

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 49-2022**

**A RESOLUTION AMENDING AND RESTATING THE EMPLOYEE
BENEFITS TRUST FOR THE CITY OF KERRVILLE, TEXAS; SUCH
TRUST CREATED AND MAINTAINED PURSUANT TO CHAPTER 222,
TEXAS INSURANCE CODE**

WHEREAS, the City provides or offers various employee benefits to its employees, including health and dental insurance, life insurance, and disability benefits; and

WHEREAS, state law (Chapter 222, Texas Insurance Code) imposes a tax upon the City's receipt of gross premiums and revenues associated with such benefits; and

WHEREAS, state law also authorizes the City to exempt the premiums and revenues from state tax provided that the City establishes and maintains the funds under the ownership and control of a single, nonprofit trust; and

WHEREAS, City Council, pursuant to Resolution No. 61-2008, created an Employee Benefits Trust (the "Trust") for the administration of employee benefits; and

WHEREAS, Resolution No. 39-2011, adopted by City Council, later amended the Trust pursuant to guidance issued by the Texas Comptroller's Office; and

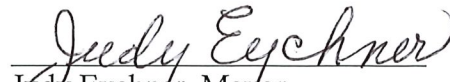
WHEREAS, to provide clarification as to the title of the person who serves as Secretary for the Trust, the Trust is proposed to be amended to account for such clarification; and


WHEREAS, City Council finds it to be in the public interest to amend the Trust for the reason provided above;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

The City Council amends the Employee Benefits Trust as provided above. The Declaration of Trust, as amended, is attached as **Exhibit A** (the "Trust"). This amendment acts as a restatement of the Trust, meaning that the amended Trust now replaces and is substituted for all previous versions of the Trust.

PASSED AND APPROVED ON this the 25 day of OCTOBER, A.D., 2022.


Judy Eychner, Mayor

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary

DECLARATION OF TRUST

I. CREATION OF TRUST

The City of Kerrville ("City"), as settlor or creator of the trust, designates the members of the City of Kerrville City Council to be Trustees and declares that the City holds in trust the funds described in **Schedule A** attached hereto and incorporated herein by reference, which is the property of the City, and all substitutions and additions to such funds, for the purpose of providing or offering, whether now or possibly in the future, 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 or offering, whether now or possibly in the future, 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.

RESO No. 49-2022

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

A. COMPOSITION. The Trustees are the members of the City Council, and the term of each Trustee is cotemporaneous with his or her term of office as a Member of the City Council. Whenever a Trustee ceases to be a member of the City Council, the person succeeding him or her in office will automatically be appointed to serve as a successor Trustee of the Trust.

B. OFFICERS. The Mayor shall serve as Chair 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 at a duly called meeting at which a quorum is present. The Mayor Pro Tem shall serve as Vice Chair and shall preside at meetings of the Trustees whenever the Chair is absent. The City Secretary shall serve as Secretary. 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.

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

D. MEETINGS. A meeting of the Trustees may be called by the Chair or on written request to the Chair 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

A. 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, leases, and agreements or any other legal documents herein authorized shall be approved by the Trustees by majority vote at a duly called meeting at which a quorum is present and signed by the Chair 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 or offering 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 or offer 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 or offering 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 shall 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 may purchase insurance for the Trustees and any other fiduciaries appointed by the Trustees and for the Trust itself 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 Trustees 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.

B. 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 purchased by the Trust as allowed under Section 222.002 (c)(5)(A) [Texas Insurance Code];
3. to make authorized investments; and
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 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 shall pay or reimburse a Trustee for expenses incurred (i) in advance of the final disposition of a Proceeding to which such Trustee was, is or is threatened to be made a party; and (ii) in connection with such Trustee's appearance as a witness or other participation in any Proceeding.

IX. AMENDMENT, REVOCATION AND TERMINATION

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

Upon termination of the Trust, the Trustees shall pay all obligations, debts, losses, and other liabilities of the Trust. Thereafter, the Trustees shall first use the remaining trust funds to pay covered claims of persons covered under the City's health benefits plan that may be in effect at the time of termination of the Trust and,

then, either apply any remaining balance of the funds for the benefit of those covered persons in such manner as the Trustees determine shall best carry out to purposes of this Trust or pay such balance over to such covered persons on a per capita basis. Notwithstanding the foregoing, the Trustees, upon termination of the Trust and payment of all Trust obligations may, by vote of a majority of the Trustees, transfer the remaining funds or any portion thereof to the trustees of any trust or trusts established by the City 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.

The Trust, previously created in 2008 and subsequently amended, is amended as included in Paragraph IV, subsection B herein, to clarify who acts as the Secretary of the Trust. This Trust document, to include the amendment, replaces and is substituted for all previous Trust documents.

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.

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 222.02 of the Texas Insurance Code.



Mayor Judy Eychner, Settlor



Roman Garcia, Trustee

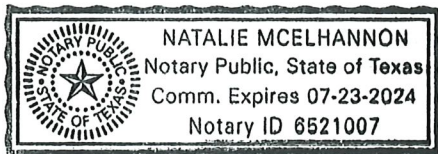


Kim Clarkson, Trustee

Joe Herring, Jr.
Joe Herring, Jr., Trustee
Brenda Hughes
Brenda Hughes, Trustee

THE STATE OF TEXAS §
 §
COUNTY OF KERR §

This instrument was acknowledged before me on OCTOBER 26, 2022, by
Judy Eychner, Mayor of the City of Kerrville on behalf of Settlor.



Natalie McElhannon
Notary Public, State of Texas
Print Name: Natalie McElhannon
My Commission Expires:
7-23-2024

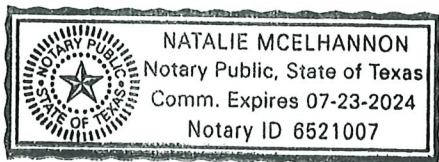
THE STATE OF TEXAS §
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COUNTY OF KERR §

This instrument was acknowledged before me on OCTOBER 28, 2022, by
Roman Garcia, Trustee. - declined to sign

Notary Public, State of Texas
Print Name: Natalie McElhannon
My Commission Expires:

THE STATE OF TEXAS §
 §
COUNTY OF KERR §

This instrument was acknowledged before me on OCTOBER 27, 2022, by
Kim Clarkson, Trustee.



Natalie McElhannon

Notary Public, State of Texas

Print Name: Natalie McElhannon

My Commission Expires:

7-23-2024

THE STATE OF TEXAS

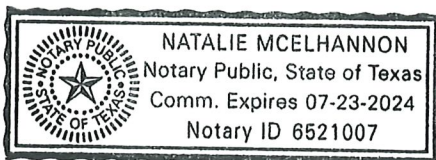
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COUNTY OF KERR

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This instrument was acknowledged before me on OCTOBER 27, 2022, by Joe Herring, Jr., Trustee.



Natalie McElhannon

Notary Public, State of Texas

Print Name: Natalie McElhannon

My Commission Expires:

7-23-2024

THE STATE OF TEXAS

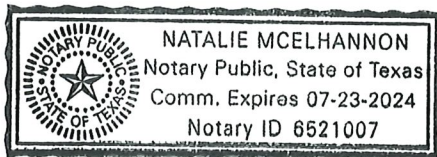
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COUNTY OF KERR

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This instrument was acknowledged before me on OCTOBER 27, 2022, by Brenda Hughes, Trustee.



Natalie McElhannon

Notary Public, State of Texas

Print Name: Natalie McElhannon

My Commission Expires:

7-23-2024

SCHEDULE A

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

City of Kerrville's first month (October 2008) contributions for Employee, and Dependent Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, and Long Term Disability Benefits.

City of Kerrville Employee and Dependents first month (October 2008) of Plan Year's payroll deductions or contributions for Medical/Pharmacy Benefits, Dental Benefits, Life Insurance Benefits, and Long Term Disability Insurance Benefits.

Reso No. 49-2022