

## Healthcare Contract

This Healthcare Contract (“Agreement”) is entered into between the City of Fort Worth (the “City”) and the Fort Worth Professional Firefighters Association (the “Association”) as an addendum to the 2014 Collective Bargaining Agreement between the Parties and any successor collectively bargained agreements between the Parties. The Association and the City collectively are referred to herein as the “Parties.”

**WHEREAS**, the City currently makes contributions for Recruits, Fire Fighters, Pre-Medicare Retirees, Medicare Retirees and their eligible spouses and dependents to participate in the City’s Healthcare Plans; and

**WHEREAS**, the Association has proposed that the City agree to allow the Association to provide a separately administered and funded healthcare plan for the Covered Populations, as defined below with the City retaining coverage obligations for Medicare Retirees; and

**WHEREAS**, the Association intends to create a tax-exempt Trust (the “Trust”) for the purpose of funding a healthcare plan to the Covered Populations; and

**WHEREAS**, the Association’s proposal would require the City to contribute an amount of money as calculated by the City to be placed in the Trust periodically; and

**WHEREAS**, although the City may continue to offer some benefits to some or all of the Covered Populations to the extent such benefits are not available under the Trust, the Trust will be the only avenue for the Covered Populations to obtain those benefits that are provided or offered by the Trust; and

**WHEREAS**, for each full or partial calendar/plan year in which this Agreement remains in effect, the City will be relieved from, and the Trust will be solely responsible for, providing a healthcare plan for members of the Covered Populations who would have qualified for coverage under the City’s Healthcare Plan during that year.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, including the recitals set forth above, the Parties agree as follows:

### Section 1. Definitions.

a. “Board of Trustees” means the governing body of the Trust as detailed in the Trust Agreement, attached hereto as Exhibit A.

b. “Business Day” shall mean a day on which Fort Worth City Hall is open to the public and shall exclude Saturdays, Sundays, and City holidays.

c. “City Contributions” means funds provided by the City for purposes of subsidizing healthcare benefits of the Covered Populations. Such contributions may not be used for voluntary benefits. It does not include money deducted from the pay of active Fire Fighters

or Recruits for healthcare premiums that is remitted to the Trust for the Local 440 Benefit Plan(s).

d. “City Healthcare Plan” means the healthcare plan that the City offers to retired employees, eligible spouses and dependents, as amended from time to time.

e. “City Subsidy” means the rate table reflecting each plan design for actives, retirees, spouses, dependents and each combination thereof developed for the City’s Healthcare Plan each year.

f. “Code” means the Internal Revenue Code of 1986, as amended, and regulations adopted thereunder. The term includes any subsequent amendments to or successors of those statutes or regulations.

g. “Covered Populations” means Recruits, Fire Fighters, Future Retirees, Pre-Medicare Retirees, Eligible Spouses, and Eligible Dependents eligible to receive healthcare and other benefits under this Agreement. The term does not include Medicare Retirees. The term also does not include any Pre-Medicare Retiree, whether single or part of a married couple, who has chosen to not enroll in the Local 440 Benefit Plan, nor their eligible spouse and eligible dependents.

h. “Effective Date” means the date on which all of the following conditions are first met:

- (i) The Agreement is ratified by a majority vote of the members of the Association voting in an election called for that purpose;
- (ii) A minimum of 90% of Pre-Medicare Retirees have waived City coverage and indicated their intent to enroll in the Local 440 Benefit Plan by signing a waiver agreement;
- (iii) The City has received fully-executed waiver agreements from all of those who, as of the effective date, are Pre-Medicare Retirees who have chosen to enroll in the Local 440 Benefit Plan; and
- (iv) The Agreement is approved by the Fort Worth City Council.

i. “Eligible Dependent” means a legal dependent (other than an Eligible Spouse) who would be eligible for coverage on the City’s Healthcare Plan due to the person’s relationship to a Recruit, Fire Fighter, Future Retiree, or Pre-Medicare Retiree.

j. “Eligible Spouse” means a legal spouse who would be eligible for coverage on the City’s Healthcare Plan due to the person’s relationship to a Recruit, Fire Fighter, Future Retiree, or Pre-Medicare Retiree.

k. “Fire Fighter” means any active employee and member of the bargaining unit represented by the Association.

l. “Future Retiree” means any Fire Fighter who has not retired before the ratification of this Agreement and is thereby governed by the terms of the 2014 Collective Bargaining or successor agreements and retires from the City on or after the Effective Date.

m. “Health Savings Account Plan” or “HSA Plan,” also known as a high deductible healthcare plan, means one in which a participating member pays a higher-than-normal deductible in exchange for a lower premium cost and, in the case of the City’s HSA Plan, incorporates a health savings account funded with pre-tax contributions by the participant and/or employer with the balance in the account for use in paying qualified medical expenses in accordance with the Code.

n. “Local 440 Benefit Plan” shall mean the plan provided to the Covered Populations under this Agreement, which will include medical, pharmacy, and dental benefits, and may include other benefits and products related to physical or mental health.

o. “Medicare Retiree” means any former Fire Fighter who retired from a position within the bargaining unit represented by the Association before the Transition Date and who, as of the Transition Date, meets the age requirement for Medicare or is otherwise eligible to receive current Medicare benefits. The term includes an Eligible Spouse or Eligible Dependent of a Medicare Retiree.

p. “Post-Transition Claims” means all claims incurred on or after the Transition Date that are the responsibility of the new plan. Hospitalizations or other inpatient treatments commenced on or after the Transition Date shall be considered to be Post-Transition claims.

q. “Pre-Medicare Retiree” means any former Fire Fighter who retired from a position within the bargaining unit represented by the Association before the Transition Date and who as of the Transition Date does not yet meet the age requirement to be eligible for Medicare.

r. “Recruit” shall mean any employee of the City of Fort Worth who is participating in a City of Fort Worth Fire Fighter Training Academy and who is covered by this Healthcare Contract as a condition of employment and will be represented by the Association upon graduation, both as a consequence of Texas Local Government Code 174.001 et seq.

s. “Third-Party Administrator” or “TPA” means an organization that processes medical or healthcare claims or certain aspects of employee benefit plans offered by the Trust and the Local 440 Benefit Plan(s).

t. “Transition Date” means the date on which coverage for Recruits, Fire Fighters, Future Retirees, Pre-Medicare Retirees, Eligible Spouses, and Eligible Dependents initially shifts to the Trust in accordance with Section 5, not sooner than January 1, 2019.

## **Section 2. Coverage and the Provider.**

a. The Association and the City enter this Agreement to obligate the Association to take appropriate steps to create a Trust that will administer a healthcare plan for the Covered

Populations and allow the Trust formed by the Association to offer a dental plan and other voluntary benefits that may include vision, disability, and life insurance. All of the Covered Populations who are eligible to participate in the Local 440 Benefit Plan(s) will be excluded from the City's Healthcare Plan's offerings with the exception of benefits identified in Section 2.c.

b. The City shall allow the Trust to participate as a sub-organization under the City's dental plan so long as the plan mirrors the City's exactly, the cost is billed separately to the Trust, and the arrangement is reasonable for all parties.

c. The City shall continue to provide an Employee Assistance Program to Fire Fighters and Recruits and their Eligible Spouses and Eligible Dependents, if provided by the City to other active employees and their eligible spouse and dependents.

d. The City shall continue to provide to active Fire Fighters and Recruits coverage under basic life insurance at the City's expense if provided by the City to other active employees.

e. In accordance with the requirements of the Code, the City shall continue to administer any Health Savings Accounts and Flexible Spending Accounts (respectively, "HSA" and "FSA") for eligible Fire Fighters, Recruits, and Pre-Medicare Retirees if provided by the City to other active employees. All third-party administration costs related to administering HSAs and FSAs for eligible members of the Covered Populations will be deducted from the City Contributions as detailed below.

f. Benefits described in Sections 2.b through 2.d are subject to change or discontinuation at any time in the discretion of the City. Availability to Covered Populations shall be contingent on benefits being available to other active City employees.

### **Section 3. The Trust.**

a. The Association shall create a tax-exempt trust (the "Trust") in compliance with all State and Federal laws and with the sole purpose to fund and administer the Local 440 Benefit Plan(s) for the Covered Populations. The Trust must obtain Internal Revenue Service approval for the Trust to function as a tax-exempt, non-profit entity, provided, however that such approval is not a prerequisite to execution or implementation of this Agreement or the transition of Covered Populations to the Local 440 Benefit Plan(s).

b. The Trust is prohibited from providing benefits to any persons outside of the Covered Populations contemplated by this Agreement. However, the Parties acknowledge and agree that a future, mutually agreed healthcare contract and/or collective bargaining agreement may expand the concept of Covered Populations and allow the Association and/or Trust to provide a healthcare plan or other benefits for Medicare Retirees, their eligible spouses and dependents, or others.

c. The instrument governing the Trust shall be consistent with the form and content of the Trust Agreement attached as Exhibit A. The Trust shall limit investment options to those authorized by the Trust's duly adopted Investment Policy Statement, which shall be provided to the City for approval at least 30 days before adoption. The Trust shall prevent prohibited transactions such as loans and excess compensation.

d. The Trust shall not compensate any member of the Covered Populations for managing the Trust; however, this provision does not prohibit the Board of Trustees from hiring member liaisons who have the limited responsibility of explaining plan benefits, addressing open enrollment questions, and directing participants to appropriate vendors for issue resolution. In addition, this provision does not prohibit the Board of Trustees from hiring and compensating an appropriate number of staff who are not members of the Covered Populations to manage the affairs of the Trust.

e. Expenditures from the Trust for travel, training, and conferences for the purpose of fulfilling the Board of Trustees' responsibilities to the Local 440 Benefit Plan(s) shall be limited to destinations in the United States. Where feasible or practical, the Trustees shall participate in organizations and meetings located in the Dallas-Fort Worth area of Texas to minimize travel and related expenses. All travel and training shall comply with a formal Travel and Training Policy adopted by the Board of Trustees that places appropriate limits on frequency, duration and cost of travel.

f. The City recognizes that the Trust will incur administrative expenses, including broker and benefit-administrator fees, related to providing healthcare coverage, and Trust assets may be used for purposes of paying such expenses. All administrative expenses shall be accounted for separately and / or disclosed on Schedule C of Form 5500.

g. The City also recognizes that the Association may offer certain health and wellness related voluntary benefits that may be administered as part of the Trust. Any provision by the Association of voluntary benefits may be included in the Trust but must be funded and accounted for separately from the City Contributions.

h. The Association will invite an employee of the City designated by the City Manager to participate as an ex ex-officio member at all regular and specially called meetings of the Board of Trustees; however, said designee will not have a voting position or assume any fiduciary responsibility for the City in the management of the Trust or administration of the Local 440 Benefit Plan(s). The ex-officio member will be given at least 30 days advance notice of any regularly scheduled meeting, and at least seven days advance notice of any special meeting, and receive a copy of all materials provided to the Board of Trustees related to the management of the Trust in the same manner as other Trustees.

i. Initially, the Trust will cover, at a minimum, all of the Covered Populations who would be eligible for coverage under the City's Healthcare Plan as of the Transition Date. For future years, the Trust will cover, at a minimum, all of the Covered Populations who would be eligible for coverage as determined by the City each year. All other healthcare plan decisions, including but not limited to, the level of coverage, who is covered (with or without City subsidy

as determined by this Agreement), and the amount to be paid by the Covered Populations, will be made by the Trust, provided the level of coverage meets the requirements of minimum essential coverage under section 4980H of the Code or any successor thereto. The Association and the Trust acknowledge and agree that the City is not taking any claims risk, and that the sole responsibility of the City is to pay the agreed-upon City Contributions. All decisions related to the healthcare and related benefits for the Covered Populations will be made by the Trust. ***Under no circumstances shall any action or decision of the Association or the Trust, including but not limited to providing additional subsidies to participants in the Local 440 Benefit Plan(s), be construed or interpreted to alter the obligations of the City to the Covered Populations in the event of a return to the City's Healthcare Plans under Section 8.***

j. The Trust, either directly or through its advisors, shall: (1) contract for fiduciary liability coverage, that includes coverage for errors and omissions of the Trustees with a minimum annual coverage amount of \$1,000,000.00; (2) contract with a licensed trust company or other financial institution to hold the Local 440 Benefit Plan(s) assets in the name of the Trust; (3) contract with a third party administrator ("TPA") who is duly licensed and in good standing in the state of Texas to administer the Trust, which may include the payment of claims; (4) put in place a fidelity bond with coverage in an amount that is equal to \$500,000 covering all persons who handle the Local 440 Benefit Plan(s) assets.

k. Funds transferred by the City to the Trust pursuant to the 2014 Collective Bargaining Agreement ("CBA") Article 15, as amended, or any successor CBA, must be segregated from other Trust funds and used for the sole benefit of participants who were hired on or after January 1, 2009, and who subsequently retired from the City.

l. The Association agrees that every duty or obligation of the Trust that is stated in this Agreement, including, but not limited to, the obligations to indemnify, hold harmless and defend the City, is also a duty or obligation of the Association. If the Trust fails or refuses to timely perform any such duty or obligation, the City may require the Association to take action to satisfy such duty or obligation, and the Association can satisfy the Trust's duty or obligation by either fully performing that duty or obligation itself, or by causing the Trust to fully perform the duty or obligation.

m. The Association shall retain all responsibility and liability for the collective bargaining obligations incidental to funding for the Trust and their obligations under the "appointing fiduciary" doctrine with regard to any Trustee appointed or elected by the Association.

#### **Section 4. City Contributions and Adjustments to Payments from City.**

a. All of the City Contributions will be used only for the purposes of providing benefits to the Covered Populations that are permitted under the rules and regulations of the Internal Revenue Service adopted pursuant to Code Section 501(c)(9).

b. For purposes of determining the City subsidy level for each plan, it will be assumed that:

- i. The City's HSA Plan and its successors is equivalent to the Association's HSA plan; and
- ii. The City's Health Center Plan and its successors is equivalent to the Association's non-HSA plan.

c. The City Subsidy will reflect the amount that the City would have contributed (excluding amounts paid by employees) for each enrolled member of the Covered Populations had they enrolled in the City Healthcare Plan. The subsidy rate for each City Healthcare Plan will be computed annually and used to determine the City Contributions for the corresponding Local 440 Benefit Plan.

d. The City Subsidy for calendar year 2019 will be calculated based on the City actuary's 2018 plan year rate schedule for General Employees, Police, and Fire Actives and Retirees, plus 3%. In subsequent years, the City Subsidy shall be based on an actuary's rate workup for the upcoming plan year that is supported by monthly paid claims and administration costs for General Employees and Police. Changes to the City Subsidy for purposes of calculating the City Contributions in calendar years after 2019 will be limited to an annual increase or decrease of +/- 3%. In the event that, during the term of this contract, either the General Employees or Police are no longer part of the City's Healthcare Plan, both parties agree to negotiate in good faith the basis of the new base calculation for the City Subsidy, and the +/- 3% limitation will not apply. Upon mutual agreement of the new City Subsidy, the City Contributions in future calendar years will be limited to an annual increase or decrease of +/- 3%.

e. The City Contributions will be limited to members of the Covered Populations who would otherwise be eligible to participate in the City's Healthcare Plan as determined by the City for each plan year. For example, the parties understand and agree that if the City decides to discontinue coverage for working spouses, the Trust can continue to cover such persons under the Local 440 Benefit Plan(s), but the City Contributions will not include any money attributable to the cost of coverage for working spouses during the time that working spouses would not otherwise be eligible for coverage under the City's Healthcare Plan.

f. In order to calculate the City Contributions, on a monthly basis, the City will (i) multiply the City Subsidy times the number of actual enrollees in the corresponding Local 440 Benefit Plan; and (ii) make the following adjustments:

- i. The City Subsidy for the 2019 plan year will be reduced by 13.3% and in each future year, the then-current subsidy will be reduced by 15.2%. The intent of these reductions is to ensure the City does not pay more to provide coverage for Covered Populations under the Local 440 Benefit Plan(s) than it would under the City's Healthcare Plans with such percentages reflecting the fact that a member of the Covered Populations generally costs the City less than the hypothetical "average" City Healthcare Plan participant. The percentages are calculated on the basis of annualized 2017 claims projections for the Covered Populations;

ii. The City Contributions will be reduced by the third-party administrative costs and/or insurance premiums associated with any benefits and services that the Covered Populations continue to receive from the City, including, but not limited to, life insurance, HSA and FSA administration, and Employees' Assistance Program;

iii. Deduction of the City's annual HSA contributions beginning in plan/calendar 2019; and

iv. The City Contributions will be reduced by any additional administrative and premium costs incurred by the City as a result of the Covered Populations being removed and excluded from the City's Healthcare Plans, thereby reducing the number of covered lives and increasing the City's per-covered-life cost for its remaining plan participants; such costs include but are not limited to those associated with third-party administration, pharmacy benefit management, voluntary dental insurance, and voluntary disability insurance.

The actual amount of the City Contributions shall be calculated each month to reflect the actual number of participants in the Local 440 Benefit Plan(s) who would have been eligible for coverage in the City's Healthcare Plan during that plan year and who are enrolled in the Local 440 Benefit Plan(s) as of the first day of the month.

g. While this Agreement is in effect, if the City adopts reference-based pricing, resulting in quantifiable reductions in the City Subsidy, the City will negotiate in good faith with the Association to maintain the City's Contribution without regard to these savings. That notwithstanding, if the City adopts reference-based pricing, the 3%+- corridor described in Section 4d. shall continue to apply.

h. In the event that the City determines it is necessary to deposit funds into the City's active or retiree healthcare funds to restore fund balance or to adopt a mid-year supplemental appropriation due to the cost of excess claims, the City is not responsible for making a similar supplemental appropriation to the Local 440 Benefit Plan. Since the Trust solely controls the Local 440 Benefit Plan, City Contributions will be limited to the calculations outlined in Section 4 and the Trust will be responsible for ensuring the sustainability of the plan design based on that City Contribution.

i. The Association will be responsible for confirming the eligibility and actual participation/enrollment of the Covered Populations and reporting such information to the City on a timely basis. The Association shall provide affidavits, as requested by the City, from members of the Covered Populations to verify whether they would be eligible for coverage or not under the City's Healthcare Plan, including for non-working retirees or retiree spouses, to support the monthly calculation of the City Contribution. If the City is otherwise performing a dependent audit of its other health plans, the Trustees may elect to include the Trust's health care plans in such dependent audit programs, provided that the City gives 60 day advance notice to the Trust and the Union of the upcoming dependent audit. If the Trustees elect not to participate in the City's dependent audit verification program, the Trust shall establish its own dependent verification audit program on the same timeline or intervals as the City's health plans.



j. The City will directly bill the Trust for the City's actual costs for each item listed below unless the parties mutually agree by a separate letter agreement to allow compensation for administrative costs in another manner. The City shall allow payments from the Trust to be made in equal parts for the remaining months of the Local 440 Benefit Plan(s) year in which the bill is sent.

i. Direct expenses of the City paid to a third party in facilitating the implementation and on-going operation of the Local 440 Benefit Plan(s), including but not limited to, technology, file interfaces and legal costs;

ii. For 2019, the City's required contributions to HSA accounts with the amount billed to the Trust reduced by a prorated amount reflecting the number of months that the member of the Covered Populations was on the City's Healthcare Plan.

iii. Members of the Covered Populations who elected to participate in the Wellness Program in 2018 will not be eligible to receive any payments related to the Wellness Program for 2018. Members of the Covered Populations will not be eligible for participation in the City's Wellness Program in 2019 or beyond because a primary intent of the Program is to reduce and control claim costs for participants on the City's self-funded healthcare plan.

k. Since fewer than 100% of all retirees eligible to participate in the Local 440 Benefit Plan have waived their rights to access to the City Healthcare Plan, the City and the Association agree that the City will continue to offer the City Healthcare Plan to those individuals who did not choose to participate in the Local 440 Benefit Plan so long as they are eligible.

The parties have agreed to an annual reconciliation of the costs of retirees who remain covered by the City Healthcare Plan instead of the Local 440 Benefit Plan, namely for coverage of:

- (i) any Pre-Medicare Retiree who did not choose to enroll in the Local 440 Benefit Plan and remained on or enrolled in the City Healthcare Plan; and
- (ii) any Retiree who is part of a married couple (one of whom is Medicare-eligible and one of whom is not Medicare-eligible) that has chosen to not enroll the Pre-Medicare spouse in the Local 440 Benefit Plan and, as a result, will have split coverage for those two spouses between City Medicare and the City Healthcare Plan.

The annual reconciliation of costs shall be done as follows:

No later than 180 days after the end of the plan year, City will determine the claims incurred and amounts actually paid by the City under the City's Healthcare Plan for the calendar year. The City will also determine any employer and employee premium payments owed for such coverage period.

After reconciling the premium payments and claims incurred and paid by the City's Healthcare Plan (not otherwise paid by the City Healthcare Plan's stop-loss carrier), the City will remit to the Trust any surplus employer/employee premiums, if any, in excess of the claims incurred (and actually paid by the reconciliation date).

In the event that for a particular calendar year claims exceed the annual employer/employee premiums associated with any member of this group, the City will not pay to the Trust any surplus premiums for that calendar year, and instead will withhold from future premiums otherwise payable to the Trust (payable at least 30 days after the reconciliation is provided to the Local Association and Trustees of the Trust) a sum of money equal to the amount by which the adjusted claims paid exceeded the premiums collected for the group. In determining the adjusted claims costs, only claims up to the aggregate and individual stop-loss attachment rates / factors established by the Local 440 Benefit Plan for the year in which the claims were incurred shall be included.

Any reimbursement amounts received via third-party reimbursements / subrogation claims shall first reimburse the City for any retained claims in excess of the Association's stop loss limits (not credited in the previous paragraph). If additional reimbursements are available, the Association Healthcare Plan will be credited for that amount to the year in which the claims were incurred, rather than when the reimbursements were paid and resulting adjusting payments between the parties shall be included in the next subsequent annual adjustment following the subrogation claim reimbursement.

1. In the event of a dispute, controversy or claim arising out of or relating in any way to this Agreement, the complaining Party shall notify the other Party in writing thereof. Within thirty (30) days of such notice, management-level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the Parties will attempt to resolve any disputed issues through mediation, using a mediator whose principal office is in the Dallas-Fort Worth metropolitan area. If the Parties cannot agree to a mediator, the choice of mediator will be determined by a coin toss. If the Parties cannot resolve the disputed issues through mediation, the Parties may, but are not required to, submit the disputed issues to binding arbitration. The demand for arbitration by either Party shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after two years from when the aggrieved Party knew or should have known of the controversy, claim, dispute or breach. If the disputed issues are submitted to arbitration, the City and the Association may, within ten (10) calendar days after the Parties both have agreed to submit the matter to arbitration, mutually agree to a neutral arbitrator whose principal office is in the Dallas-Fort Worth metropolitan area. If the Parties are unable to agree on such an appointment, the City and Association shall, within five (5) calendar days, jointly request a list of seven (7) arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service. Within ten (10) calendar days following receipt of the list of arbitrators, the Parties shall select an arbitrator by each Party in turn striking one name from the list until only one (1) name remains. The remaining individual on the list shall serve as the arbitrator. The Party who makes the first

strike will be determined by a coin toss. The arbitrator so selected shall be promptly notified of his or her selection through the agency selected, and the Parties and the arbitrator shall agree on a time, place and date for the hearing of the arbitration. The selected agency's rules will govern the progress of the case. The laws of the state of Texas shall be applied in any arbitration proceedings, without regard to principles of conflict of laws. The losing Party at arbitration will be responsible for paying the prevailing Party's arbitration-related costs, including the arbitrator's and agency's fees. However, each Party shall be responsible for paying its own attorney's fees. If the Parties agree to arbitration, arbitration will be deemed to be final and binding, and an election of remedies. Any appeal of an arbitrator's decision in this procedure shall be strictly and solely limited to the grounds that the arbitrator exceeded their authority and jurisdiction as provided under this Agreement; that the decision of the arbitrator was procured by fraud or collusion or that the arbitrator's decision is based upon a clear and manifest error of law. The parties agree that, in the event either party declines to participate in binding arbitration, venue for any dispute arising under this Agreement shall be in the state District Courts of Tarrant County, Texas. The parties further agree that this Agreement is subject to Subchapter I, Chapter 271, Texas Local Government Code.

m. The City can review, on an annual basis, its workers' compensation medical and pharmacy claims made by Recruits and Fire Fighters and, if the City determines that its claims experience with workers' compensation claims has resulted in increased workers' compensation medical and pharmacy costs for what have traditionally been considered to be a normal disease of life, and not a workers' compensation-covered illness, the City can require that the City and the Association re-calculate the City's Contributions on a prospective basis.

n. The City Contribution will be made to the Trust no later than seven (7) Business Days following each published City payday for active employees. The City Contribution will be made to the Trust no later than seventh business day of each month for Retirees covered by the Local 440 Benefit Plan. The Trust will be required to receive payment of the City Contributions via electronic or wire transfer.

o. The City will include Retirees covered by the Local 440 Benefit Plan in the monthly enrollment file to the Employees' Retirement Fund.

p. The Trust and the City shall cooperate to reconcile contributions as needed, which shall generally include at least one reconciliation per pay period. Any overpayments or underpayments discovered in the reconciliation process will be resolved in the next City Contribution cycle. However, this provision does not preclude later resolution if it cannot be resolved by the next period or if the error is discovered later than the next pay period.

q. If the City is delinquent in remitting the City Contributions, beginning on the fourteenth (14<sup>th</sup>) Business Day following each published City payday, the City shall pay the Trust simple interest at the rate of 0.0137% per calendar day on the owed balance until the City Contribution owed for that month is paid in full. This daily amount is equivalent to five percent (5%) per annum. No interest will attach to any partial delinquency (limited to 3% of contribution) associated with correction of errors identified during the reconciliation process.

r. All costs direct-billed to the Trust by the City shall be remitted to the City within 30 (thirty) days of the date of the invoice.

s. If the Trust is delinquent in remitting payments to the City for directly invoiced services, beginning on the thirty-first (31<sup>st</sup>) calendar day, including City holidays and weekends, following the invoice date, the Trust shall pay the City simple interest at a rate of 0.0137% per calendar day on the owed balance until the Trust payment owed for that month is paid in full. This daily amount is equivalent to five percent (5%) per annum.

t. The City will make deductions from payroll for Recruit and Fire Fighter contributions to the Trust for benefits being received through the Local 440 Benefit Plan(s). Where required, written authorization from the Covered Populations to allow for a pre-tax deduction pursuant to the City's Healthcare Plan under Code Section 125 will be provided to the City prior to the time deductions are made. The Parties will determine a procedure that facilitates this process, allows for pre-tax deductions where appropriate, and minimizes the administrative burden on the City.

u. The Trust shall have sole responsibility for contracting with the Fort Worth Employees' Retirement Fund to collect premiums from Pre-Medicare Retirees and remit the funds to the Trust, unless otherwise mutually agreed or if it becomes necessary for the City to assume responsibility because the Fort Worth Employees' Retirement Fund is unable to perform the necessary transactions. This sole responsibility shall include any necessary exchanges of data in order to cause the premiums to be collected.

v. City Contributions associated with Article 15 of the collective bargaining agreement intended to benefit fire fighters hired on or after January 1, 2009, shall be accounted for separately within the Trust and used exclusively for the intended purpose.

## **Section 5. Transition and On-Going Communication.**

a. The Transition Date shall occur on the first day of the month that coverage shifts from the City's to the Association's Plan. The selected Transition Date shall be mutually agreeable to the City and the Trust to ensure an orderly transition.

b. The Trust shall handle open enrollment for participants, and coordinate with the City as appropriate for any necessary payroll deductions or other items related to the on-going operations of the Trust. The City may communicate with participants with regard to any City administered benefit plans and any other matter related to the City's relationship with the Covered Populations. The Trust, in consultation with the City as appropriate, will develop any joint communications necessary for the operations of the Trust. Otherwise, the Trust and Association will be responsible for communications with participants, including all materials related to summary plan descriptions, plan documents, and other similar items. All such documents shall be subject to review by the City's ex officio trustee no later than fourteen (14) days prior to distribution. The purpose of this review is to ensure accuracy of information regarding City participation and to prepare for City administration of certain benefits and payroll withholding consistent with this Agreement.

c. Unless otherwise agreed in this Agreement, the Association represents to the City that member education, question responses and problem resolution will be the ultimate responsibility of the Trust, which may engage the TPA and/or the broker hired by the Trust to perform such tasks.

d. Within twelve (12) months of Transition Date, the Trust will provide the City written notice from any applicable regulating agency that all required actions/approvals are in place, or that approval is not required.

e. The standard transition processes applicable in the insurance industry when a self-insured employer changes from one health plan to another will apply. All Post-Transition Claims shall be the responsibility of the Local 440 Benefit Plan.

f. Members of the Covered Populations on COBRA coverage (offered pursuant to Federal requirements) as of the Transition Date will remain on the City's Healthcare Plan. For all COBRA coverage (pursuant to Federal requirements) for the Covered Populations initiated on or after that Transition Date, the Local 440 Benefit Plan(s) will have responsibility for meeting all COBRA notification and coverage requirements.

g. For 2019, any amount of deductibles and out-of-pocket expenses incurred by members of the Covered Populations under the City's Healthcare Plan prior to the Transition Date, will be applied toward calculating that member's meeting of deductibles and out-of-pocket limits on the Local 440 Benefit Plan(s) on and after the Transition Date. The City will coordinate with the City's selected healthcare providers, currently United HealthCare and OptumRx, to provide data on deductibles and out-of-pocket expenses incurred under the City's Healthcare Plan prior to the Transition Date.

h. The City shall have no financial or advisory responsibility for the tax consequences to the Covered Populations who move from the City's high-deductible plan to the Association's basic plan. The City shall have no financial responsibility to provide a reimbursement to the Trust for HSA contributions invoiced to the Trust for those participants on a City high deductible plan prior to the Transition Date who do not elect a high deductible plan with the Local 440 Benefit Plan(s).

i. Since the City collects premiums for 26 pay periods to cover 12 plan months, there is a potential for mismatch of revenues and expenditures during the transition year. Prior to finalization of the Transition Date, the City and the Association will agree to equitably split the pay periods that exceed two per month to reflect the proportion of the year covered by each plan.

## **Section 6: Open Enrollment and Data Exchanges**

a. The City shall provide necessary data files only to the Trust's TPA to accompany each of the City Contributions, including Recruit and Fire Fighter payroll deductions. The Association and/or Trust shall be responsible for all data file interfaces with other vendors. All

data files must meet the City's specifications for use in the City's payroll system. An illustrative flow chart outlining this process is attached as Exhibit B but may be modified by mutual agreement from time to time to reflect the needs of the City or the Trust.

b. Per the Internal Revenue Service, only the employer is allowed to maintain a 125 Plan authorizing pre-tax payroll deductions. Therefore, in order for the participants to make pre-tax premium contributions through payroll deductions, the Local 440 Benefit Plan(s) will be offered to Recruits and Fire Fighters under the City's 125 plan.

c. The Trust shall provide to the City specific plan design, premium information and education materials for the Local 440 Benefit Plan(s) no later than sixty (60) calendar days prior to the beginning of the initial open enrollment period and of each subsequent City open enrollment period. Plan selection data following the Trust's open enrollment will be provided by the Trust to the City within thirty (30) calendar days of the conclusion of each open enrollment or by December 1 of each year, whichever is earlier.

d. The Trust shall be responsible for the administration, and management of open enrollment for Pre-Medicare Retirees and coordinating such open enrollment with the City of Fort Worth Employees Retirement Fund ("ERF") for the deduction of premiums from the benefit payments made by the ERF to Pre-Medicare Retirees.

e. The Trust shall be responsible for developing all required employee/retiree benefit notices and customized communications necessary for open enrollment and other communications as needed or requested.

f. The Association and the Trust are responsible for exchanging accurate and complete required information with the City during the open enrollment period for any of the Covered Populations. The Association and the Trust are also responsible for exchanging accurate and complete required information with the ERF in connection with any amounts that must be deducted from retirement benefits to pay premiums for the Local 440 Benefit Plan(s).

## **Section 7. Reporting Responsibilities**

a. The Trust is anticipated to be deemed a component unit of the City, as defined by the Governmental Accounting Standards Board ("GASB"), and will be reported and administered as such.

b. The Trust shall operate on a fiscal year that coincides with the fiscal year of the City of Fort Worth, which is currently October 1 through September 30.

c. The Trust shall operate the Local 440 Benefit Plan(s) on a plan year that coincides with the plan year of the City of Fort Worth, which is currently January 1 through December 31.

d. Annually, the Board of Trustees shall engage an external auditor who is a licensed Certified Public Accountant and qualified to review audited financial statements of the Trust. The audit shall be conducted in a manner that provides compliance with auditing standards

acceptable to both the City and Trust for purposes of complying with their respective regulatory obligations. Any finding resulting from the annual external audit, including a material weakness or significant deficiency shall be forwarded to the City along with a corrective action plan simultaneous with the submission of the audited financial statements.

e. The Trust shall submit the audited financial statements that are necessary for the City's Comprehensive Annual Financial Report ("CAFR") by January 1<sup>st</sup> of each year for the previous fiscal year.

- i. All financial statements and reports shall be prepared in compliance with Governmental Accounting Standards Board pronouncements; and the Trust shall be responsible for implementation of any new GASB pronouncements issued subsequent to the Effective Date of this Agreement.
- ii. The Trust shall use the City's determined measurement date for GASB calculations and submit an annual actuarial calculation in compliance with GASB pronouncements to the City four (4) months from the measurement date.

f. Within 90 days of any request by the City, the Board of Trustees shall provide to the City the necessary data for the City to prepare an actuarial valuations of the medical and pharmacy costs for the Covered Populations that distinguish between active and retired participants, including Incurred But Not Reported claims (IBNR). In the event that the City is required to prepare a separate valuation for the Local 440 Benefit Plan in order to satisfy the City's auditor, the cost will be billed directly to the Trust following the provision of a cost estimate to the Trust prior to the commencement of the work.

g. The Ex-Officio Trustee appointed by the City shall have access to the same financial information about the Trust's operations as other Trustees, including access to the financial records, contracts, or other operating aspects of the Trust. To the extent feasible, the City's Internal and External Auditor shall rely on the work performed by the Trust's independent auditor with regard to the Trust's financial statements and related activities. To the extent such work performed is insufficient, the City shall provide notice to the Trust of the additional records / or financial reports to be reviewed by the Trust's auditor, or the additional records necessary for the City's auditor to review any financial activity of the Trust.

h. The Trust shall provide an Annual Report as noted in the Trust document that includes information required by the US Department of Labor incidental to the Trust's annual Form 5500 filing.

i. Within 90 days after the conclusion of the Plan year, the Trust and the City shall share through a mutually agreeable third party full claims data from the respective TPAs including, but not limited to, medical, pharmacy, and dental benefits. The purpose will be to evaluate the success of reference-based pricing and any future applicability to either the Trust's or the City's Healthcare Plan.

j. Within 90 days after the conclusion of Plan years 2020 and 2021, the Trust shall provide to the City unidentified claims by Current Procedural Terminology (CPT) code in order to analyze differences in claims experience by group in preparation for future City Contribution calculations for subsequent Collective Bargaining Agreements.

k. The Board of Trustees shall be responsible for compliance with all Federal and State legal requirements applicable to the Trust, including but not limited to reporting obligations, privacy and security obligations, and fiduciary duties.

l. Prior to the Transition Date and thereafter on an annual basis, no later than January 1st the Board of Trustees shall provide to the City certificates of coverage for the fidelity bond, and fiduciary coverage that shall include liability coverage for Trustees, as well as any errors and omissions coverage protecting the assets of and participants in the Local 440 Benefit Plan(s) and the Trust.

m. The Board of Trustees shall notify the City within thirty (30) calendar days of the date on which the Trust receives a complaint or grievance filed by a member of the Covered Populations related to the Trust's coverage or benefits, or of any notice, investigation or inquiry from a state or federal government agency regarding the Trust or its operations.

n. The Board of Trustees shall notify the City within three (3) Business Days of the date on which the Board first becomes aware of any actual or alleged theft or misappropriation of Trust assets.

#### **Section 8. Coverage if Trust Fails to Provide Coverage.**

a. The Parties agree that if the Trust is unable to provide healthcare coverage at any level for any of the Covered Populations, at any time, for any reason, the Covered Populations will be eligible to resume participation in the City's Healthcare Plan on a prospective basis after the City is notified by the Association and the City establishes an administratively feasible effective date for the return of the Covered Populations to the City's Healthcare Plan (the "Return Effective Date"). The cost to the Covered Populations, will be based on the then-existing rates for similarly-situated employees, and eligible spouses and/or dependents. Any subsidy of the cost for coverage under the City's Healthcare Plan will be based upon the rules governing such type of coverage that are in place at the Return Effective Date.

b. If any of the Covered Populations become eligible to return to the City's Healthcare Plan, under the circumstance described in paragraph 8(a), above, the City shall have no liability for, nor be required to pay for, any healthcare received by the Covered Populations prior to the Return Effective Date.

c. If any of the Covered Populations will be eligible to return to the City's Healthcare Plan, under the circumstance described in paragraph 8(a), above, and the City has already paid to the Trust the City Contributions for that member of the Covered Populations for the month that includes the Return Effective Date, the member of the Covered Populations will not be entitled to rejoin the City's Healthcare Plan, until either: (1) the member of the Covered



Populations or the Trust repays the City the amount of money paid by the City, by or on behalf of the member of the Covered Populations, for that member of the Covered Populations' healthcare coverage for that month; or (2) the first day of the next month of eligibility, provided that the member of the Covered Populations pays the City in advance all amounts owed for coverage under the City's Healthcare Plan for that month. If a member of the Covered Populations does not make such financial arrangement to return to the City's Healthcare Plan, the member of the Covered Populations shall no longer be eligible for City healthcare coverage, until the next open enrollment for the City's Healthcare Plan.

d. Prior to the re-enrollment of any member of the Covered Populations, the Trust shall provide all necessary data including a minimum of the prior twenty-four (24) months of claims, enrollment census, COBRA coverage enrollees, and all Trust records for such member of the Covered Populations.

## **Section 9. Legal.**

a. The Trust will comply with all applicable state and federal laws. Without limiting the foregoing, this includes HIPAA, COBRA, and PPACA. The Association shall retain all responsibility and liability for the collective bargaining obligations incidental to funding for the Trust and their obligations under the "appointing fiduciary" doctrine with regard to any Trustee appointed or elected by the Association.

b. Because on-going administration of the City's Healthcare Plan and benefits plans and the Local 440 Benefit Plan(s) may necessitate the sharing of protected health information, or PHI, the City, the Association, and the Trust will execute one or more business associate agreements, in substantially the form attached hereto as Exhibit C, that allow for mutual access of PHI in accordance with federal law.

c. Within ten (10) days of the creation of the Trust, the Association shall provide the City with written documentation signed by a Trust officer with authority to bind the Trust, confirming that the Trust will comply with and be bound by provisions of this Agreement and administer the City Contributions in accordance with the Trust Agreement. A copy of the Trust Agreement will be provided to the City at least thirty (30) days prior to the Transition Date. **If written acknowledgement and acceptance of this Agreement has not been executed by a representative of the Trust and received by the City by the thirtieth (30<sup>th</sup>) calendar day prior to the Transition Date, this Agreement shall automatically terminate, unless mutually agreed otherwise by the Parties.**

## **Section 10. INDEMNIFICATION**

**a. THE CITY IS NOT RESPONSIBLE (INCLUDING FIDUCIARY RESPONSIBILITY) FOR ANY OF THE ACTIONS OF THE ASSOCIATION OR THE TRUST. THE TRUST SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ANY AND ALL LIABILITY THAT RELATES IN ANY WAY TO THE OPERATION OF THE TRUST OR PROVIDING HEALTH CARE BENEFITS TO THE COVERED POPULATIONS. WITHOUT LIMITING THE FOREGOING, THE TRUST**

**SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ANY AND ALL LIABILITY RELATING TO CLAIMS THAT ARE THE RESPONSIBILITY OF THE TRUST.**

**IN THE EVENT THE TRUST HAS INSUFFICIENT ASSETS TO PERFORM ITS OBLIGATIONS, UNDER THIS AGREEMENT, THE ASSOCIATION WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ANY AND ALL LIABILITY THAT RELATES IN ANY WAY TO THE OPERATION OF THE TRUST OR THE ASSOCIATION.**

**b. THE ASSOCIATION, AT ITS SOLE COST AND EXPENSE, HEREBY AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS, REPRESENTATIVES, AGENTS EMPLOYEES, AND SERVANTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION ARISING OR ALLEGED TO ARISE BY REASON OF ANY CLAIM, CAUSE OF ACTION OR LOSS: (1) RELATING TO ANY DECISION MADE OR ACTION TAKEN BY THE ASSOCIATION, THE TRUST, OR THE BOARDS OR OFFICERS OF EITHER; (2) BY REASON OF ANY OTHER CLAIM WHATSOEVER OF ANY PERSON OR PARTY OCCASIONED OR ALLEGED TO BE OCCASIONED IN WHOLE OR IN PART BY ANY ACT OR OMISSION RELATED TO THE HEALTHCARE PLAN ON THE PART OF THE ASSOCIATION, THE TRUST OR ANY OF SUCH PARTIES' BOARD OR OFFICERS, REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES, OR CONTRACTORS, INCLUDING THE TPA AND ANY BROKER HIRED BY THE ASSOCIATION, TRUST, OR TPA; (3) RELATING TO ANY HEALTHCARE SERVICES RENDERED, EXPENSES INCURRED, OR PREMIUMS OWED PRIOR TO THE EFFECTIVE DATE OF A MEMBER OF THE COVERED POPULATIONS' RETURN TO THE CITY'S HEALTH PLAN; (4) FAILURE OF THE TRUST OR ASSOCIATION TO COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS; AND (5) RELATING TO THE INSOLVENCY OF THE TRUST, OR THE TRUST HAVING INSUFFICIENT FUNDS IN THE TRUST TO PAY PREMIUMS OR COVER THE COST OF CARE FOR ANY MEMBER OF THE COVERED POPULATIONS.**

**c. Each member of the Covered Populations eligible to enroll in the Local 440 Benefit Plan(s), at each open enrollment, whether administered by the City or the Trust, shall be required to acknowledge and agree to the following as a condition of enrolling in the Local 440 Benefit Plan(s):**

**I AGREE AT MY SOLE COST AND EXPENSE, TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS CITY AND THE CITY'S OFFICERS, REPRESENTATIVES, AGENTS EMPLOYEES, AND SERVANTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, COURT**

**COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION ARISING OR ALLEGED TO ARISE BY REASON OF ANY CLAIM, CAUSE OF ACTION OR LOSS: (1) RELATING TO ANY CLAIM BY ME, MY ELIGIBLE SPOUSE OR DEPENDENT(S) THAT THE DECISION TO PARTICIPATE IN THE LOCAL 440 BENEFIT PLAN(S) IS UNENFORCEABLE, VOID OR VOIDABLE AS TO ME OR SUCH ELIGIBLE SPOUSE OR ELIGIBLE DEPENDENT; (2) RELATING TO ANY HEALTHCARE SERVICES RENDERED TO, EXPENSES INCURRED BY, OR PREMIUMS OWED BY ME, MY ELIGIBLE SPOUSE OR ELIGIBLE DEPENDENT(S) WHILE COVERED UNDER THE LOCAL 440 BENEFIT PLAN(S); (3) RELATING TO ANY DECISION MADE OR ACTION TAKEN BY THE TRUST, OR ITS BOARD OF TRUSTEES OR OFFICERS CONCERNING THE LOCAL 440 BENEFIT PLAN(S) CONCERNING ME, MY ELIGIBLE SPOUSE OR DEPENDENT(S); (4) BY REASON OF ANY OTHER CLAIM WHATSOEVER RELATED TO THE LOCAL 440 BENEFIT PLAN(S), OF ANY PERSON OR PARTY CONCERNING ME, MY ELIGIBLE SPOUSE OR DEPENDENT(S), CAUSED OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY ANY ACT OR OMISSION OF THE ASSOCIATION, THE TRUST OR ANY OF SUCH PARTIES' BOARD OF TRUSTEES OR EITHER'S OFFICERS, REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES, OR CONTRACTORS.**

If any action or proceeding shall be brought by or against the City or any indemnitee in connection with any such liability or claim, the Association, on notice from the City, or any indemnitee, shall defend such action or proceeding at the expense of the Association, by or through attorneys reasonably satisfactory to the City.

The City and the Association agree that, with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

The Association agrees to notify City promptly of, and in any event no later than the fifth (5<sup>th</sup>) Business Day after the receipt of any claim or lawsuit brought in connection with any claim made relating to the Agreement, the Trust, the benefits provided to any member of the Covered Populations through the Trust, or healthcare services provided to any member of the Covered Populations pursuant to coverage provided (or supposed to be provided) under this Agreement and/or by or through the Trust. The Association and the Trust agree to make their officers, Board members, representatives, agents, (including TPAs and consultants) and employees available to City, at all reasonable times, for any statements and case preparation necessary for the defense of any claims or litigation.

**Section 11. Preemption.** This Agreement shall preempt any contrary provisions set forth in Ch. 2, Art. V, Sec. 2-190 of the Fort Worth Code and Chapter 175 of the Texas Local Government Code, provided however that nothing herein shall be construed or interpreted to

preempt Section 2-190(c) or (d) or otherwise require the City to subsidize health care coverage for any individual who is not otherwise eligible for a subsidy.

## **Section 12. Term of this Agreement.**

a. This Agreement (Appendix D of the 2014-2018 CBA) shall be effective upon the Effective Date and shall remain in effect regardless of the expiration or termination of the current CBA, and regardless of whether a new CBA is executed by the 30<sup>th</sup> day of September, 2019.

b. This Agreement shall remain in full force and effect until September 30, 2023, or until such time as it is superseded by a new agreement between the Parties, whichever occurs earlier; provided however, that in no event shall this Agreement continue in effect after September 30, 2023. This provision notwithstanding, indemnifications required by this Agreement in Section 10 shall survive the expiration or termination of this Agreement.

## **Section 13. Miscellaneous Provisions**

a. Contract Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

b. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

c. Force Majeure. If either Party is unable, either in whole or part, to fulfill its obligations under this Agreement due to acts of God; strikes, lockouts, or other industrial disturbances; acts of public enemies; wars; blockades; insurrections; riots; epidemics; public health crises; earthquakes; fires; floods; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any state; declaration of a state of disaster or of emergency by the federal, state, county, or City government in accordance with applicable law; issuance of a Level Orange or Level Red Alert by the United States Department of Homeland Security; any arrests and restraints; civil disturbances; or explosions; or some other reason beyond the Party's reasonable control (each a "Force Majeure Event"), the obligations so affected by such Force Majeure Event will be suspended only during the continuance of such event.

d. Fiscal Funding Limitation. In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal period for payments due under this contract, then the City will immediately notify the Association of such occurrence and this Agreement shall be terminated on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except to the portions of annual payments herein agreed upon for which funds shall have been appropriated.

e. Right to Audit. The Association and the Trust agree that the City's designated independent auditor shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Trust involving transactions relating to this Agreement. The Trust agrees that the City's designated independent auditor shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The City shall give the Association and the Trust reasonable advance notice of intended audits.

f. No Third-Party Beneficiaries. The provisions and conditions of this Agreement are solely for the benefit of the City, the Association, the Trust, members of the Covered Populations, and their lawful assigns or successors, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

g. Venue and Jurisdiction. Should any action, whether real or asserted, at law or in equity, arise out of the execution, performance, or attempted performance of this Agreement, venue for said action shall lie in the state district courts, Tarrant County, Texas.

h. Applicable Law. This Agreement shall be construed under and in accordance with Texas law to the extent not otherwise preempted by ERISA (or other applicable federal law).

i. Notices. Notices to be provided hereunder shall be sufficient if forwarded to the other party by hand-delivery or via U.S. Postal Service certified mail, postage prepaid, to the address of the other party shown below:

If to City:  City of Fort Worth Attn: Asst. City Manager of HR and Benefits 200 Texas Street Fort Worth, Texas 76102	If to Association:  IAFF Local 440 Attn: President 3855 Tulsa Way Fort Worth, Texas 76107-3345
---	---

j. Paragraph Headings. The paragraph headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

k. Assignment and Successors. The Association shall not assign or subcontract all or any part of its rights, privileges, or duties under this Agreement without the prior written consent of the City. Any attempted assignment of this Agreement without the City's prior written approval shall be void and constitute a breach of this Agreement.

If City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Association under which the assignee agrees to be bound by the duties and obligations of the Association under this Agreement. The Association and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants

consent to a subcontract, the subcontractor shall execute a written agreement with the Association referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Association under this Agreement as such duties and obligations may apply. The Association shall provide the City with a fully executed copy of any such subcontract.

l. Compliance with Laws, Ordinances, Rules and Regulations. The Association and the Trust, their officers, agents, servants, employees, and subcontractors, shall abide by and comply with all laws, federal, state and local, including all ordinances, rules and regulations of the City. It is agreed and understood that, if the City calls to the attention of the Association or the Trust any such violation on the part of the Association, the Trust or any of either's officers, agents, servants, employees, or subcontractors, then the Association or Trust shall immediately desist from and correct such violation. This section shall survive the expiration or termination of this Agreement.

m. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

n. Breach/Termination/Opportunity to Cure. If either Party commits a material breach of this Agreement, the non-breaching Party must give written notice to the breaching Party that describes the breach in reasonable detail. The breaching Party must commence curing such breach within fourteen (14) calendar days after the time the breaching Party receives such written notice and complete the cure within fourteen (14) calendar days from the date of commencement of the cure. If the breaching Party does not substantially cure such breach within the stated period of time, the non-breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, terminate this Agreement by giving written notice to the breaching Party; provided, however, if the breach is not reasonably susceptible to cure by the breaching Party within such fourteen (14) day period, the non-breaching Party shall not exercise its option to terminate this Agreement so long as the breaching Party has commenced to cure the default within such fourteen (14) day period and diligently completes the work within a reasonable time without unreasonable cessation of the work to complete the cure.

o. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the Parties.

p. Signature Authority. Each person signing this Agreement hereby warrants that he or she has the legal authority to execute this Agreement on behalf of his or her respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

q. Governmental Powers. The Association and the Trust agree and understands that the City does not waive or surrender any of its governmental powers by execution of this Agreement.

r. Non-Waiver. The failure of either Party to insist upon the performance of any term or provision of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment to any extent of the City's, the Association's, or the Trust's right to assert or rely on any such term or right on any future occasion.

s. Entire Agreement. This written instrument (together with any attachments, exhibits, and appendices) constitutes the entire understanding between the Parties concerning the work and services to be performed hereunder, and any prior or contemporaneous, oral or written agreement that purports to vary from the terms hereof shall be void.

t. Compliance with State Anti-Boycott Law. The Association and the Trust acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this Agreement, the Association and the Trust each certifies that its signature provides written verification to the City that the Association and the Trust: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.***

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED TO HAVE THIS AGREEMENT TO BE SIGNED BY THEIR DULY AUTHORIZED REPRESENTATIVES ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

**CITY OF FORT WORTH**

**FORT WORTH PROFESSIONAL  
FIREFIGHTERS ASSOCIATION, LOCAL 440**

\_\_\_\_\_  
David Cooke, City Manager

\_\_\_\_\_  
Michael Glynn, President

\_\_\_\_\_  
Susan Alanis  
Assistant City Manager

**TRUST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Christopher Troutt  
Senior Assistant City Attorney

Attest:

\_\_\_\_\_  
Mary Kayser, City Secretary

M&C: \_\_\_\_\_

Date Approved: \_\_\_\_\_

DRAFT



By execution hereof, I acknowledge and agree on behalf of the \_\_\_\_\_ (the “Trust”)

- that I have legal authority to bind the Trust,
- that I have reviewed the Trust Agreement and understand the same
- that I hereby bind and commit the Trust to compliance with the terms of the Trust Agreement
- that I have reviewed the Healthcare Contract between the City of Fort Worth and the Fort Worth Professional Firefighters Association (the “Agreement”)
- that I understand the Trust’s rights, responsibilities, and duties under the Agreement and
- that I hereby bind and commit the Trust to compliance with the Agreement.

**TRUST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_