

NOTICE OF REGULAR MEETING

In accordance with §38-431.02 of the Arizona Revised Statutes of the State of Arizona, notice is hereby given to the Employee Benefit Trust Board and to the general public that the Mayor and Trustees of the Employee Benefit Trust Board will hold an Employee Benefits Trust Board Meeting at 5:30 P.M., September 8, 2021. The meeting will take place at the City Council Chambers, located at 1090 E. Union Street, San Luis, Arizona, 85349.

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, the City of San Luis does not discriminate on the basis of disability in the admission of or access to, or treatment of employment in its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities or services contact: ADA/Section 504 Coordinator, City of San Luis Human Resources Department, 1090 East Union Street, San Luis, Arizona 85349; (928) 341-8579.

Notice is hereby given that pursuant to A.R.S. §1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council are audio and/or video recorded, and, as a result, proceedings in which children are present may be subject to such recording. Parents in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. §1-602.A.9 been waived.

THIS NOTICE IS APPROVED BY:

/s/ Maria Munoz, HR Coordinator

AVISO DE JUNTA REGULAR

De acuerdo con los Estatutos del Estado de Arizona A.R.S. §38-431.02, se le informa a los miembros de la Junta Fiduciaria de Beneficios para Empleados y al público en general que el Presidente y la Mesa Directiva de Fondo de Beneficios Medicos de San Luis, Arizona, tendrán una Junta Regular a las 5:30 P.M., Septiembre 8, 2021. La junta se llevará a cabo en la Sala del Cabildo, ubicada en el 1090 E. Union Street, San Luis, Arizona, 85349.

De acuerdo con el Acta de Americanos con discapacidades y la Sección 504 del Acta de Rehabilitación del 1973, la Ciudad de San Luis no discrimina por causa de discapacidad la admisión y acceso a sus programas, actividades, servicios o en el trato en cuanto a empleo. Para mas información referente a derechos y provisiones del Acta de Americanos con discapacidades o Sección 504, o para solicitar adaptaciones que sean razonables para la participación en programas, actividades o servicios de la ciudad, contactar al: Coordinador del Acta de Americanos con discapacidades/Sección 504, Departamento de Recursos Humanos de la Ciudad de San Luis, 1090 Este Calle Unión, San Luis, Arizona, 85349; (928) 341-8579.

Por medio de este aviso y de acuerdo con los Estatutos Revisados del Estado de Arizona, sujeto a ciertas excepciones reglamentarias, los padres de familia tienen el derecho de dar o no dar el consentimiento antes que el Estado o alguna subdivision política grabe a un menor de edad, ya sea en audio o video. Las juntas del Concilio se graban en audio y/o video y como resultado, el hecho de que haya menores presentes puede ser sujeto a que sean grabados. Para que los padres de familia puedan ejercer sus derechos pueden solicitar por escrito con la Secretaria de la Ciudad a tal grabación, o tomar acción personal para asegurarse que su hijo/hija menor no esté presente cuando la grabación se lleve a cabo. Si un menor de edad esta presente en el momento de la grabación, la Ciudad asumirá que los padres de familia están cediendo los derechos sobre una posible grabación de acuerdo con el Estatuto Revisado del Estado de Arizona §1-602.A.9.

ESTE AVISO ES APROBADO POR:

/f/ Maria Munoz, Coordinadora de Recursos Humanos

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AGENDA
Regular Meeting
City of San Luis Employee Benefit Trust
Council Chambers – City Hall
1090 E Union Street
San Luis, AZ 85349
Wednesday, September 8, 2021
5:30 P.M.

NOTE: Some members of the Board of Trustees of the City of San Luis Employee Benefit Trust may attend the meeting telephonically. If authorized by majority vote of the Board of Trustees, an executive session will be held immediately following the vote in accordance with A.R.S. §38-431.03(A) and the meeting will be temporarily recessed while the Board retires to executive session which will not be open to the public.

1. **CALL TO ORDER/ROLL CALL**

2. **CONSENT AGENDA**

2. A. **MINUTES OF:**
Regular meeting held on June 23, 2021

3. **DISCUSSION AND POSSIBLE ACTION ITEMS:**

3. A. Discussion and possible action by the Mayor on any and all matters regarding nomination and recommendation to City Council to renew or appoint 5-year terms for the Trustee positions of Chair and Vice-Chair. **(Kay Marion Macuil, City Attorney)**

3. B. Discussion and possible action on any and all matters regarding the quarterly review of the benefit plan. **(Monica Castro, Director of Finance and Susan Posada, Broker and Consultant)**

3. C. Discussion and possible action on any and all matters regarding the implementation of an investment strategy for Trust funds. **(Monica Castro, Director of Finance)**

3. D. Discussion and possible action on any and all matters regarding the name change of EAP Preferred to Integrated Behavioral Health (IBH), Inc., effective June 1, 2021, and the ratification and approval of the Agreement with IBH. **(Susan Posada, Broker and Consultant)**

3. E. Discussion and possible action on any and all matters regarding the proposed change to employee preventative service coverage. **(Susan Posada, Broker and Consultant)**

3. F. Discussion and possible action on any and all matters regarding the change of Prescription Retail **(Susan Posada, Broker and Consultant)**.

4. **ADJOURNMENT**

Employee Benefit Trust Board Meeting

2. A.

Meeting Date: 09/08/2021

Summary

MINUTES OF:

Regular meeting held on June 23, 2021

Attachments

Minutes for meeting held on 06/23/2021

**MINUTES
REGULAR MEETING
EMPLOYEE BENEFITS TRUST
COUNCIL CHAMBERS
1090 E. Union Street San Luis, Arizona 85349
June 23, 2021
5:30 p.m.**

1. **CALL TO ORDER/ROLL CALL** Chairman Gerardo Sanchez called the meeting to order at approximately 5:33 p.m.

Those Present:

Boardmember Maria Gonzalez	via zoom
Boardmember Gustavo MacGrew	via zoom
Vice-Chairman Emma Torres	via zoom
Chairman Gerardo Sanchez	

Those not Present:

Secretary Maria Sabori

Others present:

Kay Marion Macuil, City Attorney
Janet Taylor, Legal Secretary, Acting Clerk
Tadeo A De La Hoya, City Manager
Maria Munoz, Human Resources Benefits Coordinator
Susan Posada, Benefits Coordinator/Broker
Monica Castro, Director of Finance
Rodger Diaz Human Resources Coordinator
Jonathan Dumadag - IT Department
Rob Flunker – via telephone
Glenn Gimbut, Assistant City Attorney – arrived at approximately 6:20 p.m.

2. **CONSENT AGENDA**

All matters are considered routine by the Employee Benefit Trust Board and will be enacted by one motion. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

2. A. **MINUTES OF:**

-Regular meeting held on May 5, 2021

MOTION: Chairman Sanchez and Vice-Chairman Emma Torres to approve the Consent Agenda. **Motion passed unanimously.**

The vote was as follows:

Boardmember Maria Gonzalez	Aye
Boardmember Gustavo Macgrew	Aye
Vice-Chairman Emma Torres	Aye
Chairman Gerardo Sanchez	Aye

3. DISCUSSION AND POSSIBLE ACTION ITEMS:

3.A. Discussion and possible action on any and all matters regarding the purchase and name change of the third-party administrator, EBSO Inc., to 90 Degrees Benefits, Inc. and adoption of service agreement with 90 Degrees Benefits, Inc. and benefit plans for the fiscal year starting July 1, 2021. **(Rob Flunker, President of 90 Degrees Benefits, Inc.)**

Mr. Rob Flunker, President of 90 Degree Benefits, Inc., stated that they have been with the 90 Degree family since 2018 but have not changed their name until now. Mr. Flunker explained for a company that large, the name change takes time. Mr. Flunker also stated that everything would remain the same as far as day-to-day processes. But the brand is now 90 Degree Benefits as opposed to EBSO. The change will provide more resources to clients.

Chairman Sanchez asked if there were any questions regarding the name change. The board had none.

MOTION: Chairman Sanchez and Board Member Gustavo Macgrew to approve the following motions 1 - 6. **Motion passed unanimously.**

1. I MOVE TO APPROVE THE ADMINISTRATIVE SERVICES AGREEMENT FOR THIRD-PARTY BENEFIT SERVICES WITH 90 DEGREE BENEFITS, INC.
2. I MOVE TO APPROVE THE AUTHORIZATION AND GUARANTEE AGREEMENT FOR AUTOMATED CLEARING HOUSE AUTHORITY SO THAT 90 DEGREE BENEFITS, INC. MAY PROCESS DEBIT AND CREDIT CARD PAYMENTS.
3. I MOVE TO APPROVE THE U.S. MEDICAL PLAN WITH 90 DEGREE BENEFITS, INC. AS THE THIRD-PARTY ADMINISTRATOR.
4. I MOVE TO APPROVE THE U.S. DENTAL PLAN WITH 90 DEGREE BENEFITS, INC. AS THE THIRD-PARTY ADMINISTRATOR.
5. I MOVE TO APPROVE THE MEXICO-ONLY MEDICAL PLAN WITH 90 DEGREE BENEFITS AS THE THIRD-PARTY ADMINISTRATOR.
6. I MOVE TO APPROVE THE MEXICO-ONLY DENTAL PLAN WITH 90 DEGREE BENEFITS AS THE THIRD-PARTY ADMINISTRATOR.

The vote was as follows:

Board Member Maria Gonzalez	Aye
Board Member Gustavo Macgrew	Aye
Vice-Chairman Emma Torres	Aye
Chairman Gerardo Sanchez	Aye

3.B. Discussion and possible action on any and all matters regarding the quarterly review of the benefit plan. (Susan Posada, Broker, and Consultant)

Ms. Posada discussed the main points from the PowerPoint presentation and stated that the claims that have come in ending May 31 are 43% higher than last year. Ms. Posada noted that the worst part is that we have lost \$171,000.00 for the 11 months and anticipates very large claims coming in by the end of June. Stop-Loss claims are at \$850,000.00, which is 32% of the estimated claims of 2.6 million.

Ms. Posada continued and explained how Stop Loss works and how it pays.

Rob Flunker stated that years like this are why we have insurance and that COVID bills run high. The plan is still healthy, and the Trust is healthy, and the fact that we are in a good position should put everyone at ease.

Chairman Sanchez stated that we knew this was going to happen, and there was no way to tell that COVID was going to be our highest. It appears that it's there, but it is not. The other claims are significant, which happens when you have over two hundred employees, and our employees are protected. The benefits are probably the best in Yuma county and perhaps in the state.

Ms. Posada mentioned that it had been nine years of preparation. Still, one of the things she didn't mention last time is that the last several years the amount of contributions the city has been making did not increase; as a matter of fact, last year, it decreased, which meant less money went into the Trust. However, even with that, the Trust is still in a good position.

Vice-Chairman Emma Torres stated that she believes every precaution has been taken these past years, and we have been fortunate not to have incidents and actually to have increased our funds to be healthy. Even when there is a bad year, we are still holding strong, and that is as much as an administrator can do. Thank you, Susan.

Ms. Gonzalez concurred with Ms. Torres' statement and also thanked Susan.

Rob Flunker added to that, saying how important it was to keep the Trust healthy. Susan's diligence should be commended the Trust has been managed very well.

Ms. Posada also commented that many other brokers would increase the premiums, and that is how they get paid; they get a percentage of that. For at least the last four

or five years, we have not increased premiums to the city. Ms. Posada stated that she prefers not to think that way, but her thought is through balance.

Chairman Sanchez stated there was no motion for this item; therefore, no action was taken. This was for informational purposes only.

3.C. Discussion and possible action on any and all matters regarding renewal of a broker agreement with Susan Posada Agency, Inc. (Susan Posada, Broker, and Consultant)

City Attorney Kay Marion Macuil stated that there are three options due to the way the item has developed. Ms. Macuil began with Option #3, and that Option #3 is what is in place now; it is automatic renewal for two years but can be terminated with a sixty-day notice. If this is the option that is chosen, it would automatically renew because we haven't given the sixty-day notice. I think this is just an oversight because Susan did come in with an amendment, and I just didn't catch it; I just trusted Susan that we needed to renew, and it was expiring. I had forgotten this 2019 provision, so Susan's option of just a straight three-year extension was brought in, in March, so that is another option on the table. We met on May 5, and staff was directed to come up with Option #1 (Kay reading the option out loud);

3B is the operative change on or before June 30, 2023, the client; the client is the trustees, may give written notice to the broker of its intent to put out the agreement for the request for qualifications and proposals or take such other action in its fiduciary responsibility.

Kay explained that qualifications are different from a request for proposals. You can just go out for qualifications and see what kind of expertise is out there and then negotiate the price, so that is what qualifications do.

Chairman Sanchez asked if that was Option 3. Ms. Macuil responded, yes, B. And that qualification entitles the client to go out?

Ms. Macuil replied to go out and ask what your expertise is for a Mexico Plan, a Dental Plan, and a US plan. All the complexity of our contracts. What is your expertise in handling a Trust Fund? What is your expertise in a Self-Insured? Just to find out if there is any expertise in this area.

Chairman Sanchez asked what the time frame for that is?

Ms. Macuil stated that Susan could also put in her bid, and that would go out after you are given the notice before June 30, 2023.

Ms. Macuil stated she would just read it: The selected Broker Firm would commence creating a benefits plan for the July 1, 2024, through June 30, 2025, fiscal year on

October 1, 2023. We thought we would need a transition time. If we went out to bid, we would have to select by October. If a new firm were selected, there would be time to transition if the selected broker firm is not the current broker, then a transition. The current broker shall continue all aspects of this agreement, including working with the selected broker in creating a benefits plan to the extent that proprietary property is protected and not infringed. So brokers do have intellectual proprietary properties, so Susan wouldn't have to share hers and, if there were a new firm, they would not have to share theirs. The client will compensate the current broker (Susan) through June 30, 2024, according to sections four and five below.

So her compensation her option back in March she didn't raise it so, the compensation in all three agreements is the same.

Chairman Sanchez asked 5% Ms. Macuil responded yes in all three. Ms. Macuil then corrected herself by stating no 3%. It comes out to \$35.00 per employee per month.

Ms. Macuil stated that if there were no more questions about the content of the three options, I can stay here for that, then Susan would like to make a presentation.

Chairman Sanchez stated that he wanted to go over the options first.

Option #1-Renew broker agreement for three years with the option of going out to bid with one-year notice in 2023

Option #2-Renew brokers agreement for a flat three years, no option to go out, no nothing, just three years.

Option #3-Renew automatically for two years with both parties having the option of sixty-days notice to end renewal at the end of two years under the current amendment signed June 12, 2019.

Chairman Sanchez asked members if they had any questions or concerns, then continued with he had a concern and asked; these three options came out of what?

Ms. Macuil responded the current option was just an oversight. As Susan said, she is not focused on her compensation. She is focused on all the things that go on in March to get all the contracts done, and she just did what she usually does and given us a three-year option forgetting that back in 2019, we changed it to a two-year automatic with a sixty-day notice. So that created two options. On May 5, the trustees wanted to have an opening to go out to bid as a proposal to the whole group. And that is why the third one came in.

Chairman Sanchez replied, you came up with three options based on that? Ms. Macuil responded right.

Board Member Maria Gonzalez asked about option #3 that came about because of when we met on May 5?

Ms. Macuil responded, correct.

Chairman Sanchez stated that he was a little confused because they were given three options. I thought this was; we are going to work on a contract, and we were going to do a two year with the option to go out to bid.

Ms. Macuil responded, yes, so that is option three, and I did negotiate with Susan. She said today and in an email that she was fine with Option #3.

Chairman Sanchez stated that he thought that was the agreement and asked board members if he understood it right.

Ms. Gonzalez responded I thought Option #3 is what we agreed on. That is what I understood.

Chairman Sanchez said seeing all three options only complicates things.

Ms. Macuil apologized for the complications.

Vice-Chairman Emma Torres commented that all three are very similar in that we agree to continue to contract with Susan. If three is what we agreed upon, then I am fine with either one. The most important thing here is a trusting relationship between the contractor and us and, I don't think that is going to change. If anything, it might get strengthened.

Ms. Macuil apologized again stating that Option #1 was the one that came out of the May 5th meeting.

Susan Posada Broker stated, first, of all Trustees, I want to thank you for the opportunity to serve you all these years. If you should approve one of these agreements, I want to thank you for that. I did say to Kay that Option #3, which is Option #1, that I was okay with that.

I feel that there are bigger issues here. I am a person of very high integrity and honesty and very passionate about what I do, and I sometimes think it is my fault that I don't show the work that I do, and I know the value that I bring. Regardless of what happens after the third year, I will not bid again. I don't feel that I am valued. I have done a tremendous amount for the city all these years. My heart, my soul, has been in it. It never has stopped. And if I am not valued, I don't need to be here anymore.

But I have a commitment for you and, here is my commitment. My commitment is in the next three years. I will do the same as I have always done. I do that not only for you; I do it for me because that is the kind of person that I am. For me bringing value

and bringing pleasure, and showing that I can do a good job is more important than the money. As you can see, last several years, I did not increase the contributions

because it was the right thing to do, and brokers make money by increasing the contributions are how they are going to make money. I didn't do that. I don't think that way. I don't have a criminal mind to think like that. So I just do what I think is the right thing.

The commitment I make to you is that I will continue to do the right thing; however, this is how it works in the third year or the beginning of the third year. The renewals begin late January, late February, and what I did this year, for instance, without you renewing my contract, I took it on trust that you would renew my contract, so I did all the work for this coming year, all of it it is almost done. Throughout the year, I do more I get calls for this or that, but the majority of the work has already been done for this coming year. And paid for and done everything that needs to be done.

But that last year, once you choose a broker beginning February, that particular incumbent broker must do the work for the following year. And I am happy to help and assist, but I have already done the work for that year, so I can't do the work for the coming year, and that particular broker does not need to be paid until January 1. That is how I work. When I get a new client, I do not charge them until the renewal begins. So when you begin to look at a broker, you begin to look at the things they bring to the table, such as do they give you a website do they give you this do they give you that, what else do they provide for you for your HR. Those are things that you can quantify.

The two things you are unable to quantify are the nine years of honesty and integrity that I have brought to the table and the passion and the love I have brought to all of you and your employees and your dependants. Those are two things that you are not going to be able to measure. Thank you.

Chairman Sanchez thanked Susan and asked if there were any comments from board members.

Vice-Chairman Emma Torres stated she was sorry to hear Susan's sentiment about how she feels, distrusted, and stated that she doesn't feel that is the case. If anything, these nine years of working together, I understand what a trust is; I understand how it works. If anything, I feel like I have been a really good fiduciary agent on behalf of the people we represent and the questions as business people we ask because we are trained to ask and anything that is not clear to us we have to ask with no intention of showing distrust. I am sorry, Susan, that you feel that way. If anything, I have learned to appreciate your work more. Because I understand it, and as a representative of the community, I am making sure that I am doing the best that I can. I am sorry you have taken it that you feel mistrusted, but that is not the case for me. On the contrary, I have learned to appreciate you even more over the years.

Chairman Sanchez thanked Emma for her comments and stated that when Susan came on board, they were in a situation where our money was at a very high risk of being lost you, came in with the ideas you came in showing us because we didn't know better because we were working with other brokers that supposedly were Professionals. Our money was vulnerable and basically in someone else's account. We didn't know about the benefits and pricing and overcharging.

Over the years, my biggest concern was benefits for employees. My concern was the premiums, and I was seeing them go up, and my big question was, when is it going to stop? When I became a board member a chairman, then we were able to control the contributions, the charges, and the benefits. We have been very blessed and have a healthy account.

Chairman Sanchez apologized to Susan if she felt mistrusted, not valued. On a personal note, when I was in the hospital on day 15 and was giving up, the person I thought about was Susan, and you are the one I called when I wanted to be transferred to Mayo clinic. I value your work, and I know what you do. You have been a good partner and a good friend to the City of San Luis.

Chairman Sanchez stated that we do not have the personal for HR, but we still offer the best benefits. If an employee has a problem, things get fixed.

Boardmember Maria Gonzalez stated that was not the intention on her part when she questioned the contract. She stated that she was sorry Susan felt that way. That was not the intention, and that she valued Susan and appreciates all she has done and now understands the questions she had prior.

Susan Posada stated that she had Rob on the phone and asked if he would speak to what she made.

Rob Flunker responded yes, Susan makes about \$35.00 ppm which is about 3%. If the question on this broker bid is on cost, Susan is priced very competitively in the marketplace for what she is doing. If you went out to bid for another broker, you would get brokers that would come in cheaper. Still, you are not going to get a broker that would benefit the city like Susan does or provide the level of detail that she does. No other broker I work with knows how to run a US-Mexico plan in conjunction with a Blue Cross Blue Shield plan of Arizona. Those nuances, those intricacies right there I don't even know how to put a price on that. Susan is currently underpriced compared to the current broker fee in the marketplace. I recommend keeping Susan on as the agent and keep the plan as it is, running smoothly. That is a huge knowledge base, and there will be a huge learning curve for whatever new agent does come in. Susan is a huge asset and shouldn't go unnoticed at all. From what I have heard, it looks like she has proven that over the nine years.

Susan Posada stated that as far as the trustees go, she wasn't trying to make anyone feel uncomfortable, which was not her intention. I wanted to tell you how I felt for the last nine years. I am reminded constantly of how much I make, and I make too much money for what I do, but my experience speaks for itself. You guys, as the trustees, don't hear that, but I am constantly reminded on the political side. It is now time for me to speak up after nine years and tell you what my value is. Thank you for listening to me. I appreciate that very much.

Assistant City Attorney Glenn Gimbut stated that in talking to Kay about the current contract with Susan, I changed a couple of words to give options and flexibility to the trustees. I understand from Kay that one of the concerns from folks was that they had done their fiduciary duty to the Trust that they have done their due diligence. Mr. Gimbut stated that there are more ways to do that than an RFP, and so I put in the flexibility to choose your path in the future of what you want to do and how you want to go about doing it. It is not necessarily a request for bids. For example, you can call around to see if there is anybody else in the state that does what Susan does the way she does it. If you can't find them, you have done your due diligence and, you don't have to do an RFP. So I am suggesting that you might want to think about alternative routes and to have that flexibility and not be married to one particular method to do your due diligence. Thank you.

Chairman Sanchez stated to Glenn for clarification; you are talking about options for that option; the ability to do that. I like that option. We need to feel as chair members that we are doing our duty. Which option are you referring to? Are you referring to option number one or?

Glenn Gimbut stated you have in your contract that in the future, there is going to be an RFP, and I changed that to you will choose if there will be an RFP or you can choose another path. So you are not married to one particular solution.

Kay Macuil responded Option #1

Chairman Sanchez thanked Glenn and stated that we have reviewed and listened and that a lot of things can happen in three years. I personally would like to see Option #1. Chairman Sanchez said, let me be very clear with the option of going out. He asked Glenn, when you say RFP, you mean going out to bid; we don't actually have to go out to bid, do we?

Glenn responded it is set up so you can choose your path. If you want to do bids, you can; if you want to pick another path, you can do that too.

Chairman Sanchez replied, and that is with Option #1?

Mr. Gimbut responded; correct. I think so. Kay has the final draft, so I will let her lead you through the contract.

Kay responded, so that is the piece of Option #1 where it says, "Client may give written notice to the broker of its intent to put out the agreement for Request for Qualifications and Proposals or take such other action in its fiduciary responsibilities." So that is where the flexibility is.

Chairman Sanchez stated that we have the option of not doing and we are not forced to. But if we see the need.

Chairman Sanchez asked if there were any concerns from the members. I am looking at Option #3 as the best viable option.

Boardmember Maria Gonzalez stated that she concurred with the Mayor with Option #1. It is Option #1, right?

Vice-Chair Emma Torres commented; it is Option #1

Chairman Sanchez corrected himself and said yes Option #1

Vice-Chairman Torres said it is always a good option to have that flexibility. I am very glad that I am kind of shielded from some of the political things that you have heard. Susan and I haven't been involved in that. As an administrator, I know that it is expected that I will be able to have that opportunity to have the flexibility to make decisions on behalf of who we represent. Option #1 states that we will renew, but in case we decide not to, we still have that flexibility. Although, as it was mentioned in the discussions before, all the contracts have the option to terminate 30 days or 60 days notice from either side. That is why I said, in the beginning, I think that either of the three options still states that we trust and appreciate the work and we are willing to continue, so however the group decides, I am fine with it.

MOTION: Chairman Sanchez and Vice-Chairman Emma Torres to approve Option #1 of the broker agreement as presented. **Motion passed unanimously.**

The vote was as follows:

Boardmember Maria Gonzalez	Aye
Vice-Chairman Emma Torres	Aye
Chairman Gerardo Sanchez	Aye

4. ADJOURNMENT

Motion: Chairman Gerardo Sanchez and Boardmember Maria Gonzalez to adjourn the meeting. **Motion passed unanimously.**

Meeting adjourned at approximately 6:32 p.m.

Employee Benefit Trust Board Meeting

3. A.

Meeting Date: 09/08/2021

Department Head: Maria Munoz, HR Benefits Coordinator, Human Resources Department

Submitted By: Maria Munoz, HR Benefits Coordinator, Human Resources Department

ITEM:

Discussion and possible action by the Mayor on any and all matters regarding nomination and recommendation to City Council to renew or appoint 5-year terms for the Trustee positions of Chair and Vice-Chair. **(Kay Marion Macuil, City Attorney)**

SUMMARY:

Background

The term for Board Chairman Gerardo Sanchez, and Vice-Chair, Emma Torres expired in March 2020. On March 13, 2019, the Trustees amended the Trust allowing for three (3) consecutive appointments as trustees.

Chairman, Gerardo Sanchez, has agreed to serve his third term (5 years) starting March 2020 and ending March 2025.

Vice-Chair, Emma Torres has not yet expressed whether she wishes to continue in the position.

Legal Parameters

A general principle of law is that a person in an appointed position may hold over past expiration until a successor is appointed. The public interest requires that public offices should be filled at all times without interruption. (See *McQuillin: The Law of Municipal Corporations, Chapter 12, Article VII De Facto Officers § 12:160 (3d ed. August 2020 Update)*).

Under § 3.01, The San Luis Mayor nominates trustees and recommends to the City Council individuals to serve as trustees.

Suggested action by the Mayor

Since the Mayor is also the Chair of the Trust, he may choose this item to make nominations.

RECOMMENDATION / SUGGESTED MOTION:

MAYOR'S NOMINATION AND RECOMMENDATION TO CITY COUNCIL

(1)

I NOMINATE AND RECOMMEND TO CITY COUNCIL TRUSTEE TERM RENEWAL FOR CHAIRMAN, GERARDO SANCHEZ.

(2)

I NOMINATE AND RECOMMEND TO CITY COUNCIL TRUSTEE TERM RENEWAL FOR VICE-CHAIR, EMMA TORRES.

OR

I NOMINATE AND RECOMMEND TO CITY COUNCIL TRUSTEE APPOINTMENT FOR VICE-CHAIR, _____.

Fiscal Impact:

N/A

Attachments

Amended Trust

Approved minutes/motion - meeting 03/13/2019

2021-08-23 email from Acting Council Assistant Chair wishes to renew term

Legal Encyclopedia on Hold-overs

**AMENDMENT
OF
AGREEMENT AND DECLARATION OF TRUST
FOR
CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

Article III, Section 3.04 shall be amended and read as follows:

Section 3.04 TRUSTEES' TERM

(A) Initial Terms. The initial terms for the first five (5) Trustees shall be as follows:

- one (1) Trustee to serve an initial term of one (1) year,
- two (2) Trustees to serve an initial term of two (2) years, and
- two (2) Trustees to serve an initial term of three (3) years.

The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year and three years terms. This shall result in the Trustees rotating appointment every two (2) to three (3) years.

(B) Duration of Terms after Initial Term. After the initial term, each Trustee shall serve for five (5) years.

(C) Appointment. A Trustee may be appointed for no more than three (3) consecutive terms.

ACCEPTANCE

The undersigned Trustees hereby accept and agree to be bound by the foregoing the Amendment to the Agreement and Declaration of Trust:

 3/13/19

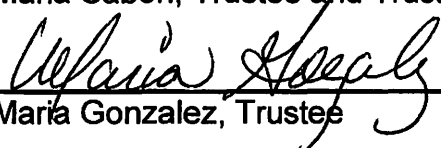
Gerardo Sanchez, Trustee and Trust Chair Date

 3/21/19

Emma Torres, Trustee and Trust Vice Chair Date

 3/13/19

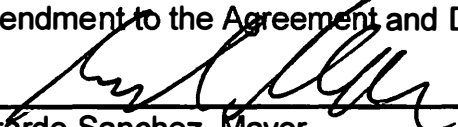

Maria Sabori, Trustee and Trust Secretary Date

 3/13/19

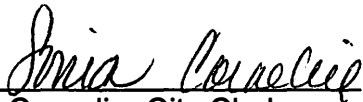
Maria Gonzalez, Trustee Date

ACCEPTANCE

The undersigned City hereby accept and agree to be bound by the foregoing Amendment to the Agreement and Declaration of Trust:

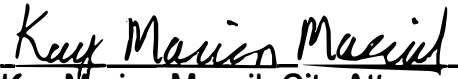
 _____ Gerardo Sanchez, Mayor	_____ Date
 _____ Maria Cecilia Ramos, Vice Mayor	<u>3/12/19</u> Date

ATTEST:



Sonia Cornelio, City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil, City Attorney

**AGREEMENT AND DECLARATION OF TRUST
FOR CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

THIS AGREEMENT AND DECLARATION OF TRUST was made and entered into this first day of September 2011, between CITY OF SAN LUIS, a municipal corporation hereinafter referred to as the "City" and certain persons hereinafter referred to as the "Trustees" to administer the Trust in accordance with the terms and provisions of this instrument.

WITNESSETH:

WHEREAS, A.R.S. § 11-981 authorizes the City of San Luis to establish a self-funded insurance program for health benefits for its Employees.

WHEREAS, A.R.S. § 11-981 requires the establishment of a health benefits trust for the purposes of management and administration of this program; and

WHEREAS, A.R.S. § 11-981 also requires the establishment of the health benefits trust board to administer the health benefits trust.

WHEREAS, CITY OF SAN LUIS, hereinafter designated and referred to as "City", and certain employees of said City hereinafter designated and referred to as "Employees", desire to enter into a program of providing and maintaining health and welfare benefits for Employees of the City and certain members of their families, hereinafter designated and referred to as "Dependents", which program is to be administered by the Trustees; and

WHEREAS, to effect the aforesaid purpose it is mutually desirable by and between the parties hereto to declare and create a Trust which establishes a Trust Fund for and in the manner more particularly set forth herein; and

WHEREAS, the Trustees and City which accept this Agreement and Declaration of Trust and agree to be bound by the provisions hereof shall, upon acceptance by the parties hereto, be deemed a party to this Agreement and Declaration of Trust.

Now THEREFORE, in consideration of the promises, covenants, agreements, terms, obligation and duties herein set forth, it is understood and agreed as follows:

**ARTICLE 1
DEFINITIONS**

It is mutually understood and agreed by and between the parties hereto that the following are and shall be the definitions:

Section 1.01 The term "Employee Benefit Trust" shall mean the program of benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

Section 1.02 The term “Employee” shall mean all persons who have met the eligibility requirements as defined in the written instrument for the Employee Benefit Trust and who have properly enrolled for and made appropriate contributions for coverage under said Trust, and who are not eligible for benefits under any other health program to which the City makes contributions.

Section 1.03 The term “Dependent” shall mean all persons who have met the eligibility requirements for being a dependent of the Employee as defined in the written instrument for the Employee Benefit Trust and who have been properly enrolled for and made appropriate contributions for coverage under the Employee Benefit Trust, and who are not eligible for benefit under any other health program which the City makes contributions.

Section 1.04 The phrase “Trust Agreement” shall mean and refer to this Agreement and Declaration of Trust and any modification or amendments thereto.

Section 1.05 The term “Fund” as used shall mean the Trust Fund created by this instrument, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the uses, purposes, and Trust set forth therein, and those things of value which compromise the corpus and additions to the Fund.

Section 1.06 The term “Trustees” as used herein shall mean the Trustees and their successors provided for in the Trust Agreement.

Section 1.07 The name of the Trust is and shall be City of San Luis Employee Benefit Trust.

Section 1.08 The phrase “City Contributions” does and shall mean the contributions made by the City of San Luis to the Fund for the Employee Benefit Trust.

Section 1.09 The phrase “Employee Contribution” does and shall mean the contributions made by the Employees of the City of San Luis to said Fund.

Section 1.10 The term “City” does and shall mean the City of San Luis, a municipal corporation organized and existing under the laws of the State of Arizona.

Section 1.11 The phrase “Plan Document” does and shall mean the written instrument containing the provisions for self-funded health and welfare benefits of the Employee Benefit Trust.

Section 1.12 The phrase “Contract Administrator” does and shall mean the person or firm employed by the Trustees who is responsible for the processing of claims and

payment of benefits, administration, accounting, reporting and other services contracted for by the Trustees.

**ARTICLE II
PURPOSE OF TRUST AND APPLICATION OF THE FUND**

Section 2.01 FUND There is hereby declared and created the City of San Luis Employee Benefit Trust: To establish a Trust Fund to provide benefits for, but not limited or restricted to Life, Accidental Death and Dismemberment, Basic or Major Medical coverage's for accidents or sickness, Dental; and any other benefits as determined by the Trustees for the Employees and their Dependents; whether through self-funded or insured programs or both.

Section 2.02 PRINCIPAL OFFICE The Trust shall have its principal office in the City of San Luis, County of Yuma, state of Arizona and hereinafter designated and referred to as Principal Office.

**ARTICLE III
POWERS AND DUTUES OF TRUSTEES**

Section 3.01 APPOINTMENTS OF TRUSTEES The Employee Benefit Trust shall be administered by the Trustees. The Mayor shall nominate individuals to serve as Trustees overseeing the management and administration of the Trust. The City Council shall consider and may appoint any individual so recommended, provided that the appointed Trustees conform to the requirements of Section 3.02.

Section 3.02 NUMBER AND IDENTITY The Trustees shall consist of five (5) persons, consisting of no more than one (1) member of the City Council and no more than (1) Employee of the City.

Section 3.03 ACCEPTANCE Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee hereby accept the Trust and Trusteeship and declares they will receive and hold the Fund by virtue of this Trust Agreement for the uses and purposes and with the powers and duties herein set forth and none other. The Trustees shall faithfully keep and hold any and all monies they receive as Trustees for the purpose of the Trust and keep adequate and proper records thereof.

Section 3.04 TRUSTEES' TERM Each Trustee shall serve a five-year term. A Trustee may be reappointed of no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five (5) Trustees shall be as follows: one (1) Trustee to serve an initial term of one (1) year; two (2) Trustees to serve an initial term of two (2) years; and two (2) Trustees to serve an initial term of three (3) years. The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year, and three year terms. This shall result in Trustees rotating appointments every two (2) to three (3) years.

Section 3.05 EXECUTIVE ADVISORS The Board of Trustees shall include as Executive Advisors, the City's Finance Director, or their designee, and the City's Human Resource Director, or their designee, and the City Manager, or their designee. Such Executive Advisors shall attend all meetings of the Board of Trustees.

Section 3.06 DUTIES The Trustees shall hold, manage, care for and keep the Fund and collect the income and increments thereof, and shall keep and maintain adequate and proper records to render an external annual audit, accounting and reports as hereinafter mentioned. The Trustees shall employ or hire such agents, attorneys, accountants, actuaries, employees or other persons and to lease premises and equipment as may be necessary or desirable in administering the Fund and carrying out its purposes and the fees, salaries, wages emoluments or compensation of any and all such persons shall be paid from the Fund. When acting upon the advice of counsel for the Trust, the Trustees shall be relieved of all responsibility for acts done or not done. The Trustees may incur any expenses for supplies, rental of space or other items or anything else believed to be necessary or desirable in administering the Fund and carrying out the objects and purposes of this Trust and Trust Agreement. The Trustees shall have all right, power and authority to do all those things which, in the opinion of the Trustees may be necessary or desirable for the administration and operation of accomplishments of the objects and purposes of the Fund and this Trust and Trust Agreement.

In addition, the Trustees shall establish terms and conditions for the Employee Benefit Trust including, but not limited to:

- A. Establish terms and conditions of coverage including exclusions of coverage;
- B. Establish provisions for eligibility requirements to enroll for coverage;
- C. Ensure that all claims are processed promptly;
- D. Administer the Trust Fund pursuant to this Agreement;
- E. Designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Articles 3 Or 9 of the Arizona Revised Statutes, and such license shall be verified by the Board of Trustees at time of the designation;
- F. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts;
- G. Review the Trust Fund quarterly to insure sufficient funds exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation;
- H. Make recommendations to the City Manager on financial issues relating to the self-insured programs;
- I. Comply with all requirements of State and Federal laws relating to self-insurance programs;
- J. Take all necessary precautions to safeguard the assets of the Trust;
- K. Maintain minutes of its meetings.

Section 3.07 TRUSTEES' AUTHORITY The Trustees shall have the power to enter in contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the desirable schedule of benefits. The Trustees, in carrying out the purposes of this Trust Agreement, shall have the power and the right to provide the intended benefits under this Trust by means of direct or self-funding by the Trust and/or by the procurement of group insurance contracts (permissible under the laws of Arizona) including group insurance contracts issued to and in the name of the Trust, together with such other forms of contracts issued by qualified insurance companies authorized to do business in the State of Arizona as may be selected by the Trustees for the purpose of providing for all or part of the benefits provided under this Trust. The Trustees are hereby expressly authorized to pay to any insurance company as may be selected by the Trustees, the required insurance premiums in connection with such group insurance contracts issued to the Trust. Whether or not benefits are provided by means of direct or self-funding or by the procurement of group insurance, such decision shall be at the sole and exclusive discretion of the Trustees.

Should the Trustees select or provide for any policy or any program of self-funding, no claims for benefits or no claims for liabilities shall be brought against the Trustees. The sole and exclusive liability of said Trustees in the management and operation of any program of self-funding shall be limited to due care in the selection of administrators, claim representatives, actuaries, or other officials charged with the administration of such a program of self-funding. In the event that submitted claims of Employees and/or Dependents exceed the funds available, the claims shall be paid in the order received.

Section 3.08 DEPOSITS AND INVESTMENTS All corpus or portions of the Fund not expended under Article III may be deposited by the Trustees in the name of the Trust in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits should carry or bear interest. The Trustees are empowered to receive for the benefit of the Fund such interest as might accrue on the above deposits. If not so deposited, any accumulated funds not currently required for the purposes of this Trust, shall be invested by the Trustees in reasonable secure, reasonable liquid investments.

The Fund may accumulate dividends or experience rating refunds or other monies, if any accruing from any insurance policy or policies deposits or investments. Such dividends, refunds or other monies or all of them, shall be held in the Fund, applied to the payment of self-funded claims, the payment of insurance premiums, or held, used or applied as herein set forth.

Section 3.09 COMPENSATION The Trustees shall receive no compensation for their services except for reimbursement of actual reasonable expenses incurred.

Section 3.10 WITHDRAWALS All checks, drafts, vouchers or other withdrawals from the Fund or depositories and the transfer or liquidating of insurance policies or

investments shall first be authorized by the Trustees and then signed by appropriate signatories as determined by the Trust, except that checks for claims payment under the self-funded benefit provision of this Trust may be signed by an authorized representative of the Contract Administrator responsible for administering the self-funded benefit.

Section 3.11 CHAIRMAN, VICE-CHAIR, AND SECRETARY The Trustee shall elect from among themselves at their first meeting a Chairman, Vice-Chair and Secretary of the Trustees. The Chairman shall preside at all meetings of the Trustees and who shall be empowered to perform ministerial duties of the Trustees as the Trustees may from time to time delegate to him. The Vice-Chair will preside in the Chairman's absence. The Secretary shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available at the said Principal Office for inspection by all the Trustees and interested persons during usual business hours. Such records and minutes need not be verbatim.

Section 3.12 MEETINGS The Trustees shall hold a regular meeting as soon as practical after being appointed and regular meetings shall be held periodically at least four (4) times each year after the first regular meeting. The Trustees shall determine the time and place of the regular meeting of the Board. Special meetings of the Trustees may be called by the Chairman. At least seven (7) days written notice designating the time and place of the annual, regular or any special meeting shall be given to the Trustees. Any meeting at which all Trustees are present shall be subject to the open meeting law established by Arizona Statute.

Section 3.13 PROXY Any Trustee, or any other person duly authorized in writing by an absent Trustee, may cast a vote on behalf of such absent Trustee. Any such authorization must be given for each meeting.

Section 3.14 QUORUM To constitute a quorum or special meeting of the Trustees, there must be present in person or by proxy at least three (3) Trustees.

Section 3.15 VOTING Each Trustee shall have one (1) vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

Section 3.16 FISCAL YEAR AND AUDIT The accounting year of the Fund shall be on a fiscal year basis, commencing on the first day of July and ending on the last day of June of the following year and similarly each and every year thereafter. Any report required by law, city, county, state or federal, or the respective subdivisions thereof, shall be made by the Trustees. The Trustees shall have an external annual audit and accounting of the Trust Fund by a Certified Public Accountant in accordance with good accounting practices, at the end of each fiscal year. The CPA shall certify to the accuracy of his audit and accounting. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust. Copies of the audit

and generalized statements of the accounting and reports shall be delivered to each Trustee after each audit or at other times when necessary and a copy maintained in the City Recorder's office for a period of five (5) years.

Section 3.17 REGULATIONS The Trustees shall have the power to adopt rules and regulations for the administration of the Fund and/or Trust, which shall be consistent with the covenants, terms, conditions, obligation and duties as set forth in this Trust Agreement, and such rules and regulations shall be binding upon all persons dealing with the Fund and upon any and all persons claiming any benefit hereunder.

Section 3.18 BONDS The Trustees shall procure fidelity bonds for the Trustees and persons authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be in such reasonable amount to reasonably aid in reimbursing bondable loss of money, and shall meet the requirements as may be required, from time to time by applicable United States or State law. Such are to be obtained from reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with the law, such bonds may be position bonds. The cost of the premiums on such bonds shall be paid out of the corpus or income of the fund. If any fidelity or surety company refuses to bond or write a bond for any Trustee, or other persons as described in this section, said Trustee or person shall not serve and shall resign or be terminated.

Section 3.19 DEFENSE The Trustees shall institute, prosecute, maintain or defend any proceeding at law or inequity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustees; but the Trustees shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reason thereof.

ARTICLE IV TRUSTEE AND SUCCESSOR TRUSTEES

Section 4.01 TRUSTEE TERMINATION The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal of a Trustee by a majority vote of the City Council; or for a Trustee who is an employee of the City of San Luis, the termination of such employment.

In the event of the death, resignation, or removal of an appointed Trustee, the City Council shall designate a successor to such Trustee from recommendations from the Mayor, who, upon acceptance of his/her appointments in writing, shall succeed to the legal interest of his/her predecessor. Upon the effective date of the death, resignation or removal, the Trustee shall be discharged from any further duty or responsibility under the

Trust and any and all property in his or her possession or control which belongs to the Plan or Trust shall be delivered to the Chairman (or to the Secretary, if the Chairman is resigning, removed, or deceased.)

Section 4.02 TRUSTEE RESIGNATION A Trustee may resign by giving sixty (60) days prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the sixty (60) day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of the resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts the appointment prior to the stated effective date of the resignation.

Section 4.03 SUCCESSORS The Trustees, and their successors from time to time acting hereunder, shall have all the rights, powers and duties of the original Trustees named herein and the insurance company or companies and Contract Administrator shall be immediately notified of any successor.

Section 4.04 SUCCESSORS' LIABILITY No successor Trustee shall be liable or responsible for any act or defaults of his/her predecessor, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Fund or Trust prior to his/her appointment as Trustee, nor shall he/she be required to inquire into or take any notice of the prior administration of the Fund or Trust. A successor Trustee is solely responsible for his/her actions as set forth in Article III.

Section 4.05 SUCCESSORS' TERM The appointed successor Trustee shall complete the initial term of his predecessor.

ARTICLE V CONTRIBUTIONS TO THE FUND

Section 5.01 CONTRIBUTIONS In order to effectuate the purpose hereof, the City and/or Employees shall contribute to the Fund an amount determined by the Trustees, to be necessary to pay for the benefits provided hereunder. The City and/or Employee contribution shall be due and payable as of the first day of the month as determined by the Trustees.

Section 5.02 CITY CONTRIBUTIONS ARE NOT WAGES The City contributions to paid into the Fund shall not constitute or be deemed wages due to Employees, nor shall the City contributions in any manner be liable for or subject to the debts, contracts, or liabilities of the City; neither the City, any Employee, not any Dependent under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

Section 5.03 PAYMENTS IN LIEU OF BENEFITS No Employee shall have any right to receive any part of his own or the City contributions paid to him in lieu of benefits.

Section 5.04 PAYROLL DEDUCTIONS All Employees' contributions shall be paid by payroll deductions. The City shall remit all monies obtained through payroll deductions in a lump sum to the Fund, at least once per month, or as otherwise determined by the Trustees.

Section 5.05 PAYMENT All contributions shall be payable to name of the Trust, and shall be paid in the manner and form determined by the Trustees.

Section 5.06 REPORTS The City shall make all reports required by the Trustees. The Trustees may at any time have an audit made by an independent Certified Public Accountant of the wage records of the City in connection with their contribution and/or reports.

Section 5.07 IRREVOCABILITY OF CONTRIBUTIONS Subject to the provisions providing for termination of this Trust Agreement in Article XII, all contributions to the Fund shall be irrevocable, and under no circumstances shall any monies properly paid into the Fund, or any part of the Fund, be revocable by or payable to the City or any Employee, nor shall any of the same be used for or diverted for purposes other than for the exclusive program of benefits for Employees and beneficiaries provided hereunder.

ARTICLE VI PAYMENT OF BENEFITS

Section 6.01 METHOD OF PAYMENT The Trustees shall arrange for the disbursement of benefits under the Employee Benefit Trust through a Contract Administrator appointed by the Trustees for any self-funded benefits or through insurance company for fully-insured benefits.

Section 6.02 PROTECTION OF EMPLOYEES Prior to payment to an Employee or his Dependents, all assets of the Trust shall be owned by the Trust and shall not be liable in any way for any debt or obligation of any Employee or the City. To the extent permitted by law, all Trust benefits shall be exempt from attachment, garnishment, and levy of execution, bankruptcy proceedings, or other legal process at any time subject to the Trustee's possession and control; but in any event such assets shall be subject to such process only to the extent of such Employee's benefits hereunder as they fall due.

Section 6.03 CLAIM TO BENEFITS No Employee, Dependent, or other beneficiary shall have any right or claim to benefits under the Employee Benefit Trust except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Article II and III. Any disputes as to eligibility time, amount,

or duration of benefits shall be resolved by the appropriate insurance carrier or Contract Administrator, under and pursuant to the policy or contract; and the Employees, Dependents, or other beneficiary shall not have a right or claim in respect thereto, against the Funds, or Trustees. Any dispute as to eligibility, type, amount, time or duration of benefits provided by the Fund as self-funded, shall be decided by the Trustees, and all disputes shall be finally settled pursuant to Article VII.

Section 6.04 FAILURE TO PAY BENEFITS Neither the City, nor the Trustees shall be liable for the failure or omission, for any reason, to pay any benefits under the Employee Benefit Trust. If for any reason including, but not limited to, epidemics, catastrophes, or normal depletion, the Trustees determine that self-insured funds are insufficient to pay the current claims, the amount of benefits payable to an Employee or Dependent shall, in all events, be limited to the extent that sufficient self-insured funds are available to the Trustees for the payment of all such claims; and in such event, benefit payments to Employees or Dependents shall be limited to the extent that sufficient funds are available from the Trust Fund, and shall be further prorated in such amounts that all such claims shall be treated proportionately equal to the ratio that such total claims bear to the funds that are available for such payment. If any controversy or dispute exists concerning such matters, all disputes or controversies shall be settled by the dispute provision contained in Article VII.

ARTICLE VII CONTROVERSIES AND DISPUTES

Section 7.01 DISPUTES The Trustees shall have the power to construe, interpret and apply the provisions of this Agreement and Declaration of the Trust or any amendments, rules or regulations adopted thereto, and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the City, beneficiaries, administrators, and/or legal representatives.

Section 7.02 BENEFITS CLAIM SETTLEMENT The Trustees may in their sole discretion compromise or settle any disputed benefits claim or benefits claim controversy in such manner as they deem best, and any decision made by a majority of the Trustees in compromise or settlement of a disputed benefits claim or benefits claim controversy, or any compromise or settlement agreement entered into by the Trustees shall be conclusive and binding upon all parties interested in this Fund.

Section 7.03 DISPUTE OF POWERS In the event there shall be any disagreement between the Trustees and the Contract Administrator over exercise of powers granted herein, the Trustees shall prevail, and the service organization shall have no liability to any person with respect to such act or omission in the event it shall give notice in writing of its dissent from such act to each Trustee and to the City.

**ARTICLE VIII
RESPONSIBILITY**

Section 8.01 RESPONSIBILITY The Trustee shall only be responsible for monies when and only after such are received in accordance herewith. The Trustees, or Successor Trustees, shall only be responsible for any liability arising from their respective gross negligence, bad faith or willful misconduct in handling of the monies actually received in hand by them for execution and administration of the terms of the Fund. The Trustees and Successors shall not be responsible for the action or omission of their Co-Trustees, Successors, nor for the actions or omissions of other agents, or for any of the actions or omissions of any insurance company or its agents, servants, or representatives, including, but not limited to non-payment of claims by an insurance company or insurance companies for any reason. The City shall hold harmless the Trustees or Successor Trustees from all such claims except those arising from his/her own willful misconduct, bad faith or gross negligence. (No Trustee or Successor Trustee shall be entitled to any indemnification or court costs or attorney's fees for any liability arising from his/her own willful misconduct, bad faith or gross negligence.)

Section 8.02 OTHER PERSONS AND INTERPREATIONS No person who is dealing with the Trustees shall be obligated to see the application of any monies or property of the Fund, or to see that the terms of this Trust Agreement have been complied with or to inquire as to the necessity of expediency of any act of the Trustees. Every instrument executed by the Trustees or by their direction shall be conclusive in favor of every person who in good faith relies upon it, that (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect, (b) the instrument was executed in accordance with the terms and conditions of this Agreement and (c) the Trustees were duly authorized to execute the instrument or direct its execution

**ARTICLE IX
AMENDMENTS**

Section 9.01 AMENDMENTS It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Agreement, and it is the intention of the Trustees, and each and every party or person to this Agreement that the power of amendment which is herein granted be exercised in order to carry out the spirit, object and purposes of this Trust. Therefore, the general power is granted to the Trustees, by all parties to this Agreement, to amend this Agreement upon the consent and unanimous agreement of the Board of Trustees, and all parties to the Trust and all persons claiming any interest hereunder are and shall be bound thereby. Any such amendment shall be signed by the Trustees or Successor Trustee

**ARTICLE X
NONVESTING OF RIGHTS**

Section 10.01 RIGHTS No Employee, Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representatives shall have any right, title or interest, vested or otherwise, in or to the Fund, Trust, corpus, (income or increments thereto) insurance dividends, cash value, if any, or insurance or benefits or monies payable there from, payments from the Fund, or in or to the eligibility requirements for benefits as changed or altered. Any participating Employee who withdraws or ceases to participate in the Employee Benefit Trust does hereby and shall expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, nor his Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representative shall have any right in or to the Trust, Fund, corpus, insurance, interest, dividends, cash value, if any, of insurance, interest, income, benefits, or any benefits or money payable there from, or anything arising out of or in this Trust during the term of this agreement and any benefits he or they may have is forever terminated and discharged upon the Employee's loss of employment with the City (quitting, discharge, or otherwise), or when this Trust Agreement is terminated, wound up, and dissolved. No benefit, right or interest is transferrable or assignable by the Employee to another Employee or person, corporate or otherwise except to physicians, hospitals and any other person or institution furnishing medical services within the terms of this Trust Agreement. No monies, property, or equity, of whatsoever nature, in the Fund, nor insurance policies or benefits or monies payable there from, nor investments, nor deposits nor any part of portion of the Fund, shall be subject in any manner by any Employee, or person claiming through such Employee, to ownership, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution, mortgage, lien or charge of whatsoever nature or kind, and any attempt to cause the same is and shall be null and void.

**ARTICLE XI
PROVISIONS RELATING TO INSURANCE COMPANY**

Section 11.01 No insurance company which may issue any policies or contracts for the purpose of fulfilling the terms of this Agreement shall be deemed to be a party to this Trust Agreement, nor shall it be responsible for the validity of this Trust Agreement, nor is this Trust Agreement in any manner for the benefit of any insurance company or companies.

Section 11.02 An integral part of the trust will be an aggregate stop loss and specific stop loss insurance. Stop loss coverage will be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

**ARTICLE XII
TERMINATION OF TRUST**

Section 12.01 TERMINATION BY THE TRUSTEES This Trust may be terminated after ninety (90) days advance written notice duly executed by all the Trustees.

Section 12.02 TERMINATION BY THE CITY This Trust may be terminated after ninety (90) days advance written notice duly executed by the City. If the Trust is in a deficit position, including the claims lag determined by the Trustees, the City and Employees will share in the liability of the Trust.

Section 12.03 NOTIFICATION OF TERMINATION Upon termination of the Trust in accordance herewith, the Trustees shall forthwith notify all Employees in writing and also all other necessary parties.

Section 12.04 CONCLUDING THE TRUST Notwithstanding any provisions herein concerning the duration and termination of this Trust, the Trust shall continue in existence for so long a period as may be necessary to wind up its affairs; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

Section 12.05 FUNDS REMAINING Upon termination of this Trust, any and all monies remaining in the Fund after the payment of all unpaid claims and/or insurance premiums and other expenses and obligation of the Trust, shall be paid or used for the continuance of one or more of the benefits of the character hereinabove contemplated, until such monies have been exhausted.

Section 12.06 FINAL ACCOUNTING As such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the City and all Employees, and thereafter there shall be no claim or action against the Trustees and they shall have not further responsibility or duties and they shall be discharged.

**ARTICLE XIII
MISCELLANEOUS**

Section 13.01 LAWSUITS In the event any suit, action or proceeding is brought against the Trust, Trustees, one or more of the Trustees or the Fund, in connection with any matter arising out of the administration of the Trust of Fund in connection with this Trust Agreement or in connection with any action or omission of the Trustees or any one or more of the Trustees, or in the event of nay suit, action or proceeding commenced by the Trustees, including but not limited to a request for a judicial settlement of accounts, a suit for construction, a bill of interpleader, or any other matter relating to the Trust, the Trustees shall have the power and authority to employ counsel to represent them or one or more of them in any such suit, action or proceeding, including counsel fees and all

other costs, shall be paid from the Fund as long as the Trustees have acted in good faith and until final judgment has been rendered that the Trustees have acted in bad faith, gross negligence or willful misconduct, and in the event of such judgment, the Trust shall be entitled to recover all sums paid to or for Trustees for counsel fees and other costs. It is the intent to indemnify the Trustees against all honest mistakes in judgment and all acts of omissions that are not deliberate or willful violations of the duties of the Trustees. In addition, the trustees shall have the right to commence and prosecute such suits, actions or proceedings as seem to them, necessary and proper in order to protect the interest of the trust and Fund, and, in this connection, the Trustees shall have the same rights and reimbursements for costs concerning the prosecution of such suites as heretofore described in defending lawsuits.

Section 13.02 WORKER'S COMPENSATION The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Worker's Compensation Laws.

Section 13.03 SITUS The City of San Luis, County of Yuma, State of Arizona shall be deemed the situs of the Fund created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of such State and County. This Trust Agreement is deemed, made, executed and delivered in such State.

Section 13.04 CONSTRUCTION Wherever any words are used in the Trust Agreement in the masculine gender, they shall be construed as though they were also in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Trust Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the plural form they shall be construed as though they were also in the singular form in all situations where they would also apply.

Section 13.05 SEVERABILITY Should any provision or term in this Trust Agreement be deemed or held unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein contained unless such illegality shall make impossible or impractical the functioning of the Trust, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 13.06 INTERNAL REVENUE This Trust Agreement is being entered into and the City contributions are being made upon the condition and understanding of the City that all payments made by the City to this Fund are legally deductible as a business expense of the City for tax purposes under State and Federal laws, and that the same are not taxable to the Employee for compensation. The parties hereto individually and collectively agree to take or cause to be taken any and all steps that may be necessary or advisable in order to obtain and maintain a tax-exempt status for this Trust. If any

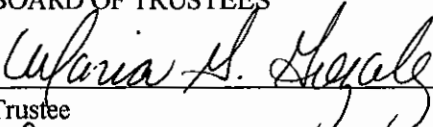
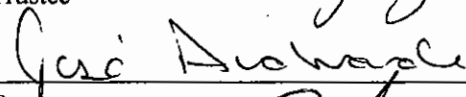

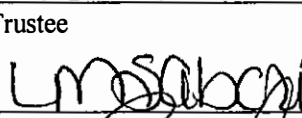
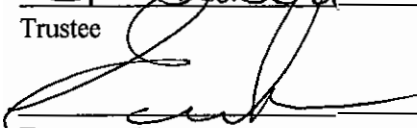
provisions of this Trust Agreement are held to render contributions by the City into the Trust non-deductible for tax purposes, or taxable to the Employee, or to render income received by such Trust non-exempt from taxation, the necessary steps to remedy such non-deductibility or taxability shall be taken immediately.

Section 13.07 CAPTIONS It is understood and agreed that the captions headings are for convenience only and are not and shall not be a part of this Trust Agreement and in no manner whatsoever define, limit or expand any of the items, obligations or conditions hereof.

ACCEPTANCE

The undersigned Trustees hereby accepts the foregoing Agreement and Declaration of Trust and agrees to be bound by the provision thereof.

BOARD OF TRUSTEES

	<u>3/14/2012</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date

ACCEPTANCE

The undersigned City hereby accepts the foregoing Agreement and Declaration of Trust and agrees to be bound by the provisions thereof.

CITY OF SAN LUIS

	<u>3/15/12</u>
Mayor	Date

MINUTES
Regular Meeting
City of San Luis Employee Benefit Trust
Council Chambers – City Hall
1090 E Union Street
San Luis, AZ 85349
Wednesday, March 13, 2019
5:30 p.m.

NOTE: Some members of the Board of Trustees of the City of San Luis Employee Benefit Trust may attend the meeting telephonically. If authorized by majority vote of the Board of Trustees, an executive session will be held immediately following the vote in accordance with A.R.S. §38-431.03 (A) and the meeting will be temporarily recessed while the Board retires to executive session which will not be open to the public.

1. **CALL TO ORDER/ROLL CALL** Mayor Gerardo Sanchez called the meeting to order at approximately 5:35 PM.

THOSE PRESENT:

Board Member Maria Gonzalez
Secretary Maria Sabori
Chairman Gerardo Sanchez

THOSE NOT PRESENT:

Vice Chairman Emma Torres

OTHERS PRESENT:

Kay Marion Macuil, City Attorney
Janet Taylor, Acting Clerk of the Board
Maria Munoz, Benefits Coordinator
Susan Posada, Benefits Consultant – by phone
Edgar Carbajal, Human Resources
Jonathan Dumadag, IT Senior Tech

2. CONSENT AGENDA

2.A. MINUTES OF

Regular board meeting held February 13, 2019

MOTION: Chairman Gerardo Sanchez and Secretary Maria Sabori to approve the consent agenda.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

3.A. DISCUSSION AND POSSIBLE ACTION ITEMS:

Discussion and possible action on any and all matters regarding excluding from the Trust the mandatory benefit under A.R.S. §38-673 for police and firefighters for counseling after exposure to traumatic events. ITEM CONTINUED FROM REGULAR BOARD MEETING HELD ON FEBRUARY 13, 2019. **(Monica Castro, City Finance Director and Kay Marion Macuil, City Attorney)**

Monica Castro, Director of Finance, was not able to be present.

Kay Marion Macuil, City Attorney, explained this item was discussed at the prior trust meeting with Susan Posada, and the trustees asked us to clarify whether workers compensation would pay for the City. Our worker's compensation is part of our risk pool plan, and Maria Sabori as our Risk Manager called the risk pool, and our worker's compensation company does not cover it. So the police and fire are planning on budgeting for it, and so we are recommending and Monica from finance is recommending that it not go in to the trust since it only benefits those two groups of employees and not all employees and also because the costs are so hard to determine to give the trustees a good handle on it we don't have any history with this and so we are recommending that it not be in the trust.

Chairman Sanchez responded by asking if this was going to be by department both the fire and police are going to have this item on their budget?

Kay Marion Macuil City Attorney responded yes, they are both planning for the budget retreat to give it a number and do their best to stay in that budget.

Chairman Sanchez responded that it made sense. Chairman Sanchez also commented, so this will not appear in the trust, and this will be coming from their yearly budget.

Ms. Macuil responded-right.

Chairman Sanchez asked if any action will be taken?

Ms. Macuil replied yes this one I did do a motion to recommend not allowing it in the trust. So I put I move to deny incorporating the traumatic event mental health benefit for police and firefighters under A.R.S. §38-673 into the trust.

MOTION: Chairman Sanchez and Board Member Maria Gonzalez to deny incorporating the Traumatic Event Mental Health benefit for police and firefighters under A.R.S. §38-673 into the Trust.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

3.B. Discussion and possible action on any and all matters regarding a contract with Counseling & Family Resources, Ltd., for Employee Assistance Program Preferred (EAPP) for administration assistance of the mandatory traumatic event counseling for police and firefighters. ITEM CONTINUED FROM REGULAR BOARD MEETING HELD FEBRUARY 13, 2019. **(Monica Castro, Director of Finance and Kay Marion Macuil, City Attorney)**

Monica Castro, Director of Finance not present.

Kay Macuil, City Attorney, explained that this is related to the other item it is a contract to help implement the program in case the trustees had wanted it we are recommending that this agreement be signed by the City instead of the Trust.

Susan Posada, Benefits Consultant, asked that Kay explain the last statement to her again.

Kay Macuil, City Attorney commented, Susan this is the EAP contract for Traumatic Events, and we are recommending denying inclusion into the Trust this contract.

Susan Posada replied, okay good. Thank you

MOTION: Chairman Sanchez and Board Member Maria Gonzalez to deny inclusion of the EAPP contract in the Trust.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

3.C. Discussion and possible action on any and all matters regarding amending the City of San Luis Employee Benefit Trust. **(Kay Marion Macuil, City Attorney)**

Kay Macuil, City Attorney, stated that everyone wanted to continue on the Trust so we are recommending that the trustees change so that everybody can have another term.

Chairman Sanchez commented, I thank every member I really do. Continuing what we have done is very important and I thank you. I really thank you.

Ms. Macuil stated that was the only thing she amended while she was in there. Yes that was the only change I made to the Trust. The three (3) consecutive terms instead of two (2).

Chairman Sanchez replied so now all I have to do is recommend the following motion?

Ms. Macuil, yes

MOTION: Chairman Sanchez and Secretary Maria Sabori to approve the amendment to the trust allowing for three (3) consecutive appointments as trustee, as presented.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

Chairman Sanchez asked Ms. Macuil if this was going in front of council tonight and Ms. Macuil replied yes and everyone needs to sign here and we will take that document to council tonight.

Chairman Sanchez replied, okay

3.D. Discussion and possible action on any and all matters regarding the terms of all Trust Board Members and recommendations for appointments to expiring terms. ITEM CONTINUED FROM REGULAR BOARD MEETING HELD ON FEBRUARY 13, 2019. (Kay Marion Macuil, City Attorney)

Kay Macuil, City Attorney, stated that this item we have even with the extension of another term two (2) terms are ending tomorrow, but we never decided who had that staggered term so if you could decide among yourselves which two (2) have the term ending this year and so that you will go to 2024 and the other two (2) will go to 2025. Because their terms will end next year.

Chairman Sanchez said Maria and Maria this year and Emma and myself next term.

Ms. Macuil responded, okay Maria wants to end tomorrow

Chairman Sanchez replied yes

Maria Sabori, Secretary of the Board, asked how does that work it ends tomorrow then it is five (5) years and that will take you to March 2024.

Chairman Sanchez stated to Maria Sabori; you can always quit.

Ms. Macuil asked, the two (2) Maria's?

Board Member Maria Gonzalez stated I have a question? Remember those documents I signed last year was it about this trust or was that a different thing? Remember I signed some documents with you and Janet? Was it another committee?

Janet Taylor, Acting Clerk, stated to Ms. Gonzalez that is was another committee.

Board Member, Maria Gonzalez said that she was sorry she couldn't remember

Ms. Macuil stated like a swearing-in the document it was probably one of the many boards you are on. It was probably the detention one.

Janet Taylor, Acting Clerk commented to Mr. Chairman the minutes are we going to approve those this meeting?

Ms. Macuil stated let's get this item that is on the table right now. So the two (2) Maria's would like to expire tomorrow?

Both Ms. Gonzalez and Ms. Sabori replied that it was fine.

Ms. Macuil stated that she had a motion and it would be I move that the trustees Maria Gonzalez and Maria Sabori have the term which ends March 14, 2019, and recommends reappointment for a third term ending 2024.

MOTION: Chairman Sanchez and Board Member Maria Gonzalez recommend trustees Maria Gonzalez and Maria Sabori have the term which ends March 14, 2019, and recommends reappointment for a third term ending 2024.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

Ms. Macuil stated that there was one (1) item left on the agenda we skipped the minutes.

MOTION: Chairman Sanchez and Maria Gonzalez to approve the consent agenda which includes the minutes. Members voting in favor: Chairman Gerardo Sanchez, Board Member Maria Gonzalez, Secretary Maria Sabori.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

4.D. ADJOURNMENT

APPROVED BY MEMBERS

DATE: APRIL 10, 2019

MINUTE TAKER s/J.Taylor

MOTION: Chairman Sanchez and Board Member Maria Gonzalez to adjourn the meeting.

Members voting in favor:

Chairman Gerardo Sanchez,
Board Member Maria Gonzalez,
Secretary Maria Sabori.

Members voting against:

None

Meeting adjourned at approximately 5:50PM

Maria Munoz

From: Francia Alonso
Sent: Monday, August 23, 2021 2:54 PM
To: Maria Munoz; Jose L. Cisneros
Cc: Rodger Diaz
Subject: RE: Employee Benefit Trust Board member- renewal

Good afternoon,

Mayor Sanchez would like to continue as the trust chairman. In addition, he is good to go for the board meeting 9/8 at 5:30pm

From: Maria Munoz
Sent: Monday, August 23, 2021 9:32 AM
To: Francia Alonso <falonso@sanluisaz.gov>; Jose L. Cisneros <jcisneros@sanluisaz.gov>
Cc: Rodger Diaz <rdiaz@sanluisaz.gov>
Subject: Employee Benefit Trust Board member- renewal

Good morning Francia/Jose,

Mayor Sanchez is the Trust Chairman for the Employee Benefit Trust Board and his term ended last year. Could you please ask him if he would like to renew for another term? Also, the quarterly meeting for the Board will be on Wednesday, 09/08/2021, @5:30 pm. Can you ask him if he will be available? Thank you both for your help 😊

Maria Muñoz

Human Resources Coordinator

1090 E. Union Street | P.O. Box 1170 | San Luis, Arizona 85349
P: 928.341.8579 | F: 928.722.6773 | E: mmunoz@sanluisaz.gov
www.sanluisaz.gov

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3 McQuillin Mun. Corp. § 12:160 (3d ed.)

McQuillin The Law of Municipal Corporations | August 2020 Update

Chapter 12. Elections, Offices and Officers, Employees and Agents and Municipal Departments

VII. De Facto Officers

§ 12:160. Hold-overs

West's Key Number Digest

- West's Key Number Digest, [Municipal Corporations](#)  147

Legal Encyclopedias

- [Am. Jur. 2d, Municipal Corporations, Etc. § 218](#)

Officers who hold over after the expiration of their term under some color of right, no successor having been appointed or chosen, and continue to exercise the functions of their office are de facto officers.¹

Absent provisions to the contrary, the public interest requires that public offices should be filled at all times without interruption.² Under this policy, an elected or appointed officer may remain in office after the expiration of its term until a successor qualifies, whether or not this is provided for by the statute creating the office.³ Stated otherwise, the rights of a holdover officer terminate when the rights of the successor vest.⁴ Thus a city clerk, by holding over after an election date at which no successor is elected, does not become vested with a full term of office, but only with a term of office until the next general election and subsequent qualification of a successor.⁵

It has been held that an officer who holds over after the expiration of his or her term and until such officer's successor has qualified as required by the State constitution is a de jure and not a de facto officer, and such is true of an officer who is elected to succeed himself or herself and fails to qualify for the second term.⁶

In one example, the acts of a board of equalization, upon which some of the members were holding over after the expiration of their terms, no other persons having been appointed to the positions, having been recognized by the taxpayers as legal, were valid as the acts of a de facto board.⁷ Likewise, a regularly appointed water commissioner holding over after the expiration of term was held to be a de facto officer.⁸ And where an office is abolished and another substituted in its place, the occupant of the former office, holding over until the occupant of the new office is chosen, is a de facto officer; but a resolution, passed by a board after the expiration of the terms of its members as fixed by charter, is not the act of a de facto board, and is invalid.⁹ Similarly, where the authority of an officer has been terminated by notice of removal and the appointment of a successor, any of his or her purported official acts after such notice and replacement are invalid.¹⁰

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Footnotes

- 1 **Mich.**
Cantwell v. City of Southfield, 95 Mich. App. 375, 290 N.W.2d 151 (1980)
- N.J.**
  Gillson v. Heffernan, 40 N.J. 367, 192 A.2d 577 (1963)
- Pa.**
Com. ex rel. Baldrige v. Glass, 295 Pa. 291, 145 A. 278 (1929)
- S.C.**
Killian v. Wilkins, 203 S.C. 74, 26 S.E.2d 246 (1943)
- Tex.**
Whatley v. State, 110 Tex. Crim. 337, 8 S.W.2d 174 (1928)
See Martinez & Libonati, Local Government Law § 10:24.
- 2 **Md.**
  Grooms v. LaVale Zoning Bd., 27 Md. App.266, 340 A.2d 385 (1975)
- 3 **Md.**
  Grooms v. LaVale Zoning Bd., 27 Md. App.266, 340 A.2d 385 (1975)
- Mich.**
Cantwell v. City of Southfield, 95 Mich. App. 375, 290 N.W.2d 151 (1980) (city civil service commissioner)
- 4 **Iowa**
  Westphal v. City of Council Bluffs, 275 N.W.2d 439 (Iowa 1979)
- 5 **Iowa**
  Westphal v. City of Council Bluffs, 275 N.W.2d 439 (Iowa 1979)
- 6 **Tex.**
Delamora v. State, 128 S.W.3d 344 (Tex. App. Austin 2004), petition for discretionary review refused, (July 28, 2004)
- 7 **Tex.**
  Nalle v. City of Austin, 41 Tex. Civ. App.423, 93 S.W. 141 (1906), writ refused
- 8 **N.Y.**
Village of Canaseraga v. Green, 88 N.Y.S. 539 (County Ct. 1903)
- 9 **R.I.**
Devlin v. White, 27 R.I. 173, 61 A. 172 (1905)
- 10 **Tex.**
Manning v. Harlan, 122 S.W.2d 704 (Tex. Civ. App. El Paso 1938), dismissed

Employee Benefit Trust Board Meeting

3. B.

Meeting Date: 09/08/2021

Department Head: Maria Munoz, HR Benefits Coordinator, Human Resources Department

Submitted By: Maria Munoz, HR Benefits Coordinator, Human Resources Department

ITEM:

Discussion and possible action on any and all matters regarding the quarterly review of the benefit plan.
(Monica Castro, Director of Finance and Susan Posada, Broker and Consultant)

SUMMARY:

The Trustees are to meet quarterly to review the Trust Fund on a quarterly basis. This would be to ensure "sufficient funds to exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment and to pay for risk management consultation".

This item is informational. However, it has been put on the agenda as an action item in case there is any action the Board wishes to take.

RECOMMENDATION / SUGGESTED MOTION:

I MOTION TO _____

Fiscal Impact

Fiscal Impact:

N/A

Employee Benefit Trust Board Meeting

3. C.

Meeting Date: 09/08/2021

Department Head: Maria Munoz, HR Benefits Coordinator, Human Resources Department

Submitted By: Maria Munoz, HR Benefits Coordinator, Human Resources Department

ITEM:

Discussion and possible action on any and all matters regarding the implementation of an investment strategy for Trust funds. **(Monica Castro, Director of Finance)**

SUMMARY:

The current Trust fund status is healthy with \$4,000,000 currently available in funds.

Under section 3.08 Deposits and Investments of Agreement and Declaration of Trust For City of San Luis Employee Benefit Trust, any accumulated funds not currently required for the purposes of this Trust, shall be invested by the Trustees in reasonable secure, reasonable liquid investments.

RECOMMENDATION / SUGGESTED MOTION:

I MOVE TO _____

Fiscal Impact

Fiscal Impact:

N/A

Attachments

Trust Document

**AMENDMENT
OF
AGREEMENT AND DECLARATION OF TRUST
FOR
CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

Article III, Section 3.04 shall be amended and read as follows:

Section 3.04 TRUSTEES' TERM

(A) Initial Terms. The initial terms for the first five (5) Trustees shall be as follows:

- one (1) Trustee to serve an initial term of one (1) year,
- two (2) Trustees to serve an initial term of two (2) years, and
- two (2) Trustees to serve an initial term of three (3) years.

The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year and three years terms. This shall result in the Trustees rotating appointment every two (2) to three (3) years.

(B) Duration of Terms after Initial Term. After the initial term, each Trustee shall serve for five (5) years.

(C) Appointment. A Trustee may be appointed for no more than three (3) consecutive terms.

ACCEPTANCE

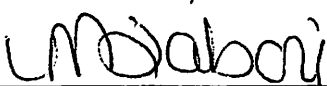
The undersigned Trustees hereby accept and agree to be bound by the foregoing the Amendment to the Agreement and Declaration of Trust:

 3/13/19

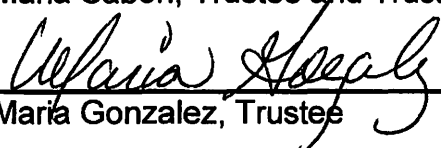
Gerardo Sanchez, Trustee and Trust Chair Date

 3/21/19

Emma Torres, Trustee and Trust Vice Chair Date

 3/13/19

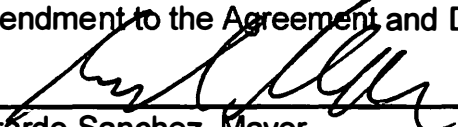

Maria Sabori, Trustee and Trust Secretary Date

 3/13/19

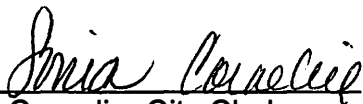
Maria Gonzalez, Trustee Date

ACCEPTANCE

The undersigned City hereby accept and agree to be bound by the foregoing Amendment to the Agreement and Declaration of Trust:

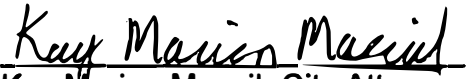
 _____	_____
Gerardo Sanchez, Mayor	Date
 _____	3/12/19
Maria Cecilia Ramos, Vice Mayor	Date

ATTEST:



Sonia Cornelio, City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil, City Attorney

**AGREEMENT AND DECLARATION OF TRUST
FOR CITY OF SAN LUIS EMPLOYEE BENEFIT TRUST**

THIS AGREEMENT AND DECLARATION OF TRUST was made and entered into this first day of September 2011, between CITY OF SAN LUIS, a municipal corporation hereinafter referred to as the "City" and certain persons hereinafter referred to as the "Trustees" to administer the Trust in accordance with the terms and provisions of this instrument.

WITNESSETH:

WHEREAS, A.R.S. § 11-981 authorizes the City of San Luis to establish a self-funded insurance program for health benefits for its Employees.

WHEREAS, A.R.S. § 11-981 requires the establishment of a health benefits trust for the purposes of management and administration of this program; and

WHEREAS, A.R.S. § 11-981 also requires the establishment of the health benefits trust board to administer the health benefits trust.

WHEREAS, CITY OF SAN LUIS, hereinafter designated and referred to as "City", and certain employees of said City hereinafter designated and referred to as "Employees", desire to enter into a program of providing and maintaining health and welfare benefits for Employees of the City and certain members of their families, hereinafter designated and referred to as "Dependents", which program is to be administered by the Trustees; and

WHEREAS, to effect the aforesaid purpose it is mutually desirable by and between the parties hereto to declare and create a Trust which establishes a Trust Fund for and in the manner more particularly set forth herein; and

WHEREAS, the Trustees and City which accept this Agreement and Declaration of Trust and agree to be bound by the provisions hereof shall, upon acceptance by the parties hereto, be deemed a party to this Agreement and Declaration of Trust.

Now THEREFORE, in consideration of the promises, covenants, agreements, terms, obligation and duties herein set forth, it is understood and agreed as follows:

**ARTICLE 1
DEFINITIONS**

It is mutually understood and agreed by and between the parties hereto that the following are and shall be the definitions:

Section 1.01 The term "Employee Benefit Trust" shall mean the program of benefits to be established by the Trustees pursuant to this Agreement and Declaration of Trust.

Section 1.02 The term “Employee” shall mean all persons who have met the eligibility requirements as defined in the written instrument for the Employee Benefit Trust and who have properly enrolled for and made appropriate contributions for coverage under said Trust, and who are not eligible for benefits under any other health program to which the City makes contributions.

Section 1.03 The term “Dependent” shall mean all persons who have met the eligibility requirements for being a dependent of the Employee as defined in the written instrument for the Employee Benefit Trust and who have been properly enrolled for and made appropriate contributions for coverage under the Employee Benefit Trust, and who are not eligible for benefit under any other health program which the City makes contributions.

Section 1.04 The phrase “Trust Agreement” shall mean and refer to this Agreement and Declaration of Trust and any modification or amendments thereto.

Section 1.05 The term “Fund” as used shall mean the Trust Fund created by this instrument, and shall mean generally the monies, property, contracts, or things of value, tangible or intangible, received and held by the Trustees for the uses, purposes, and Trust set forth therein, and those things of value which compromise the corpus and additions to the Fund.

Section 1.06 The term “Trustees” as used herein shall mean the Trustees and their successors provided for in the Trust Agreement.

Section 1.07 The name of the Trust is and shall be City of San Luis Employee Benefit Trust.

Section 1.08 The phrase “City Contributions” does and shall mean the contributions made by the City of San Luis to the Fund for the Employee Benefit Trust.

Section 1.09 The phrase “Employee Contribution” does and shall mean the contributions made by the Employees of the City of San Luis to said Fund.

Section 1.10 The term “City” does and shall mean the City of San Luis, a municipal corporation organized and existing under the laws of the State of Arizona.

Section 1.11 The phrase “Plan Document” does and shall mean the written instrument containing the provisions for self-funded health and welfare benefits of the Employee Benefit Trust.

Section 1.12 The phrase “Contract Administrator” does and shall mean the person or firm employed by the Trustees who is responsible for the processing of claims and

payment of benefits, administration, accounting, reporting and other services contracted for by the Trustees.

**ARTICLE II
PURPOSE OF TRUST AND APPLICATION OF THE FUND**

Section 2.01 FUND There is hereby declared and created the City of San Luis Employee Benefit Trust: To establish a Trust Fund to provide benefits for, but not limited or restricted to Life, Accidental Death and Dismemberment, Basic or Major Medical coverage's for accidents or sickness, Dental; and any other benefits as determined by the Trustees for the Employees and their Dependents; whether through self-funded or insured programs or both.

Section 2.02 PRINCIPAL OFFICE The Trust shall have its principal office in the City of San Luis, County of Yuma, state of Arizona and hereinafter designated and referred to as Principal Office.

**ARTICLE III
POWERS AND DUTUES OF TRUSTEES**

Section 3.01 APPOINTMENTS OF TRUSTEES The Employee Benefit Trust shall be administered by the Trustees. The Mayor shall nominate individuals to serve as Trustees overseeing the management and administration of the Trust. The City Council shall consider and may appoint any individual so recommended, provided that the appointed Trustees conform to the requirements of Section 3.02.

Section 3.02 NUMBER AND IDENTITY The Trustees shall consist of five (5) persons, consisting of no more than one (1) member of the City Council and no more than (1) Employee of the City.

Section 3.03 ACCEPTANCE Each Trustee so appointed shall accept the appointment in writing and shall confirm in writing that the Trustee hereby accept the Trust and Trusteeship and declares they will receive and hold the Fund by virtue of this Trust Agreement for the uses and purposes and with the powers and duties herein set forth and none other. The Trustees shall faithfully keep and hold any and all monies they receive as Trustees for the purpose of the Trust and keep adequate and proper records thereof.

Section 3.04 TRUSTEES' TERM Each Trustee shall serve a five-year term. A Trustee may be reappointed of no more than one additional consecutive term. Notwithstanding the foregoing, the initial terms for the first five (5) Trustees shall be as follows: one (1) Trustee to serve an initial term of one (1) year; two (2) Trustees to serve an initial term of two (2) years; and two (2) Trustees to serve an initial term of three (3) years. The Trustees shall determine among themselves which of the first five (5) Trustees shall serve the one year, two year, and three year terms. This shall result in Trustees rotating appointments every two (2) to three (3) years.

Section 3.05 EXECUTIVE ADVISORS The Board of Trustees shall include as Executive Advisors, the City's Finance Director, or their designee, and the City's Human Resource Director, or their designee, and the City Manager, or their designee. Such Executive Advisors shall attend all meetings of the Board of Trustees.

Section 3.06 DUTIES The Trustees shall hold, manage, care for and keep the Fund and collect the income and increments thereof, and shall keep and maintain adequate and proper records to render an external annual audit, accounting and reports as hereinafter mentioned. The Trustees shall employ or hire such agents, attorneys, accountants, actuaries, employees or other persons and to lease premises and equipment as may be necessary or desirable in administering the Fund and carrying out its purposes and the fees, salaries, wages emoluments or compensation of any and all such persons shall be paid from the Fund. When acting upon the advice of counsel for the Trust, the Trustees shall be relieved of all responsibility for acts done or not done. The Trustees may incur any expenses for supplies, rental of space or other items or anything else believed to be necessary or desirable in administering the Fund and carrying out the objects and purposes of this Trust and Trust Agreement. The Trustees shall have all right, power and authority to do all those things which, in the opinion of the Trustees may be necessary or desirable for the administration and operation of accomplishments of the objects and purposes of the Fund and this Trust and Trust Agreement.

In addition, the Trustees shall establish terms and conditions for the Employee Benefit Trust including, but not limited to:

- A. Establish terms and conditions of coverage including exclusions of coverage;
- B. Establish provisions for eligibility requirements to enroll for coverage;
- C. Ensure that all claims are processed promptly;
- D. Administer the Trust Fund pursuant to this Agreement;
- E. Designate a risk management consultant or insurance administrator licensed pursuant to Title 20, Chapter 2, Articles 3 Or 9 of the Arizona Revised Statutes, and such license shall be verified by the Board of Trustees at time of the designation;
- F. Provide financial oversight of the Trust Fund by evaluating claim expenses and reserve amounts;
- G. Review the Trust Fund quarterly to insure sufficient funds exist to pay outstanding and future benefits, to pay for losses or claims or any combination of insurance and direct payment, and to pay for risk management consultation;
- H. Make recommendations to the City Manager on financial issues relating to the self-insured programs;
- I. Comply with all requirements of State and Federal laws relating to self-insurance programs;
- J. Take all necessary precautions to safeguard the assets of the Trust;
- K. Maintain minutes of its meetings.

Section 3.07 TRUSTEES' AUTHORITY The Trustees shall have the power to enter in contracts, procure insurance policies, or provide such benefits through self-funding, and to place into effect and maintain the desirable schedule of benefits. The Trustees, in carrying out the purposes of this Trust Agreement, shall have the power and the right to provide the intended benefits under this Trust by means of direct or self-funding by the Trust and/or by the procurement of group insurance contracts (permissible under the laws of Arizona) including group insurance contracts issued to and in the name of the Trust, together with such other forms of contracts issued by qualified insurance companies authorized to do business in the State of Arizona as may be selected by the Trustees for the purpose of providing for all or part of the benefits provided under this Trust. The Trustees are hereby expressly authorized to pay to any insurance company as may be selected by the Trustees, the required insurance premiums in connection with such group insurance contracts issued to the Trust. Whether or not benefits are provided by means of direct or self-funding or by the procurement of group insurance, such decision shall be at the sole and exclusive discretion of the Trustees.

Should the Trustees select or provide for any policy or any program of self-funding, no claims for benefits or no claims for liabilities shall be brought against the Trustees. The sole and exclusive liability of said Trustees in the management and operation of any program of self-funding shall be limited to due care in the selection of administrators, claim representatives, actuaries, or other officials charged with the administration of such a program of self-funding. In the event that submitted claims of Employees and/or Dependents exceed the funds available, the claims shall be paid in the order received.

Section 3.08 DEPOSITS AND INVESTMENTS All corpus or portions of the Fund not expended under Article III may be deposited by the Trustees in the name of the Trust in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits should carry or bear interest. The Trustees are empowered to receive for the benefit of the Fund such interest as might accrue on the above deposits. If not so deposited, any accumulated funds not currently required for the purposes of this Trust, shall be invested by the Trustees in reasonable secure, reasonable liquid investments.

The Fund may accumulate dividends or experience rating refunds or other monies, if any accruing from any insurance policy or policies deposits or investments. Such dividends, refunds or other monies or all of them, shall be held in the Fund, applied to the payment of self-funded claims, the payment of insurance premiums, or held, used or applied as herein set forth.

Section 3.09 COMPENSATION The Trustees shall receive no compensation for their services except for reimbursement of actual reasonable expenses incurred.

Section 3.10 WITHDRAWALS All checks, drafts, vouchers or other withdrawals from the Fund or depositories and the transfer or liquidating of insurance policies or

investments shall first be authorized by the Trustees and then signed by appropriate signatories as determined by the Trust, except that checks for claims payment under the self-funded benefit provision of this Trust may be signed by an authorized representative of the Contract Administrator responsible for administering the self-funded benefit.

Section 3.11 CHAIRMAN, VICE-CHAIR, AND SECRETARY The Trustee shall elect from among themselves at their first meeting a Chairman, Vice-Chair and Secretary of the Trustees. The Chairman shall preside at all meetings of the Trustees and who shall be empowered to perform ministerial duties of the Trustees as the Trustees may from time to time delegate to him. The Vice-Chair will preside in the Chairman's absence. The Secretary shall keep minutes of all meetings, proceedings, and acts of the Trustees, which records shall be available at the said Principal Office for inspection by all the Trustees and interested persons during usual business hours. Such records and minutes need not be verbatim.

Section 3.12 MEETINGS The Trustees shall hold a regular meeting as soon as practical after being appointed and regular meetings shall be held periodically at least four (4) times each year after the first regular meeting. The Trustees shall determine the time and place of the regular meeting of the Board. Special meetings of the Trustees may be called by the Chairman. At least seven (7) days written notice designating the time and place of the annual, regular or any special meeting shall be given to the Trustees. Any meeting at which all Trustees are present shall be subject to the open meeting law established by Arizona Statute.

Section 3.13 PROXY Any Trustee, or any other person duly authorized in writing by an absent Trustee, may cast a vote on behalf of such absent Trustee. Any such authorization must be given for each meeting.

Section 3.14 QUORUM To constitute a quorum or special meeting of the Trustees, there must be present in person or by proxy at least three (3) Trustees.

Section 3.15 VOTING Each Trustee shall have one (1) vote. All actions by and decisions of the Trustees shall be the affirmative vote of a majority of the Trustees attending a duly called meeting of the Trustees at which there is a quorum present.

Section 3.16 FISCAL YEAR AND AUDIT The accounting year of the Fund shall be on a fiscal year basis, commencing on the first day of July and ending on the last day of June of the following year and similarly each and every year thereafter. Any report required by law, city, county, state or federal, or the respective subdivisions thereof, shall be made by the Trustees. The Trustees shall have an external annual audit and accounting of the Trust Fund by a Certified Public Accountant in accordance with good accounting practices, at the end of each fiscal year. The CPA shall certify to the accuracy of his audit and accounting. A statement of the results of each audit shall be available for inspection by authorized persons at the Principal Office of the Trust. Copies of the audit

and generalized statements of the accounting and reports shall be delivered to each Trustee after each audit or at other times when necessary and a copy maintained in the City Recorder's office for a period of five (5) years.

Section 3.17 REGULATIONS The Trustees shall have the power to adopt rules and regulations for the administration of the Fund and/or Trust, which shall be consistent with the covenants, terms, conditions, obligation and duties as set forth in this Trust Agreement, and such rules and regulations shall be binding upon all persons dealing with the Fund and upon any and all persons claiming any benefit hereunder.

Section 3.18 BONDS The Trustees shall procure fidelity bonds for the Trustees and persons authorized to receive, handle, deal with or draw upon the monies in the Fund for any purpose whatsoever, said bonds to be in such reasonable amount to reasonably aid in reimbursing bondable loss of money, and shall meet the requirements as may be required, from time to time by applicable United States or State law. Such are to be obtained from reputable fidelity or surety company or companies as the Trustees shall determine. If convenient, and in conformity with the law, such bonds may be position bonds. The cost of the premiums on such bonds shall be paid out of the corpus or income of the fund. If any fidelity or surety company refuses to bond or write a bond for any Trustee, or other persons as described in this section, said Trustee or person shall not serve and shall resign or be terminated.

Section 3.19 DEFENSE The Trustees shall institute, prosecute, maintain or defend any proceeding at law or inequity concerning the Trust Fund or the assets thereof, at the sole cost and expense of the Trust Fund, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Trust Fund or of the Trustees; but the Trustees shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other legal proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reason thereof.

ARTICLE IV TRUSTEE AND SUCCESSOR TRUSTEES

Section 4.01 TRUSTEE TERMINATION The term of any Trustee shall automatically terminate upon the earliest of the following: death; resignation; removal of a Trustee by a majority vote of the City Council; or for a Trustee who is an employee of the City of San Luis, the termination of such employment.

In the event of the death, resignation, or removal of an appointed Trustee, the City Council shall designate a successor to such Trustee from recommendations from the Mayor, who, upon acceptance of his/her appointments in writing, shall succeed to the legal interest of his/her predecessor. Upon the effective date of the death, resignation or removal, the Trustee shall be discharged from any further duty or responsibility under the

Trust and any and all property in his or her possession or control which belongs to the Plan or Trust shall be delivered to the Chairman (or to the Secretary, if the Chairman is resigning, removed, or deceased.)

Section 4.02 TRUSTEE RESIGNATION A Trustee may resign by giving sixty (60) days prior written notice to the Chairman. The Chairman may exercise discretion to waive or reduce the sixty (60) day requirement, but shall not waive the written-notice requirement. The notice shall state the effective date of the resignation. The resignation shall take effect on its stated effective date unless a new Trustee is appointed and accepts the appointment prior to the stated effective date of the resignation.

Section 4.03 SUCCESSORS The Trustees, and their successors from time to time acting hereunder, shall have all the rights, powers and duties of the original Trustees named herein and the insurance company or companies and Contract Administrator shall be immediately notified of any successor.

Section 4.04 SUCCESSORS' LIABILITY No successor Trustee shall be liable or responsible for any act or defaults of his/her predecessor, or for any losses or expenses resulting from or occasioned by anything done or neglected to be done in the administration of the Fund or Trust prior to his/her appointment as Trustee, nor shall he/she be required to inquire into or take any notice of the prior administration of the Fund or Trust. A successor Trustee is solely responsible for his/her actions as set forth in Article III.

Section 4.05 SUCCESSORS' TERM The appointed successor Trustee shall complete the initial term of his predecessor.

ARTICLE V CONTRIBUTIONS TO THE FUND

Section 5.01 CONTRIBUTIONS In order to effectuate the purpose hereof, the City and/or Employees shall contribute to the Fund an amount determined by the Trustees, to be necessary to pay for the benefits provided hereunder. The City and/or Employee contribution shall be due and payable as of the first day of the month as determined by the Trustees.

Section 5.02 CITY CONTRIBUTIONS ARE NOT WAGES The City contributions to paid into the Fund shall not constitute or be deemed wages due to Employees, nor shall the City contributions in any manner be liable for or subject to the debts, contracts, or liabilities of the City; neither the City, any Employee, not any Dependent under the Plan shall have any rights, title, or interest in the Fund, except as otherwise specifically provided herein.

Section 5.03 PAYMENTS IN LIEU OF BENEFITS No Employee shall have any right to receive any part of his own or the City contributions paid to him in lieu of benefits.

Section 5.04 PAYROLL DEDUCTIONS All Employees' contributions shall be paid by payroll deductions. The City shall remit all monies obtained through payroll deductions in a lump sum to the Fund, at least once per month, or as otherwise determined by the Trustees.

Section 5.05 PAYMENT All contributions shall be payable to name of the Trust, and shall be paid in the manner and form determined by the Trustees.

Section 5.06 REPORTS The City shall make all reports required by the Trustees. The Trustees may at any time have an audit made by an independent Certified Public Accountant of the wage records of the City in connection with their contribution and/or reports.

Section 5.07 IRREVOCABILITY OF CONTRIBUTIONS Subject to the provisions providing for termination of this Trust Agreement in Article XII, all contributions to the Fund shall be irrevocable, and under no circumstances shall any monies properly paid into the Fund, or any part of the Fund, be revocable by or payable to the City or any Employee, nor shall any of the same be used for or diverted for purposes other than for the exclusive program of benefits for Employees and beneficiaries provided hereunder.

ARTICLE VI PAYMENT OF BENEFITS

Section 6.01 METHOD OF PAYMENT The Trustees shall arrange for the disbursement of benefits under the Employee Benefit Trust through a Contract Administrator appointed by the Trustees for any self-funded benefits or through insurance company for fully-insured benefits.

Section 6.02 PROTECTION OF EMPLOYEES Prior to payment to an Employee or his Dependents, all assets of the Trust shall be owned by the Trust and shall not be liable in any way for any debt or obligation of any Employee or the City. To the extent permitted by law, all Trust benefits shall be exempt from attachment, garnishment, and levy of execution, bankruptcy proceedings, or other legal process at any time subject to the Trustee's possession and control; but in any event such assets shall be subject to such process only to the extent of such Employee's benefits hereunder as they fall due.

Section 6.03 CLAIM TO BENEFITS No Employee, Dependent, or other beneficiary shall have any right or claim to benefits under the Employee Benefit Trust except as specified in the policy or policies or contract or contracts or self-funded benefits procured or entered into pursuant to Article II and III. Any disputes as to eligibility time, amount,

or duration of benefits shall be resolved by the appropriate insurance carrier or Contract Administrator, under and pursuant to the policy or contract; and the Employees, Dependents, or other beneficiary shall not have a right or claim in respect thereto, against the Funds, or Trustees. Any dispute as to eligibility, type, amount, time or duration of benefits provided by the Fund as self-funded, shall be decided by the Trustees, and all disputes shall be finally settled pursuant to Article VII.

Section 6.04 FAILURE TO PAY BENEFITS Neither the City, nor the Trustees shall be liable for the failure or omission, for any reason, to pay any benefits under the Employee Benefit Trust. If for any reason including, but not limited to, epidemics, catastrophes, or normal depletion, the Trustees determine that self-insured funds are insufficient to pay the current claims, the amount of benefits payable to an Employee or Dependent shall, in all events, be limited to the extent that sufficient self-insured funds are available to the Trustees for the payment of all such claims; and in such event, benefit payments to Employees or Dependents shall be limited to the extent that sufficient funds are available from the Trust Fund, and shall be further prorated in such amounts that all such claims shall be treated proportionately equal to the ratio that such total claims bear to the funds that are available for such payment. If any controversy or dispute exists concerning such matters, all disputes or controversies shall be settled by the dispute provision contained in Article VII.

ARTICLE VII CONTROVERSIES AND DISPUTES

Section 7.01 DISPUTES The Trustees shall have the power to construe, interpret and apply the provisions of this Agreement and Declaration of the Trust or any amendments, rules or regulations adopted thereto, and the terms used herein and any construction, interpretation or application adopted in good faith shall be final and binding upon the City, beneficiaries, administrators, and/or legal representatives.

Section 7.02 BENEFITS CLAIM SETTLEMENT The Trustees may in their sole discretion compromise or settle any disputed benefits claim or benefits claim controversy in such manner as they deem best, and any decision made by a majority of the Trustees in compromise or settlement of a disputed benefits claim or benefits claim controversy, or any compromise or settlement agreement entered into by the Trustees shall be conclusive and binding upon all parties interested in this Fund.

Section 7.03 DISPUTE OF POWERS In the event there shall be any disagreement between the Trustees and the Contract Administrator over exercise of powers granted herein, the Trustees shall prevail, and the service organization shall have no liability to any person with respect to such act or omission in the event it shall give notice in writing of its dissent from such act to each Trustee and to the City.

**ARTICLE VIII
RESPONSIBILITY**

Section 8.01 RESPONSIBILITY The Trustee shall only be responsible for monies when and only after such are received in accordance herewith. The Trustees, or Successor Trustees, shall only be responsible for any liability arising from their respective gross negligence, bad faith or willful misconduct in handling of the monies actually received in hand by them for execution and administration of the terms of the Fund. The Trustees and Successors shall not be responsible for the action or omission of their Co-Trustees, Successors, nor for the actions or omissions of other agents, or for any of the actions or omissions of any insurance company or its agents, servants, or representatives, including, but not limited to non-payment of claims by an insurance company or insurance companies for any reason. The City shall hold harmless the Trustees or Successor Trustees from all such claims except those arising from his/her own willful misconduct, bad faith or gross negligence. (No Trustee or Successor Trustee shall be entitled to any indemnification or court costs or attorney's fees for any liability arising from his/her own willful misconduct, bad faith or gross negligence.)

Section 8.02 OTHER PERSONS AND INTERPREATIONS No person who is dealing with the Trustees shall be obligated to see the application of any monies or property of the Fund, or to see that the terms of this Trust Agreement have been complied with or to inquire as to the necessity of expediency of any act of the Trustees. Every instrument executed by the Trustees or by their direction shall be conclusive in favor of every person who in good faith relies upon it, that (a) at the time of the delivery of the instrument this Trust Agreement was in full force and effect, (b) the instrument was executed in accordance with the terms and conditions of this Agreement and (c) the Trustees were duly authorized to execute the instrument or direct its execution

**ARTICLE IX
AMENDMENTS**

Section 9.01 AMENDMENTS It is anticipated that in the administration of this Trust, conditions may arise that are not foreseen at the time of execution of this Agreement, and it is the intention of the Trustees, and each and every party or person to this Agreement that the power of amendment which is herein granted be exercised in order to carry out the spirit, object and purposes of this Trust. Therefore, the general power is granted to the Trustees, by all parties to this Agreement, to amend this Agreement upon the consent and unanimous agreement of the Board of Trustees, and all parties to the Trust and all persons claiming any interest hereunder are and shall be bound thereby. Any such amendment shall be signed by the Trustees or Successor Trustee

**ARTICLE X
NONVESTING OF RIGHTS**

Section 10.01 RIGHTS No Employee, Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representatives shall have any right, title or interest, vested or otherwise, in or to the Fund, Trust, corpus, (income or increments thereto) insurance dividends, cash value, if any, or insurance or benefits or monies payable there from, payments from the Fund, or in or to the eligibility requirements for benefits as changed or altered. Any participating Employee who withdraws or ceases to participate in the Employee Benefit Trust does hereby and shall expressly waive and forfeit any right, title or interest in and to the Fund, its corpus and assets. No Employee, nor his Dependents, beneficiary, nor any other person or group nor their respective successors, assignees nor legal representative shall have any right in or to the Trust, Fund, corpus, insurance, interest, dividends, cash value, if any, of insurance, interest, income, benefits, or any benefits or money payable there from, or anything arising out of or in this Trust during the term of this agreement and any benefits he or they may have is forever terminated and discharged upon the Employee's loss of employment with the City (quitting, discharge, or otherwise), or when this Trust Agreement is terminated, wound up, and dissolved. No benefit, right or interest is transferrable or assignable by the Employee to another Employee or person, corporate or otherwise except to physicians, hospitals and any other person or institution furnishing medical services within the terms of this Trust Agreement. No monies, property, or equity, of whatsoever nature, in the Fund, nor insurance policies or benefits or monies payable there from, nor investments, nor deposits nor any part of portion of the Fund, shall be subject in any manner by any Employee, or person claiming through such Employee, to ownership, anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, attachment, execution, mortgage, lien or charge of whatsoever nature or kind, and any attempt to cause the same is and shall be null and void.

**ARTICLE XI
PROVISIONS RELATING TO INSURANCE COMPANY**

Section 11.01 No insurance company which may issue any policies or contracts for the purpose of fulfilling the terms of this Agreement shall be deemed to be a party to this Trust Agreement, nor shall it be responsible for the validity of this Trust Agreement, nor is this Trust Agreement in any manner for the benefit of any insurance company or companies.

Section 11.02 An integral part of the trust will be an aggregate stop loss and specific stop loss insurance. Stop loss coverage will be provided by an authorized carrier licensed to execute contracts in the State of Arizona.

**ARTICLE XII
TERMINATION OF TRUST**

Section 12.01 TERMINATION BY THE TRUSTEES This Trust may be terminated after ninety (90) days advance written notice duly executed by all the Trustees.

Section 12.02 TERMINATION BY THE CITY This Trust may be terminated after ninety (90) days advance written notice duly executed by the City. If the Trust is in a deficit position, including the claims lag determined by the Trustees, the City and Employees will share in the liability of the Trust.

Section 12.03 NOTIFICATION OF TERMINATION Upon termination of the Trust in accordance herewith, the Trustees shall forthwith notify all Employees in writing and also all other necessary parties.

Section 12.04 CONCLUDING THE TRUST Notwithstanding any provisions herein concerning the duration and termination of this Trust, the Trust shall continue in existence for so long a period as may be necessary to wind up its affairs; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

Section 12.05 FUNDS REMAINING Upon termination of this Trust, any and all monies remaining in the Fund after the payment of all unpaid claims and/or insurance premiums and other expenses and obligation of the Trust, shall be paid or used for the continuance of one or more of the benefits of the character hereinabove contemplated, until such monies have been exhausted.

Section 12.06 FINAL ACCOUNTING As such time as the Trust is terminated, the Trustees shall render a final accounting of the affairs of the Trust and the Trust Fund to the City and all Employees, and thereafter there shall be no claim or action against the Trustees and they shall have not further responsibility or duties and they shall be discharged.

**ARTICLE XIII
MISCELLANEOUS**

Section 13.01 LAWSUITS In the event any suit, action or proceeding is brought against the Trust, Trustees, one or more of the Trustees or the Fund, in connection with any matter arising out of the administration of the Trust of Fund in connection with this Trust Agreement or in connection with any action or omission of the Trustees or any one or more of the Trustees, or in the event of nay suit, action or proceeding commenced by the Trustees, including but not limited to a request for a judicial settlement of accounts, a suit for construction, a bill of interpleader, or any other matter relating to the Trust, the Trustees shall have the power and authority to employ counsel to represent them or one or more of them in any such suit, action or proceeding, including counsel fees and all

other costs, shall be paid from the Fund as long as the Trustees have acted in good faith and until final judgment has been rendered that the Trustees have acted in bad faith, gross negligence or willful misconduct, and in the event of such judgment, the Trust shall be entitled to recover all sums paid to or for Trustees for counsel fees and other costs. It is the intent to indemnify the Trustees against all honest mistakes in judgment and all acts of omissions that are not deliberate or willful violations of the duties of the Trustees. In addition, the trustees shall have the right to commence and prosecute such suits, actions or proceedings as seem to them, necessary and proper in order to protect the interest of the trust and Fund, and, in this connection, the Trustees shall have the same rights and reimbursements for costs concerning the prosecution of such suites as heretofore described in defending lawsuits.

Section 13.02 WORKER'S COMPENSATION The insurance coverage contemplated by this Trust Agreement shall not apply in any case which is compensable under Worker's Compensation Laws.

Section 13.03 SITUS The City of San Luis, County of Yuma, State of Arizona shall be deemed the situs of the Fund created hereunder. All questions pertaining to validity, construction and administration shall be determined in accordance with the laws of such State and County. This Trust Agreement is deemed, made, executed and delivered in such State.

Section 13.04 CONSTRUCTION Wherever any words are used in the Trust Agreement in the masculine gender, they shall be construed as though they were also in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Trust Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this Agreement and Declaration of Trust in the plural form they shall be construed as though they were also in the singular form in all situations where they would also apply.

Section 13.05 SEVERABILITY Should any provision or term in this Trust Agreement be deemed or held unlawful or invalid for any reason, such fact shall not adversely affect the provisions herein contained unless such illegality shall make impossible or impractical the functioning of the Trust, and in such case the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

Section 13.06 INTERNAL REVENUE This Trust Agreement is being entered into and the City contributions are being made upon the condition and understanding of the City that all payments made by the City to this Fund are legally deductible as a business expense of the City for tax purposes under State and Federal laws, and that the same are not taxable to the Employee for compensation. The parties hereto individually and collectively agree to take or cause to be taken any and all steps that may be necessary or advisable in order to obtain and maintain a tax-exempt status for this Trust. If any

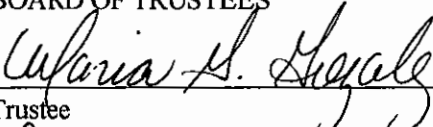
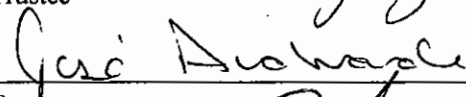

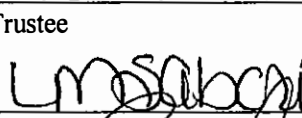
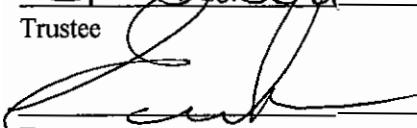
provisions of this Trust Agreement are held to render contributions by the City into the Trust non-deductible for tax purposes, or taxable to the Employee, or to render income received by such Trust non-exempt from taxation, the necessary steps to remedy such non-deductibility or taxability shall be taken immediately.

Section 13.07 CAPTIONS It is understood and agreed that the captions headings are for convenience only and are not and shall not be a part of this Trust Agreement and in no manner whatsoever define, limit or expand any of the items, obligations or conditions hereof.

ACCEPTANCE

The undersigned Trustees hereby accepts the foregoing Agreement and Declaration of Trust and agrees to be bound by the provision thereof.

BOARD OF TRUSTEES

	<u>3/14/2012</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date
	<u>3/14/12</u>
Trustee	Date

ACCEPTANCE

The undersigned City hereby accepts the foregoing Agreement and Declaration of Trust and agrees to be bound by the provisions thereof.

CITY OF SAN LUIS

	<u>3/15/12</u>
Mayor	Date

Employee Benefit Trust Board Meeting

3. D.

Meeting Date: 09/08/2021

Department Head: Maria Munoz, HR Benefits Coordinator, Human Resources Department

Submitted By: Maria Munoz, HR Benefits Coordinator, Human Resources Department

ITEM:

Discussion and possible action on any and all matters regarding the name change of EAP Preferred to Integrated Behavioral Health (IBH), Inc., effective June 1, 2021, and the ratification and approval of the Agreement with IBH. **(Susan Posada, Broker and Consultant)**

SUMMARY:

Integrated Behavioral Health, Inc. ("IBH") was a parent company to Employee Assistance Program ("EAP") Preferred, and effective June 1, 2021, they moved their organization over to the IBH EAP Platform. This change came with an enhanced website and an emotional support online Peer Support Groups while maintaining the same services provided under EAP Preferred.

IBH will continue with the existing EAP services agreement made effective on February 1, 2019, for the Traumatic Counseling Program for Public Safety Personnel so long as the employer maintains the EAP services agreement with IBH. This Agreement is retroactively effective as of July 1, 2021, since all they are doing is a name change. Under Section 4.1, the Agreement automatically renews annually on July 1 unless either party terminates the Agreement with at least 60 days' notice before July 1.

The critical incident stress debriefings for Public Safety employees exposed to traumatic events in the line of duty is a benefit required by A.R.S. 38-672.

RECOMMENDATION / SUGGESTED MOTION:

I MOVE TO APPROVE THE ADMINISTRATIVE SERVICES AGREEMENT FOR EMPLOYEE ASSISTANCE AND WORK-LIFE SERVICES PROVIDED BY INTEGRATED BEHAVIORAL HEALTH, INC. AS PRESENTED.

Fiscal Impact

Fiscal Impact:

No change to service fee, it will remain the same: \$2.28 per covered employee per month.

Attachments

EAP Agreement with IBH

IBH Transition letter to COSL



April 22, 2021

City of San Luis
1090 E Union St
P.O BOX 1170
San Luis, AZ 85349

Dear City of San Luis,

EAP Preferred, an Integrated Behavioral Health (IBH) Company, appreciates and values the opportunity to continue serving the many employees and families of your organization. We would like to thank you for putting your trust in IBH and hope our services have proven to be a tremendous asset.

As you know, IBH is our parent company. Over the last year, we have been working to bring all IBH companies under one platform. We are excited to announce effective June 1, 2021 we are moving your organization over to the IBH EAP platform. This change comes with many important and exciting benefits, including an enhanced website, an emotional support, AI Chatbot, online Peer Support Groups and more. IBH is also announcing a complete redesign of our client reporting and will be rolling out a dashboard to provide employer group administrative access to run utilization reports, when and where they need to.

We would also like to inform you that we have initiated the closure of our Arizona staff offices, this will be completed by May 31, 2021. We want to assure that you and your members will have continuity of care throughout this process. Providers will be talking with their patients about his/her plans going forward. Those providers who elect to move into our provider network will be able to continue seeing members at their new locations. Providers who choose not to move into our provider network will be assisting members with a smooth transition to another IBH provider. The EAP phone numbers will remain the same. The only difference will be that we will no longer have staff in physical offices in Arizona. All telephonic and in-person sessions will be conducted in a secure process with their provider.

IBH looks forward to many more years of successful service to your employees. If you have any questions, please do not hesitate to call your Arizona-based Account Manager, Tricia Litzenberg, at 480-530-6129.

Sincerely,

Alison Dipilla

Alison Dipilla
Chief Operations Officer

**2 Park Plaza, Suite 1200
Irvine, CA 92614-2562
(800) 395-1616**

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Employee Benefit Trust Board Meeting

3. E.

Meeting Date: 09/08/2021

Department Head: Maria Munoz, HR Benefits Coordinator, Human Resources Department

Submitted By: Maria Munoz, HR Benefits Coordinator, Human Resources Department

ITEM:

Discussion and possible action on any and all matters regarding the proposed change to employee preventative service coverage. **(Susan Posada, Broker and Consultant)**

SUMMARY:

The current benefits plan document for preventative services covers only those mandated by the Affordable Care Act ("ACA") which are listed under the U.S. Preventative Services Task Force ("USPSTF"), A and B plus mandated immunizations, Pediatric and Well-Woman Care. Grades A and B are both suggested for preventative practice.

Payment under the current benefits plan document:

On the current plan document, other services outside grades A and B are denied and are paid 100% out of pocket by the employee.

Proposed payment change under the benefits plan document:

Continue coverage at 100% for the ACA mandated preventive care grades A and B.

All other preventive care payable as any other illness, subject to deductibles and co-pays.

RECOMMENDATION / SUGGESTED MOTION:

I MOVE TO AMEND THE BENEFITS PLAN DOCUMENT FOR PREVENTIVE CARE NOT MANDATED BY ACA AND NOT LISTED IN THE USPSTF GRADE A AND B, TO BE PAYABLE AS ANY OTHER ILLNESS, SUBJECT TO DEDUCTIBLES AND COPAYS.

Fiscal Impact

Fiscal Impact:

N/A

Fiscal Impact:

Under the current plan:

If a medical provider includes services not mandated by ACA in a wellness visit, the employee pays 100%.

For the deductibles and copays to apply to the services not included in the ACA mandate, they would have to come back for another appointment.

Under the proposed plan change, all services can be provided in the wellness visit and deductibles and copays will apply to those not covered by the ACA mandates.

Attachments

email from 3rd Party Administrator

From: [Susan Posada](#)
To: [Kay Macuil](#)
Subject: FW: USPSF A & B
Date: Wednesday, September 1, 2021 9:24:20 AM
Attachments: [image004.png](#)
[image005.png](#)
[image007.png](#)
[image008.png](#)

See below Option 2

From: Paula Hennen <Paula.Hennen@90degreebenefits.com>
Sent: Monday, August 16, 2021 9:50 AM
To: Susan Posada <sposada@sposadaagency.com>
Subject: RE: USPSF A & B

Hi Susan – below are the options for preventative care. Years ago when this list came out, most groups were using option 1. Due to customer dissatisfaction, we now use and recommend option 2 as the default. Option 3 is covering any services at 100% as long as the diagnosis is preventative. Thanks

Preventive Care	Option 1 - Does plan wish to limit coverage of preventive care labs and tests to ONLY those services mandated under ACA? (The USPSTF A&B services, plus mandated Immunizations, Pediatric and Well-Woman Care)
	Option 2 - Allow mandated care at 100%, all other preventive care payable as any other illness, subject to deductibles/copays - DEFAULT OPTION
	Option 3 - All preventive care labs and screenings at 100% if billed with a routine diagnosis



Paula Hennen
Manager of Account Executives
800-558-7798 ext. 3280
Paula.Hennen@90Degreebenefits.com
90DegreeBenefits.com

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From: Susan Posada <sposada@sposadaagency.com>
Sent: Monday, August 16, 2021 11:08 AM
To: Paula Hennen <Paula.Hennen@90degreebenefits.com>
Subject: USPSF A & B

******Security Note: EXTERNAL EMAIL - Please exercise caution and DO NOT open attachments or click on links from unknown or unexpected emails.**

Paula, can you give me the verbiage you will use to change the plan document so I can approach the Trust for approval.



Susan Posada

Phoenix 602-212-9400

Fax: 602-212-9424

Email: sposada@sposadaagency.com

Website: www.sposadaagency.com



Leading Producers Round Table - Eagle

Employee Benefit Trust Board Meeting

3. F.

Meeting Date: 09/08/2021

Department Head: Maria Munoz, HR Benefits Coordinator, Human Resources Department

Submitted By: Maria Munoz, HR Benefits Coordinator, Human Resources Department

ITEM:

Discussion and possible action on any and all matters regarding the change of Prescription Retail **(Susan Posada, Broker and Consultant)**.

SUMMARY:

Prescriptions retail was changed from a 30-day supply to a 90-day supply service program during COVID-19 when there was a shortage of medication and mailing options. Since then, these issues are no longer a problem and the employee will still have the option for 90-day refill by mail order. It is recommended that the 30-day supply be restored.

RECOMMENDATION / SUGGESTED MOTION:

I MOVE TO PROVIDE THE PRESCRIPTION MEDICINE RETAIL BENEFIT TO A 30-DAY SUPPLY AND REMOVE THE 90-DAY REFILL OPTION FROM THE BENEFITS DUE TO THERE NO LONGER BEING A MEDICINE SHORTAGE CAUSED BY THE COVID-19 PANDEMIC.

Fiscal Impact

Fiscal Impact:

N/A
