OFFICE OF THE CITY ATTORNEY

MEMORANDUM

Please note that information provided below is a privileged memo: Attorney—Work Product and is understood to be preliminary to determination of policy on the questions presented and then action on the policy. Finally, it is intended as frank intra-office communication. As such, this memo is not subject to FOIA disclosure and is not to be disseminated without the City Attorney's expressed consent.

TO: Virg Bernero, Mayor
Randy Hannan, Chief of Staff
Chad Gamble, Chief Operating Officer

FROM: JANENE McINTYRE, City Attorney

DATE: November 23, 2015

RE: Report on Teamster 580 Retiree Health Care Contributions for Retirees between February 20, 2004 and February 8, 2010

PRE-2010 GROUP

For some time, certain Teamster 580 Union (T-580) retirees have disputed charges imposed by the City for providing retirement health care insurance as collectively bargained. This memo will focus on one particular group of such retirees, i.e., those who retired between February 20, 2004 and February 8, 2010. For convenience, this group will be referred to as the "Pre-2010 Group". An additional characteristic of this group is that its members have not yet begun to receive Medicare at the age of 65[1].

The significance of the February 20, 2004 start date is that it is the date the City commenced implementation of the concept commonly known as "Retirees Follow Actives" for T-580 health insurance purposes. The meaning of "Retirees Follow Actives" is more fully explained below. The significance of the February 8, 2010 end date is that this is when the 2003-2007 CBA was amended by a tentative agreement. The tentative agreement was ratified February 8, 2010 (2010 TA) and the summary of the 2010 TA provided that the changes to health care were not to take effect until the insurance vendors actually made the plan changes. Under this 2010 TA, the City and Union first agreed that active employees and retirees would be charged for a portion of their health care premiums for "Base Plan" insurance coverage.

[1] Under the T-580 CBA, the City provided retirement health care coverage converts to complementary Medicare coverage when the retiree begins to receive Medicare coverage.

BACKGROUND

As the Office of the City Attorney (OCA) has been advised, in early October of 2010, Jerry Ambrose, the Mayor's Executive Assistant and Finance Director, met with Human Resources Department (HR) personnel. One of the intended purposes of the meeting was to establish the points in time at which retirees in the different unions and City employment groups would commence "Retirees Follow Actives" for health insurance policies and coverage. For this meeting, the concept of Retirees Follow Actives was given the interpretation that the health insurance provided retirees would be the same insurance that the active employees (actives) were receiving at any given time. Stated differently, as current actives' insurance changed, such charges would also be effective for already retired union members, including changes in policies, deductibles, buy-ups, etc. Under this concept, when new changes are made to actives' health insurance plans, the changes would also apply equally to the retirees. For the Pre-2010 Group, this meant that those who retired after February 20, 2004 will follow actives. As a result of the meeting, a memo was generated that contained a summary of the conclusions of the meeting (Exhibit H)[2]. It should be noted that this was an internal meeting and no union representation was present or included in reaching the summary conclusions.

The October 2010 meeting was prompted in part by the fact that the language in many of the CBAs regarding retirees' health insurance was ambiguous as to *when* the retirees' insurance benefits would be tied to the actives' benefits, i.e., many of the CBAs were vague or silent as to the point in time when the retirees' insurance was to be fixed by the tie-bar to the actives' coverage. The question of the timing of the health insurance tie-bar was further complicated by a lack of uniformity in the City's CBAs with different unions and the contracts with other employment groups.

This ambiguity was acknowledged in the attached August 22, 2012 letter to the City Attorney from attorney Dennis B. DuBay, the City's outside labor law consultant (Exhibit I). Although Mr. DuBay's review was of the language the CBA for the UAW, the text interpretation he questions is that same language as that contained in the T-580 CBA, which is the subject of this review (See Exhibit B).

STANDARD OF REVIEW

It is well-established law that a collective bargaining agreement (CBA) is a contract between the employer and the union for the benefit of the union member employees. Therefore, the general legal contract principles apply when interpreting a CBA. These general principles have been succinctly laid out in *Doucette v. City of Marquette,* an unpublished opinion per curium of the Michigan Court of Appeals, issued August 9, 2011 (Docket No. 293124). The opinion cites reported Michigan authority.

> A contract must be interpreted according to its plain and ordinary meaning. *Holmes v. Holmes*, 281 Mich. App 575, 593; 760 NW2d 300 (2008). "The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by parties to reach their agreement." *Dobbeldare v. Auto-Owners Ins. Co.*, 275 Mich. App 527, 529; 740NW2d 503 (2007). If contractual language is clear and unambiguous, its meaning is a question of law, and courts must interpret and enforce the contract as written. *Frankenmuth Mut. Ins. Co. v. Masters,* 460 Mich. 105, 111; 595 NW2d 832 (1999). However, if contractual language is

[2] This memo is intended to supplement the March 18, 2015 memo from the City Attorney, Janene McIntyre, to the Mayor. Therefore, the exhibit lettering in this memo will be the same as, and continue from the March 18, 2015 memo.

> ambiguous, its meaning is a question of fact for the jury to decide. *Klapp v. United Ins. Group Agency, Inc.*, 468 Mich. 459, 469, 663 NW2d 447 (2003).
>
> A contract is ambiguous if it allows two or more reasonable interpretations, or if the provisions cannot be reconciled with each other. *Meagher v. Wayne State Univ.*, 222 Mich.App 700, 721-722; 565 NW2d 407 (1997). If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. *Id.* A court may not rewrite clear and unambiguous language under the guise of interpretation. Rather, courts "must give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp*, 468 Mich. At 468.

This recitation of the law is particularly important to the present inquiry because the linchpin of the City's position is that the CBA language is not ambiguous but instead clearly means Retirees Follow Actives. Conversely, the Pre-2010 Group asserts that the language contains the ambiguity pointed out in Dennis DuBay's letter (Exhibit I) and that the past practice before the 2010 TA established the CBA meaning. The Pre-2010 Group maintains that the past practice gives the CBA the meaning that retirees are entitled to continue to receive the health care that they were receiving as actives *at the time of their retirement*.

The court has recognized the importance of the issue of ambiguity as the starting point for analysis of disputed CBA language. In *Port Huron Ed v. Port Huron Sch Dist*, 452 Mich 309, 323 (1996), the court said:

> The initial question whether contract language is ambiguous is a question of law. If the contract language is clear and unambiguous, its meaning is a question of law. *Dykema v Muskegon Piston Ring Co*, 348 Mich 129, 138; 82 NW2d 467 (1957). Where the contract language is unclear or susceptible to multiple meanings, interpretation becomes a question of fact. *Zinchook v Turkewycz*, 128 Mich App 513; 340 MW2d (1983).

ANALYSIS

A. Question and Short Answers

QUESTION PRESENTED: Does the 2003-2007 CBA for T-580 provide by its terms that the City's obligation to provide retirement health care mean that "Retirees Follow Actives," as the City defines this terminology?

CITY ANSWERS: "Yes"

CITY'S POSITION: The CBA provides "eligible retirees shall be covered by the same insurance as active bargaining unit members". This is an unambiguous clear statement that means Retirees Follow Actives. This interpretation is further supported by the CBA text that also provides:

> Effective October 1, 2000, the City agrees to provide and pay one hundred percent (100%) of the premium (including dental insurance) for single, double, or full family coverage **(up to the appropriate premium under the base plan)** beginning at the date of termination of employment with the Employer, or at age fifty-five (55), whichever is later, provided the employee has at least fifteen (15) years of

> applicable full-time service with the Employer (including full time service prior to October 1, 2000). [Exhibit B, page 25] Emphasis added.

Thus, as the base plan is changed from time to time, the buy-up to optional coverage will also change for both actives and retirees.

PRE-2010 GROUP ANSWERS: "No"

RETIREES' POSITION: The CBA does not indicate that the City reserves the right to have future changes to actives' health insurance cost and coverage relate back retroactively to those retirees who previously retired. Instead, retirees are entitled to receive the same insurance in existence under the CBA that was being received by actives at the time of retirement and such coverage, including cost to the retiree at the time of retirement, is not subject to future change.

B. City and Pre-2010 Group Positions, Support and Analysis

Please note that the analysis provided below is a privileged memo: Attorney—Work Product and is understood to be preliminary to determination of policy on the questions presented and then action on the policy. Finally, it is intended as frank intra-office communication. As such, this memo is not subject to FOIA disclosure and is not to be disseminated without the City Attorney's expressed consent.

1. City Position and Support

To the extent that I am aware of a written explanation of the City's position, it is contained in an August 19, 2010 letter to Denise Estee from Susan C. Graham (Exhibit J). Additionally, I reviewed an October 8, 2014 draft letter between the same parties (Exhibit K). It is my understanding that Exhibit K was never sent. Nonetheless, it is included because it contains a somewhat clearer statement that the City interprets of the CBA language "eligible retirees shall be covered by the same insurance as active bargain unit members" to mean Retirees Follow Actives.

Finally, I have attended meetings in which I have heard Sue Graham explain that the CBA language can be interpreted to mean Retirees Follow Actives and that this meaning binds the T-580 Union and retirees, even if the Union did not understand the importance of the language at the time of the agreement.

2. Pre-2010 Group Retiree's Position and Support

As I understand the Pre-2010 Group's position, it is that the documents (CBAs before 2003 and 2003-2007 CBA) do not contain language that indicate the retirees' health insurance is subject to change after the date of retirement because the City did not reserve the right to modify the benefits. Interestingly, the retirees point to the same text as the City to support their position. Ms. Estee has stated the retirees' position in a January 27, 2015 email as follows: "Retirees believe that their benefits are governed by their outgoing (year of retirement) collective bargaining agreement

(level of benefits and costs) and (sic) which has been the City of Lansing's past practice for decades up until 2010."

With the caveat of this memo squarely in mind, I find the Pre-2010 Group position to be more persuasive than the City's for reasons delineated below.

C. Ambiguity

1. The terminology used in the T-580 CBAs prior to 2003-2007 is substantially the same that contained in the 2003-2007 CBA. As was pointed out in Dennis DuBay's letter (Exhibit I), this language is susceptible to more than one interpretation on its face. Michigan courts have said "a contract is ambiguous if it allows two or more reasonable interpretations." *Meagher v Wayne State Univ.*, 222 Mich App 700, 721-722 (1997). This is the case here. The language in the CBA is silent as to when the retirees' insurance coverage is to be tied to the same as actives. Thus, the CBA is ambiguous. This means the intended meaning is a question of fact, and as such, extrinsic evidence may be used to establish the understanding of the parties.

   As I've been informed, on October 23, 2012, a meeting in the Mayor's office was held to discuss this particular matter and served as a follow-up to Exhibit I. When the concept of Retirees Follow Actives came up, Mr. DuBay (who was part of the meeting by telephone on speaker) asked whether the City had any extrinsic evidence to support the interpretation being advanced. He said the extrinsic evidence could take different forms. It could be actual discussions during the CBA negotiations or something in writing, like an email or memo on the interpretation, or established past practice. It is my understanding, based on information provided by those in attendance at the said meeting, prompted by the question, Chad Gamble asked Terri Taylor, Sue Graham, and Lisa Thelen if any of them had any such evidence. They answered by stating that no one had such extrinsic evidence.

2. Added support that the phrase relied upon in the T-580 CBA is reasonably susceptible to more than one interpretation is found in the UAW 2008-2013 CBA. In this CBA, the retiree health care provision says:

> Retiree Health Insurance Coverage. **Eligible retirees shall be covered by the same insurance as active bargaining unit members;** except that employees who retire prior to February 20, 2001 shall retain a preferred prescription drug co-pay of Dollars ($5). **Employees who retire between February 20, 2001 and March 29, 2010 shall maintain the same insurance plans provided by the collective bargaining agreement in place at the time of retirement.** Emphasis added.

The Interpretative sentence at the end of this paragraph makes it obvious that the first sentence does not only mean Retirees Follow Actives. Further, this meaning is specifically confirmed in the 2013-2016 Tentative Agreement (TA), ratified October 21, 2013.[3] In this TA, the retirement health care is set out in two complementary provisions:

> Retiree Health Insurance:
>
> - Employees retiring on or after October 1, 2014 will follow active employee's health insurance benefits for retiree health insurance benefits.
> - Employees retiring prior to October 1, 2014 will have Option 2 health insurance benefits (i.e., the benefits of BCBSM PPO 1 with $0 deductible or PHP comparable plan) with premium sharing of $125/225/325 annually, deducted from monthly pension check but not exceed 1% of monthly pension benefit.

When compared to the language in the 2008-2013 CBA, it is plainly evident that the second provision of the TA relates back to July 1, 2010. This is the date in the 2008-2013 CBA when it was amended to require active employees pay a premium share. The CBA states:

> "EFFECTIVE JULY 1, 2010: Employees who retire after July 1, 2010 shall contribute toward premium sharing up to one-percent (1%) of annual pension benefits, paid monthly and capped at $125 single, $225 double and $325 family.

Moreover, the first provision specifically stays that Retirees Follow Actives beginning October 1, 2014.

Simply put, the UAW retirees now come within one of three categories:

- Retirees who retired before July 1, 2010 and have the same health care as they were receiving at the time of retirement;
- Retirees who retired between July 1, 2010 and September 30, 2014 and are charged a premium share that is capped at 1% of their pension or 125/225/325; or
- Retirees who retire on or after October 1, 2014 and are subject to Retirees Follow Actives.

Because the three different scenarios all fit within the meaning of "eligible retirees shall be covered by the same insurance as active bargaining unit members," this phrase is ambiguous on its face.

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[3] Despite the October 21, 2013 TA ratification date, as of the date of this memo, the TA provisions are not yet incorporated into a CBA.

3. The inherent ambiguity of the T-580 phrase "eligible retirees...shall be covered by the same insurance as active bargaining unit members" is also evident when we look at similar language provided at about the same time as the 2003-2007 CBA for the City's department heads. In the Executive Management Plan Fringe Benefits summary (that make up part the department heads' contracts), the retirement health care language reads as follows: "Retirement health coverage shall begin at the date of termination of employment with the City provided the employee is age 55. *This coverage shall be the same insurance coverage provided to active employees.*" Exhibit L, page 4—Emphasis added.

   While there are minor differences in the text of the department heads' contracts and the T-580 CBA, the statements are for all practical purposes the same. Nevertheless, when this phrase is interpreted for the retired Executive Management Plan employees, it is not interpreted to mean Retirees Follow Actives. Instead, it has been the City's consistent practice for those department heads who retired prior to 2006 to provide them with the insurance that was being received by active members of the group at the time of the retirement. Clearly if the same phrase can be interpreted in this way for one group, and possibly a different way for another, it is ambiguous.

D. Past Practice

The closest the City could come at the October 23, 2010 meeting to any extrinsic evidence for Retirees Follow Actives was under past practice. The City could say that its practice had been to charge retirees for health premiums like actives. However, as we know, this "past practice" did not start until after the 2010 TA and then not actually until September 2011 for the Pre-2010 Group. Under the test for past practice outlined in the Michigan seminal case of *Port Huron Ed Ass'n v. Port Huron Area Sch. Dist* 452 Mich 309 (1996), the City's claim of established past practice lacks merit because the City cannot show that "the past practice is so widely acknowledged and mutually accepted that it amends the contract." [Id. at 312]. The City cannot show a meeting of the minds and mutual acceptance of the City's interpretation. This requirement of the meeting of the minds is set forth in *Port Huron*, supra at 326-327:

> However, in the same way a meeting of the minds is necessary to create a binding contract, so also is a meeting of the minds necessary to modify the contract after it has been made. *Universal Leaseway System, Inc v Herrud & Co*, 366 Mich 473; 115 NW2d 294 (1962). A collective bargaining agreement, like any other contract, is the product of informed understanding and mutual assent. To require a party to bargain anew before enforcing a right set forth in the contract requires proof that the parties knowingly, voluntarily, and mutually agreed to new obligations.

The Union and members of the Pre-2010 Group have appeared at Council committee meetings, made claims, and filed grievances. In all these actions they have uniformly disputed any mutual understanding to change the prior practice to Retirees Follow Actives. Moreover, it is the past practice established prior to the 2010 TA that the City wants to overcome.

The parties' past practice prior to the 2003-2007 CBA was to have the retirees' health insurance fixed at the coverage the active employees had at the time of retirement. To change this meaning and past practice was, as I understand it, the intended purpose of Ambrose October 2010 internal meeting.

E. CBAs and Health Care Coverage for T-580

1. Prior to 2000

Prior to the 2000-2003 CBA, there was one health insurance plan that covered both active employees and retirees. It was provided to both retirees and actives without cost. Because there was only one insurance plan, the CBA contained no provision for base plan or differential costs, a.k.a. buy-up (See Exhibit M). Even though the CBA statement of coverage is "Eligible retirees shall be covered by the same insurance as active bargaining unit members" there has never been an attempt by the City to change the retirees health care from that in effect at the time they retired. The City has not, in practice, interpreted this to be Retirees Follow Actives.

2. 2000-2003

During this CBA period, the City first introduced the "Base Plan" insurance policy language. Exhibit B, section 3A, Page 20-21. This happened presumably because the City and Union agreed that employees could choose to participate in optional coverage under a health maintenance organization. Exhibit B, Section 3B, Page 21. It needs to be emphasized this health maintenance alternative coverage was *not* made available to retirees. Thus, the CBA language, which the City wants to interpret to mean Retirees Follow Actives, was explicitly not given this interpretation in the 2000-2003 CBA. While Exhibit B, section 3H, page 24 says, "Eligible retirees shall be covered by the same insurance as active bargaining unit members", in contrast, Exhibit B, section 3H, subsection 4, page 25, says, "Employees who terminate employment with the Employer prior to October 1, 2000 shall not be eligible for modifications to the retiree health care language that takes effect October 1, 2000." Thus, retirees did *not* follow actives regarding all the types of insurance plans provided actives.

Finally, it should be pointed out that there was no cost to the employee or retirees for premium for the base plan insurance. The CBA explicitly provided the City pays

100% of the premium for the base plan. Exhibit B, section 3C, page 22 and section 3H, subsection 4, page 25. When viewing the 2000-2003 CBA provision discussed above, I believe it is understandable why the City did not want to attempt to reach back to the 2000-2003 retirees to attempt to institute its interpretation of Retirees Following Actives. During this time, it simply was not the City's practice to provide retirees with all the health plans/options available to actives. It is established by the February 20, 2010 start date in Sue Graham's Exhibit J letter that the City's established past practice has been not to include retirees under the 2000-2003 CBA within the Retirees Follow Actives concept.

3. 2003-2007

As can be seen when we look at Exhibit B, the text in the CBAs for 2000-2003 and for 2003-2007 is virtually the same concerning base plans, retirement health care, City's responsibility for 100% of premium, etc. In fact, the language remains unchanged. This seems to beg the question of how or why the City establish February 20, 2004 as the date to launch its interpretation that Retirees Follow Actives. As best I can determine, it appears from the CBA that this is the date prescription coverage co-pays were changed. Exhibit B, section 3D, page 22-23. Also, it appears that under this contract and starting approximately July 1, 2004, the City agreed to allow employees to purchase vision insurance to be provided by the City. Exhibit B, section 4. I do not consider a change in prescription coverage to be the same as a change to the health care base plan. In fact, the base plan was not changed until the 2010 TA.

Finally there does not appear to be any evidence, extrinsic or otherwise, that shows a meeting of the minds to change the interpretation of when retirement health care received by actives is the health care to which the retiree is eligible. The past practice interpretation patently overcomes Retirees Follow Actives as the CBA meaning.

CONCLUSION

In all honesty, I cannot see how a modest 2004 change in prescription drug coverage equates with the change in retirement health care language to support the new interpretation that Retirees Follow Actives without some explicit text change. Also, there is no extrinsic evidence that acknowledges this new interpretation is the prospective understanding of both parties. Based upon the past practice interpretation of the ambiguous CBA, I believe that retirees are entitled to receive the insurance that actives were receiving at the time of the retirees retirement and that this continued until premium share for retirees became effective under the 2010 TA.

For me, the gravaman to the City's position is that the CBA language was not changed from the 2000-2003 CBA to the 2003-2007 CBA. Instead, all that changed was how the retirees for these two periods are being treated. Retirees under the 2000-2003 CBA were not included in Retirees Follow Actives. Rather, the City's past practice continues to be to provide the health insurance

to this group without charge. Because the CBA language did not change, the Pre-2010 Group expresses that they should be treated the same as the 2000-2003 retirees. Based on the analysis contained in this memo, I cannot disagree with the Pre-2010 Group's CBA interpretation.

If the City intended to establish the new concept that Retirees Follow Actives during the 2003-2007 negotiations, it seems that it would have put forward language during the negotiation to change the text of Exhibit B, section 3H, page 24 to the language that was the same or similar to the Teamster 214 2000-2003 CBA. This T-214 CBA language more clearly sets forth this concept. See Exhibit N, section 3H, page 21. See also the UAW language under *Analysis*, C, 2.

In preparing this internal memo, I am mindful that Sue Graham has been asked by the OCA at different times to provide HR's reasoning and support for the current practice involving the Pre-2010 Group. To date, I am only aware of Exhibits J and K as written explanations of the City's justification and conclusion. It is my understanding; the City has supported its practice based on the theory that the CBA text is clear and not ambiguous. For the reasons stated in this memo, I do not believe that under the facts that this theory supplies the City's position has any real strength or traction. If there is any other documentation that has not been provided to the OCA and lends the City's position support, I would be glad to review it.

Exhibit B

ARTICLE 7

WAGE SUPPLEMENTS

SECTION 1. Bereavement Time. At the time of the death of a spouse, child, step child, parent, step parent and parent of a current or deceased spouse, an employee will be entitled to use a maximum of the next five (5) work days with pay, not to be deducted from the accumulated sick leave, to arrange for and/or attend the funeral or a service in lieu of the funeral.

An employee will be entitled to use a maximum of three (3) work days with pay, not to be deducted from the accumulated sick leave, to make arrangements and attend the funeral or a service in lieu of the funeral for any other immediate family member. "Other immediate family" shall mean niece, nephew, brother, sister, brother-in-law, sister-in-law, grandparents, grandparents-in-law and grandchild.

A period of time taken off for bereavement under this section which is less than or equal to one half a day, shall only be considered one half day. A period of time taken off in excess of one half day shall be considered a full day.

The City may require verification of the death and/or of the relationship of the employee to the deceased, at its discretion, following the leave and before making payment for the bereavement time. The City may withhold payment if the employee did not make prompt notification for leave, prior to taking the time off, so that his/her work would be covered in his/her absence.

In the event of the death of a member of the immediate family, including spouse, child, step child, parent, parent of a current or deceased spouse, and step parent, additional time may be taken off, with the approval of the department head. This time off may be charged to vacation, sick leave, personal leave time or compensatory time earned.

An employee shall be granted leave to attend a funeral or service in lieu of the funeral for an aunt or uncle, provided the time off is charged against accumulated vacation, compensatory, sick and/or personal leave available to the employee.

SECTION 2. Holidays. The City will pay an employee, as provided below for the following holidays:

One Full Day Prior to New Years Day
New Years Day
Martin Luther King Day
Good Friday
Memorial Day

Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Friday After Thanksgiving
One Full Day Prior to Christmas Day
Christmas Day

Provided that the employee meets all of the following eligibility rules:

He/she works or is paid pursuant to this Agreement, the full period of his/her last scheduled work day prior to, and his/her next scheduled work day following, the holiday..

When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday recognized by this Agreement; when it falls on a Sunday, the following Monday shall be so observed as the holiday, excepting that, whenever state or federal statute requires that any of such holidays be observed on a day or date other than as set forth above, the holiday shall be observed on the day or date prescribed by state or federal statute, whichever is controlling.

When two consecutive holidays fall on Sunday and Monday, the holidays shall be observed on Monday and Tuesday. When two consecutive holidays fall on Friday and Saturday, the holidays shall be observed on Thursday and Friday.

An employee who works any of the holidays designated above shall receive one and one half the hourly rate for all hours worked in addition to the holiday pay. At the employee's option the employee may receive an additional eight (8) hour day off instead of the holiday pay.

Employees working in a twenty-four (24) hour continuous operation and who are not scheduled to work on the date the designated holidays are celebrated shall have the option to receive the holiday pay or receive eight (8) hours of saved holiday. The first saved holiday earned will be the first saved holiday used.

Employees working in operations run on a seven (7) day schedule shall observe the holidays on the actual rather than the recognized day that the holiday falls as listed in Appendix A attached to this agreement. Those employees who are eligible to and do "save holidays" must use the holiday time saved within one (1) year of the date accrued.

SECTION 3. Hospital, Medical, Surgical Insurance.

A. Blue Cross/Blue Shield Community Blue. The following will be made available as the base plan for all active employees: Blue Cross/Blue Shield

Community Blue PPO 1, Option 2, ($0 co-pay for emergency room, no maximum for preventative services, 50% co-pay for mental health and substance abuse) plan of hospital, medical and surgical insurance. The City shall pay no more than the amount paid for the BC/BS Community Blue plan provided for in this section for bargaining unit members each health care contract year. Such changes shall become effective the 20th of the month after special open enrollment following ratification of the 2000 Agreement by both parties.

EFFECTIVE FEBRUARY 20, 1998, the base plan shall include: pap smears, mammograms, prescription contraceptives and hospice care. Effective February 20, 1998, single-person or full-family ward coverage will be changed to single-person or full-family semi-private coverage.

Current BC/BS Traditional and Plan D medical, hospital, and surgical insurance will no longer be available for active employees following ratification of the 2000 Agreement. In the event that the current provider network list (year 2000) is reduced in number by more than twenty percent (20%), BC/BS Traditional would then become the base plan for all active employees and retirees, until such time that an alternate network or plan is established.

The City will provide complementary health care coverage (coordinating with Medicare) when an employee or spouse reaches the Medicare eligibility date, with no reduction in benefits or coverage.

B. Optional Coverage. As long as they are available, the City will provide as an option, one open panel or group practice health maintenance organization and one closed panel or individual practice health maintenance organization. The City shall request that coverage and co-pays associated with optional health care plans become more cost effective in comparison with the base plan. Any changes will become effective the 20th of the month after special open enrollment following the 2000 contract ratification.

1. As an open panel or group practice health maintenance organization, the City shall provide as an option, coverage through Blue Care Network. Such Blue Care Network (BCN5) coverage shall include an optical rider and a $5.00 generic/$10.00 brand Preferred RX prescription co-pay.

2. As a closed panel or individual practice, the City shall provide as an option, coverage through Physicians Health Plan. A description of Physicians Health Plan is available through the City's Personnel Department.

C. Enrollment. An employee shall become covered by insurance or a health maintenance organization effective on the 20th day of the month following the month of the employee's hire date, through his/her completion of the required forms (at time of hire, rehire, or during an annual enrollment period), and his/her acceptance by

Blue Cross Blue Shield Community Blue PPO, other Preferred Provider Organization, or a health maintenance organization as a participant. Such forms, and information as to the plans, shall be available at the City's Personnel Office.

The City agrees to pay 100% of the premium for single, double, or full family coverage (up to the appropriate premium under the base plan) for each employee hired into the bargaining unit. Such coverage shall become effective on the 20th day of the month following the month of the employee's hire date. In the event the employee does not successfully complete his/her appropriate probationary period (as referenced in Article 5 and Appendix E), or terminates employment with the City of Lansing for any reason whatsoever during his/her appropriate probationary period, said employee shall be required to reimburse the City for the first four (4) premium payments for hospital, medical and surgical insurance paid by the City on his/her behalf. Employees shall be required at the time of hire to fill out a payroll deduction authorization form.

D. Prescription Drug Plan:

The City shall provide through Blue Cross/Blue Shield a prescription drug plan with a preferred Rx $5.00 generic/$10 brand co-pay, MOPD (mail order prescription drug service), PDCM (prescription drug contraceptive medicine).

Effective February 20, 2004: The City shall provide through Blue Cross/Blue Shield a prescription drug plan with a ten dollar ($10) generic / twenty dollar ($20) brand name preferred Rx co-pay and a MOPD2 (mail order prescription service - 2) and PDCM (prescription drug contraceptive medicine) to employees with Blue Cross/Blue Shield Community Blue PPO medical insurance.

Note, For Information Only – BC/BS Blue Care Network:

Effective February 20, 2004 The City will provide to employees with Blue Cross/Blue Shield Blue Care Network medical insurance a prescription drug plan with ten dollar ($10) generic / twenty dollar ($20) brand name preferred Rx co-pay and MOPD (mail order prescription drug service) [not MOPD2] and PDCM (prescription drug contraceptive medicine).

Note: For Information Only – Physicians Health Plan:

Also Effective February 20, 2004 The City will provide to employees with Physicians Health Plan (PHP) medical insurance a prescription drug plan with ten dollar ($10) generic / twenty dollar ($20) brand name preferred Rx co-pay, mail order prescription drug service and prescription drug contraceptive medicine. Current prescription mail order requires two (2) co-pays for a ninety (90) day supply.

E. Premium Computation. The employee shall be responsible for any cost differential between the base plan premium and their chosen plan premium through payroll deduction.

F. Substitute Carrier. The City reserves the right to substitute other carriers if it would be economically advantageous, providing the current level of benefits are maintained or improved.

G. Opt Out.

1. Procedures. The parties will meet and mutually agree to written procedures for implementation of the terms of an opt-out program.

2. Members of the bargaining unit, up to a maximum of fifteen percent (15%) of each bargaining unit, will be allowed to opt out of the City's health care plan annually, during the City's open enrollment period provided the employee provides written proof of coverage from another source. Employees shall not be eligible for the opt out provision until they have successfully completed their probationary period.

   Re-enrollment in one of the City's medical insurance plans will only be permitted at the time of the City's open enrollment which is at least one (1) year from the initial date of the opt out with the following exception. In the event the bargaining unit member loses his/her alternative coverage and provides written documentation of loss of such coverage, re-enrollment in one of the City's medical insurance plans will be permitted and the effective date of coverage will be as soon as allowable by the applicable insurance vendor.

3. Payment. Any employee who opts out of the City's health care plan will be eligible to receive $1500 in any year which they receive coverage from another source. Such payment shall not be eligible to be considered in the calculation of the employee's final average compensation. In addition such payments shall be made at least twice a

year, by separate check, following the period of time the employee had alternate coverage. Employees who do not choose to opt out shall incur no additional cost other than those costs provided in above sections which the employee may currently be paying.

Effective February 20, 2004: The health care opt-out payment referred to above in this subsection, shall be increased to eighteen hundred dollars ($1,800).

4. Cancellation. In the event that IRS Code, Section 125 and/or opt out plans are no longer permissible under State or Federal statutes or IRS Regulations, the City may cancel this option.

H. Retirement Health Care Coverage. Eligible retirees and eligible members of the City's Defined Contribution Money Purchase Plan (DCMPP) shall be covered by the same insurance as active bargaining unit members. However, Blue Cross/Blue Shield Traditional health care insurance will remain available as an option to eligible retirees and eligible members of the city's DCMPP. Any additional costs for traditional coverage in excess of the base plan will be paid by the retiree.

1. Defined Benefit Plan Employees hired on or after July 1, 1987 shall not become eligible retirees under this provision unless they work at least fifteen (15) years for the City, and are eligible to receive age and service retirement benefits or they are eligible for duty disability retirement, under the terms of the General Employees' Retirement System ordinance.

2. Defined Benefit Plan Employees hired before July 1, 1987, shall become eligible retirees under this provision when they are eligible to receive age and service retirement benefits (deferred or immediate) or a disability retirement under the terms of the General Employees' Retirement System ordinance, consistent with the practice then in effect.

3. Retirement Health Insurance for Employees Hired Prior to October 29, 1990 who Previously Transferred Out of the Employees Retirement System to the Defined Contribution Money Purchase Plan.

These employees shall become eligible for retirement health care coverage with sixty-five (65) points that applies to Teamsters Local 580 bargaining unit members of the Employees Retirement System, as specified in Article 24.

4. Retirement Health Insurance for Defined Contribution Members Hired After October 29, 1990 (Which, Effective October 1, 2003 are members of the Employee Retirement System (ERS) with a one and six tenths percent (1.60%) factor):

Effective October 1, 2000, the City agrees to provide and pay one hundred percent (100%) of the premium (including dental insurance) for single, double, or full family coverage (up to the appropriate premium under the base plan) beginning at the date of termination of employment with the Employer, or at age fifty-five (55), whichever is later, provided the employee has at least fifteen (15) years of applicable full-time service with the Employer (including full time service prior to October 1, 2000). Employees who terminate employment with the Employer prior to October 1, 2000 shall not be eligible for modifications to the retiree health care language that take effect October 1, 2000.

(A) In the event a member dies prior to age fifty-five (55), and has fifteen (15) years of service, the member's spouse and eligible dependents will retain vested health care benefits. Eligibility for these health benefits will commence at such time that the deceased member would have obtained age fifty-five (55).

(B) Eligible employees, as defined above, must select post retirement health care prior to age seventy (70).

(C) Retirement Health Care Opt Out.

(1) If allowed by IRS regulations, and only if retirement health care opt out does not become taxable income to those who elect to participate in the health care plan provided, eligible members (minimum 15 years of service and age 55) of the Defined Contribution Money Purchase Plan shall be allowed to opt out of the retirement health care plan annually during the first open enrollment period following the date they reach the eligibility age of fifty-five (55), continuing through age sixty (60). During the first open enrollment period after reaching age sixty (60), the eligible member must irrevocably select one of the following (any of which, once selected, will be in effect to age seventy (70), with one exception noted in the paragraph below):

(a) Elect to receive the opt out dollar amount listed above. The total City commitment for retirement health care opt

out would end at age seventy (70), subject to Article 7, Section 4 (B) above.

OR

(b) Elect to participate in the health care Plan provided, in which the total City commitment for retirement health care opt out would end.

OR

(c) Elect not to participate in either (a) or (b), in which case the City commitment for retirement health care opt out would end.

Subject to the above conditions, re-enrollment in one of the City's retirement health care plans will only be permitted at the time of the City's open enrollment which is at least one year from the initial date of the opt out, with the following exception: In the event the member loses his/her alternative coverage prior to age seventy (70) and provides written documentation of loss of such coverage, re-enrollment in one of the City's medical insurance plans will be permitted and the effective date of coverage will be as soon as allowable under the applicable insurance vendor. After such re-enrollment, retiree health care opt-out will no longer be permitted to that member.

(2) It is the employee/retiree's responsibility to contact the City regarding their opt out, and to provide the City with their current mailing address.

(3) Payment. Eligible members of the Defined Contribution Money Purchase Plan who opt out of the retirement health care plan shall be eligible to receive the amount provided for active employees referenced in Article 7, Section 3 G. Such payments shall be made at least twice a year, by separate check, following the period of time the member had alternate coverage.

(D) The City will establish a trust by ordinance under Act 149 for the purpose of pre-funding retirement health care benefits for eligible employees who terminate employment under the Defined Contribution Money Purchase Plan.

(1) Effective October 1, 2000, the City shall responsible for prefunding of the retirement health care for all eligible employees of the Defined Contribution Money Purchase Plan.

(2) The City shall deposit annually into the trust assets to pre-fund retirement health care. A minimum of four percent (4%) of total bargaining unit payroll will initially be used to base employer contributions.

(1) The City will obtain an actuarial evaluation not less than every three (3) years to assess the funded status of the trust. Any unfunded liabilities will be amortized over a prudent period of time.

(4) The trust shall have employee representation subject to election. The current Defined Contribution Governing Board, which includes employee representation, shall act as trustees for this trust.

For Information Only: The above changes regarding health care made to the 2003 2007 collective bargaining agreement shall not be effective for current retirees (those retired at the time of ratification of this agreement - August 12, 2003) until February 20 2006.

5. Complementary Health Care Coverage. The City will provide 100% paid complementary health care coverage as the base plan for people qualifying under Article 7, Section 4, Subsection H, paragraphs 1, 2, 3, or 4 above at the time the individual or spouse reaches the Medicare eligibility age. At the time an eligible retiree, eligible member of the City's Defined Contribution Money Purchase Plan, or current spouse reaches the Medicare eligibility date, such individual's coverage shall be converted to complementary coverage. Benefits and coverages under complementary health care coverage shall not be reduced from that provided in the base plan in effect.

SECTION 4. Vision insurance. As soon as reasonably possible after July 1, 2004, the City shall offer to employees of the bargaining unit, Blue Cross/Blue Shield VSP 12/12/12 program, subject to approval by Blue Cross/Blue Shield. Employees choosing to purchase this benefit shall purchase it through payroll deduction and may at the next open-enrollment elect to purchase this benefit through the IRS 125 Cafeteria Plan if allowed by

law, subject to the plan maximum. Where possible the City would coordinate any other vision plan currently associated with other hospital, medical, surgical insurance offered by the City.

SECTION 5. Dental Insurance Coverage.

A. Active Employees. The City shall continue to pay the full premium costs of Delta Dental Plan C coverage for each employee and his/her family. Plan C provides fifty percent (50%) of treatment costs of Class I and Class II benefits with an $800 maximum per person per contract year. Coverage under this plan is afforded to each employee who is a member of this bargaining unit and his/her dependents. When an employee and spouse are both employed by the City and eligible for coverage, dental benefits shall be coordinated in accordance with the policy of the insurance carrier. Additionally, employees and their dependents will receive orthodontic coverage which provides fifty percent (50%) of treatment costs, with a $1,000.00 lifetime maximum per person.

The City may provide as an option, dental coverage through another provider. Information regarding the additional coverage option shall be available through the City's Personnel Department. The City may discontinue the optional coverage if less than ten percent (10%) of eligible employees participate in the program or if the premium cost exceeds that of the existing Delta Dental plan.

Employees shall be responsible for any premium costs above the Delta Dental base plan.

B. Retiree Dental Insurance Coverage. Eligible retirees shall be covered by the same insurance as active bargaining unit members.

1. Defined Benefit Plan Employees hired on or after July 1, 1987 shall not become eligible retirees under this provision unless they work at least fifteen (15) years for the City and are eligible to receive age and service retirement benefits, or they are eligible for duty disability retirement benefits, under the terms of the General Employee's Retirement System ordinance.

2. Defined Benefit Plan Employees hired before July 1, 1987 shall become eligible retirees under this provision when they are eligible to receive age and service retirement benefits (deferred or immediate) or a disability retirement under the terms of the General Employees' Retirement System ordinance, consistent with the practice then in effect.

3. Employees Hired Prior to October 29, 1990 who Previously Transferred Out of the Employees Retirement System to the Defined Contribution Money Purchase Plan. These employees shall become eligible for retiree dental coverage with sixty-five (65) points that applies to Teamsters Local 580 bargaining unit members of the Employees Retirement System, as specified in Article 24.

Exhibit H

In Yrs - never premium share
TE 2010

Document effective October 8, 2010

HAVE ALL RETIREES WHERE THEY ARE AS OF 10/08/2010 WITH THE EXCEPTION OF CONTRACTS SETTLED IN 2009/2010.

MAYOR STAFF Effective 7/1/2010	RETIRED AFTER 7/01/2010 GET WHAT ACTIVES HAVE PREMIUM SHARE NO DUAL COVERAGE FOR MARRIED EMPLOYEE - YES OPT OUT NO SPOUSAL COVERAGE HIRED AFTER 7/1/2007
COUNCIL STAFF	RETIRED AFTER 7/01/2010 GET WHAT ACTIVES HAVE PREMIUM SHARE NO DUAL COVERAGE FOR MARRIED EMPLOYEE - NO OPT OUT
EXECUTIVE STAFF	RETIRED AFTER 7/01/2010 GET WHAT ACTIVES HAVE PREMIUM SHARE NO DUAL COVERAGE FOR MARRIED EMPLOYEE - YES OPT OUT NO SPOUSAL COVERAGE HIRED AFTER 7/1/2007
NON-BARGAINING	RETIRED AFTER 7/01/2007 GET WHAT ACTIVES HAVE PREMIUM SHARE NO DUAL COVERAGE FOR MARRIED EMPLOYEE - YES OPT OUT NO SPOUSAL COVERAGE HIRED AFTER 7/1/2007
FOP 911 Ratification date 08/17/2009	AFTER RATIFICATION DATE GET WHAT ACTIVE GET. PREMIUM SHARE NO SPOUSAL COVERAGE HIRED AFTER 10/29/2009
FOP SUPERVISORS Ratification date 06/28/2010	GET WHAT THEY HAD WHEN THEY LEFT ~~PREMIUM SHARE~~ Don't prem. share Hired after 6-28-2010 - 25 yrs h/c vest
FOP NON-SUPERVISORS Ratification date 05/17/2010	GET WHAT THEY HAD WHEN THEY LEFT ~~PREMIUM SHARE~~ Don't prem share Hired after 5-17-2010 25 yrs
T580	RETIRED AFTER 2/20/2004 GET WHAT ACTIVES HAVE WAITING ON SUE GRAHAM FOR PREMIUM SHARE Yes NO DUAL COVERAGE FOR MARRIED EMPLOYEE - NO OPT OUT ~~NO SPOUSAL COVERAGE HIRED AFTER 3/1/2010~~ Hired after 2-8-10 - 25 yrs to vest
T214	ALL 214'S - NO DATE DRIVEN GET WHAT GET ACTIVE ALL WILL PREMIUM SHARE INC. WHEN ENROLLED WITH AMWINS NO DUAL COVERAGE FOR MARRIED EMPLOYEE - NO OPT OUT NO SPOUSAL COVERAGE HIRED AFTER 12/8/2008
UAW Ratification date 3/10/2010	GET WHAT ACTIVE GET AFTER ~~03/08/2010~~ 3/29/10 PREMIUM SHARE Hired after ~~3-10-10~~ 25 yrs yrs. h/c 3-10-10
ELECTED	WHAT ACTIVES HAVE (MAYOR PLAN) INCLUDES PREIMUM SHARE

Beneficiary spouses are based on the retirement date of our employee as to whether to pay

FIRE

GET WHAT THEY HAVE WHEN THEY LEAVE. RETIRED PRE 7/1/1998
WITH BCBS HAVE $5.00 CO-PAY
HIRED AFTER 7/1/2006 WHEN RETIRED, FOLLOW ACTIVES
OPT OUT AND DUAL COVERAGE OK
Emp. hired after 7-1-10 - 25 yrs to vest

Exhibit I

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August 22, 2012

CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

Brigham C. Smith, Esq.
City Attorney
Office of the City Attorney
City of Lansing
124 West Michigan Ave.
Lansing Michigan 48933

Re: *Retiree Healthcare for City Staff Members Who Elected to Accept the City of Lansing Voluntary Exit Incentive and Severance/Separation Agreement and Release*

Dear Mr. Smith:

We have reviewed the various materials provided to our office by Ms. Powell and, given our time constraints, we are zeroing in on the outstanding relevant questions. There are, as we discussed in a telephone conference, two distinct questions. First, whether, under the language of the severance agreements, the City may charge employees to buy-up to a more expensive plan than the base plan offered the retirees, i.e., whether such a buy-up requirement would violate the agreement that individuals taking the retirement incentive program would do so with no healthcare premium sharing requirement.

It is our opinion that requiring a "buy-up" payment is not the same thing as making a premium contribution. Hence, assuming the City has retained the right to change the base plan for retirees both in, and outside of, the exit incentive program, the provision in the severance agreement would not prohibit the required buy-up payment. The severance agreement does not specifically address a change in the base plan or a buy-up payment. It would appear clear that participants understood that premium contributions are a different thing (i.e., even if there is no change in the plan a premium contribution may be required). P.A. No. 152 took effect on

September 27, 2011. While it is true that retirees are not covered by P.A. No. 152, Ms. Lisa Thelan noted in her August 2, 2012 e-mail that retirees from the UAW and Teamsters 580 units are required by contract to make premium contributions during their retirement. It would therefore make sense to waive this requirement as a retirement incentive.

The second, larger, question is whether the City has the right to change the base healthcare plan provided to retirees. The law is becoming crystal clear that public employers must maintain whatever was promised to the eligible retiree, e.g., if an employer promised to provide the health insurance in effect on the date of the retiree's retirement, no changes may be made.[1]

A study of each collective bargaining agreement is required. We note that the UAW contract in paragraph B Substitute Carrier, allows the employer to change carriers "provided the current level of benefits are maintained or improved." But at the same time, the UAW contract provides, in paragraph G, on page 28 of the agreement, that eligible retirees would be covered by the same insurance as active bargaining unit members. Has this been read to mean on the date of the employee's retirement? Or, does it mean the same as active employees in the future as well, e.g., when there's a change in the active employees' insurance, there has been a change in the retirees' insurance as well? The answer to these questions will provide guidance on whether the base plan for retirees may be changed.

We do not have the requisite pages for the other contracts, but the same analysis would apply.

Let me know if you have further questions.

Very truly yours,

KELLER THOMA, A PROFESSIONAL CORPORATION

Dennis B. DuBay

DBD/dg
Enclosure

[1] In that regard, see the attached case of *Loftis, et al. v. City of Oak Park*, Per Curiam Court of Appeals decision, Case No. 304064 (July 24, 2012).

> The City will also provide a prescription rider in addition to the other coverage. Such rider will provide for ten dollars ($10.00) deductible for each prescription and is to be subject to the rules and regulations and procedures of the Michigan Hospital Service – Michigan Medical Service. Effective 1/1/06 the co-pay shall increase to $10.00 generic/ $20 specific. Effective when all other Employee unions and non-union employees receive $15 generic/ $30 specific, this will also apply to the union.

Additionally, the 2001 to 2006 CBA provided that the same level of healthcare coverage would be available to employees who retired while the 2001 to 2006 CBA was still in effect. Article 24.4:D provides:

> Hospital, Medical, Surgical, Dental, Optical and *Prescription rider coverage will be made available to all retirees,* their spouse and any eligible dependents, *at the same level of coverage that was provided at the time of their separation of employment with the City, with cost to be paid by the City.* Spousal coverage is only for that individual that the retiree is married to at the time of their retirement. If a retiree and/or spouse become eligible for Medicare, they must participate in the Medicare program, and pay for all of its associated costs. The City will provide supplemental coverage to Medicare to the same level that was provided prior to Medicare participation. Any survivor receiving a pension who receives health coverage from their employer or through a new spouse, must participate in those health care programs as primary coverage and the City health care shall be supplemental, as long as they continue to receive a City pension. [Emphasis added.]

But, on May 17, 2006, defendants sent a letter to plaintiffs informing them that their medical and prescription coverage would be changing. Specifically, the letter stated that because of increasing costs in employer sponsored healthcare premiums, plaintiffs would have $10 physician office visit co-pay instead of the master medical plan that required 20 percent co-pay after meeting the annual deductible. Additionally, prescription co-pays would be increasing from $10 to $15 generic and $30 specific, with a mail order prescription service that would allow for a 90 day prescription supply to be filled for one co-pay.

After receiving this letter, plaintiffs filed a complaint, alleging that their prescription co-pay could not be increased because they were entitled to the same level of healthcare coverage provided for within the 2001 to 2006 CBA. After plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10) was denied by the trial court, a bench trial ensued. At trial, plaintiffs argued that the same level of coverage under the terms of 2001 to 2006 CBA meant that their prescription co-pay could not be increased. Defendants argued that the same level of coverage referred to the overall coverage provided in the hospital, medical, surgical, dental, optical, and prescription riders, and that, therefore, an assessment of all healthcare benefits needed to be included in determining whether the same level of coverage was being provided. After the bench trial, the trial court issued an opinion and order finding that defendants breached the 2001 to 2006 CBA by increasing the prescription co-pay:

> The terms of the contract are clear and unambiguous. The City is required to maintain the same coverage for the retirees during the course of there [sic] respective retirement. Defendants argue the second provision [Article 24.4:A.4.] does not include "retirees." Defendants' argue the healthcare coverage must be provided at the "same level" which permits one element (e.g., preventive coverage) and another element (e.g., prescription coverage), as long as the total out-of-pocket costs are approximately the same. However, this assertion is without merit. The interpretation urged by Plaintiffs is more accurate and gives meaning to each word and clause within the agreement.
>
> The Court is "required to read contracts as a whole, giving harmonious effect, if possible, to each word and phrase." *Royal [Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 719; 706 NW2d 426 (2005)], citing *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 50 n[] 11[; 664 NW2d 776] (2003). Further, the testimony of Plaintiff Loftis regarding the statement made by Defendant Hock (that the Plaintiffs would have the same prescription coverage if they retired as was being discussed) is credible and persuasive. Hock indicated he had primary responsibility for negotiating the contract, and the statement made to Loftis reflects the understanding of both parties. This admission by Defendant Hock, made during the scope of his employment with Defendant City of Oak Park, reflects not only his understanding of the terms of the contract but also the terms as written. Therefore, this Court finds in favor of Plaintiffs and grants the judgment in the requested amount of $1,141.05.
>
> * * *
>
> Plaintiffs request in this claim [declaratory relief] a determination that the decision of Defendants "to unilaterally implement new terms and conditions of the contract upon the Plaintiffs without negotiation" was prohibited under the terms of the contract. For the reasons set forth above, the Court finds the contractual language prohibited the modification of the prescription coverage. Thus, Plaintiffs are entitled to such declaratory relief and the Court hereby grants same.

The trial court filed an order of judgment granting plaintiffs damages in the amount of $1,322.01 and finding that plaintiffs were entitled to the same level of prescription coverage that was in place at the time of their respective retirements. The trial court denied defendants' motion for a new trial, and defendants now appeal as of right to this Court.

II. ANALYSIS

A. CONTRACT INTERPRETATION

Defendants argue that the trial court misinterpreted the meaning of "same level" within the 2001 to 2006 CBA. Following a bench trial, we review a trial court's findings of fact for clear error and its conclusions of law de novo. *Butler v Wayne Co*, 289 Mich App 664, 671; 798

NW2d 37 (2010). Additionally this Court reviews issues of contract interpretation de novo. *Holland v Trinity Health Care Corp*, 287 Mich App 524, 526; 791 NW2d 724 (2010).

"The fundamental goal of contract interpretation is to determine and enforce the parties' intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement." *Dobbelaere v Auto-Owners Ins Co*, 275 Mich App 527, 529; 740 NW2d 503 (2007). A contract should be read in its entirety to give meaning to all the terms within the contract. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003); *Century Surety Co v Charron*, 230 Mich App 79, 82; 583 NW2d 486 (1998). If the contract term is unambiguous, its meaning is clear and must be enforced as written. *Shay v Aldrich*, 487 Mich 648, 660; 790 NW2d 629 (2010); *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664-665; 770 NW2d 902 (2009).

A review of the language within the 2001 to 2006 CBA reveals that it is plain and unambiguous. The contract provides that hospital, medical, surgical, dental, optical, and prescription rider coverage will be available to all retirees "*at the same level of coverage* that was provided at the time of their separation of employment with the City." (Emphasis added.) When determining the plain and ordinary meaning of undefined words within a contract, a dictionary may be consulted. *Pontiac Sch Dist v Pontiac Ed Ass'n*, 295 Mich App 147, 153; 811 NW2d 64 (2012) (citation omitted). "Same" is defined as: "identical with what is about to be or has just been mentioned[;]" "agreeing in kind, amount, etc.[;]" "unchanged in character, condition, etc." *Random House Webster's College Dictionary* (2001). "Level" is defined as: "equal, as in height, condition, status, or advancement[;]" "even, equable, or uniform[.]" *Random House Webster's College Dictionary* (2001). Applying the plain meaning definition of "same level" we conclude that defendants must provide plaintiffs with healthcare coverage that is identical and equal to the coverage plaintiffs had under the 2001 to 2006 CBA. Under the contract, defendants agreed to provide six riders of healthcare coverage: hospital, medical, surgical, dental, optical, and prescription. Consequently, pursuant to the 2001 to 2006 CBA, plaintiffs are entitled to healthcare coverage under each rider category that is identical and equal to that which was received at the time of their respective retirements. Although defendants argue that the "same level" means equality formed from an assessment of the overall healthcare coverage across all six rider categories, this interpretation is contrary to the plain meaning of the contract. The contract specifically states that each rider coverage for hospital, medical, surgical, dental, optical, and prescription will be available to plaintiffs at the same level. It does not provide that defendants may decrease benefits in one rider category as long as they also increase benefits in another rider category. Such an interpretation would not permit identical and equal healthcare coverage to plaintiffs.

Defendants' assertion that in reading the whole 2001 to 2006 CBA plaintiffs agreed to accept the prescription benefits change when the active union employees had their prescription benefits changed is also contrary to the express terms of the contract. Article 24.1:A.4 provides that the $10 prescription co-pay would be increasing to $10 generic and $20 specific effective January 1, 2006, for union employees, and that once all other union and non-union employees began paying $15 generic / $30 specific, the union would as well. But, this provision does not govern retirees. Instead, it is Article 24.4:D that governs the healthcare coverage available to retirees: "Hospital, Medical, Surgical, Dental, Optical and Prescription rider coverage will be made available to all retirees . . . at the same level of coverage that was provided *at the time of*

their separation of employment with the City, with cost to be paid by the City."[1] (Emphasis added.) Consequently, the 2001 to 2006 CBA expressly states that the City will provide retirees with the same healthcare coverage they had as of the date of their respective retirements, not what current city employees receive. Moreover, Article 24.4;D expressly provides that the City will pay for any additional costs associated with providing retirees with this same level of healthcare coverage.

The terms of the 2001 to 2006 CBA are clear and unambiguous. Plaintiffs Krizmanich, Skatjune, Robell, Loftis, and Pickett retired before January 1, 2006. These plaintiffs are entitled to the identical and equal prescription rider coverage of $10 prescription co-pay. Plaintiff Potter retired on June 30, 2006, and therefore, is entitled to the identical and equal prescription rider coverage of $10 generic and $20 specific prescription co-pay.

B. EXTRINSIC EVIDENCE

Defendants also argue that it was error for the trial court to consider extrinsic evidence in interpreting the 2001 to 2006 CBA. Defendants did not object to the admission of this evidence before the trial court, and so, it is unpreserved for appellate review. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). Usually, this Court does not review an issue not decided by the trial court. *Candelaria v BC Gen Contractors, Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999). But, "[w]hether extrinsic evidence should be used in contract interpretation is a question of law that this Court reviews de novo." *In re Kramek Estate*, 268 Mich App 565, 573; 710 NW2d 753 (2005). Because this issue presents a question of law and all the facts necessary for resolution are present, we will consider this issue. *Candelaria*, 236 Mich App at 83. Whether a contract is ambiguous is an issue of contract interpretation, which this Court reviews de novo. *Holland*, 287 Mich App at 526. If a contract is unambiguous, its meaning is a question of law; however, if the contract is ambiguous, its interpretation becomes a question of fact. *Butler*, 289 Mich App at 671-672.

Ambiguity within a contract term is either patent or latent. A patent ambiguity is "one apparent upon the face of the [contract] . . ." *Hall v Equitable Life Assurance Society of the United States*, 295 Mich 404, 409; 295 NW2d 204 (1940) (quotations and citation omitted). Thus, a contract is patently ambiguous if, after the court has engaged in giving effect to the language of the contract, two provisions irreconcilably conflict or a term is susceptible to more than one meaning. *Klapp*, 468 Mich at 467; *Holland*, 287 Mich App at 527. A latent-ambiguity "'arises not upon the words of the will, deed, or other instrument, as looked at in themselves, but upon those words when applied to the object or to the subject which they describe.'" *Shay*, 487 Mich at 671-672, quoting *Hall*, 295 Mich at 409. Thus, although parol evidence is not admissible to prove a patent ambiguity because it appears on the face of the document, *Shay*, 487 Mich at 667, when a court is determining if a latent ambiguity exists, "extrinsic evidence is admissible to prove the existence of the ambiguity, and, if a latent ambiguity is proven to exist, extrinsic evidence may then be used as an aid in the construction of the contract[.]" *City of*

[1] The increases within Article 24.1;A.4 would also not apply to these plaintiffs because the increases occurred after the date of their separation from employment.

Grosse Pointe Park v Mich Muni Liability & Prop Pool, 473 Mich 188, 201; 702 NW2d 106 (2005) (opinion by CAVANAGH, J.). Therefore, extrinsic evidence may be used "not to add or detract from the writing, but merely to ascertain what the meaning of the parties is." *Klapp*, 468 Mich at 470 (quotations and citation omitted); see *Shay*, 487 Mich at 660 ("[I]f the language of a contract is ambiguous, courts may consider extrinsic evidence to determine the intent of the parties.") (footnote omitted). However, an unambiguous contract provision must be enforced as written, without consideration of extrinsic evidence. *Shay*, 487 Mich at 667.

As previously discussed, the contract provides that hospital, medical, surgical, dental, optical, and prescription rider coverage will be available to all retirees "*at the same level of coverage* that was provided at the time of their separation of employment with the City." (Emphasis added.) This contract language does not reveal a patent ambiguity. The phrase "same level" does not create an irreconcilable conflict and it is not susceptible to more than one meaning. Additionally, in looking at the extrinsic evidence presented, there is also not a latent ambiguity. The phrase "same level" clearly applies to the healthcare coverage provided for within the contract. Here, although the trial court determined that the term same level was clear and unambiguous, it nonetheless considered extrinsic evidence as additional support for its ruling regarding the contract terms. Because the contract terms are clear and unambiguous, extrinsic evidence regarding the meaning of the contract cannot be consulted. *Shay*, 487 Mich at 667. Thus, it was error for the trial court to consult extrinsic evidence as additional support in determining the meaning of the contract term, but as previously concluded, the trial court reached the correct result through application of the plain language of the contract. See *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (this Court will not reverse where the trial court reached the correct result, even if it employed the wrong reasoning).

C. MITIGATION OF DAMAGES

Defendants argue that the trial court did not consider plaintiffs' failure to mitigate damages. A trial court's determination of damages at a bench trial is reviewed for clear error. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165; 177; 530 NW2d 772 (1995). "Mitigation of damages is a legal doctrine that seeks to minimize the economic harm arising from wrongdoing." *Morris v Clawson Tank Co*, 459 Mich 256, 263; 587 NW2d 253 (1998). "'Where one person has committed a tort, breach of contract, or other legal wrong against another, it is incumbent upon the latter to use such means as are reasonable under the circumstances to avoid or minimize the damages. The person wronged cannot recover for any item of damage which could thus have been avoided.'" *Id.* at 263-264, quoting *Shiffer v Bd of Ed of Gibraltar Sch Dist*, 393 Mich 190, 197; 224 NW2d 255 (1974). In other words, "[i]n both contract and tort actions, the injured party must make every reasonable effort to minimize damages suffered." *Williams v American Title Ins Co*, 83 Mich App 686, 697; 269 NW2d 481 (1978). "It is the burden of the defendant, however, to show that the plaintiff has not used every reasonable effort within his or her power to minimize damages." *Id.*; see *Lawrence v Will Darrah & Assoc, Inc*, 445 Mich 1, 15; 516 NW2d 43 (1994) ("At common law, while a plaintiff has a duty to mitigate his loss, it is the defendant who bears the burden of proving a failure to mitigate[.]").

Essentially, defendants argue that plaintiffs failed to take full advantage of the mail order prescription plan provided with the new $15 generic and $30 specific prescription coverage.

However, we cannot conclude that reasonable efforts to minimize damages include plaintiffs' participation in an optional mail order prescription plan. Defendants also contend that the presumably lower office visit out-of-pocket expenses should be offset against any damage award. But, defendants failed to present any evidence that the lower office visit co-pay combined with higher prescription co-pays actually resulted in lower out-of-pocket expenses to plaintiffs, as compared to the out-of-pockets expenses plaintiffs incurred under their original healthcare coverage. The trial court did not clearly err in awarding damages.

Affirmed.

Plaintiffs may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

Exhibit J

DRAFT

October 8, 2014

Denise Estee
2923 Greenbriar Avenue
Lansing, MI 48912

RE: Claim (Retiree Healthcare)

Dear Ms. Estee,

This is in response to the Claim Form for Retiree Healthcare filed by you and received by the Office of the City Attorney on September 24, 2014. To the extent that you raise issues relative to the decision of the City to utilize February 20, 2004 as the date to implement changes relative to retiree benefits, please see the enclosed copy of a letter dated August 19, 2010 previously sent to you.

Regarding the remaining issues you raise, be advised that the Teamsters Local 580 Clerical, Technical, Professional ("Union") collective bargaining agreements provide that retirees shall be covered by the same health insurance as active employees. Previously, the PHP plan was the base plan for both active employees and retirees. Active employees paid a premium share of 10% toward this plan. Retirees also paid a premium share of 10% with a cap not to exceed 1% of the retirees' pension up to a specified maximum amount of $125 single/$225 double/$325 family. In addition, the City offered the option of a BCBS plan to employees and retirees. If the BCBS plan was chosen, the employee or the retiree paid the cost differential above the base plan, plus the applicable premium share.

The City and the Union recently ratified a new collective bargaining agreement that includes new health insurance plan options for active employees. Therefore, because retirees are covered by the same health insurance as active employees, health insurance plan options for retirees also changed. These plan options were effective August 1, 2014.

Currently, the employee or retiree now has the option of selecting a plan <u>fully paid for</u> by the City. The retiree or employee may elect to choose an optional plan and pay the cost differential, if any, above the amount that the collective bargaining agreement provides the City will pay for.

As mentioned above, the former health insurance plan options all included a premium share provision that employees and retirees were required to pay. The new health insurance plan options eliminate the premium share provision for employees and retirees.

The new health insurance plan options allow employees and retirees to purchase a more expensive option if they choose. This is in recognition that different people have different individual or family needs while continuing to contain healthcare expenses for the City, its employees and our retirees, including yourself.

In summary, the retiree healthcare benefit options you are and have been provided by the City of Lansing are in accordance with the benefit and cost provisions collectively bargained with Teamsters Local 580, Clerical, Technical, Professional Unit. As stated above, these include a provision that retirees shall be covered by the same health insurance as active employees. As a retiree, this provision applies to you as well as retirees on or after February 20, 2004.

Sincerely,

As mentioned above, the former health insurance plan options all included a premium share provision that employees and retirees were required to pay. The new health insurance plan options eliminate the premium share provision for employees and retirees.

The new health insurance plan options allow employees and retirees to purchase a more expensive option if they choose. This is in recognition that different people have different individual or family needs while continuing to contain healthcare expenses for the City, its employees and our retirees, including yourself.

In summary, the retiree healthcare benefit options you are and have been provided by the City of Lansing are in accordance with the benefit and cost provisions collectively bargained with Teamsters Local 580, Clerical, Technical, Professional Unit. As stated above, these include a provision that retirees shall be covered by the same health insurance as active employees. As a retiree, this provision applies to you as well as retirees on or after February 20, 2004.

Sincerely,

Exhibit

L

City of Lansing

Executive Management Plan Fringe Benefits

Fringe benefits provided to executives shall be in accordance with provisions provided to other City employees. In recognition of the fact that these are senior management positions and that employees within them supervise other employees who have varying fringe benefit provisions, the Mayor or designee shall be authorized to offer fringe benefits commensurate with education experience and at a level appropriate to their position. The City will furnish a current copy of the fringe benefits to all employees covered under these rules.

Health Insurance:
The City of Lansing shall offer at the time of hire or during an annual open enrollment period the following choice of medical insurances. Coverage will be effective the twentieth (20th) day of the month following the date of hire. Current plans offered are:

- Blue Cross/Blue Shield PPO - includes a $20.00 co-pay for office visits. Prescription drug co-pays are $10.00 generic/$20.00 Preferred brand co-payment and a mail order prescription drug service plan. This plan includes a $500 calendar year limit on preventative services, emergency room services with a $0 co-pay, and a 50% co-pay for mental health and substance abuse services. Summary booklets are available in the Personnel Department.

- Blue Care Network - Health Central - includes a $20.00 co-payment for office visits Prescription drug co-pays are $10.00 generic/$20.00 Preferred brand co-payment. Optical (vision) coverage, with co-payments and maximum benefits, for exams, lenses, frames and contacts. Summary booklets are available in the Personnel Department.

- Physicians Health Plan - includes a $20.00 co-payment for office visits. Prescription drug co-pays are $10.00 generic/$20.00 Preferred brand co-payment. Optical (vision) coverage, for exam only with $15.00 co-payment. Summaries are available in the Personnel Department.

Medical Insurance Opt Out Program: Pursuant to the City of Lansing 125 Cafeteria Plan, employees may choose to opt-out of the City's health care plan annually, during an open enrollment period. An employee who opts-out of the City's health care plan will be eligible to receive $1800.00 annually, in accordance with the procedures of the Medical Insurance Opt-Out Program.

Dental Insurance: The City pays the full premium costs for the Dental plan provided by the City, coverage includes the employee and family members. Coverage includes 100% coverage for cleaning; 50% coverage for treatment costs with an $800 maximum per person per contract year. Employees and dependents will also receive orthodontic coverage which provides fifty percent (50%) of treatment costs with a $1,500.00 lifetime

maximum per person. Coverage is effective the first day of the month following thirty calendar days of service. Booklets and summaries are available in the Personnel Department.

Life Insurance: The City pays the premium for a base $50,000 of group life and $50,000 Accidental Death and Dismemberment Insurance for full-time regular employees. Life insurance coverage for dependents is available for a reasonable cost to the employee, in accordance with the following schedule:

Spouse	$25,000
Unmarried child, age 14 days to 6 months	$ 500
6 months to 23 years	$ 2,000

Coverage is effective one (1) month and one (1) day following the date of hire. Summaries are available in the Personnel Department.

Longevity Bonus: Longevity bonuses shall be paid to employees as follows:

5 but less than 10 years service	2% bonus
10 but less than 15 years service	4% bonus
15 but less than 20 years service	6% bonus.
20 but less than 25 years service	8% bonus
25 or more years	10% bonus

Following completion of five (5) years of continuous full time service by October 1 of any year and continuing in subsequent years of such service, each employee shall receive annual longevity payments as provided in the schedule. Payments to employees who become eligible by October 1 of any year shall be due the subsequent December 1.

No longevity payment as above scheduled shall be made for that portion of an employee's regular salary or wage which is in excess of the negotiated maximum base wage, which is currently $20,000.00.

Vacation: Effective immediately at the point of hire, any new appointment shall be credited with eighty (80) hours to one hundred twenty hours (120) vacation which is immediately available for use. Thereafter, employees will receive an additional eight (8) hours vacation for each year of additional full-time service, not to exceed a maximum vacation leave of 160 hours accrued in any given year, with a maximum corresponding accumulation of 400 hours per pay period.

Sick Leave: Employees shall be credited with 3.7 hours of sick leave each pay ending

(approximately (1) one day per month). Employees may use sick leave for absences due to his/her illness or injury, including pregnancy, or an illness or injury in his/her immediate family. No sick leave credit shall be accrued by an employee during an unpaid leave of absence. Upon separation from the City, employees shall be paid 50% of accrued sick leave up to a maximum of 680 hours paid except in cases when fraud, theft, or embezzlement have resulted in discharge. Maximum accrual for sick time will be 1,440 hours.

An employee is eligible for a $150.00 sick leave reimbursement should an employee use eight hours or less of sick leave between October 1 and September 30 of any year. Payment shall be made no later than December 15 each year.

Personal Leave: Employees receive two (2) personal leave days annually on January 1 or at time of hire. Personal days must be used by December 31 or they shall be forfeited.

Holidays:

New Year's Day
Martin Luther King Birthday
Good Friday
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Friday After Thanksgiving Day
Day Before Christmas
Christmas Day
Day Before New Year's Day

Bereavement: At the time of the death of a spouse, child, step-child, parent, step-parent and parent of a current or deceased spouse, an employee will be entitled to use a maximum of the next five (5) working days with pay, not to be deducted from the accumulated sick leave, to arrange for and/or attend a funeral or memorial service. Additional time may be taken off with the approval of the department head and charged to vacation, personal leave or compensatory time.

An employee will be entitled to use a maximum of three (3) working days with pay, not to be deducted from the accumulated sick leave to make arrangements and attend a funeral or memorial service for any other immediate family member. "Other immediate family" shall mean niece, nephew, brother, sister, brother-in-law, sister-in-law, grandparents, grandparents-in-law and grandchild.

Education Reimbursement: Employees covered herein shall be eligible for educational cost reimbursement benefits up to $500.00 annually for job related courses. Such courses must have prior approval in writing and must be taken on personal time to be eligible for reimbursement. All requests must be made in writing and courses must be satisfactorily completed with a grade of 2.5 or better.

Parking/Transportation Subsidy: Employees covered herein shall have parking provided

at no cost.

City of Lansing 125 Cafeteria Plan
Medical and Dependent Care Reimbursement: Employees have the opportunity to pay for unreimbursed medical expenses, and dependent care costs with pretax dollars through AFLAC. AFLAC also offers supplemental insurances that may purchased on a pretax basis through payroll deduction.

Deferred Compensation: Employees shall be eligible to participate in the City's deferred compensation plan as may be offered by the City. Currently those plan include investment options from Aetna Life & Annuity and T. Rowe Price. The employee may contribute up the maximum as allowed by law annually through payroll deduction or as revised by the Deferred Compensation Committee. For a bi-weekly employee the minimum contribution is $25.00 per pay period. Summaries are available in the Personnel Department.

Retirement: Employees will belong to the City of Lansing General Employees Retirement System (ERS). Vesting, retirement factor multipliers and effective dates for calculation are all governed by Ordinance Chapter 292. Commencing October 1, 2003, the retirement factor for full time members will be one and six tenths percent (1.60%). Employee contributions for retirement will be six and five-tenths percent (6.50%) and deducted on a pretax basis.

As provided by ordinance; for service after September 30, 2003 the annual retirement amount is calculated at 1.6 times the final average compensation for the first 35 years of credited service. The maximum pension allowance will be equal to 100% of an employee's final average compensation. Eligibility, for regular retirement, will be age 50 with 25 or more years of service or age 58 with 8 or more years of service.

For all employees hired after October 29, 1990, the City agrees to provide retirement health care coverage of 55% of the designated base plan premium after completing 8 years of full time service, 75% of the premium after 12 years of service, and 100% of the premium after 15 years of service. Retirement health coverage shall begin at the date of termination of employment with the City provided the employee is age 55. This coverage shall be the same insurance coverage provided to active employees. Retirees shall convert to complimentary coverage at their Medicare eligibility date.

Defined Benefit Retirement Systems
RETIREMENT:
An employee hired into a position subject to the Executive Management Plan Personnel Rules who was a member of the Police and Fire Retirement System or the Employee Retirement System (ERS) on the day before his/her date of hire into the Executive Management Plan position shall remain a member of the Police and Fire Retirement System or the Employee Retirement System (ERS), whichever is applicable.

RETIREMENT HEALTH CARE:
Employees shall become eligible retirees for the purpose of retirement health care coverage when they are eligible to receive age and service retirement benefits (deferred or immediate) or a disability retirement under the terms of the General Employees'

Retirement System or Police and Fire Retirement System ordinance, whichever is applicable, consistent with the practice then in effect, provided that the employee works at least 15 years.

Summary information regarding the Plan is available in the Personnel Department.

Sworn Employee Provision: Fire Chief - As provided to L.F.D. employees who are on a forty hour week schedule and are required to wear a uniform, the Fire Chief will receive an annual uniform maintenance allowance.

Police Chief - As provided to F.O.P. Supervisors, the Police Chief will receive a clothing allowance of two percent (2%) of his/her base wage.

Classification/Compensation: Compensation and classification shall be administered by the Personnel Department and established through job content evaluation and wage line administration pursuant to the City's adopted classification/compensation plan.

Subsequent increases in compensation levels for the non bargaining unit employees shall be determined by the Mayor in accordance with provisions at the same level and date provided to other City employees.

Upon separation from City service employee shall receive a lump sum payment for 100% of accrued vacation, 50% of accrued sick leave to a maximum of 680 hours, and 100% of accrued personal leave.

Personnel Department, 4th Floor City Hall, 124 West Michigan Avenue, Lansing MI 48933. Phone: 483-4014

(Rev. 12/14/2005 New admin.)
(Rev. 10/01/2003-Retirement 1.6 DB Plan
(Rev. February 21, 2003)
(Rev. March 28, 2002 - Sworn)
(Rev. February 18, 2002-Comp only)
(Rev. January 1, 2001)
(Rev. September 27, 2000)
(Rev. June 20, 2000)

Exhibit M

2) Members of the bargaining unit, up to a maximum of fifteen percent (15%) of each bargaining unit, will be allowed to opt out of the City's health care plan annually, during the City's open enrollment period[1] provided the employee provides written proof of coverage from another source.

Re-enrollment in one of the City's medical insurance plans will only be permitted at the time of the City's open enrollment which is at least one (1) year from the initial date of the opt out with the following exception. In the event the bargaining unit member loses his/her alternative coverage and provides written documentation of loss of such coverage, re-enrollment in one of the City's medical insurance plans will be permitted and the effective date of coverage will be as soon as allowable by the applicable insurance vendor.

3) Payment. Any employee who opts out of the City's health care plan will be eligible to receive $1500 in any year which they receive coverage from another source. Such payment shall not be eligible to be considered in the calculation of the employee's final average compensation. In addition such payments shall be made at least twice a year, by separate check, following the period of time the employee had alternate coverage. Employees who do not choose to opt out shall incur no additional cost other than those costs provided in above sections which the employee may currently be paying.

4. Cancellation. In the event that IRS Code, Section 125 and/or opt out plans are no longer permissible under State or Federal statutes or IRS Regulations, the City may cancel this option.

G. Retiree Health Care Coverage. Eligible retirees shall be covered by the same insurance as active bargaining unit members.

1. Employees hired on or after July 1, 1987 shall not become eligible retirees under this provision unless they work at least fifteen (15) years for the City, and are eligible to receive age and service retirement benefits or they are eligible for duty disability retirement, under the terms of the General Employees' Retirement System ordinance.

2. Employees hired before July 1, 1987, shall become eligible retirees under this provision when they are eligible to receive age and service retirement benefits (deferred or immediate) or a disability retirement under the terms of the General Employees' Retirement System ordinance, consistent with the practice then in effect.

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[1]Initially a special opt-out period may be implemented outside of the City's open enrollment period.

Exhibit N

open enrollment period[1] provided the employee provides written proof of coverage from another source other than a City plan, exclusive of coverage provided through a City plan available to a spouse who is a current or retired City employee. Employees shall not be eligible for the opt out provision until they have successfully completed their probationary period.

Re-enrollment in one of the City's medical insurance plans will only be permitted at the time of the City's open enrollment which is at least one (1) year from the initial date of the opt out with the following exception. In the event the bargaining unit member loses his/her alternative coverage and provides written documentation of loss of such coverage, re-enrollment in one of the City's medical insurance plans will be permitted and the effective date of coverage will be as soon as allowable by the applicable insurance vendor.

3. Payment. Any employee who opts out of the City's group health care plan will be eligible to receive a maximum of $1500 or the applicable prorated amount in any year for the period of time which they receive coverage from a source other than the City. Such payment shall not be eligible to be considered in the calculation of the employee's final average compensation. In addition such payments shall be made at least twice a year, by separate check, following the period of time the employee had alternate coverage from a source other than a City plan except as provided above. Employees who do not choose to opt out shall incur no additional cost other than those costs provided in above sections which the employee may currently be paying.

4. Cancellation. In the event that IRS Code, Section 125 and/or opt out plans are no longer permissible under State or Federal statutes or IRS regulations, the City may cancel this option.

H. Retirement Health Care Coverage. Eligible retirees and eligible members of the City's Defined Contribution Money Purchase Plan (DCMPP) shall be covered by the same insurance as active bargaining unit members and shall be subject to the same premium computation requirements as active employees, i.e., the employee shall be responsible for any cost differential between their applicable computation baseline and their chosen plan through payroll deduction as applicable.

1. Employees hired before October 29, 1990, shall become eligible retirees under this provision when they are eligible to receive age and service retirement benefits (deferred or immediate) or a disability retirement under the terms of the General Employees' Retirement System ordinance

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[1]Initially a special opt-out period may be implemented outside of the City's open enrollment period.