

190480

**SIDE LETTER AGREEMENT
SUPPLEMENTAL TO THE
2015 – 2020 COLLECTIVE BARGAINING AGREEMENT
BETWEEN
CITY OF KANSAS CITY, MISSOURI
AND
LOCAL NO. 42, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS**

WHEREAS, Article V, Section 7 of the Collective Bargaining Agreement between the City and IAFF Local No. 42, which addresses Employee Health and Wellness, states:

The City shall continue to provide an Employee Assistance Program (EAP) and the IAFF/IAFC Candidate Physical Agility Test (CPAT) for entry-level candidates. The City and the Union agree to encourage members to get annual physicals from their personal physician in accordance with the IAFF/IAFC Wellness Fitness Initiative. The City shall maintain at no cost to the member the health and wellness requirements of HAZMAT during the term of this Agreement. All required vaccinations for EMS licensure will be provided by the fire department at no cost to the member; and,

WHEREAS, Article XXI, Section 1 of the Collective Bargaining Agreement between the City and IAFF Local No. 3808, which addresses Employee Health and Wellness, states:

The fire department shall provide a health and wellness initiative modeled after the IAFF/IAFC Health and Wellness Initiative and as established by the Labor/Management partnership; and

WHEREAS, Article XXV, Section 15 of the Collective Bargaining Agreement between the City and AFSCME Local No. 500, which addresses an Employee Assistance Program, states:

The City and the Union are both participating in the Employee Assistance Program. As long as they are participating they shall cooperate to make it a success.

WHEREAS, bargaining unit members of IAFF Local No. 42 are subject to the Drug and Alcohol Misuse Testing Policy found in Appendix B of the Collective Bargaining Agreement between the City and IAFF Local No. 42 and such Policy requires mandatory referrals to an Employee Assistance Program under certain specified conditions when the Policy has been violated; and,

WHEREAS, bargaining unit members of IAFF Local No. 3808 are subject pursuant to Article XIX of the Collective Bargaining Agreement between the City and Local 3808 to the Drug and Alcohol Misuse Testing Policy found in Appendix B of the Collective Bargaining Agreement between the City and IAFF Local No. 42 and such Policy requires mandatory referrals to an Employee Assistance Program under certain specified conditions when the Policy has been violated; and,

WHEREAS, bargaining unit members of AFSCME Local No. 500, pursuant to Article XXV, Section 15, of the Collective Bargaining Agreement between the City and AFSCME Local No. 500, and City employees who are not in a bargaining unit are subject to the Drug and Alcohol Misuse Testing Policy found in Appendix G of the Human Resources Rules and Policy Manual and such Policy requires mandatory referrals to an Employee Assistance Program under certain specified conditions when the Policy has been violated; and,

WHEREAS, the composition and certain characteristics of the members of the Kansas City Fire Department, as they relate to behavioral health, have changed; and,

WHEREAS, among other things, changes include an increased incidence of) Post Traumatic Stress Disorder (PTSD) and related symptoms and afflictions; and,

WHEREAS, the International Association of Fire Fighters (IAFF) and IAFF Local No. 42 have developed programs and expertise in matters of behavioral health, through such programs as the IAFF Center of Excellence and the IAFF's Peer Counselor Program which can help all members of the Fire Department; and,

WHEREAS, IAFF Local No. 42, at no expense to the City has developed and trained its own cadre of Peer Counselors; and,

WHEREAS, the City and IAFF Local No. 42 have determined that an array of behavioral health services, such as Employee Assistance Program services, can be best provided by IAFF Local 42 to its members and the members of the Fire Department; NOW THEREFORE,

The City and IAFF Local No. 42 agree and stipulate that:

1. Compensation.

A. The amount the City will pay Local 42 under this Side Letter Agreement will not exceed \$250,000. Local 42 will be paid in twelve monthly installments of \$20,833.33.

B. Local 42 will bill the City, in a form acceptable to the City, on a monthly basis.

C. It shall be a condition precedent to payment of any invoice from Local 42 that Local 42 is in compliance with, and not in breach or default of, all terms, covenants and conditions of this

Side Letter Agreement. If damages are sustained by City as a result of breach or default by Local 42, City may withhold payment(s) to Local 42 for the purpose of set off until such time as the exact amount of damages due City from Local 42 may be determined.

D. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the terms of this Side Letter Agreement.

E. City is not liable for any obligation incurred by Local 42 except as approved under the provisions of this Side Letter Agreement.

2. **Scope of Services.** Local 42 shall perform the Scope of Services appended to this Side Letter Agreement as Attachment 1 which is incorporated herein and made a part of this Agreement.

3. **Effective Date and Term of Agreement.** This Side Letter Agreement will become effective upon the City's Director of Finance signing it. This Side Letter Agreement shall terminate one year from its effective date or upon the termination of the Collective Bargaining Agreement between the City and Local 42, whichever shall first occur. The City is authorized to enter into an amendment to extend the term of this Side Letter Agreement.

4. **Indemnification**

A. For purposes of this Section only, the following terms shall have the meanings listed:

1) Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

2) Local 42's Agents means Local 42's officers, employees, consultants, subcontractors, successors, assigns, invitees, and other agents.

3) City means City and its agents, officials, officers and employees.

B. Local 42's obligations under this Paragraph with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Local 42 is required to procure and maintain under this Side Letter Agreement.

C. Local 42 shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Side Letter Agreement caused in whole or in part by Local 42 or Local 42's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of the City. Local 42 is not obligated under this Section to indemnify City for the sole negligence of City.

D. Nothing in this Section shall apply to indemnification for professional negligence which is specified in a separate provision of this Side Letter Agreement.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

5. Indemnification for Professional Negligence. Local 42 shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Side Letter Agreement, caused by Local 42, its employees, agents, subcontractors, or caused by others for whom Local 42 is liable, in the performance of professional services under this Side Letter Agreement. Local 42 is not obligated under this Section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

6. Independent Contractor. Local 42 is an independent contractor as regards the Scope of Work in this Agreement and is not City's agent. Local 42 has no authority to take any action or execute any documents on behalf of City in connection with such Scope of Work.

7. Insurance.

A. Local 42 shall procure and maintain in effect throughout the duration of this Side Letter Agreement insurance coverage not less than the types and amounts specified in this Section. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Local 42's Self-Insured Retention.

1) Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a. Severability of Interests Coverage applying to Additional Insureds.
- b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- c. No Contractual Liability Limitation Endorsement.
- d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

2) If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of \$100,000 accident with limits of \$500,000 disease-policy limit And \$100,000 disease-each employee

3) Professional Liability Insurance with limits per claim and annual aggregate of

\$1,000,000.

B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Side Letter Agreement. Local 42 shall provide to City at execution of this Side Letter Agreement a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

D. Local 42's failure to maintain the required insurance coverage will not relieve Local 42 of its contractual obligation to indemnify the City pursuant to the above Sections. If the coverage afforded is cancelled or changed or its renewal is refused, Local 42 shall give at least thirty (30) days prior written notice to City. In the event of Local 42's failure to maintain the required insurance in effect, City may upon ten (10) days' notice and an opportunity to cure, pursue its remedies for breach of this Side Letter Agreement as provided for herein.

E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

8. **Governing Law.** The provisions of this Side Letter Agreement shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Local 42 submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri, waive any and all objections to jurisdiction and venue; and will not raise forum non conveniens as an objection to the location of any litigation.

9. **Compliance with Laws.** Local 42 shall comply with all federal, state and local laws, ordinances and regulations applicable to the Scope of Services of this Side Letter Agreement.

10. **Termination.** City may, at any time upon ten (10) days' notice to Local 42 specifying the effective date of termination, terminate this Contract, in whole or in part. If this Side Letter Agreement is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination.

11. **Default and Remedies.** If Local 42 shall be in default or breach of any provision of this Side Letter Agreement, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Local 42 notice and

opportunity to correct such default or breach.

12. **Waiver.** Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Side Letter Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Local 42 to which the same may apply and, until complete performance by Local 42 of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Side Letter Agreement or by law despite any such forbearance or indulgence.

13. **Modification.** Unless stated otherwise in this Contract, no provision of this Side Letter Agreement may be waived, modified or amended except in writing signed by the parties.

14. **Severability of Provisions.** Except as specifically provided in this Side Letter Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Side Letter Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Side Letter Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Side Letter Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

15. **Records.**

A. For purposes of this Section “Record” shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Side Letter Agreement and all Side Letter Agreement amendments and renewals.

B. Local 42 shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Side Letter Agreement and all Side Letter Agreement amendments. City shall have a right to examine or audit all Records and Local 42 shall provide access to City of all Records upon ten (10) days written notice from the City.

C. The books, documents and records of Local 42 in connection with this Side Letter Agreement shall be made available to the City within ten (10) days after the written request is made.

16. **Assignability.** Local 42 shall not assign or transfer any part or all of Local 42’s obligation or interest in this Side Letter Agreement without prior written approval of City. If Local 42 shall assign or transfer any of its obligations or interests under this Side Letter Agreement without the

City's prior written approval, it shall constitute a material breach of such Agreement. This provision shall not prohibit Local 42 from subcontracting as otherwise provided for herein.

17. **Subcontracting.** Local 42 may subcontract any part or all of Local 42's obligations or interests in this Side Letter Agreement. The utilization of subcontractors shall not relieve Local 42 of any of its responsibilities under this Side Letter Agreement, and Local 42 shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. Local 42 shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Side Letter Agreement in performing Local 42's services hereunder.

18. **Notices.** All notices required by this Side Letter Agreement shall be in writing to the following:

CITY:

Fire Chief
635 Woodland Ave., Suite 2100
Kansas City, Missouri 64106
Phone (816) 513-4647
Facsimile (816) 513-4685

LOCAL 42:

President of IAFF, Local No. 42 International Association of Fire Fighters,
Local No. 42
6320 Manchester Avenue, Suite 42A
Kansas City, Missouri 64133
Phone (816) 783-5444
Facsimile (816) 358-8383

All notices are effective when delivered in person; or upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail; or upon receipt after dispatch by registered or certified mail, postage prepaid; or on the next business day if transmitted by overnight courier (with confirmation of delivery); or three business days after the date of mailing, whichever is earlier.

19. **Council Approval.** This Side Letter Agreement shall only be executed and shall only become effective following the passage of an ordinance by the City Council authorizing such Agreement.

Effective the date(s) set forth below this Side Letter Agreement is hereby incorporated as part of the Collective Bargaining Agreement between the parties.

TIM DUPIN
President
IAFF Local No. 42

Signed on _____, 2019

Approved as to form:

Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance

TROY SCHULTE
City Manager
City of Kansas City, Missouri

Signed on _____, 2019

ATTACHMENT 1

Scope of Services

I. Behavioral Health/Employee Assistance Program

- a. Offer all Fire Department (KCFD) employees in the classified service, and their spouses and dependents, professional counseling, assessment and referral through licensed clinicians in a 4-5-session model, with appointments available at locations established by Local 42.
- b. Provide 24/7 emergency coverage through an assigned account representative, the EAP Director and other clinicians. Local 42 shall provide a cell phone to City for a representative who shall be available in the event of an emergency. Such representative shall be trained on all aspects of the KCFD EAP program components and protocol.
- c. Deliver support and consultation as needed in the development of an Occupational Stress Program.
- d. Assist with facilitation of referral and level of care approval process for KCFD employees in the classified service and their dependents covered by City insurance carriers. EAP representatives shall participate in meetings with City insurance providers as needed to facilitate improved coordination and ease of referral.
- e. Assist with delivery of training modules for all KCFD personnel in the classified service as needed to increase participation and ensure adherence to KCFD EAP policy. Provide training module to all new cadet classes and newly promoted managers in the classified service related to stress, dispute management and other behavioral health issues.
- f. Provide professional counseling, assessment and referral for those KCFD personnel in the classified service who have been mandatorily referred pursuant to the relevant Drug and Alcohol Misuse Testing Policy. Such counseling, assessment and referral shall be in a manner consistent with any such Policy.

II. Data Collection and Reporting

- a. Local 42 shall submit data quarterly to the KCFD Wellness coordinator for internal review. Provider shall collect data in format needed for submission to IAFF/IAFC/NFPA annual surveys. All data shall be provided in format that complies with the input parameters for national survey instruments.
- b. Data shall include activity reports and aggregate data from all clinical and health screenings.