

ACTUARIAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 2016, by and between the EMPLOYEES’ RETIREMENT FUND OF THE CITY OF FORT WORTH d/b/a Fort Worth Employees’ Retirement Fund (the “Fund”), a qualified governmental pension fund existing under the laws of the State of Texas, and _____ (the “Actuary”), a _____, duly organized under the laws of the State of _____, and located at _____.

WITNESSETH

WHEREAS, the Fund desires to engage the professional services of the Actuary to, among other things, provide actuarial valuations and reports and to consult with and advise the Fund and its Board of Trustees (the “Board”) regarding the Fund’s actuarial needs;

WHEREAS, the Fund issued a request for proposals in connection with such desire (the “RFP”) and selected the Actuary’s proposal as most beneficial to the Fund; and

WHEREAS, the Actuary has demonstrated the expertise and experience to perform the actuarial services outlined in said proposal;

NOW, THEREFORE, in consideration of services to be performed and payments to be made together with mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. Actuary agrees to provide the services set forth in Schedule 1 of this Agreement in accordance with the work plan and schedule set forth therein in exchange for payment for such services in the amount(s) also set forth therein. Actuary acknowledges and agrees that it shall not be entitled to any payment in excess of the amount(s) specified in Schedule 1 associated with the set forth scope of services until and unless such excess is approved in writing by the Fund. As more

fully described in Schedule 1, for work performed that is outside the scope of services, charges shall be assessed on an hourly basis and at rates not to exceed those hourly rates set forth in Schedule 1.

2. The Actuary shall obtain and maintain during the life of this Agreement (and as indicated herein) all of the following insurance coverages:

- a. Commercial General Liability. Actuary shall provide and maintain a Commercial General Liability insurance policy which names the Fund as additional insured. Such policy shall be primary to and not contributing with any other insurance maintained by the Fund. Such policy shall cover legal liability for bodily injury, personal injury, and property damage arising out of Actuary's business operations, including those services that the Actuary provides pursuant to this Agreement. Such policy shall include, without limitation, endorsements for Products/Completed Operations, Blanket Contractual Liability Coverage, and Personal Injury with a limit of at least One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of at least Two Million Dollars (\$2,000,000). If such insurance is written on a Claims Made Form, such insurance shall be renewed or replaced with a policy containing Full Prior Acts Provision.
- b. Automobile Insurance. Automobile liability for vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- c. Workers' Compensation Insurance. Workers' compensation insurance as required by the State of Texas.
- d. E&O Coverage and Fiduciary Liability Insurance. Professional errors and omissions liability insurance and fiduciary liability insurance with policy limits of not less than Five Million Dollars (\$5,000,000.00) combined single limits, per occurrence and aggregate. The Actuary agrees that such insurance shall name the Fund as loss payee.

Actuary shall obtain and maintain said insurance during the life of this Agreement and for three years after completion of the work hereunder.

- e. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:
 - i. Additional insureds: “Employees’ Retirement Fund of the City of Fort Worth d/b/a Fort Worth Employees’ Retirement Fund and its Fund, officers, agents, and employees are additional insureds with respect to this subject project and contract” and
 - ii. Other insurance: “Any other insurance maintained by the Fund shall be excess and not contributing with the insurance provided by this policy.”
- f. Certificates of Insurance. Prior to performing any services under this Agreement, the Actuary shall provide to the Fund certificates of insurance showing the insurance coverages and required endorsements described above. With respect to the renewal during the term of this Agreement of any coverage required by this Agreement, the Actuary shall provide a certificate of insurance at least ten (10) days prior to the expiration of coverage.
- g. Notice. The Actuary acknowledges and agrees that any termination, cancelation, or reduction in the coverages set forth above shall constitute a breach of this Agreement and shall be grounds for immediate termination of this Agreement by the Fund. The Actuary further agrees that it will provide at least thirty (30) days written notice to the Fund of any such termination, cancelation, or reduction in coverage.

Nothing in this paragraph 2(a-g) shall be construed as waiving or limiting in any way the indemnity contained in this Agreement, any immunity or other defense the Fund may have to any claim brought against the Fund, or the extent to which the Actuary may be held liable for any claim against the Actuary.

3. The Actuary acknowledges that the Fund is a Texas governmental entity and, in connection therewith, the Fund reserves all immunities, defenses, rights or actions arising out of its status as a Texas governmental entity, including, without limitation, those provided by the Constitution of the State of Texas, and no waiver of such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by entering into this Agreement, including Schedule 1, by any express or implied provision thereof, or by any actions or omissions, whenever taken and regardless of whether taken pursuant to this Agreement. The provisions of this paragraph 3 will survive the termination of this Agreement.
4. The Actuary shall record all information and data obtained in the performance of the services provided under this Agreement and shall make such information available to the Fund upon request. Upon completion of this Agreement, all information and data shall become the property of the Fund. The Actuary agrees that it will not disclose to any third party any reports, data, or other information obtained, created, or provided in connection with this Agreement without the express written consent of the Fund. The Actuary acknowledges that, as a Texas governmental entity, the Fund is subject to both the Texas Public Information Act (the "TPIA") and the Texas Open Meetings Act (the "TOMA"). The Actuary acknowledges and agrees that the Fund shall be entitled to disclose any information required to be disclosed pursuant to, or otherwise deemed public information under, any federal, state, or local law, rule, or regulation, including the TOMA and the TPIA. The provisions of this paragraph 4 will survive the termination of this contract.
5. The Actuary acknowledges and agrees that it is an independent contractor and not an officer, agent, servant or employee of Fund. The Actuary shall have exclusive control of and exclusive right to control the manner of the work to be performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; the doctrine of respondeat

superior shall not apply as between Fund and the Actuary, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating a partnership or joint enterprise between Fund and the Actuary.

6. The Fund may terminate this Agreement at any time upon thirty (30) days written notice to Actuary. In the event that the Fund fails to perform any of its duties hereunder for a period of more than sixty (60) days after written notice by the Actuary of such failure, the Actuary may terminate this agreement and be entitled to compensation through the date of such termination, based on the work actually performed. This Agreement shall remain in effect until the earlier of either (a) March 1, 2022; or (b) the termination of this Agreement by either party as provided for in this paragraph 6.
7. This Agreement, including Schedule 1, constitutes the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.
8. Neither party hereto may assign, convey, or otherwise transfer any of its rights, obligations, or interest herein without the prior express written consent of the other party.
9. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, including its formation, performance, or termination, together with any other related claims, whether sounding in contract, tort, or otherwise. THE PARTIES EXPRESSLY SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION OF THE STATE OF TEXAS. THE PARTIES AGREE THAT ALL DISPUTES RELATING TO THIS AGREEMENT, AND OVER WHICH THE FEDERAL COURTS HAVE SUBJECT MATTER JURISDICTION, SHALL BE LITIGATED, IF AT ALL, EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION, AND IF NECESSARY, THE CORRESPONDING

APPELLATE COURTS. THE PARTIES FURTHER AGREE THAT ALL DISPUTES RELATING TO THIS AGREEMENT, AND OVER WHICH THE FEDERAL COURTS DO NOT HAVE SUBJECT MATTER JURISDICTION, SHALL BE LITIGATED, IF AT ALL, EXCLUSIVELY IN THE COURTS OF THE STATE OF TEXAS, IN TARRANT COUNTY, AND, IF NECESSARY, THE CORRESPONDING APPELLATE COURTS.

10. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

11. Actuary will be governed in its relations with the Fund and Board by the duties, requirements, and responsibilities of Texas law and as otherwise set forth in this Agreement. The Actuary will not enter into any agreement or take any action contrary to such duties, requirements, and responsibilities. The Actuary will not accept or perform an engagement involving the Fund's members, retirees, or any organization of such members and retirees other than the Fund without prior written consent of the Fund. Actuary warrants to the Fund and the Board that the services performed under this Agreement will be performed in accordance with generally accepted industry standards. In all of its relations with the Fund and Board, Actuary shall discharge its duties with respect to the Fund solely in the interest of the participants and their beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the Fund. Actuary shall act with the skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition to, and without limiting, any liability which Actuary may have under this Agreement or as a result of services performed under this Agreement, Actuary shall be liable for a breach of duties, requirements, or responsibilities under Texas law or as otherwise described in this Agreement of another entity which provides services to the Fund ("provider"), in the following circumstances:

- a. if Actuary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other provider, knowing such act or omission is a breach;
- b. if, by Actuary's failure to comply with the requirements set forth in this paragraph 11 in respect of the administration of its specific responsibilities, Actuary has enabled such other provider to commit a breach; or
- c. if Actuary knew or should have known of a breach by such other provider, unless Actuary makes reasonable efforts under the circumstances to remedy the breach.

12. **Indemnity.** THE ACTUARY SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE FUND AND ITS TRUSTEES, DIRECTORS, OFFICERS, AGENTS, ATTORNEYS, AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES (WHICH SHALL IN TURN INCLUDE ANY ATTORNEY FEES ASSOCIATED WITH THE ENFORCEMENT OF THIS PARAGRAPH 12), AND ALL EXPENSES IN ANY WAY ARISING OUT OF, RELATED TO, OR RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE ACTUARY OR ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM THE ACTUARY IS RESPONSIBLE IN CONNECTION WITH THE PROVISION OF SERVICES UNDER THIS AGREEMENT. This paragraph 12 shall not be construed as a waiver of any immunity or defense of the Fund, including any governmental immunity that would otherwise be available to the Fund against claims arising from the exercise of

governmental powers and functions. The provisions in this paragraph 12 will survive the termination of this Agreement.

13. The Actuary and its partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

14. This is a negotiated contract. Should any part of this Agreement be in dispute, the parties agree that the Agreement shall not be construed more favorably for either party on the grounds that such party did not draft the Agreement.

15. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one instrument

IN WITNESS WHEREOF, the Board has signed duplicates hereof, and _____ has caused its corporate name to be signed to said duplicates by its proper officers thereunto duly authorized on the day and in the year first above written.

By: _____

By: _____

President / CEO (Actuary)

Executive Director/CIO

ATTEST:

ATTEST:

By: _____

By: _____