



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information**, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: August 25, 2015
Submitted by: Town Manager Eileen Cabanel
Department:
Speakers: Eileen Cabanel

Date of Meeting: September 10, 2015
Time Required: 15 minutes
Background Info. Supplied: Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input checked="" type="checkbox"/>
New Business:	<input type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Application and Membership Agreement with HealthTrust

DESCRIPTION OF ITEM

The Town Council will consider the amendments and the adoption of the Application and Membership Agreement between the Town of Merrimack and HealthTrust, Inc.

REFERENCE (IF KNOWN)

RSA:	Warrant Article:	_____
Charter Article:	Town Meeting:	_____
Other:	N/A	

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

CONTACT INFORMATION

Name:	<u>Eileen Cabanel</u>	Address:	<u>6 Baboosic Lake Road</u>
Phone Number:	<u>424-2331</u>	Email Address:	<u>ecabanel@merrimacknh.gov</u>

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:

Hold for Meeting Date: _____

Memo



To: Eileen Cabanel, Town Manager
From: Sharon Marunicz, Human Resources Coordinator
Date: September 3, 2015
Re: Amendments to Language Regarding Distribution of Surplus in the HealthTrust Application and Membership Agreement

At the Town Council Meeting of July 16th, the Town Council approved amendments to the Application and Membership Agreement that was originally proposed by HealthTrust. Following that meeting, we submitted sent HealthTrust the amended Application and Membership Agreement and the required resolution that was executed by you as the Town Manager.

After review, the HealthTrust attorney contacted our attorney, Christopher Stevenson, to negotiate different language that would still accomplish what the Town was looking for, but would also be language that the HealthTrust was comfortable with.

The attached Application and Membership Agreement is a result of that negotiation. Attorney Stevenson is comfortable with the language and feels that it accomplishes what the Town set out to accomplish, which is to state that the Town does not to agree to the manner in which HealthTrust distributes surplus and acknowledge that should the court ultimately determine that the provision is legal, the Town shall agree to be bound by it.

Since the language has changed from what was voted on at the July 16th Town Council meeting, it is necessary to bring the proposed amendments forward to the Town Council for another vote on the Agreement and Certificate of Authorizing Resolution. Below, you will see the highlighted additional language that has been proposed by our attorney, as agreed to by HealthTrust, in sections 4 and 8 of the agreement.

4. Governing Provisions. Applicant shall be bound by the provisions of this Membership Agreement, the HealthTrust Articles of Incorporation, Bylaws, Rules, any applicable Coverage Documents, and any other agreements pursuant or incident thereto, all as amended and in effect from time to time (known collectively in the Bylaws as the "Operative Documents"), except as provided in Section 8 of this Membership Agreement. Applicant acknowledges receipt of the HealthTrust Bylaws.

8. Surplus. Applicant hereby acknowledges and agrees that any distribution of surplus, or a Member's rights thereto, shall be governed by the applicable terms of the HealthTrust Bylaws

and/or other Operative Documents, as they may be amended from time to time, unless a court of competent jurisdiction rules that such terms are in violation of New Hampshire statute/regulation or are otherwise unenforceable. Applicant further agrees that HealthTrust may first apply any surplus due to Applicant to pay any unpaid and overdue Contributions or other amounts owed by Applicant to HealthTrust prior to returning the balance remaining of such surplus to Applicant.

If the Council is agreeable, Atty. Stevenson suggested that the Council could move to approve the Application and Membership Agreement between the Town and HealthTrust with the amendments in sections 4 and 8. Once approved, they can read the attached Certificate of Authorizing Resolution into the record and move to adopt it.

EXHIBIT A

CERTIFICATE OF AUTHORIZING RESOLUTION

I hereby certify to *HealthTrust, Inc.* (“HealthTrust”), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on September 10, 2015.

RESOLVED: That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the “Application and Membership Agreement” and NH RSA 5-B.

RESOLVED: That **Eileen Cabanel/Town Manager** is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the “Application and Membership Agreement” in substantially the form presented to this meeting.

I further certify that the foregoing resolution remains in full force and effect without modification.

APPLICANT: TOWN OF MERRIMACK

Date:

By: _____ Duly Authorized

Name:

Title:



HEALTHTRUST, INC.
APPLICATION AND MEMBERSHIP AGREEMENT

Town of Merrimack

This Application and Membership Agreement (“Membership Agreement”) is made by and between Town of Merrimack ("Applicant") and HealthTrust, Inc., a New Hampshire voluntary corporation (“HealthTrust”), effective as of July 1, 2015 (“Effective Date”). This Membership Agreement sets forth the terms and conditions of Applicant’s membership and/or continuing membership in HealthTrust.

Preamble

HealthTrust is a pooled risk management program operating pursuant to RSA 5-B and offering its member political subdivisions the opportunity to participate in its Coverage Programs and related services including, but not limited to, group medical, dental, short-term disability, long-term disability, and life coverages.

Applicant is eligible and wishes to become or remain a Member of HealthTrust and participate in certain Coverage Programs offered by HealthTrust and therefore is entering this Membership Agreement.

Agreement

Applicant and HealthTrust hereby mutually agree as follows:

1. **Application.** Applicant applies for membership (including continuing membership if applicable) in HealthTrust for the provision of group medical and/or other benefit plans as may be selected by Applicant from time to time.
2. **Eligibility.** Applicant hereby represents and warrants to HealthTrust that Applicant is an entity eligible for membership in HealthTrust in accordance with the HealthTrust Bylaws.
3. **Contingent on Acceptance.** Applicant understands and agrees that its membership in HealthTrust is contingent on HealthTrust’s acceptance and execution of this Agreement.
4. **Governing Provisions.** Applicant shall be bound by the provisions of this Membership Agreement, the HealthTrust Articles of Incorporation, Bylaws, Rules, any applicable Coverage Documents, and any other agreements pursuant or incident thereto, all as amended and in effect from time to time (known collectively in the Bylaws as the “Operative Documents”), **except as provided in Section 8 of this Membership Agreement.** Applicant acknowledges receipt of the HealthTrust Bylaws.
5. **Member Rights.** As a Member, Applicant will have the rights provided in the Operative Documents including, without limitation, the right to participate in HealthTrust’s Coverage Programs and the right to vote for the HealthTrust Board of Directors at annual meetings of the Members. Applicant acknowledges that pursuant to the current HealthTrust Bylaws, the person serving as the top administrative official of Applicant, or his or her designee, shall be entitled to cast a vote on behalf of Applicant at any meetings of the Members of HealthTrust unless and until

Applicant's Governing Board appoints, by resolution, a different representative to cast such a vote prior to the meeting(s) to which the designation relates.

6. **Selection of Coverage Programs and Services.** Subject to the terms and conditions of the Operative Documents, Applicant may select and periodically change the Coverage Programs and related services in which Applicant participates without amending this Membership Agreement. Applicant's participation (or continuing participation) in any of the Coverage Programs and/or related services is subject to:

- (a) The proper and timely completion and execution by an authorized representative of Applicant of the documents, agreements, and forms for such participation as required by HealthTrust, and
- (b) The policies, procedures, guidelines and Operative Documents that apply to any selected coverages including, without limitation, any applicable minimum participation requirements for such Coverage Program.

7. **Contributions.** Applicant agrees to pay in a timely manner all Contributions required to participate in HealthTrust and/or the applicable Coverage Programs pursuant to the terms of the Operative Documents.

8. **Surplus.** Applicant hereby acknowledges and agrees that any distribution of surplus, or a Member's rights thereto, shall be governed by the applicable terms of the HealthTrust Bylaws and/or other Operative Documents, as they may be amended from time to time, unless a court of competent jurisdiction rules that such terms are in violation of New Hampshire statute/regulation or are otherwise unenforceable. Applicant further agrees that HealthTrust may first apply any surplus due to Applicant to pay any unpaid and overdue Contributions or other amounts owed by Applicant to HealthTrust prior to returning the balance remaining of such surplus to Applicant.

9. **Health Plan Coverage Program Responsibilities.**

- (a) Applicant acknowledges that, with respect to the group health (medical and/or dental) plan(s) offered to its Employees through HealthTrust, Applicant is responsible for complying with all applicable provisions of federal and state law governing such health plan(s) including, without limitation: (i) the continuation of coverage provisions set forth in Sections 2201 through 2208 of the Public Health Service Act ("COBRA"), (ii) the retiree medical coverage provisions set forth in New Hampshire RSA 100-A:50, and (iii) the Patient Protection and Affordable Care Act of 2010, as amended and implemented ("ACA").
- (b) To assist Applicant in satisfying certain of its COBRA coverage obligations, HealthTrust provides base COBRA services on behalf of Applicant pursuant to a separate COBRA administrative services agreement which Applicant must sign as a condition of participating in HealthTrust's medical and/or dental Coverage Programs. In addition, Applicant may elect to receive additional COBRA billing services offered by HealthTrust pursuant to the separate COBRA administrative services agreement.
- (c) To assist Applicant in satisfying certain of its retiree coverage obligations, HealthTrust may offer to provide and Applicant may elect and contract with HealthTrust to receive

retiree billing services on behalf of Applicant pursuant to a separate retiree billing administrative services agreement.

10. **Provision of Information.** Applicant agrees to provide HealthTrust in a timely and accurate manner any and all information HealthTrust deems necessary or desirable with regard to HealthTrust's provision of the Coverage Programs and related services selected by Applicant, including but not limited to, all required eligibility and enrollment data.

11. **Safeguarding Personal Information.** HealthTrust may provide Applicant certain non-claims related information, including enrollment, billing, and payment information relevant to the administration of the medical and dental Coverage Programs in which Applicant participates. Some of this information may constitute protected health information, as defined by the Health Insurance Portability and Accountability Act of 1996, as amended and implemented. Examples of information HealthTrust may disclose to Members include: monthly invoices detailing coverage types and cost, payment and enrollment confirmation, and information necessary to assist Applicant in completing its IRS reporting required by the ACA. HealthTrust, at its discretion, also may provide Applicant with non-individually identifiable summary claims information in a manner consistent with state and federal law and applicable HealthTrust policies and procedures.

Applicant hereby certifies that with respect to any protected health information received from HealthTrust, Applicant will:

- (a) Safeguard the privacy and security of the information,
- (b) Not use or disclose the information beyond that which is necessary to administer the selected coverage(s),
- (c) Not use the information for employment-related actions or decisions, and
- (d) Restrict access to the information to only those individuals who require the information to administer the coverage(s).

Applicant also acknowledges and agrees that:

- (e) HealthTrust will only provide such information to those individuals specifically identified in HealthTrust's database as authorized to receive such information on behalf of Applicant,
- (f) HealthTrust does not share individually identifiable claims information unless authorized in writing by the covered person or otherwise permitted by applicable laws, and
- (g) HealthTrust reserves the right to decide what, if any, information is provided to Applicant.

12. **Term and Termination.** The term of Applicant's membership (or continuing membership) in HealthTrust under this Membership Agreement begins on the Effective Date. Applicant's participation in specific Coverage Program(s) shall begin on the effective dates for such coverage as indicated in the Coverage Documents executed by Applicant in order to participate in such coverage. Membership in HealthTrust and participation in any Coverage Program shall continue until such coverage is terminated or cancelled in accordance with the terms of the HealthTrust Bylaws, Coverage Documents and/or other Operative Documents.

13. **Miscellaneous Provisions.**

- (a) This Membership Agreement is governed by New Hampshire law and may only be modified by a written amendment signed by all applicable parties.
- (b) All capitalized terms utilized but not defined herein shall have the same meaning as set forth in the HealthTrust Bylaws.
- (c) Section headings contained in this Membership Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Membership Agreement.

14. **Certificate of Authorizing Resolution.** This Membership Agreement shall be accompanied by a certificate of authorizing resolution (or a copy of the resolution) of the Governing Body of Applicant in substantially the same form and content as contained in the attached Exhibit A that indicates Applicant has duly authorized its membership in HealthTrust in accordance with RSA 5-B and the execution and delivery of this Membership Agreement by the individual signing, which authorization is legally binding and remains in full force and effect as of the date hereof.

IN WITNESS WHEREOF, Applicant and HealthTrust have caused this Membership Agreement to be executed by their duly authorized officials:

For APPLICANT:

TOWN OF MERRIMACK

Authorized Official Signature

Print Name

Title

Date

For HEALTHTRUST, INC.:

Peter Bragdon
Executive Director

Date

EXHIBIT A

CERTIFICATE OF AUTHORIZING RESOLUTION

I hereby certify to *HealthTrust, Inc.* (“HealthTrust”), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on _____ [Date].

RESOLVED: That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the “Application and Membership Agreement” and NH RSA 5-B.

RESOLVED: That _____ [Name/Title] is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the “Application and Membership Agreement” in substantially the form presented to this meeting.

I further certify that the foregoing resolution remains in full force and effect without modification.

APPLICANT: TOWN OF MERRIMACK

Date: _____

By: _____
Duly Authorized

Name: _____

Title: _____

Approved: August 20, 2015

Posted: August 24, 2015

Chairman Harrington reiterated the need for the Council to amend the language of the Ordinance to identify the criteria by which such facilities can be reviewed and considered by the Planning Board.

MOTION made by Councilor Boyd and seconded by Councilor Mahon to accept the first reading, refer the proposed amendments to the Zoning Ordinance to the Planning Board, and move to a second reading and Public Hearing to be scheduled for the Council's August 20, 2015 meeting. MOTION CARRIED 6-0-0

The Council returned to the regular order of business.

3. Application and Membership Agreement with HealthTrust

Submitted by Town Manager Eileen Cabanel

The Town Council will consider amendments to the Application and Membership Agreement proposed by HealthTrust, to consider adopting the Certificate of Authorizing Resolution, and to authorize the Town Manager to sign any necessary paperwork.

Town Manager Cabanel noted receipt of a boilerplate Membership Agreement, Bylaws, and stand-alone agreements for COBRA Administration and Retiree Billing Services from the HealthTrust. As she took exception to some of the language included in the Agreement and the Bylaws regarding the return of surplus, she took it upon herself to recommend modifications to the Agreement. With regard to insurance, the Town of Merrimack is primarily rated on its own experience. The Bylaws that were provided included language stating the Town concurs with language within the Bylaws that states if the Town were to leave the Trust any monies remaining from previous years' surplus (of our own experience) would be forfeited. As an example, this year the Town anticipates receipt of \$500,000 in surplus. If the language were not changed, a decision not to continue as a member of the Trust would result in the loss of that \$500,000.

She requested the Agreement language be modified noting the matter is currently being adjudicated and the Town would accept the court's final decision on the matter.

Councilor Rothhaus remarked, his reading of the letter provided by Peter Bragdon, Executive Director, HealthTrust, Inc., suggests the language has been in place for a long time. Town Manager Cabanel responded she and Mr. Bragdon discussed that. He was of the opinion the Town is bound by it because it had agreed to the Bylaws in a previous agreement. Her response was they are a new organization with new bylaws, and as such, the Town would not be obligated under prior agreements with an old business and old bylaws.

Councilor Rothhaus remarked it appears as though they don't trust their own product, and they are trying to lock you in. He thanked the Town Manager for her diligent review of the documentation and subsequent request for modification. Councilor Dwyer commented five years ago he was amazed when suggesting the Council drop HealthTrust and shop around for another insurance carrier. The response had been there are no other options; other insurance companies do not sell the products to municipal employees, etc. It may be that situation remains. Town Manager Cabanel remarked the only issue she had was with that language hidden within the Bylaws and a clear statement within the Agreement indicating the Town's concurrence with the Bylaws.

Approved: August 20, 2015

Posted: August 24, 2015

Vice Chairman Mahon commented past agreements did not include language relative to retention of surplus within the Bylaws, it stated that within the body of the Agreement. Part of the reason for the requirement is the insurance is what is loosely known as a self-funding pool. The rationale was you would be leaving the other members of the pool on the hook if you were to depart taking your surplus with you, and there were subsequent claims. The other rationale was to hold onto you.

Town Manager Cabanel responded over the years, things have changed. In the past, smaller communities (under 100 employees) were in a pool and they all shared the same rate. That has been changed to communities having fewer than 50 employees. The larger the municipality the less they use of the pooling aspect. They primarily rate the larger municipalities on their own experiences.

Councilor Rothhaus questioned, and was told this came to light due to lawsuits. Vice Chairman Mahon stated they HealthTrust was sued by Salem, Portsmouth, and Dover. This language was one of the points of contention with the investigation by the Securities Division of the Secretary of State's Office, e.g. the retention of the surplus and how it was allocated for redistribution. Vice Chairman Mahon stated he would recuse himself from the vote because of who he had been employed by for many years.

Councilor Boyd questioned the downside to opposing the language. Town Manager Cabanel stated she is unaware. She stated she posed that question of Mr. Bragdon. He stated he would get back to her, but has not as of yet. She believes it to be harmless in the way it is written in that the Council would be stating the Town does not, as a philosophy, agree with the language. If the Court says we must, we will abide by it.

Councilor Boyd questioned the need to act quickly, and was told the Town has to if the desire is to belong to the HealthTrust. If making a decision to discontinue membership, the Town would have to acquire health insurance from another entity within the next few weeks. Councilor Dwyer questioned if the result would be that the Town continues its membership while taking the position of not agreeing with the philosophy. Town Manager Cabanel stated that is pretty much the result. The agreement would be modified, and if, in the future, the Court decides against the HealthTrust, the Town would have already taken the position of not agreeing to the terms outlined within the Bylaws.

MOTION made by Councilor Koenig and seconded by Councilor Rothhaus to accept the amendments to the Application and Membership Agreement as stated.

MOTION CARRIED 5-0-1 *Councilor Mahon Abstained*

The following Certificate of Authorizing Resolution was read into the record:

"I hereby certify to HealthTrust, Inc. ("HealthTrust"), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on July 16, 2015:

RESOLVED: That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the "Application and Membership Agreement" and NH RSA 5-B.

Approved: August 20, 2015

Posted: August 24, 2015

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the “Application and Membership Agreement” in substantially the form presented to this meeting.

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust a certificate of this resolution.

I further certify that the foregoing resolution remains in full force and effect without modification.”

MOTION made by Councilor Dwyer and seconded by Councilor Koenig to adopt the Certificate of Authorizing Resolution as read

ON THE QUESTION

It was stated the language within the Resolution, which states “in substantially the form presented to this meeting” refers to the amended version presented to and accepted by the Council. Vice Chairman Mahon stated concern there could be confusion between the certificate provided by HealthTrust and the amended language accepted by the Council. Chairman Harrington stated the discussion of the Council captured in the minutes of the meeting will provide clarification of the intent of the Council to first amend the Application and Membership Agreement, and then adopt the Certificate of Authorizing Resolution.

Assistant Town Manager/Finance Director Micali suggested amending the Resolution to read as follows:

“I hereby certify to HealthTrust, Inc. (“HealthTrust”), that the following is a true copy of a resolution adopted by the Governing Body of Town of Merrimack at a meeting duly held on July 16, 2015, with the following modifications to #s 4, 8, and 14:

“*It is understood that this issue is currently being adjudicated. It should be noted that the Town does not agree to be bound by the section of Article V, Section 5.1 of the HealthTrust Bylaws regarding the definition of eligibility to participate in a return of surplus. The Town maintains that the surplus should accrue to the members who participated in the HealthTrust in the year in which the surplus was derived. It should further be noted that should the court ultimately determine that this provision is legal, the Town shall agree to be bound by it.”

RESOLVED: That Town of Merrimack shall participate as a Member in the HealthTrust pooled risk management program for the provision of group medical and/or other benefit plans in accordance with the “Application and Membership Agreement” and NH RSA 5-B.

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust, on behalf of Town of Merrimack, the “Application and Membership Agreement” in substantially the form presented to this meeting.

Approved: August 20, 2015

Posted: August 24, 2015

RESOLVED: That Eileen Cabanel, Town Manager, is hereby authorized and directed to execute and deliver to HealthTrust a certificate of this resolution.

I further certify that the foregoing resolution remains in full force and effect without modification.”

AMENDED MOTION made by Councilor Dwyer and seconded by Councilor Koenig to adopt the Certificate of Authorizing Resolution as modified

ON THE QUESTION

Councilor Boyd asked for clarification of his understanding the agreement is date certain, July 1, 2015, but there is no end date. It is all predicated on the language in the Bylaws should we wish to terminate membership notification has to be provided within 60 days of the date of termination, and that, once terminating membership, the Town cannot rejoin for a period of two years.

Assistant Town Manager/Finance Director Micali responded that is stated; however, the requirement can be, and has in the past, been waived.

Councilor Boyd questioned if it is known how often HealthTrust has changed its Bylaws, and if so, have they provided notification and sought acceptance of applicable changes. Town Manager Cabanel stated they do not. This is the first time she has seen a document like what was presented. Her past history has been receipt of a single sheet of paper stating rates, plans, etc., which would be agreed to. Assistant Town Manager/Finance Director Micali had stated this has come before the Council in the past in some other form, but she has never seen it in her experience.

Councilor Boyd questioned if other Councilors were bothered by language in the Bylaws that suggests membership is in perpetuity until a determination is made to terminate membership. Vice Chairman Mahon remarked it is a matter of automatic renewal. The only requirement is a 60-day notice of termination. Chairman Harrington and Councilor Koenig responded they are not bothered by that particular language. Town Manager Cabanel remarked it is a good point; if they were to change the Bylaws during our involvement, we would have concurred with them in whatever form they may take. Councilor Koenig clarified what was concurred with is the Bylaws that were presented. If changes are made, concurrence would be required.

Assistant Town Manager/Finance Director Micali noted 2011 was the last time a change was made to the Bylaws. At that time, the changes were brought before the Council, and the Council signed off on them. What is before the Council again is a new Bylaw change. Every time a change is made the information is provided to the membership.

MOTION CARRIED 5-0-1

Councilor Mahon Abstained

5. Protocol for Scoping Meetings

Submitted by Town Manager Eileen Cabanel

Discussion and review of protocol for scoping meetings.