

SIDE LETTER
San Bernardino County Firefighters Local 935
Firefighter Unit and Fire Suppression Aide Unit

HEALTHCARE TRUST

Section 1 – General Provisions

- a. Following the approval of the February 8, 2025 through February 28, 2030 Memorandum of Understanding (“MOU”) between The San Bernardino County Fire Protection District and the San Bernardino County Professional Firefighters IAFF, Local 935 (hereinafter “the Parties”), the Parties met and conferred regarding the Union’s establishment of a voluntary employee benefit association. This Side Letter Agreement (sometimes referred to as “Agreement”) memorializes the Parties’ related understanding.

San Bernardino County Professional Firefighters, IAFF, Local 935 (“Union”) shall establish a voluntary employee benefit association (“VEBA” or “Trust” or “Union Plan”) that funds benefits under a plan that (i) offers medical, dental, vision, prescription drug coverage and wellness benefits that are qualifying medical expenses under Internal Revenue Code (“IRC”) section 213(d) (collectively, “Healthcare Benefits”) (ii) is compliant with both IRC section 4980H, and the Affordable Care Act (“ACA”) rules mandating applicable large employers to offer health coverage satisfying minimum benefits and cost requirements, (iii) does not create Government Accounting Standards Board (“GASB”) Other Post-Employment Benefit (“OPEB”) liability for the San Bernardino County Fire Protection District (“Fire District”), and (iv) is an “accident or health plan” that satisfies the requirements of section 1.106-1 of the IRC regulations. The Fire District is not a party to the Trust agreement, nor is the Fire District responsible for administering the Trust or related plan and the obligations of the Fire District set forth herein do not constitute administration of the Trust or plan. The Trust will provide sufficient documentation and information for the Fire District to conduct an analysis to determine whether the Trust meets the criteria outlined in this paragraph and is relevant to the Fire District’s compliance with other applicable state and federal statutes. The Parties shall utilize best efforts to negotiate additional details of the Trust and plan pursuant to California Government Code section 3505.

- (1) The Union Plan shall sponsor Healthcare Benefits through the Trust to eligible active Fire District employees (“Employee(s)”). An Employee, for the purpose of this Side Letter Agreement, is defined as a Fire District employee in a regular position, who is a bargaining unit member of the San Bernardino County Professional Firefighters IAFF, Local 935, (“Bargaining Unit Member”) as defined in classifications listed in Appendix B of the MOU, and who has not terminated employment from the Fire District, including those on paid status and on approved unpaid leave of absence.

The Union Plan may also offer retiree Healthcare Benefits to former Fire District employees (“Retiree(s)”) who were active Bargaining Unit Members when their Fire District employment terminated. Eligibility shall be defined in the Union Plan document.

- (2) The Union Plan will be comprised of: a plan(s) covering Employees and their eligible dependents (“Active Plan(s)”); and may include a separate component plan(s) covering Retirees and their eligible dependents (“Retiree Plan”). All Fire District-paid subsidies shall be used solely to fund the Active Plan(s), and no Fire District-paid subsidies shall fund the Retiree Plan. The Trust will be sponsored and administered by the Union.
- (3) The Parties agree to a “side-by-side” which allows employees to choose to receive Healthcare Benefits through the Fire District or Union Plan.
- (4) The Union will ensure that the Trust will maintain separate accounting for Employees and Retirees who are eligible for Healthcare Benefits under the Union Plan to ensure that Fire District-paid subsidies are solely used for Employees on the Active Plan(s). The Fire District-paid subsidies to the Active Plan(s) will be used solely to fund Healthcare Benefits under the Active Plan(s), including reasonable administrative expenses, and may not be diverted to any other purpose such as the funding of benefits or expenses of the Retiree Plan. Employee contributions to the Trust, along with investment earnings on those funds will be used solely to fund Healthcare Benefits provided by the Trust, including reasonable administrative expenses.

The Healthcare Benefits under the Union Plan will maintain separate underwritten rates for the Active and Retiree plans. The Premium Subsidies will not be used to fund benefits or expenses of the Retiree Plan.

- (5) The Union will ensure that the funds in the Trust will not be co-mingled with Union funds or other funds outside the Trust. The Trust shall be an approved VEBA and structured so that earnings in the Trust will be tax-exempt and benefits to Employees will be tax-free to the extent possible under the Internal Revenue Code. As soon as practicable after full execution of this Agreement, but no later than 120 (one hundred and twenty) calendar days, the Union shall apply for recognition of the Trust as a tax-exempt VEBA under IRC Section 501(c)(9) by submitting Form 1024 and all required documentation to the IRS. The Union shall provide the Fire District with a copy of the application and any IRS correspondence regarding the application. If the IRS does not grant tax-exempt status, or if the Trust fails to maintain such status, the Union shall notify the Fire District immediately, and the parties shall meet and confer to address the tax implications.

Section 2 – One-Time Contribution to Trust

The Parties reached agreement for the Fire District to make a four million dollars (\$4,000,000) one-time contribution (“Contribution”) to the Union’s Trust upon the approval of this Side Letter Agreement. The Parties agree that the Contribution shall only be used for the creation, maintenance and administration of the Trust and for the exclusive benefit of the Employees and their dependents. The Contribution will be made in one installment. Beyond this contribution, the Fire District is not responsible for any future financial needs of the Trust. All Parties agree that no additional future contributions other than the premium subsidies included in Section 3 are provided for in this Agreement. If the agreed-upon Trust, as defined in Section 1(a), is not implemented as an approved VEBA within twenty-four (24) months of the final signed Side Letter Agreement, the Fire District’s four million dollars (\$4,000,000) Contribution will be returned to the Fire District, unless IRS review is still pending, in which case the Parties shall agree to a reasonable extension.

Section 3 – Fire District-Paid Subsidies for Active Employees Healthcare

- (1) Premium Subsidies shall fund medical, dental, vision, prescription drug coverage and wellness benefits that are qualifying medical expenses under IRC section 213(d). The Premium Subsidies below will be applicable only for Fire District Employees enrolled in the Active Plan(s) under the Union's Trust.

Following the initial Open Enrollment for the Healthcare Benefit plan offered by the Trust, Employees who elect to participate in the Healthcare Benefit plan under the Trust will no longer be eligible for Section 3 – "Medical Premium Subsidy" under the Medical and Dental Coverage and the Vision Care Insurance articles of the February 8, 2025 through February 28, 2030 MOU. Instead, Employees who elect to participate in the Union's Trust will receive the applicable Premium Subsidies per biweekly pay period as set forth below:

- Effective July 12, 2025: \$875.00 per biweekly pay period
 - Effective July 11, 2026: \$900.00 per biweekly pay period
- (2) For Employees who elect to participate in the Healthcare Benefits Trust, the Fire District will contribute the Premium Subsidies amounts as specified in Section 3(1) to the Trust for the sole purpose of offsetting the cost of such Employees' Healthcare Benefits. If at any time, the Premium Subsidy exceeds the underwritten active premiums for medical, dental, vision, prescription drug coverage and wellness benefits, the excess amounts shall be used solely to fund future Healthcare Benefits for Employees as defined in Section 1a.(1). At no time may the Premium Subsidies be used to subsidize Retiree Healthcare Benefits, including but not limited to medical, dental and vision premiums that creates an explicit or implicit subsidy resulting in OPEB liability for the Fire District.
 - (3) For Employees who elect to participate in the Union's Trust, outstanding premium balance in excess of the Premium Subsidies for the Employee's active Healthcare Benefits will be deducted on a bi-weekly basis from the Employee's pay warrant in amounts established by the Trust. Employees may elect to designate the deductions as pre-tax or after-tax, subject to the terms of the County's Section 125 Premium Conversion Plan. The Fire District and the Union acknowledge that the Fire District is not a party to the Trust, and that the permitted use of Trust funds collected through Employee contributions is governed exclusively by the Trust's terms.
 - (4) Late Payment – The Fire District agrees to remit payment due to the Trust five business days after the pay date of each pay period. For example, for pay period ending July 25, 2025, with the pay date of August 6, 2025, the payment will be remitted to the Trust by August 13, 2025. If the Fire District fails to remit payment by the due date, the Union will notify the Fire District as soon as practicable to request a meeting to identify and implement solutions to ensure timely payment.

Section 4 – Compliance with Applicable Law

- (1) The Trust shall comply with all laws applicable to medical, dental, and vision plans and/or healthcare trust funds and the administration and management thereof.
- (2) In the administration and provision of medical, dental, and/or vision plans, the Trust shall comply with the Consolidated Omnibus Budget Reconciliation Act (COBRA), HIPAA, ACA, and all other applicable laws and regulations. The Fire District and the Union, through the Trust, will work together to ensure compliance with COBRA.

Section 5 – Indemnification and Insurance

- (1) In addition to the obligations of the Trust outlined in this Side Letter Agreement, the Union will be responsible for administering the Trust and all accounting practices relating to the Trust. Accounting practices will be in accordance with industry standards for trust fiduciaries. The parties agree that San Bernardino County (“County”) and the Fire District, including its officers, employees, or agents, shall have no responsibility or liability for the operations, management decisions, accounting decisions and practices of the Trust.
- (2) Except where such indemnification is prohibited by law and as set forth in Section 5(3) below, the Union shall defend (with counsel reasonably approved by the Fire District), indemnify and hold harmless the Fire District and the County, and all officers, employees, agents, and volunteers from any and all claims, actions, losses, damages and/or liability arising out of, or in any way related to, the Trust and/or any administration of its health plans, including those related to the taxable status of Employee contributions provided pursuant to this Agreement, and those related to any determination by any state or federal tax authority that contributions required by this Agreement do not qualify as tax exempt contributions.
- (3) The Union’s obligation to defend, indemnify and hold harmless as set forth in Section 5(2) above (the “Indemnification”) shall not apply to any breach by the Fire District of its obligations under this MOU/agreement, including any acts, errors or omissions of the Fire District, in the provision of the payment of the Premium Subsidies as indicated in Section 3 of this Side Letter Agreement and the one-time contribution to the Trust as outlined in Section 2 of this Side Letter Agreement, or to any HIPAA violations made by the Fire District. Nor shall the Indemnification apply to the Fire District’s intentional misconduct or gross negligence. However, the Union’s Indemnification shall apply to the Fire District’s active or passive negligence, except if the Fire District commits HIPAA violations as set out above. Notwithstanding the foregoing, this paragraph does not apply to the extent the Fire District’s acts, errors or omissions arise from negligence, gross negligence, or willful misconduct of the Union or the Trust.

Section 6 – Eligibility and Enrollment

- (1) Employees must enroll in either the Healthcare Benefits plans offered by the Fire District or Union. There will be no opt-out or waive options for medical, dental and vision plans for Employees who participate in either the Fire District’s Active Plan(s) or the Trust. For details on the requirements and eligibility for the Union plan, Employees should refer to the applicable Trust plan document. For additional eligibility terms not covered in this Side Letter Agreement related to medical, dental, vision coverage and Premium Subsidies, Employees should refer to the MOU.
- (2) All components of an employee’s Healthcare Benefits must be either under the Healthcare Benefits offered by the Fire District or the Union Trust. Additionally, an employee who is covered under the benefits plan of another County or Fire District employee cannot be simultaneously covered by both plans.
- (3) Newly hired employees into the Bargaining Unit may choose to participate in either the Fire District Healthcare Benefits or the Union Trust. If a newly hired Employee fails to select a medical plan upon hire, the Employee will be automatically enrolled in the lowest-cost self-only medical, dental and vision coverage options under the Union Trust plans. If an automatically enrolled Employee is responsible for paying premiums for such coverage, the amount will be deducted after-tax from their Fire District compensation. Moreover, any outstanding premium balance in excess of the Premium Subsidies will be the Employee’s responsibility.

- (4) Employees may change from the plan in which they are enrolled only (i) during open enrollment or (ii) if permitted by the relevant plans' policies, upon the occurrence of Internal Revenue Code (IRC) Section 125 qualifying events. If applicable, Employees must sign and provide the County/Fire District with a written authorization for deductions via paper and/or electronic signature to comply with the County's Section 125 Premium Conversion Plan. The Union shall certify that the Union Trust will accept responsibility for the administration of the Section 125 Premium Conversion Plan with respect to Employees enrolled in the Active Plan(s) under the Union Trust.
 - (5) Current employees may maintain participation in the Fire District Healthcare Benefits plans or the Union Trust. This choice becomes effective on the earliest date permitted by the Union Trust and Fire District Healthcare Benefits plans and, if applicable, the County's Section 125 Cafeteria Plan. Changes in Bargaining Unit representation will be deemed to be a qualifying event that allows employees to make mid-year changes between the Fire District Healthcare Benefits plan or the Union Trust.
- If the employee does not elect to enroll in the Union Trust, their existing coverage under the Fire District's Healthcare Benefits plan will continue until the next permitted election change date.
- (6) Employees who do not make a new plan selection during open enrollment will automatically retain their current coverage status for the subsequent plan year.
 - (7) Employees returning from a leave of absence will continue to participate in the Healthcare Benefits plan (i.e., plans offered by the Trust or Fire District) in which they were enrolled at the beginning of the leave. Employees who are on leave during the initial Open Enrollment for the Healthcare Benefits plan offered by the Trust will be eligible to elect to participate in the Healthcare Benefits plan under the Trust while on leave.
 - (8) The open enrollment period and plan year period for the Trust shall coincide with the County/Fire District's open enrollment and plan year period. The Trust shall work closely with the County/Fire District in preparation for the County/Fire District's plan year and production of open enrollment materials. The parties agree that both the County/Fire District and the Union Trust may educate employees regarding the Union's Trust and County medical plan options.

Section 7 – Administration of Trust

- (1) The County will transmit eligibility files and all contributions as provided in Section 3 to the Trust on a bi-weekly basis for the purpose of plan administration as required by the Trust. Prior to the County disclosing Employees' Protected Health Information to the Union Trust's third-party administrator (TPA)/consultant (e.g., Brown Insurance Services), the County and the Union Trust's TPA/consultant shall fully execute a mutually agreed upon Business Associate Agreement. The County will deduct the following administrative fees per participating Employee from the transfer of premiums to the trust on a bi-weekly basis.

Plan Enrollment in Trust	Per Enrolled Employee Per Pay Period
Medical	\$0.69
Dental	\$0.50
Vision	\$0.23

Likewise, the Union ensures that the Trust will provide the County on a bi-weekly basis files containing Employees' plan elections (e.g., Employee Only, Employee + 1, or Employee + 2 or more), enrollment changes (i.e., qualifying life events), and any other information necessary for the County to administer payroll deductions and process payments to the Trust, provided the County certifies that it shall comply with all relevant statutes and regulations that ensure the protection of Protected Health Information and shall only use the information for plan administration. The Union ensures that the Trust will be responsible for reconciling any billing discrepancies with their healthcare carrier plans. Any discrepancies identified will be paid or withheld from a future scheduled payment.

- (2) The Union ensures that the Trust will be responsible for reimbursing the County up to a maximum of seventy-nine thousand dollars (\$79,000) for reasonable start-up administrative costs incurred by the County in connection with the establishment and implementation of the VEBA. These costs may include, but are not limited to, costs related to the Trust's formation and initial administration. The County shall invoice the Trust for all such costs incurred.
- (3) The Union ensures that the Trust will be administered by Trustee(s) who shall serve in a legally recognized fiduciary capacity, and that the Trust shall maintain fiduciary liability insurance coverage for Trustees. The County/Fire District may request to be listed as an additional insured on an endorsement of the third-party administrator's errors and omission policy.
- (4) The Union ensures that the Trust will be responsible for all accounting practices relating to the Trust in accordance with industry standards for trust fiduciaries. To the extent that the County/Fire District may be required to obtain information from the Trust for the purpose of completing its annual financial statements, the Union ensures that the Trust will cooperate in providing necessary information.
- (5) The Union ensures that the Trust will be responsible for all policies relating to the investment of trust funds, including reserves. Investment practices will be in accordance with fiduciary standards.
- (6) The Parties agree that the County/Fire District, to include its officers, employees, or agents, shall have no fiduciary or administrative responsibility or liability whatsoever with respect to the Trust or the Union plans funded by the Trust, including but not limited to the accounting decisions and practices of the Trust, the investment decisions related to Trust funds, or any other aspect of the Trust's or plan's administration or operation.
- (7) The Parties may annually review how the administration of the Trust is working. The Union ensures that the Trust shall establish a liaison between the County's Employee Benefits and Services Division and the Trust Administrator to address such concerns.
- (8) Should an independent audit of the Trust identify substantial deficiencies or compliance issues, the County/Fire District will articulate its concerns in writing to the Trust. The independent auditor shall provide recommendations to resolve the substantial deficiencies or compliance issues. Parties agree to meet within thirty (30) days of the County/Fire District's notification to seek necessary solutions, giving due consideration of the recommendations of the independent auditor.
- (9) At the Fire District's expense, the Fire District shall have the ability to review Trust's audit results and/or independently conduct its own audit of the Union Trust, including its operations.
- (10) The Fire District shall have the ability to meet with the Union, its Board of Directors, the Trustees, Trust Counsel, or the Trust Administrator, as applicable, to discuss any concerns it has with the Trust.
- (11) The Union ensures that the Trust shall not terminate any major healthcare benefit plan (medical, dental, or vision) under the Trust for Employees during the term of this Agreement. However, the

Parties agree that the Union reserves the right to replace a major benefit plan when necessary due to cost, access concerns, regulatory compliance, carrier performance issues, network disruptions, plan sustainability, or market changes, provided that a suitable replacement plan is secured to ensure uninterrupted coverage for Employees. The Fire District will be notified at least thirty (30) calendar days prior to coverage termination.

If a provider discontinues a major benefit plan, the Trust shall be given a reasonable period to secure a suitable replacement.

The Fire District must be notified at least thirty (30) calendar days in advance of any coverage termination or replacement.

- (12) The Union ensures that the Trust shall cooperate with the County/Fire District and provide all necessary information to the County/Fire District within agreed upon or established timelines as set forth in the Side Letter Agreement, plan documents, applicable law, or pursuant to the County/Fire District's request in order for the County/Fire District to fulfill its compliance and regulatory obligations. To the extent required by applicable law, the Trust will be responsible for paying any penalties caused by failure to comply with Trust reporting and compliance requirements.
- (13) The Union shall be responsible for the Trust and the Third-Party Administrator of the Trust's plans complying with all provisions of this Article, and any other applicable agreements related to the Trust. The County/Fire District is not responsible for the administration of the Trust and the Union's compliance with this Side Letter Agreement or any applicable agreements related to the Trust. The Union acknowledges that the County/Fire District has no responsibility whatsoever regarding the tax treatment of Trust earnings and benefit payments from the Trust, and that the Union and Trust are solely liable for any adverse tax consequences associated with those amounts.

This Agreement hereby supersedes and replaces all prior agreements both written and oral relating to the matters covered by this Agreement. In the event any prior agreements shall have terms which conflict with this Agreement, the terms of this Agreement shall control.

Section 8 – Meet and Confer

- (1) The parties will meet and confer on any Trust-related issues if they are required to do so under Government Code section 3500 et seq. or upon mutual agreement to do so.
- (2) If the Union proposes for the Trust to implement a self-insured medical, dental, and/or vision plan, the Parties agree to meet and confer prior to the implementation.

Section 9 – Post-Employment Healthcare

Post-Employment Healthcare established by the Trust shall not create an OPEB liability as indicated by the accounting and reporting requirements under the GASB or other liability for the Fire District as determined by the Fire District. Upon request, the Union will provide the County/Fire District sufficient documentation and information for the County/Fire District to conduct an analysis to determine liability for the County/Fire District.

Section 10 – Choice of Law and Venue

The grievance procedure in the MOU shall not apply to disputes regarding this Agreement. However, either party may request mediation in writing to hear disputes under this Agreement.

This article shall be governed by and construed according to the laws of the State of California. The parties agree that the venue of any action or claim brought by any party to this article will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court which would allow them to request or demand a change of venue. If any action or claim concerning the article is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

Date Agreed: 7/24/2025

San Bernardino County Fire Protection District



Leonardo Gonzalez
Human Resources Director

IAFF, Local 935



Jim Grigoli
Labor Representative