



City of West University Place

A Neighborhood City

EMPLOYEE BENEFITS TRUST MEETING AGENDA

Notice is hereby given of a meeting of the City of West University Place Employee Benefits Trust (EBT) to be held on Monday, September 9, 2019, beginning at approximately 6:30 p.m. in the Municipal Building, 3800 University Boulevard, West University Place, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action.

1. Call Meeting to Order
2. Resolution Approving Proposed Changes to the Employee Benefits Trust [see Memo]
3. Adjourn and reconvene City Council meeting

If you plan to attend this public meeting and you have a disability that requires special arrangements, please contact City Secretary Thelma Gilliam at 713.662.5813 at least 24 hours prior to the meeting.

I certify that the attached notice and agenda of items to be considered by the City of West University Place Employee Benefits Trust on September 9, 2019 was posted on the Municipal Building bulletin board on September 6, 2019 at approximately 10:00 o'clock a.m.

(SEAL)

Thelma A. Gilliam

AGENDA MEMO
BUSINESS OF THE CITY COUNCIL
CITY OF WEST UNIVERSITY PLACE, TEXAS

AGENDA OF:	September 9, 2019	AGENDA ITEM:	EBT 2
DATE SUBMITTED:	September 5, 2019	DEPARTMENT:	Administration
PREPARED BY:	J. Urban, Human Resources Director	PRESENTER:	J. Urban, Human Resources Director
SUBJECT:	Resolution Approving Proposed Changes to the Employee Benefits Trust		
ATTACHMENTS:	Resolution		
EXPENDITURE REQUIRED:	N/A		
AMOUNT BUDGETED:	N/A		
ACCOUNT NO.:	N/A		
ADDITIONAL APPROPRIATION REQUIRED:	N/A		
ACCOUNT NO.:	N/A		

EXECUTIVE SUMMARY

The Employee Benefits Trust allows the City of West University Place to purchase insurance for its employees. By purchasing insurance through a trust structure, the City avoids an insurance premium tax of 1.75% imposed by the State of Texas. This results in an approximate \$30,000 savings annually by purchasing health insurance through this structure.

A revision to the City of West University Place Benefit Trust document was requested to amend Article V, Rights, Powers, And Duties of Trustees; Quorum and Voting, Section 7 by deleting the last sentence that reads, “Any insurance purchased by the City of West University Place must give the insurer recourse against the Trustees or other fiduciaries concerned for breach of any fiduciary obligation or fiduciary duty owed to the Trust.” Removal of this language should not impact the tax savings resulting from use of the Trust.

The City currently provides errors and omissions liability insurance for the City of West University Place, its elected officials, and officers. The limits on this insurance are \$5,000,000 for each wrongful act or \$10,000,000 in aggregate annually. Excluded from this coverage, however, is any “claim made against any Member or Covered Party ... arising from a Member’s or Covered Party’s activities in a fiduciary capacity with respect to public property and funds, bond obligations, and employee benefit and retirement funds and obligations.” Our current carrier does not offer a supplemental insurance to cover this fiduciary situation, but referred us to an independent firm for coverage options.

RECOMMENDATION

Staff recommends that City Council review and take any desired action.

**CITY OF WEST UNIVERSITY PLACE
EMPLOYEE BENEFIT TRUST**

RESOLUTION NO. XX-XXXX

**A RESOLUTION OF THE TRUSTEES OF THE CITY OF WEST UNIVERSITY PLACE
EMPLOYEE BENEFIT TRUST, AMENDING AND RESTATING THE EMPLOYEE
BENEFIT TRUST'S DECLARATION OF TRUST ORIGINALLY DATED JULY 14, 2008**

WHEREAS, by Resolution No. R2008-9 duly adopted by the City Council of the City of West University Place, Texas (the "City Council") on July 14, 2008, the City Council authorized the creation of an Employee Benefit Trust and the execution of a Declaration of Trust regarding same; and

WHEREAS, the Declaration of Trust was executed on July 14, 2008, thereby establishing the Trust; and

WHEREAS, Article IX of the Declaration of Trust authorizes the Trustees to amend the Declaration of Trust, and the Trust created thereby, by a majority vote of the Trustees at a duly called meeting of the Trust; and

WHEREAS, the Trustees, have previously amended and restated the Declaration of Trust on October 24, 2011; and

WHEREAS, the Trustees, at a duly called meeting of the Trust, have found and determined that the Declaration of Trust should be further amended and restated as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE CITY OF WEST UNIVERSITY PLACE EMPLOYEE BENEFIT TRUST:

Section 1. That the Trustees hereby authorize the amendment to Article V of the Employee Benefit Trust's Declaration of Trust originally dated July 14, 2008, and subsequently amended on October 24, 2011. The Amendment to Article V is attached hereto as Exhibit "A."

Section 2. That the Trustees authorize the amended Declaration of Trust to be restated so as to include the amendment approved by this Resolution. The Amended and Restated Declaration of Trust is attached as Exhibit "B."

Section 3. That this Resolution shall be effective immediate upon its passage and adoption.

PASSED, APPROVED, AND ADOPTED THIS 6th day of September, 2019.

**CITY OF WEST UNIVERSITY PLACE
EMPLOYEE BENEFIT TRUST**

Bob Higley, Chairman

ATTEST:

City Secretary

APPROVED AS TO FORM:

Alan P. Petrov, City Attorney

EXHIBIT A

Language to be deleted shown by strike-out

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

RIGHTS, POWERS, AND DUTIES. In addition to all other powers and duties conferred on them by this Trust document and imposed or authorized by law, the Trustees shall have the following powers and duties:

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

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

3. The Trustees shall use the Trust's funds to accomplish the purpose of the Trust, as described in Paragraph II herein, and to operate and administer the Trust solely in the interest of the covered City officers, employees, and qualified retirees and dependents thereof and for the exclusive purpose of providing benefits to such persons and defraying the reasonable expenses of administration of the Trust. To this end, the

Trustees may purchase life, disability, or accident and health insurance to provide coverage for participating City officers, employees, and qualified retirees and their dependents. The Trustees may also adopt a health benefits plan that covers eligible City officers, employees, and qualified retirees, and their dependents.

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

5. The Trustees shall be authorized to contract with any qualified organization to perform any of the functions necessary for providing life, disability, sick, accident, and other health benefits, including but not limited to excess loss insurance, stop loss insurance, claims administration and administrative services when required by law or desired by the Trustees, the Trustees may seek sealed competitive bids or sealed competitive proposals with respect to contracts required to carry out the operations of the Trust and to effect the purpose of the Trust.

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

7. The City of West University Place may purchase insurance for the Trustees and any other fiduciaries appointed by the Trustees and for the City of West

University Place to cover liability or losses occurring by reason of the act or omission of anyone or more of the Trustees or any other fiduciary appointed by them. ~~Any insurance purchased by the City of West University Place must give the insurer recourse against the Trustees or other fiduciaries concerned for breach of any fiduciary obligation or fiduciary duty owed to the Trust.~~

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

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

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

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

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

EXHIBIT "B"

AMENDED AND RESTATED DECLARATION OF TRUST

I.

The City of West University Place ("City"), as settlor, designates the members of the City of West University Place City Council to be Trustees and declares that the City holds in trust the funds described in Schedule A attached hereto and incorporated herein by reference, which is the property of the City, and all substitutions and additions to such funds, for the purpose of providing life, disability, sick, accident, and other health benefits to the City's officers, employees, and qualified retirees and their dependents.

II. PURPOSE

This is a nonprofit trust created for the purpose of providing City officers, employees, and qualified retirees and their dependents with life, disability, sickness, accident, and other health benefits either directly or through the purchase of insurance and to perform operations in furtherance thereof.

III. DURATION

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

IV. TRUSTEES: COMPOSITION, OFFICERS, COMPENSATION, AND MEETINGS

COMPOSITION. The Trustees are the members of the City of West University Place City Council, and the term of each Trustee is contemporaneous with his or her term of office as a Member of the City Council. Whenever a Trustee ceases to be a

member of the City of West University Place City Council, the person succeeding him or her in office will serve as a successor Trustee of the Trust.

OFFICERS. The Mayor shall serve as Chairman and shall preside at meetings of the Trustees and shall have all such other powers as are conferred herein or by majority vote of the Trustees. The Mayor Pro Tern shall serve as Vice Chairman and shall preside at meetings of the Trustees whenever the Chairman is absent. The Secretary shall rotate, coinciding with the City of West University Place's Fiscal Year, between the District Council members, skipping the Mayor Pro Tern District, beginning with Position 1. The Secretary will oversee the preparation of meeting agendas, giving notice of meetings to the Trustees, and the minutes of the meetings of the Trustees.

COMPENSATION. The Trustees shall be reimbursed for all reasonable and necessary expenses incurred by them in the performance of their duties and will otherwise receive no compensation for their service as Trustees. Any approved reimbursement(s) will be made by the City of West University Place.

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

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

RIGHTS, POWERS, AND DUTIES. In addition to all other powers and duties conferred on them by this Trust document and imposed or authorized by law, the Trustees shall have the following powers and duties:

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

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

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

dependents. The Trustees may also adopt a health benefits plan that covers eligible City officers, employees, and qualified retirees, and their dependents.

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

5. The Trustees shall be authorized to contract with any qualified organization to perform any of the functions necessary for providing life, disability, sick, accident, and other health benefits, including but not limited to excess loss insurance, stop loss insurance, claims administration and administrative services when required by law or desired by the Trustees, the Trustees may seek sealed competitive bids or sealed competitive proposals with respect to contracts required to carry out the operations of the Trust and to effect the purpose of the Trust.

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

7. The City of West University Place may purchase insurance for the Trustees and any other fiduciaries appointed by the Trustees and for the City of West University Place to cover liability or losses occurring by reason of the act or omission of anyone or more of the Trustees or any other fiduciary appointed by them. Any

insurance purchased by the City of West University Place must give the insurer recourse against the Trustees or other fiduciaries concerned for breach of any fiduciary obligation or fiduciary duty owed to the Trust.

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

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

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

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

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

VI. BENEFICIARIES

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

VII. TRUST FUNDS

The Trust funds consist of the funds described in Schedule A hereto as provided by the City to institute this Trust, future contributions by the City, beneficiary contributions, investment income, and any other money or property which shall come into the hands of the Trustees in connection with the administration of the Trust. The Trustees may use the Trust's funds as follows:

1. to pay all expenses which the Trustees consider necessary in establishing the Trust and in administering the Trust and all reasonable expenses incurred by the Trustees in the performance of their duties; as defined to be those allowed under Section 222.022(c)(5)(A) [Texas Insurance Code] and or permitted by the State Comptroller of the State of Texas in its role as the administrator of this legislation;

2. to pay premiums on any insurance policies allowed under Section 222.022(c)(5)(A) [Texas Insurance Code] purchased by the Trust;

3. to make authorized investments;

4. to pay claims under any health benefits plan adopted by the Trustees;

VIII. LIABILITY OF TRUSTEES AND OFFICERS

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

IX.
AMENDMENT, REVOCATION AND TERMINATION

This Declaration of Trust and the Trust created herein shall terminate when and if required by operation of law. The Trustees shall have the power to amend, modify, terminate or revoke, in whole or in part, this Declaration of Trust and the Trust created herein by majority vote at a duly called meeting at which a quorum is present. Notwithstanding the foregoing, the Trustees shall have no power to amend Paragraph II of this Declaration of Trust. Beneficiaries of the Trust shall have no right to amend this Declaration of Trust, and their approval shall not be a condition or requirement for an authorized amendment by the Trustees.

Upon termination of the Trust, the Trustees shall pay all obligations, debts, losses, and other liabilities of the Trust. Thereafter, the Trustees shall first use the remaining trust funds to pay covered claims of persons covered under the City's health benefits plan that may be in effect at the time of termination of the Trust and, then, either apply any remaining balance of the funds for the benefit of those covered persons in such manner as the Trustees determine shall best carry out to purposes of this Trust or pay such balance over to such covered persons on a per capita basis. Notwithstanding the foregoing, the Trustees, upon termination of the Trust and payment of all Trust obligations may, by vote of a majority of the Trustees, transfer the remaining funds or any portion thereof to the trustees of any trust or trusts established for a substantially similar purpose to be applied for uses substantially similar to those set forth in Paragraph II herein.

**X.
GOVERNING LAW**

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

**XI.
MISCELLANEOUS**

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

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

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

IN WITNESS WHEREOF, the undersigned parties have executed this Amended Declaration of Trust, consisting of eleven (11) pages, on the dates of their respective acknowledgments below. By joining in the execution of this Amended Declaration of Trust, the Trustees acknowledge, signify acceptance of the Amendment created hereunder, and covenant that the Amendment will be executed with all due fidelity. This Amended Declaration Trust is effective as of the date notarized below.

Bob Higley, Trustee

Kevin Trautner, Trustee

James P. Barnes, Trustee

Lauri Lankford, Trustee

Ed Sobash, Trustee

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me on this day, personally appeared Bob Higley, Kevin Trautner, James P. Barnes, Lauri Lankford and Ed Sobash, Trustees, proved to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that each executed the instrument for the purposes and consideration expressed therein, by proper authority, and in the capacity stated in the instrument.

Given under my hand and seal of office this ____ day of _____, 2019.

[seal]

Notary Public in and for the State of Texas

Schedule A