

RESOLUTION NO. 125-2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN COUNCIL TO ENTER INTO A PARTICIPATION AGREEMENT WITH THE PALM BEACH FIRST RESPONDERS FOUNDATION, INC. TO MEMORIALIZE THE TOWN'S COMMITMENT TO PROVIDE NECESSARY INFORMATION TO THE FOUNDATION FOR PURPOSES OF THE FOUNDATION'S ESTABLISHMENT OF A TERM LIFE INSURANCE BENEFIT FOR TOWN OF PALM BEACH POLICE AND FIRE SWORN AND CIVIL EMPLOYEES FUNDED AND MAINTAINED BY THE FOUNDATION; APPROVING TERMS OF THE AGREEMENT, AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE TOWN COUNCIL; PROVIDING SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR FULL FORCE AND EFFECTIVENESS; PROVIDING FOR REPEAL AND CONFLICTING RESOLUTIONS.

WHEREAS, the Town employs a certain number of employees classified by the Town as members of the Town's Police and Fire Departments ("Police and Fire Employees");

WHEREAS, the Town provides its Police and Fire Employees with compensation and the opportunity to participate in a suite of employee benefits, as amended from time to time, including insurance benefits;

WHEREAS, the Foundation was established as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for a number of purposes, including that it works to support the Town's efforts to recruit and retain qualified Police and Fire Employees by providing emergency assistance, scholarships, equipment, and training, among other things;

WHEREAS, the Town and the Foundation desire that the Foundation provide reduced or no cost life insurance for certain full-time Police and Fire Employees through its PB First Responders Trust (the "Insurance Trust");

WHEREAS, the Town hereby agrees, consents to, and approves the establishment and operation of the Insurance Trust for the benefit of Police and Fire Employees ("Program") by the Foundation, for the purpose of providing certain additional benefits to certain Police and Fire Employees who meet the Foundation's eligibility criteria as set forth on Exhibit A attached hereto;

WHEREAS, the Town acknowledges that the Foundation's provision of Program benefits to Police and Fire Employees support the Town's efforts to recruit and retain these employees, and therefore fulfills a public purpose and lessens the burdens on the Town; and

WHEREAS, the Town and Foundation desire to memorialize their agreement regarding the Program, as provided in this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement, the Town and the Foundation (the “Party” or “Parties” as appropriate) hereby agree to the following:

- A. *Term of Agreement.* This Agreement shall be effective beginning on the Effective Date and shall remain in effect until terminated by either Party by providing the other Party with at least 30 days’ written notice of termination. Termination of the Agreement shall not, in and of itself, affect any insurance policies already effective under the Program, provided that no further policies shall be made under the Insurance Trust for the Program following termination of the Agreement.
- B. *General Responsibilities of the Foundation.* The Foundation shall act as the trustee under the Insurance Trust, execute the Insurance Trust agreement, and be responsible for the funding, administration and operation of the Insurance Trust, in accordance with the terms of the Insurance Trust, as amended from time to time. Within 90 days following the end of each Plan year the Foundation shall provide a report to the Town reflecting the total participants in the Program.
- C. *General Responsibilities of the Town.* The Town shall provide to the Foundation information related to the compensation and benefits of Police and Fire Employees as necessary for the establishment and funding of the Insurance Trust and the operation of the Program by the Foundation. Notwithstanding the foregoing, the Town will not release to the Foundation any Town records deemed confidential or exempt from disclosure under Chapter 119, *Florida Statutes*, provided that the Town will notify the Foundation in writing if such unreleased information cannot be disclosed. The Town has no obligations with respect to the operation of the Program other than set forth herein.

The Town has no responsibility to provide the Program benefits referenced herein, even if the Foundation terminates this Agreement or otherwise ceases to provide the Program benefits to Police and Fire Employees. Further, nothing in this Agreement shall be construed to affect in any way the Town’s rights, privileges, and immunities as set forth in Florida Statute § 768.28.

D. *Amendment/Termination.*

- 1. The Foundation shall have the exclusive right to amend and/or terminate the Program or the Insurance Trust at any time, provided that no amendment or resolution to terminate the Program shall be effective prior to the date that is 60 days following the date the Foundation notifies the Town in writing of the amendment or the resolution to terminate the Program; and provided further that such notice period shall be waived to the extent necessary in respect of a Program amendment required for the Program to maintain its compliance under applicable law.

2. The Town acknowledges the importance of the Foundation's tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code ("Tax Exempt Status"), and Town agrees to execute any amendments to this Agreement and to take such other or further actions reasonably required to preserve the Foundation's tax exempt status, provided the same do not materially increase the costs and risks, or materially reduce the rights and benefits of Town hereunder. If, as a result of a change in law or regulation or judicial or administrative decision or interpretation, the performance by Foundation of any provision of this Agreement should, as reasonably determined in good faith by Foundation, jeopardize the Foundation's Tax-Exempt Status, or constitute a violation or threatened violation of any statute, regulation, or ordinance, the Foundation may request that this Agreement be renegotiated to eliminate the jeopardy and, if agreement is not reached within sixty (60) days after such renegotiation commences, then the Foundation may terminate this Agreement on notice in writing to Town; provided, however, that in the event of any such termination, the parties may seek to find alternative means to carry out the objectives of this Agreement.
- E. Trust Agreement. The Town hereby consents to, acknowledges, and, to the extent necessary, approves the terms of the Insurance Trust, substantially in the form attached hereto as Exhibit B.
- F. Representations of the Town. The Town hereby warrants and represents that:
1. It acknowledges that the Foundation has established the Insurance Trust for the purpose of providing benefits for certain eligible Police and Fire Employees.
 2. It has reviewed the Insurance Trust and approves of the Program.
 3. It acknowledges that the Foundation (and not the Town) is acting as the trustee of the Insurance Trust, as defined under the Insurance Trust, with the authority to control the operation and administration of the Program.
 4. It will provide the Foundation with any and all information and data (including compensation information; date of hire; date of termination) requested by the Foundation that is reasonably required to administer the Program.
 5. It will not reduce other compensation and benefits of Program participants based on the value of the benefits received by such participants under the Program.
 6. The Program is intended to satisfy the voluntary plan safe harbor under Department of Labor Reg. §2510.3-1(j), and hereby agrees to the following:
 - a) The Town shall not be making any contributions towards the cost of coverage under the Program;
 - b) The Program is completely voluntary, and eligible Police and Fire Employees of the Town may decline participation in the Program;
 - c) the Town shall not endorse the Program, including by (i) promoting the Program more than disseminating program materials, (ii) listing the Town on Program materials, and (iii) designating the Town as plan administrator, plan sponsor, or policyholder of the Program;

- d) The Town shall disseminate Program materials separately from the Town's employee benefit plan materials;
- e) The Town shall not state in any fashion that ERISA applies to the Program;
- f) the Town shall not receive any consideration in the form of cash or otherwise in connection with the Program; and
- g) The Town shall not determine the eligibility of its Police and Fire Employees under the Program.

- B. Limitation of Liability. Neither the Foundation nor the Town shall be liable, under any circumstances, for any indirect, special, consequential, punitive or exemplary damages, or similar damages arising out of or relating to this Agreement or the relationship of the Parties under this Agreement.
- C. Notices. All notices, requests, and other communications shall be in writing and mailed, postage prepaid, to the other Party at the addresses set forth in the first paragraph of this Agreement. All notices pursuant to this Agreement shall be effective and deemed received upon the earlier of actual receipt by an officer of the Party to whom the notice is addressed or three days after the notice is either deposited in first class mail or mailed by certified or registered mail, postage prepaid. Any documents, certificates, termination notice or other written communications will be delivered promptly to the policyholders' upon request and instructions of the Town. Additionally, notice via email may be provided by the Foundation to the Town, provided such notice is provided to an email address previously verified by the Town as pertaining to the subject matter discussed herein.
- D. Independence. In performing its obligations hereunder, the Foundation, its directors, officers, employees, and agents shall be deemed to be acting as an independent contractor. Neither the Foundation, its directors, officers, employees, and agents, nor the Town shall have the power or authority to act for or on behalf of or to bind the other Party, except as otherwise set forth herein. Furthermore, the Parties acknowledge and agree that neither this Agreement nor the Insurance Trust is intended to create, and shall not create, an employment relationship between the Foundation and any Police and Fire Employees or any other employee of the Town and the Town shall not represent that such a relationship may exist.
- E. Waiver. Failure to enforce any provision of this Agreement does not alter or waive the provision or affect the future enforceability of the provision.
- F. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions, and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto or arising hereunder. Venue shall be in Palm Beach County.
- G. Third Party Beneficiaries. This Agreement shall not confer any rights, remedies, claims, or obligations on third parties except as expressly provided herein.

- H. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes any and all prior or contemporaneous oral or written communications or proposals not expressly included herein. This Agreement may be amended only by writing signed by duly authorized representatives of both Parties. By executing this Agreement, both Parties acknowledge and agree that they have reviewed all terms and conditions incorporated herein and intends to be legally bound by the same.
- I. Severability. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and the Agreement will be enforced with that provision severed or as modified by the court; provided, however, that if such severance or modification has or will have a material adverse effect on either Party, the Party so affected shall have the right to terminate this Agreement upon at least 30 days' prior written notice to the other Party.
- J. Public Records. In accordance with the Florida Public Records Act (Fla. Stat. § 119.0701), the Foundation shall:
1. Keep and maintain public records required by the Foundation to perform the service.
 2. Upon request from the Town's custodian of public records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Foundation does not transfer the records to the Town.
 4. Upon completion of the contract, transfer, at no cost, to the Town all public records in possession of the Foundation or keep and maintain public records required by the Town to perform the service. If the Foundation transfers all public records to the Town upon completion of the contract, the Foundation shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Foundation keeps and maintains public records upon completion of the contract, the Foundation shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.

IF THE FOUNDATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY EMAIL AT TOWNCLERK@TOWNOFPALMBEACH.COM; BY TELEPHONE AT (561) 838-5416; OR BY MAIL AT TOWN CLERK, 360 SOUTH COUNTY ROAD, PALM BEACH, FL 33480.

AGREED by the parties through their undersigned representatives

Town of Palm Beach, Florida

The Palm Beach First Responders
Foundation, Inc.

By: _____

By:_____

Its: _____

Its: _____

Date: _____

Date: _____

Exhibit A

Insurance Trust Eligibility Criteria

Eligible Employee and Exclusions:

- Police and Fire Department employees, age 18 and over
- Must have completed 1 year of service to enroll
- Individuals who are participating the Deferred Retirement Option Program (DROP) will be included

Eligible to participate as long as you are not:

- Covered under a collective bargaining agreement, except where such collective bargaining agreement provides for coverage under this Program and such Employee has satisfied all conditions necessary to obtain coverage under this Program in accordance with the Insurance Trust agreement and any Program policies as reported to the trustee under the Insurance Trust by the Town of Palm Beach (“Employer”) (for sake of clarity, eligible employees include employees who are covered under the Collective Bargaining Agreement between the Town of Palm Beach and the Professional Firefighters/Paramedics Palm Beach County, Local 2928 (Non-Supervisory Unit) who have otherwise satisfied the eligibility requirements under this Program;
- A nonresident alien with no U.S.-earned income;
- An individual employed by an employment agency;
- A leased employee; or
- An independent contractor (even if later reclassified as an employee)

Service Requirement:

The cut-off date to determine eligibility in the program shall be June 30 of each year (the “Eligibility Date”). You become eligible to be a Participant in the Program after completing one year of employment as a police or firefighter with the Employer prior to any Eligibility Date so long as you remain employed in good standing with the Employer on the Enrollment Date immediately following your Eligibility Date. The “Enrollment Date” shall be each October 1.

Termination of Employment:

If a participant terminates their employment with Employer after their Enrollment Date (provided participant is not transferred to or otherwise employed by an affiliated employer eligible for the Program), then the participant may elect to have their insurance policy under the Program transferred to such Participant individually upon a termination of employment pursuant to the conditions and requirements of the specific policy, and Participant shall agree to take over payment of all premiums on the policy from and after the date of termination. Otherwise, Participant may terminate the policy pursuant to its terms and conditions.

Any eligible participant who chooses not to participate in the Program will not be afforded any monetary or other compensation in lieu of participation in the Insurance Trust Program.

Death Benefit:

Upon the death of a participant in the Program, beneficiaries will be entitled to receive the death benefit pursuant to applicable tax laws. Participants should consult their personal tax advisor for more information.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 10th day of September 2024.

Danielle H. Moore, Mayor

Bobbie D. Lindsay, Town Council President

Lewis S.W. Crampton, Council President Pro Tem

ATTEST:

Julie Araskog, Town Council Member

Edward A. Cooney, Town Council Member

Bridget Moran, Town Council Member

Kelly Churney, Acting Town Clerk