



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

June 24, 2019

TO: Debora P. Diaz, Town Manager

FROM: Beverly Kissinger, Finance Director

REF: Establishment of Local Government Other Post-Employment Benefits Trust

BACKGROUND

In 2002 the Board of Commissioners approved a resolution that provided Town retirees health care coverage until Medicare eligibility. Retiree health care coverage thus became part of the compensation package offered to employees, and as such requires funding. This is a post-employment healthcare benefit for Town employees who meet the requirements to receive benefits from the North Carolina Local Government Retirement System.

Established in 1984, the Governmental Accounting Standards Board (GASB) is the independent, private-sector organization that establishes accounting and financial reporting standards for United States' state and local governments that follow Generally Accepted Accounting Principles (GAAP). GASB standards are recognized as authoritative by state and local governments, state Boards of Accountancy, and the American Institute of CPAs. Through GASB, accounting standards are developed and issued that are intended to promote financial reporting that provides useful information to all who use financial reports. GASB Statement 75's primary objective is to improve accounting and financial reporting by state and local governments for post-employment benefits other than pensions.

FISCAL YEAR 2018-2019

The adopted budget implemented the recommendation that the Communications Special Revenue Fund be dissolved. Established in 2006 this reserve fund was comprised of rental revenues from companies with communications arrays located on the elevated water tower at 1634 North Croatan Highway. Resources from the fund were recorded as revenues and expenditures in the General Fund.

One of the expenditures from the dissolved Communications Special Revenue Fund was appropriation of \$200,000 to establish an official funding policy, the Other Post-Employment

Benefits (OPEB) Irrevocable Trust Fund, through the North Carolina Department of the State Treasurer, for the retiree healthcare benefit described above.

FISCAL YEAR 2019-2020

The 2019-2020 Fiscal Year adopted budget appropriates the amount of \$25,000 for both contribution and an actuarial study related to the OPEB. Contributions from the Town can be made annually to the trust fund. The actuarial study is required by GASB 75, which is the managing accounting procedure throughout the process.

RECOMMENDATION

The State Treasurer's Office requires approval of the Enrollment Package to finalize Kill Devil Hills' participation in the OPEB Irrevocable Trust Fund. This includes approval of the OPEB Trust Agreement, and the Resolution to Establish an OPEB Trust and to Participate in the Ancillary Governmental Participants Investment Program (AGPIP). The AGPIP is the investment arm of this program and specifically authorizes the State Treasurer to invest monies for governmental entities that are outside the North Carolina Retirement System; investments are calculated to produce consistent returns.

Town Attorney Casey Varnell has been consulted extensively on this matter and he has finalized his approval.

Staff recommends proceeding with this investment program with approval of the following motion:

- To re-appropriate the \$200,000 in Fiscal Year 2019-2020 as these funds were not used in Fiscal Year 2018-2019;
- To approve and adopt the Resolution to Establish an OPEB Trust and Participate in the AGPIP. The Resolution is attached to this memorandum;
- To approve the Enrollment Package to Participate in the Ancillary Governmental Participants Investment Program (AGPIP), including the Other Post-Employment Benefits Trust Agreement. The Trust Agreement is attached to this memorandum.

**TOWN OF KILL DEVIL HILLS RESOLUTION TO ESTABLISH AN OPEB TRUST
AND PARTICIPATE IN AGPIP**

WHEREAS, the Board of Commissioners of the Town of Kill Devil Hills wishes to establish a Local Government Other Post-Employment Benefits Trust (“OPEB Trust”) pursuant to N.C.G.S. § 159-30.1 for the purpose of paying post-employment benefits for which the Town of Kill Devil Hills is liable;

WHEREAS, the OPEB Trust will be an irrevocable trust, and the assets of the OPEB Trust will not be subject to the claims of the Town of Kill Devil Hills’s creditors;

WHEREAS, the Board of Commissioners wishes to invest assets from the OPEB Trust in the Ancillary Governmental Participants Investment Program (“AGPIP”) established by the Treasurer of the State of North Carolina (the “Treasurer”);

WHEREAS, the Board of Commissioners has determined that it is advisable and in the best interests of the Town of Kill Devil Hills to contribute assets from the OPEB Trust to AGPIP, as provided in the Deposit Agreement between the Town of Kill Devil Hills and the Treasurer, which is attached to this resolution as Attachment 2 (the “Deposit Agreement”).

NOW, THEREFORE, BE IT RESOLVED, that

The OPEB Trust is established by adoption of the trust agreement in Attachment 1 to this resolution;

The OPEB Trust is established for the purpose of paying post-employment benefits for which the Town of Kill Devil Hills is liable;

The trustee(s) of the OPEB Trust is/are determined and selected as follows:

Debora P Díaz, Town Manager
Beverly Kissinger, Finance Director
Shawn Murphy, Assistant Town Manager

The OPEB Trust shall participate in AGPIP pursuant to the terms and conditions of the Deposit Agreement;

The initial contribution of the OPEB Trust to AGPIP shall be \$ 200,000.00 (the “Contribution”).

The following officers, managers, and/or representatives of the Town of Kill Devil Hills (collectively, the “Authorized Representatives”) are authorized and directed to execute and deliver the Deposit Agreement, to take any other actions deemed necessary or appropriate to consummate the transactions provided for therein, and to cause the Contribution to be made:

Town Manager, Co-Trustee of OBEP Trust
Finance Director, Co-Trustee of OBEP Trust
Assistant Town Manager, Co-Trustee of OBEP Trust

The Authorized Representatives, acting on behalf of the Town of Kill Devil Hills, are authorized to take all such actions as they may deem necessary or appropriate to give effect to the foregoing resolutions; and

All actions heretofore taken by any of the Authorized Representatives acting on behalf of the Town of Kill Devil Hills in furtherance of the foregoing resolutions are hereby ratified, adopted, approved, and confirmed in all respects.

Approved by the Board of Commissioners of Town of Kill Devil Hills this ____ day of _____, _____.

SEAL

Sheila F. Davies, Ph.D.
Mayor

ATTEST:

Mary E. Quidley
Town Clerk

**TOWN OF KILL DEVIL HILLS OTHER POST-EMPLOYMENT BENEFITS TRUST
AGREEMENT**

This **Trust Agreement** is entered into as of the 26th day of June, 2019 (the “**Effective Date**”), by and between the Town of Kill Devil Hills, North Carolina (the “**Employer**”) and *Finance Director, Assistant Town Manager, and Town Manager* (the “**Trustee**”);

RECITALS :

WHEREAS, the Employer maintains certain post-employment benefits other than pensions for the benefit of its eligible retired employees;

WHEREAS, the Employer wishes to establish a trust pursuant to Section 159-30.1 of the North Carolina General Statutes, to be known as the “Town of Kill Devil Hills Other-Post Employment Benefits Trust” (hereinafter the “**Trust**”), for the purpose of funding its obligation to provide post-employment benefits other than pension benefits, as required to be reported under GASB 75;

WHEREAS, this Trust is established by the Employer with the intention that the Trust qualify as an irrevocable tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and the regulations issued thereunder and as a tax-exempt trust under the provisions of the applicable laws of the State of North Carolina; and

WHEREAS, the Employer has appointed its Town Manager, Finance Director, and Assistant Town Manager as the Trustee of the Trust, and the Trustee has accepted such appointment pursuant to the terms and conditions set forth in this Trust Agreement; and

NOW THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

- 1.1 “**Assets**” shall mean all contributions and transfers of assets received into the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers and any increments accruing to them, net of any investment losses, benefits, expenses or other costs.
- 1.2 “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.3 “**Eligible Employees**” shall mean collectively eligible retired employees of the Employer and their dependents and beneficiaries.
- 1.4 “**Employer**” shall mean the Town of Kill Devil Hills, North Carolina.
- 1.5 “**GASB**” shall mean the Governmental Accounting Standards Board.
- 1.6 “**GASB 75**” shall mean Statement Number 75 issued by GASB requiring public agencies to report OPEB Obligations on their balance sheets.
- 1.7 “**GASB 75 Investment Policy**” shall mean the written investment policy for the Trust which shall be adopted by the Employer and delivered to the Trustee.

- 1.8 “**OPEB**” shall mean “other post-employment benefits,” such as medical, dental, vision, life insurance, long-term care and other similar benefits, provided to Eligible Employees, other than pension benefits.
- 1.9 “**OPEB Obligation**” shall mean the Employer’s obligation to provide post-employment health care and welfare benefits to Eligible Employees as specified in the Plan.
- 1.10 “**Plan**” shall mean the plan adopted by the Employer for the purpose of documenting the Employer’s OPEB Obligations and governing the Employer’s satisfaction thereof, a copy of which is attached here as Exhibit A.
- 1.11 “**Qualified Investments**” shall mean all investments authorized under Section 159-30.1(b) of the North Carolina General Statutes, including the following:
- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
 - (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
 - (3) Obligations of the State of North Carolina.
 - (4) Bonds and notes of any North Carolina local government or public authority, to the extent permitted in Section 159.30(c)(4) of the North Carolina General Statutes.
 - (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided, that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.
 - (6) Prime quality commercial paper bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates of particular obligation.
 - (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
 - (8) Participating shares in a mutual fund for local government investment; provided,

that the investments of the fund are limited to Qualified Investments hereunder, and the fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.

- (9) A commingled investment pool established and administered by the State Treasurer pursuant to Section 147-69.3 of the North Carolina General Statutes.
- (10) A commingled investment pool established by interlocal agreement by two or more units of local government pursuant to Sections 160A-460 through 160A-464 of the General Statutes of North Carolina, if the investments of the pool are limited to those qualifying for investment under Section 159.30(c)(4) of the North Carolina General Statutes.
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
 - (a) Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;
 - (b) A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been

established for the benefit of the local government or public authority or its assignee;

- (c) Such securities are free and clear of any adverse third party claims; and
- (d) Such repurchase agreement is in a form satisfactory to the local government or public authority.

- (13) In connection with funds subject to the arbitrage and rebate provisions of the Code, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.
- (14) Investments of the State Treasurer authorized pursuant to Section 147-69.2(b4) of the North Carolina General Statutes.

ARTICLE II THE TRUST

2.1 Purpose

The purpose of the Trust is to hold assets from which to satisfy the Employer's commitment to provide OPEB, as offered by the Employer to its Eligible Employees in accordance with the Plan.

2.2 Trustee Accounting

The Trustee shall be responsible only for maintaining records and maintaining accounts for the Assets of the Trust. The Employer shall be responsible for Plan-level accounting for OPEB.

2.3 No Diversion of Assets

The Assets in the Trust shall be held in trust for the exclusive purpose of providing OPEB to eligible employees of the Employer and defraying the reasonable administrative and actuarial expenses of the Trust. The Assets in the Trust shall not be used for or diverted to any other purpose, except as expressly provided herein.

2.4 Type and Nature of Trust

Neither the full faith and credit nor the taxing power of the Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of the Employer, but are payable solely from the Assets of the Trust, as more fully described herein. No employee of the Employer may compel the exercise of the taxing power by the Employer.

Distributions of Assets under the Trust are not debts of the Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances upon any of the Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of the Plan and Trust set aside for distributions. Neither the members of the governing body of the Employer nor its officers, employees, agents or volunteers are liable hereunder.

ARTICLE III ADMINISTRATIVE MATTERS

3.1 Certification to Trustee

The governing body of the Employer, or other duly authorized official, shall certify in writing to the Trustee the names and specimen signatures of the individuals authorized to act on behalf of the Employer, whose names and specimen signatures shall be kept accurate by the Employer acting through its governing body or a duly authorized official. The Trustee shall have no liability if it acts upon the direction of an individual who has been duly authorized hereunder, even if that individual is no longer authorized to act, unless the Employer has informed the Trustee of such change in writing.

3.2 Removal of Trustee

Each individual Trustee shall serve during his tenure in the applicable office of the Employer and shall immediately cease to serve, without the necessity for formal resignation, upon termination from such office for any reason. The successor to such office, including any interim successor, shall become a successor Trustee immediately upon the assumption of such office without the need for formal appointment. A successor Trustee shall not have any liability for any action or omission by the Trustee prior to the date of his assumption of such office.

3.3 Trustee Procedures

All official meetings of the Trustee, whether held in person or by electronic means, shall be open to the public and conducted in accordance with Article 33C of Chapter 143 of the North Carolina General Statutes and any applicable Employer policy. The Trustee shall keep a record of all official meetings, including those official meetings held in closed session under Section 143-318.11 of the North Carolina General Statutes, and shall forward all necessary communications to the Employer. Such official meeting records shall be public records within the meaning of Chapter 132 of the North Carolina General Statutes. The Trustee may adopt such by-laws and regulations as it deems desirable for the conduct of its affairs. All decisions by the Trustee shall be made by the vote of the majority of the Trustee members. The Trustee may authorize one or more of such members to act for the Trustee with respect to specified Trustee duties under this Trust Agreement. A dissenting Trustee member who, within a reasonable period of time after he has knowledge of any action or failure to act by the majority, delivers his written dissent to the other Trustee members and the Employer shall not be responsible for such action or failure to act.

3.4 Payments from the Trust

At the Employer's direction, the Trustee from time to time shall make payments out of the Assets of the Trust to such persons, in such manner and in such amounts as the Employer directs. Such payments may include, but are not limited to, benefit payments, insurance or stop-loss premiums, and the expenses of administering the Plan and Trust, as may be specified in the Employer's direction.

ARTICLE IV THE TRUSTEE

4.1 Powers and Duties of the Trustee

Except as otherwise provided in Article V, and subject to the provisions of Article VI, the Trustee shall have full power and authority with respect to property held in the Trust to perform all acts, take all proceedings, and exercise all rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part thereof in Qualified Investments pursuant to this Trust and applicable state law.
- (b) To place uninvested cash and cash awaiting distribution in any type of interest-bearing account including, without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina;
- (c) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;
- (d) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;
- (e) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (h) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

4.2 Additional Trustee Powers

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

- (a) To pay administrative fees as directed by the Employer;
- (b) To invest funds pending required directions in a designated account as directed by the Employer or if there is no designated account, any type of interest-bearing account including without limitation, time certificates of deposit or interest-bearing accounts issued by a commercial bank or savings and loan association organized under the laws of the State of North Carolina or having its principal office in North Carolina Trustee or any affiliate thereof;
- (c) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;
- (d) To appoint a custodian with respect to the Trust Assets;
- (e) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer, including a broker-dealer affiliated with the Trustee, and pay to such broker-dealer at the expense of the Trust, its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;
- (f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust;
- (g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;
- (h) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by a United States agency;
- (i) To comply with all requirements imposed by applicable provisions of law;
- (j) To seek written instructions from the Employer on any matter and await its written instructions without incurring any liability; provided, that if at any time the Employer should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;
- (k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Employer in

connection with the administration of the Plan and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Employer;

- (l) To act upon proper written directions of the Employer;
- (m) To pay from the Trust the expenses reasonably incurred in the administration thereof, as provided in the Plan;
- (n) To hold uninvested reasonable amounts of cash whenever it is deemed advisable to do so to facilitate disbursements or for other operational reasons;
- (o) To seek and obtain a judicial settlement of the Trustee's accounts and a judicial determination of any question in connection with the Trustee's duties and obligations under this Trust Agreement; and
- (p) To have and to exercise such other additional powers as may be advisable for the effective and economical administration of the Trust.

ARTICLE V INVESTMENTS

5.1 Trust Investments

The Employer shall have the responsibility to select Qualified Investments for the Trust Assets and may appoint a registered investment advisor, as defined by regulations issued by the Securities and Exchange Commission, by executing a written consulting or management agreement with said registered investment advisor.

5.2 Trustee Fees

As may be agreed upon, in writing, between the Employer and Trustee, the Trustee will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the Trust. The Trustee shall be entitled to receive its fees and expenses when due directly from the Trust. Notwithstanding the foregoing, any Trustee who is an employee of the Employer shall receive no fee for service as a Trustee hereunder.

5.3 Contributions to the Trust

The Employer may from time to time remit cash contributions and other payments under the Plan to the Trustee, which may include contributions by Eligible Employees. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether any contributions to the Trust are in compliance with the Employer's policies and/or the Plan, nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by the Employer, nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet the Employer's OPEB Obligation, as may be determined under GASB 75. The contributions received by the Trustee from the Employer, including any contributions by Eligible Employees, shall be held and administered pursuant to the terms hereof without distinction between income and principal.

5.4 Records

(a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder. Such records shall be available at all reasonable times for inspection by the Employer. The Trustee shall, at the direction of the Employer, submit such valuations, reports or other information as the Employer may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, that the Employer shall instruct the Trustee as to valuation of assets for which the value is not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Employer and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Employer fails to provide such value, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

5.5 Statements

(a) Periodically as requested by the Employer and within sixty (60) days after each June 30, the Trustee shall render to the Employer a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Employer may approve such statements either by written notice or by failure to express objections to such statement by written notice delivered to the Trustee within ninety (90) days from the date the statement is delivered to the Employer. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such account had been settled and allowed by a decree from a court of competent jurisdiction.

5.6 Exclusive Benefit

The Assets of the Trust shall be held in trust for the exclusive purpose of providing OPEB to the Eligible Employees pursuant to the Plan and defraying the reasonable expenses associated with providing such benefits and shall not be used for or diverted to any other purpose.

ARTICLE VI FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Employer pursuant to this Trust

Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

6.2 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

- (a) Solely in the interest of the Eligible Employees and for the exclusive purpose of providing OPEB to Eligible Employees and defraying reasonable administrative and actuarial expenses associated with providing such benefits; and
- (b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

6.3 Limitations on Fiduciary Responsibility

To the extent allowed by the law of the State of North Carolina:

- (a) No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary.
- (b) No fiduciary shall be liable for a breach by another fiduciary except as provided by law.
- (c) No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

6.4 Indemnification

The Trustee shall not be liable for, and the Employer shall indemnify, defend and hold the Trustee harmless from and against, any claims, demands, loss, costs, expense or liability in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of the Employer's duties under this Trust Agreement.

In addition, the Trustee shall not be liable for, and Employer shall indemnify and hold the Trustee harmless from and against, any claims, demands, loss, costs, expense or liability arising out of or in connection with this Trust Agreement, including reasonable attorneys' fees and costs incurred by the Trustee, in the event that the Trust loses or fails to qualify for tax exempt status under Section 115 of the Code and the regulations issued thereunder or as a tax-exempt trust under the provisions of North Carolina law, unless such results directly or indirectly from the active or passive negligent act or omission of the Trustee or an employee or agent thereof.

This section shall survive the termination of this Trust Agreement.

ARTICLE VII AMENDMENT, TERMINATION AND MERGER

7.1 No Obligation to Continue Trust

Continuance of the Trust is not assumed as a contractual obligation of the Employer.

7.2 Amendments

(a) The Employer and the Trustee reserve the right to amend this Trust Agreement at any time by a written instrument executed by the Employer and the Trustee. The Trust Agreement may be amended or terminated only as provided herein.

(b) No amendment shall:

(1) Cause the Assets of the Trust to be used for or diverted to purposes other than for the exclusive benefit of Eligible Employees or for the purpose of defraying the reasonable expenses of administering the Trust; or

(2) Have any retroactive effect so as to reduce the benefits of any Eligible Employees as of the date the amendment is adopted, except that such changes may be made as may be required to permit this Trust Agreement to meet the requirements of applicable law.

7.3 Termination of the Plan

A termination of the Employer's obligation to provide OPEB pursuant to the Plan shall not, in itself, effect a termination of the Trust. Upon any termination of the Employer's obligation to provide OPEB pursuant to the Plan, the Assets of the Trust shall be distributed by the Trustee as directed by the Employer. From and after the date of such termination and until final distribution of the Assets, the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such assets, and the Trust shall continue until the Assets have been completely distributed in accordance with the Plan.

7.4 Right to Terminate

The Employer and the Trustee may terminate this Trust by a written instrument executed by the Employer and the Trustee. Neither a temporary cessation nor the suspension of contributions by the Employer shall be deemed to be a termination of the Trust. Upon termination of this Trust, the Trustee shall pay all obligations of the Trust and shall apply the remaining Assets to purchase or continue OPEB for Eligible Employees to the extent possible. Notwithstanding the foregoing provisions, the Trustee may, upon termination of the Trust and with the Employer's consent, transfer any remaining Assets to the Employer or to any trust or trusts established for purposes substantially similar to those set forth herein. In no event will any remaining Assets be transferred to any entity that is not a state, political subdivision of a state, or entity the income of which is excluded from gross income under Section 115 of the Code.

7.5 Fund Recovery Based on Mistake of Fact

Except as hereinafter provided, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purposes of providing OPEB to Eligible Employees and defraying reasonable expenses of administering the Trust. However, in the case of a contribution which is made by the Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition precedent to such repayment, the Employer shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

**ARTICLE VIII
MISCELLANEOUS PROVISIONS**

8.1 Nonalienation

Eligible Employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an Eligible Employee or any other party. Trust Assets shall not be subject to the claims of the Employer or the claims of its creditors.

8.2 Saving Clause

In the event any provision of this Trust Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement, and this instrument shall be construed and enforced as if said provision had never been included.

8.3 Applicable Law

This Trust Agreement shall be construed, administered and governed under the Code and the laws of the State of North Carolina. To the extent any of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

8.4 Employment of Counsel

The Trustee may consult with legal counsel (who may be counsel for the Trustee or the Employer) and charge the Trust. The Trustee shall be fully protected in relying on advice of such counsel.

8.5 Gender and Number

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

8.6 Headings

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

8.7 Counterparts

This Trust Agreement may be executed in an original and any number of counterparts by the Employer and Trustee, each of which shall be deemed to be an original of the one and the same instrument.

AGREED TO AND ACCEPTED this ____ day of _____, 2019 .

TRUSTEE

EMPLOYER

TOWN OF KILL DEVIL HILLS, NORTH CAROLINA

Town Manager

By: _____
Town Manager

Finance Director

Assistant Town Manager

TOWN OF KILL DEVIL HILLS OTHER POST-EMPLOYMENT BENEFITS PLAN

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility

Retiree Health Insurance

Employees who meet the requirements to retire with service or disability retirement with the North Carolina Local Government Employee Retirement System may receive health insurance from the Town. Retirees will share the cost with the Town. The Town will pay the same rate for retired employees as for active employees and based on the ratio at the time of retirement. Retirees may purchase dependent coverage by paying the same dependent costs as active employees. When the retiree becomes eligible for Medicare, supplemental non-group insurance benefits will be made available to retirees for purchase.

Employees who are hired on or after July 1, 2007 and retire from the Town of Kill Devil Hills shall receive the same retirement health care coverage and payments as previously hired and retired employees provided that they meet the same qualifications as previously hired employees and serve not less than 20 years as an employee with the Town of Kill Devil Hills.

TOWN OF KILL DEVIL HILLS
BUDGET AMENDMENT REQUEST



<i>Finance Department Use Only</i>
<i>Budget Amendment Number: 1</i>
<i>Finance Officer:</i>

INCREASE (DECREASE)			INCREASE (DECREASE)		
CODE	ACCOUNT DESCRIPTION	AMOUNT	CODE	ACCOUNT DESCRIPTION	AMOUNT
4400 554550	OPEB Irrevocable Trust	200,000.00	10 499100	Fund Bal - Unassigned	200,000.00
TOTAL		200,000.00	TOTAL		200,000.00

JUSTIFICATION: To re appropriate funds originally budgeted in FY 18-19 for purposes of initial funding of the OPEB Trust.

RECOMMENDED:

APPROVED: _____

DATE: July 10, 2019