

RESOLUTION NO. 2015-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS, AUTHORIZING THE CREATION OF AN EMPLOYEE BENEFIT TRUST, DESIGNATING THE MEMBERS OF THE CITY OF COPPERAS COVE'S CITY COUNCIL TO BE TRUSTEES, AND AUTHORIZING THE TRUST TO PURCHASE VARIOUS FORMS OF INSURANCE FOR THE BENEFIT OF CITY OFFICERS, EMPLOYEES, QUALIFIED RETIREES, AND THEIR DEPENDENTS.

**WHEREAS,** On September 01, 2015, the City Council authorized the City Manager to execute an agreement with Arthur J Gallagher Benefits Services, INC to create and provide the required documents and support needed to establish an Employee Benefits Trust; and

**WHEREAS,** The establishment of an Employee Benefits Trust will benefit the City in future cost savings under the Texas Department of Insurance Code 222.002.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:**

**Section 1.**

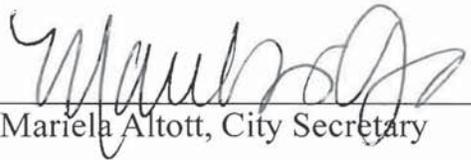
That the City Council hereby authorizes the creation of an Employee Benefits Trust, designating all members of the City Council to be Trustees, and authorizing the Trust to purchase various forms of insurance for the benefit of city officers, employees, qualified retirees, and their dependents as set out in Exhibit "A" attached hereto.

**PASSED, APPROVED AND ADOPTED** this 1st day of December, 2015, at a regular meeting of the City Council of the City of Copperas Cove, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't. Code* §551.001, et.seq., at which meeting a quorum was present and voting.

**CITY OF COPPERAS COVE, TEXAS**

  
John Hull, Mayor

**ATTEST:**

  
Mariela Altott, City Secretary



**APPROVED AS TO FORM:**

  
Denton, Navarro, Rocha, Bernal, Hyde & Zech

## DECLARATION OF TRUST

### I.

The **City of Copperas Cove**<sup>1</sup> (“City”), as settlor, designates the members of the **City of Copperas Cove City Council**<sup>2</sup> 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 Copperas Cove City Council**, and the term of each Trustee is cotemporaneous with his or her term of office as a

---

<sup>1</sup> The settlor is the entity establishing the trust and may also be a Chapter 172 Pool, a county, a hospital district, or a county or municipal hospital.

<sup>2</sup> The trustees will govern the operations of the trust and may also be the Trustees of a Chapter 172 Pool, members of a County Commissioners Court, or members of the Board of Directors of a hospital district or of a municipal or county hospital.

Member of the City Council. Whenever a Trustee ceases to be a member of the **City of Copperas Cove** 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 Tem shall serve as Vice Chairman and shall preside at meetings of the Trustees whenever the Chairman is absent. The Secretary shall rotate, coinciding with the **City of Copperas Cove's** Fiscal Year, between the Council members, skipping the Mayor Pro Tem, beginning with Place 1. The Secretary will oversee the preparation of meeting agendas, giving notice of meetings to the Trustees, and the minutes of the meetings of the Trustees.

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.

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 Copperas Cove may purchase insurance for the Trustees and any other fiduciaries appointed by the Trustees and for the City of Copperas Cove to cover liability or losses occurring by reason of the act or omission of any one or more of the Trustees or any other fiduciary appointed by them. Any insurance purchased by the City of Copperas Cove 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 Settlor to institute this Trust, future contributions by the Settlor, beneficiary contributions,

investment income, and any other money or property which shall come into the hands of the Trustees in connection with the administration of the Trust. The 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 222.002(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 222.002(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 Copperas Cove 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 Copperas Cove 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.

IN WITNESS WHEREOF, the undersigned parties declare that no funds since the inception of said Employee Benefits Trust, were used or diverted for any purpose than those allowed by Section 222.002 of the Texas Insurance Code.

**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.

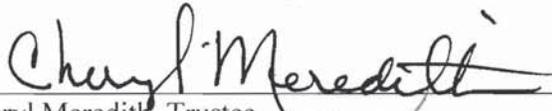
If any clause or provision of this Declaration of Trust proves to be or is adjudged invalid or void for any reason, such invalid or void clause, provision, or portion shall not affect the whole, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as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

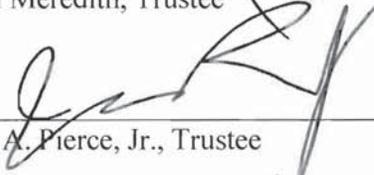
IN WITNESS WHEREOF, the undersigned parties have executed this Declaration of Trust, consisting of twelve (12) pages and Schedule A attached hereto, on the dates of their respective

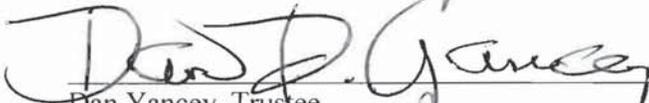
acknowledgments below. By joining in the execution of this Declaration of Trust, the Trustees acknowledge receipt of the property described in Schedule A, signify acceptance of the Trust created hereunder, and covenant that the Trust will be executed with all due fidelity. This Trust is effective as of the last date of signature below.

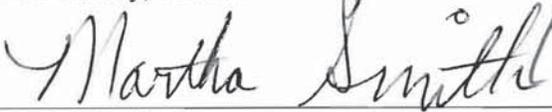
  
Mayor Frank Seffrood, Settlor

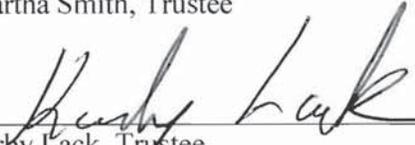
  
Frank Seffrood, Trustee

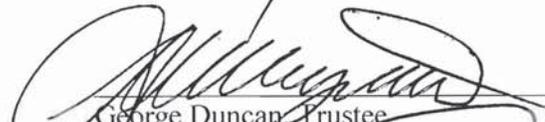
  
Cheryl Meredith, Trustee

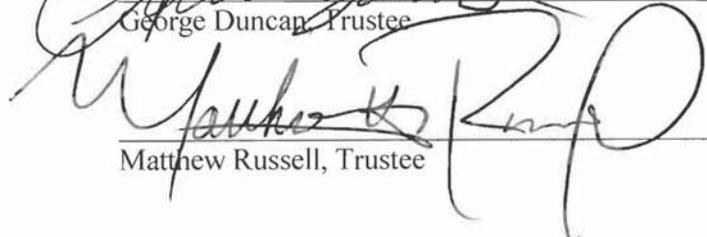
  
James A. Pierce, Jr., Trustee

  
Dan Yancey, Trustee

  
Martha Smith, Trustee

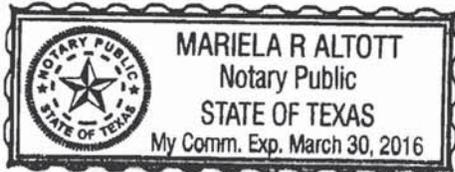
  
Kirby Lack, Trustee

  
George Duncan, Trustee

  
Matthew Russell, Trustee

THE STATE OF TEXAS     §  
  §  
COUNTY OF CORYELL     §

This instrument was acknowledged before me on, December 1, 2015, by Frank Seffrood, Mayor of the City of Copperas Cove on behalf of Settlor.

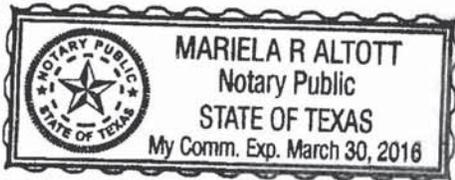


*Mariela R. Altott*

Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS     §  
  §  
COUNTY OF CORYELL     §

This instrument was acknowledged before me on, December 1, 2015, by Frank Seffrood, Trustee.

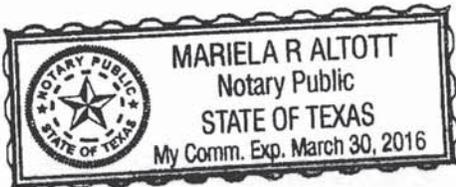


*Mariela R. Altott*

Notary Public, State of Texas  
Print Name: Mariela Altot  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS     §  
  §  
COUNTY OF CORYELL     §

This instrument was acknowledged before me on, December 1, 2015, by Cheryl Meredith, Trustee.

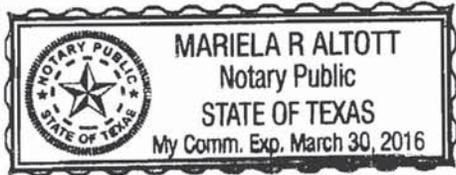


*Mariela R. Altott*

Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF CORYELL   §

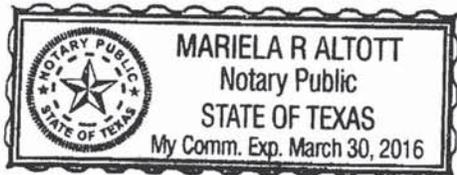
This instrument was acknowledged before me on December 1, 2015, by James Pierce, Jr., Trustee.



Mariela R. Altott  
Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF CORYELL   §

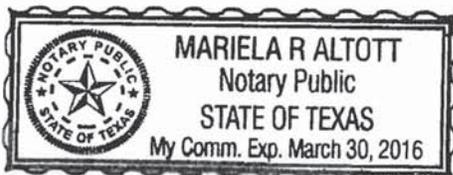
This instrument was acknowledged before me on December 1, 2015, by Dan Yancey, Trustee.



Mariela R. Altott  
Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF CORYELL   §

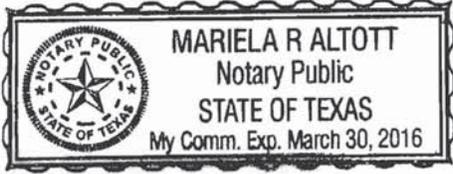
This instrument was acknowledged before me on December 1, 2015, Martha Smith, Trustee.



Mariela Altott  
Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS     §  
  §  
COUNTY OF CORYELL     §

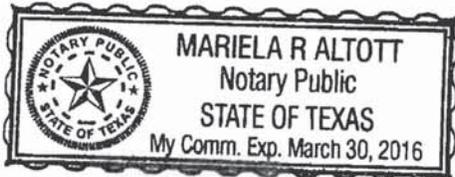
This instrument was acknowledged before me on December 1, 2015, by Kirby Lack, Trustee.



Mariela R. Altott  
Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS     §  
  §  
COUNTY OF CORYELL     §

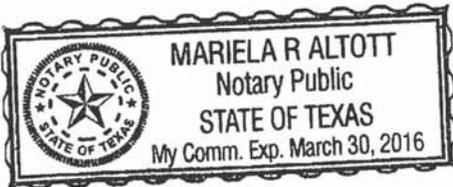
This instrument was acknowledged before me on December 1, 2015, by George Duncan, Trustee.



Mariela R. Altott  
Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

THE STATE OF TEXAS     §  
  §  
COUNTY OF CORYELL     §

This instrument was acknowledged before me on December 1, 2015, by Matthew Russell, Trustee.



Mariela R. Altott  
Notary Public, State of Texas  
Print Name: Mariela Altott  
My Commission Expires: March 30, 2016

## **SCHEDULE A**

The following is a list of the assets initially transferred by the **City of Copperas Cove**, Settlor, to the Trust:

**City of Copperas Cove's** first month (October 2015) contributions for Employee, Dependent, and Retiree Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, Vision, and Short Term Disability Benefits.

## CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made by and between Gallagher Benefit Services, Inc., ("Gallagher") and City of Copperas Cove (the "Client").

The Client wishes to enter into a consulting relationship with Gallagher on the terms and conditions set forth in this Agreement, and Gallagher is willing to accept such a consulting relationship.

In consideration of and in reliance upon the previous paragraph and the terms and conditions contained in this Agreement, the Client and Gallagher agree as follows:

### *1. Engagement*

The Client engages Gallagher as an employee benefits consultant as stated in this Agreement and Gallagher accepts this engagement. During the time that Gallagher is performing services for the Client under this Agreement, and for all purposes outlined in this document, Gallagher's status will be that of an independent contractor of the Client.

### *2. Term and Termination*

The Effective Date of this Agreement is July 1, 2015. The term of Gallagher's engagement under this Agreement (the "Consulting Period") will begin as of the Effective Date and will remain in effect for one (1) year from the Effective Date. Either party may terminate this Agreement by giving the other party at least thirty (30) days written notice of its intent to terminate. In the event such termination is effective during the Consulting Period (including any renewed Consulting Period), Client shall be responsible for compensating Gallagher for any and all services performed prior to the date of termination and Gallagher shall be responsible to Client to continue to provide services until the date of termination of this Agreement.

### *3. Services*

Gallagher will develop Employee Benefits Trust documents for the Client and consult with its employees, representatives, agents and contractors as to such matters as more fully described in Exhibit A attached to this Agreement and incorporated herein. Gallagher will perform other services as the Client and Gallagher mutually agree in writing for an additional fee.

### *4. Compensation*

Subject to any changes as may be mutually agreed by the parties, Gallagher will receive, as compensation for its services under this Agreement, fees in the amount of \$7,500.00, which amount will be billed in two equal installments of \$3,750.00; 1<sup>st</sup> installment due and payable upon execution of this Agreement and 2<sup>nd</sup> installment due and payable upon creation and execution of the Trust by the Trustees/City Council of Client.

For additional information regarding Gallagher compensation, please see the Gallagher revenue disclosure policy and schedule set forth in Exhibit B.

### *5. Performance and Scope*

(a) The quality of services provided by Gallagher under this Agreement shall be of the level of professional quality performed by professionals regularly rendering this type of service and Gallagher shall perform its services in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in this Agreement.(b)

(b) Gallagher Not a Fiduciary Under ERISA. To the extent that one or more of the Client's employee benefit plans are subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and in spite of any other provision of this Agreement to the contrary, the parties agree and acknowledge that:

(i) Gallagher's services under this Agreement are not intended in any way to impose on Gallagher or any of its affiliates a fiduciary status under ERISA; and

(ii) this Agreement does not provide Gallagher, and the Client will not cause or permit Gallagher to assume, without prior written consent of Gallagher, any:

(A) discretionary authority or discretionary control respecting management of any "employee benefit plan" within the meaning of Section 3(3) of ERISA (an "ERISA Plan"),

(B) authority or control respecting management or disposition of the assets of any ERISA Plan, or

(C) discretionary authority or discretionary responsibility in the administration of any ERISA Plan.

(c) Reliance. In the performance of its duties, Gallagher may rely upon, and will have no obligation to independently verify the accuracy, completeness, or authenticity of, any written instructions or information provided to Gallagher by the Client or its designated representatives and reasonably believed by Gallagher to be genuine and authorized by the Client.

(d) No Practice of Law. Gallagher will not be obligated to perform, and the Client will not request performance of, any services which may constitute unauthorized practice of law. The Client will be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of Gallagher under the scope and terms as provided herein, conform in all respects with applicable State and Federal laws and regulations (including ERISA, the Internal Revenue Code, State and securities laws and implementing regulations) and, to the extent that the Client has foreign operations, any applicable foreign laws and regulations.

(e) Subcontractors. Gallagher may cause another person or entity, as a subcontractor of Gallagher, to provide some of the services required to be performed by Gallagher hereunder; provided, that Gallagher shall remain responsible for all acts and omissions of any such subcontractors (each of which shall be bound by Gallagher's obligations under this Agreement). Gallagher shall seek prior written approval from Client for any subcontractors providing substantive consulting, professional or managerial services. Prior written approval shall not be required for clerical, office, secretarial, IT back-up, administrative or similar support services.

(f) Conflict of Interest. Gallagher's engagement under this Agreement will not prevent it from taking similar engagements with other clients who may be competitors of the Client. Gallagher will, nevertheless, exercise care and diligence to prevent any actions or conditions which could result in a conflict with Client's best interest.

(g) Acknowledgements. In connection with Gallagher's services under this Agreement, Client agrees that:

(i) Although Gallagher will apply its professional judgment to access those insurance companies it believes are best suited to insure the Client's risks, there can be no assurance that the insurance companies Gallagher has accessed are the only or are the best suited ones to insure the Client's risks.

(ii) Any compensation of the types described above and disclosed to it does not constitute a conflict of interest and the Client expressly waives any claims alleging any such conflict of interest.

(iii) The final decision to choose any insurance company has been made by the Client in its sole and absolute discretion. The Client understands and agrees that Gallagher does not take risk, and that Gallagher does not guarantee the financial solvency or security of any insurance company.

(iv) The compensation payable to Gallagher is solely for the services set forth under this Agreement, including Exhibit A. Any additional administrative, claims representative or other services (collectively, "Additional Services") will be governed by the terms of a separate agreement covering the Additional Services.

(v) The Client is responsible for immediate payment of Gallagher's fees upon receipt of invoice. If any amount is not paid in full when due, that nonpayment will constitute a material breach of this Agreement that will allow Gallagher to immediately terminate this Agreement, at its option, without notice to the Client.

## 6. *Confidentiality*

(a) Client Information. Gallagher recognizes that certain confidential information may be furnished by the Client to Gallagher in connection with its services pursuant to this Agreement ("Confidential Information"). Gallagher agrees that it will disclose Confidential Information only to those who, in Gallagher's reasonable determination, have a need to know such information. Confidential Information will not include information that (i) is in the possession of Gallagher prior to its receipt of such information from the Client, (ii) is or becomes publicly available other than as a result of a breach of this Agreement by Gallagher, or (iii) is or can be independently acquired or developed by Gallagher without violating any of its obligations under this Agreement. However, disclosure by Gallagher of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee will not constitute a violation of this Agreement.

(b) HIPAA Privacy. Gallagher and the Client will each comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent they apply to them directly or indirectly pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulation concerning privacy of individually identifiable health information as set forth in 45 CFR Parts 160-164, as amended from time to time. Where required, the Client, as a representative of the health plans and Gallagher will enter into a separate Business Associate Agreement.

(c) Use of Names; Public Announcements. No party will use, in any commercial manner, the names, logos, trademarks or other intellectual property of the other party without its prior written consent. Except as may be required by law, no party will issue any press releases or make any public announcements of any kind regarding the relationship between the parties without the other party's prior consent.

## 7. *Indemnification Rights and Limitation of Liability*

(a) Indemnification. Subject to the limitations set out in Section 7(c), below, each party ("Indemnifying Party") will promptly defend, indemnify and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this Agreement.

(b) Limitation of Liability. Subject to the limitations set out in Section 7(c) below, notwithstanding any other term or provision of this Agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential or punitive damages. Furthermore, the aggregate liability under this Agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.

(c) Gallagher agrees and acknowledges that any obligation placed on the Client to indemnify Gallagher or to be liable to Gallagher, under Sections 7 (a) and (b) extends only to that which is permitted by the Texas Constitution and State Law as the Client is a home rule municipality chartered under the Texas Constitution and a political subdivision of the State of Texas and that a claim or an indemnity obligation cannot be paid from current revenues and that no order, resolution, tax nor interest and sinking funds has been set, adopted or established for payment of a claim or this indemnity obligation, and without expanding the Client's liability beyond the statutory limits of the Texas Tort Claims Act or under existing law, and furthermore, without waiving or diminishing City's immunity beyond the scope of that allowed by the Texas Tort Claims Act or existing law.

## 8. *Insurance*

(a) Before commencing work under this Agreement, Gallagher shall obtain and maintain the following limits and types of insurance:

(i) Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by Gallagher, its employees, sub-contractors, or independent contractors..

(ii) Workers Compensation Insurance: Gallagher shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all Gallagher's employees carrying out the work involved in this contract.

(iii) General Liability Insurance: Gallagher shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of Gallagher or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

(iv) Automobile Liability Insurance: Gallagher shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by Gallagher or its employees.

(b) Subcontractor: In the case of any work sublet, Gallagher shall require subcontractor and independent contractors working under the direction of either Gallagher or a subcontractor to carry and maintain the same workers compensation and liability insurance required of Gallagher.

(c) Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with Gallagher continuing to furnish the Client certificates of insurance.

(d) Evidence of such insurance shall be attached hereto as Exhibit C.

#### 9. Notices

Any notices, requests and other communications pursuant to this Agreement will be in writing and will be deemed to have been duly given, if delivered in person or by courier or sent by express, registered or certified mail, postage prepaid, addressed as follows:

If to the Client: City of Copperas Cove  
Attention: Andrea M. Gardner, City Manager  
914 S. Main Street, Suite E  
Copperas Cove, Texas 76522

If to Gallagher: Gallagher Benefit Services, Inc.  
Attention: Burke O. Sunday, Branch Manager  
245 Commerce Green Blvd., Suite 290  
Sugar Land, Texas 77478

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

#### 10. Miscellaneous

(a) Severability. The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

(b) Entire Agreement; Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. Except for changes in carriers and/or lines of coverage noted in Exhibit B which may occur upon unilateral approval of the Client, this Agreement may be modified or amended only by a written instrument executed by both parties.

(c) Governing Law; Rule of Construction. This Agreement will be construed, interpreted and enforced in accordance with the laws of the State of Texas without giving effect to the choice of law principles thereof or any canon, custom or rule of law requiring construction against the drafter.

(d) Successors. This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in the interest of the parties hereto.

(e) Counterparts. This Agreement may be executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

(f) Survival of Provisions. Sections 5(a), 6 and 7 will survive the termination of this Agreement.

**{The remainder of this page intentionally left blank.  
The parties' signatures appear on the following page.}**

IN WITNESS WHEREOF, the parties hereto have caused this Consulting Agreement to be duly executed on the date first written above.

CITY OF COPPERAS COVE

By:



Name: Andrea M. Gardner

Title: City Manager

Date: 9/3/15

GALLAGHER BENEFIT SERVICES, INC.

By:



Name: Burke O. Sunday

Title: Branch Manager

Date: 8/6/15

**EXHIBIT A  
SCOPE OF SERVICES**

Subject to any changes and additions as may be mutually agreed by the parties in writing, availability and delivery of data from the insurance carrier and other third party vendors, Gallagher will provide the following services:

**CONSULTING SERVICES PROVIDED ON AN "AS NEEDED" BASIS**

**DEVELOPMENT OF CLIENT EMPLOYEE BENEFITS TRUST DOCUMENTS:**

- Employee Benefits Trust -- Declaration of Trust (signature ready)
- Employee Benefits Trust Resolution -- resolution authorizing the creation of the Employee Benefits Trust
- Agenda Items for:
  - ✓ City Council
  - ✓ Employee Benefits Trust
- Consult with Client staff to internally prepare the City Council resolution(s)
- Consult with Client staff to internally prepare the resolution(s) for the City Council
- Consult with Client staff to internally prepare the resolution(s) for the Employee Benefits Trust
- Consult with Client staff to coordinate with Client's approved insurance carriers regarding the adoption of the Employee Benefits Trust and request for contractual rate adjustments to reflect the premium tax savings

**EXHIBIT B  
COMPENSATION DISCLOSURE STATEMENT**

What follows is the disclosure of our actual fees and/or commissions related to Client's Group Health Plan(s) and any relationships, or agreements Gallagher has with the insurance company involved in this transaction. Gallagher, as agent of record, will receive the following initial and renewal sale commissions expressed as percentage of gross premium payments, or fees as agreed upon by Client:

Line of Coverage	Insurance Company	Effective Date	Commission <sup>1</sup> / Supplemental Compensation <sup>2</sup>	Direct Fees <sup>3</sup>
Development of Employee Benefits Trust Documents	N/A - Gallagher	07/01/2015	N/A	\$7,500.00

It should also be noted that:

- **Gallagher** is not an affiliate of the insurer whose Contract is recommended. This means the insurer whose contract is recommended does not directly or indirectly have the power to exercise a controlling influence over the management or policies of **Gallagher**.
- **Gallagher's** ability to recommend other insurance contracts is not limited by an agreement with the Insurance Carrier.
- **Gallagher** is effecting the transaction for the Plan(s) in the ordinary course of **Gallagher business**.
- The transaction set forth is at least as favorable to the Plan(s) as an arm's length transaction with an unrelated party.
- **Gallagher** is not a trustee of the Plan(s) and is neither the Plan Administrator of the Plan(s), a fiduciary of the Plan(s), nor an employer which has employees in the Plan(s).

**For Employers and Plan Sponsors Subject to ERISA:** This Disclosure Statement is being given to the Client (1) to make sure Client knows about Gallagher's and Gallagher affiliates' income before purchasing the insurance product and (2) for plans subject to ERISA, to comply with the disclosure, acknowledgment and approval requirement of Prohibited Transaction Class Exemption No. 84-24<sup>4</sup>, which protects both Client and Gallagher<sup>5</sup>. Disclosure must be made to an independent plan fiduciary for the ERISA Plan(s), and Client acknowledges and confirms that this is a reasonable transaction in the best interest of participants in its ERISA Plan(s).

For more information on Gallagher's compensation arrangements, please visit [www.ajg.com/compensation](http://www.ajg.com/compensation). In the event a client wishes to register a formal complaint regarding compensation Gallagher receives, please send an email to [Compensation\\_Complaints@ajg.com](mailto:Compensation_Complaints@ajg.com) or send a letter to: AVC Compliance Officer, c/o Internal Audit Department, Arthur J. Gallagher & Co., Two Pierce Place, Itasca, IL 60143.

<sup>1</sup> Commissions include all commissions/fees paid to Gallagher that are attributable to a contract or policy between a plan and an insurance company, or insurance service. This includes indirect fees that are paid to Gallagher paid by a third party, and includes, among other things, the payment of "finders' fees" or other fees to Gallagher for a transaction or service involving the plan.

<sup>2</sup> Gallagher companies may receive supplemental compensation referred to in a variety of terms and definitions, such as contingent commissions, additional commissions and supplemental commission.

<sup>3</sup> Direct Fees include compensation to Gallagher paid for directly by the plan sponsor.

<sup>4</sup> Which allows an exemption from a prohibited transaction under Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA).

<sup>5</sup> In making these disclosures, no position is taken, nor is one to be inferred, regarding the use of assets of a plan subject to ERISA to purchase such insurance.