

## FEE AGREEMENT – GENERAL AGENT

**DATE:** 1st day of October, 2019

**TRUST:** **AGC HEALTH BENEFIT TRUST**  
9450 SW Commerce Circle  
Wilsonville, OR 97070

**FULWILER:** **JD FULWILER & CO., INSURANCE**  
5727 SW Macadam Avenue  
Portland, OR 97239

### RECITALS

A. Fulwiler provides general agent services, while the Oregon-Columbia Chapter, Associated General Contractors of America, Inc. (“AGC”) sponsors the Trust, which is both a “voluntary employees' beneficiary association” described in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, and an “employee welfare benefit plan,” as defined in § 3(l) of the Employee Retirement Income Security Act of 1974, as amended. The Trust provides for a Board of Trustees (“Trustees”) with the authority to establish a plan of group life and group accident and health benefits, and to hold and manage the assets of the Trust for the exclusive purpose of providing such benefits and defraying the related reasonable administrative expenses.

B. Subject to the terms and conditions herein, Fulwiler desires to provide General Agent Services (“Services”) for the Trust, as set forth in Exhibit A attached hereto, and the Trustees agree to compensate Fulwiler in exchange for performance of the Services, as set forth herein.

### AGREEMENT

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fulwiler and the Trustees agree as follows:

#### 1. Fulwiler Services.

- 1.1 **General.** Subject to the terms and conditions herein, Fulwiler shall provide the services set forth on Exhibit A (the “Services”). Fulwiler shall perform the Services with the same care and diligence as other employee benefits advisors in the Pacific Northwest.
- 1.2 **Evaluation of Coverage Options.** Fulwiler shall review the financial soundness of the insurers Fulwiler recommends, through evaluation of publicly available information, including information produced by well-recognized rating agencies. Fulwiler will provide assistance to the Trustees in reviewing all binders, policies, and endorsements to confirm that the same conform to the negotiated specifications and the Trustees' written instructions to Fulwiler. Fulwiler does not

guarantee or warrant the solvency or financial condition of any insurer or intermediary recommended or otherwise used to place coverage for the Trust, nor will Fulwiler be obligated to obtain, review, or provide non-public information through the course of analyzing the financial soundness of the insurers it recommends.

## 2. **Trust Responsibilities.**

- 2.1 **Cooperation.** The Trustees shall cooperate fully with Fulwiler in the performance of Fulwiler's obligations under this Agreement. Fulwiler shall be entitled to rely on facts, information, and direction provided by AGC or the Trustees in performance of the Services.
- 2.2 **Information.** AGC or the Trustees, as applicable, shall promptly and completely respond to all inquiries by Fulwiler or its agents for information required to enable Fulwiler to fully and timely perform the Services. Fulwiler shall not be liable to AGC, its members, the Trustees or any other third party for failure of AGC or the Trustees to provide timely, accurate and/or complete information in response to Fulwiler's requests, unless Fulwiler knows or reasonably should know that such information is materially inaccurate or materially incomplete. The Trustees shall promptly advise Fulwiler in writing, of any changes in the Trust's business and/or operations that may affect the Services or the Trust's insurance coverages.
- 2.3 **Coverage Decisions.** The Trustees shall be responsible to make all final decisions relating to insurance coverages, risk management, and loss control needs of the Trust. Notwithstanding any assistance Fulwiler renders to the Trustees as set forth above, the Trustees shall independently review all such binders, policies, and endorsements, and shall promptly notify Fulwiler of any provisions, terms, and/or conditions within binders, policies, and/or endorsements of which the Trustees disapproves. AGC and the Trust shall be responsible to obtain its own legal and/or tax advice, to the extent AGC or the Trustees so desire, and no advice, input, or other information provided by or on behalf of Fulwiler to AGC or the Trustees shall be deemed to be legal and/or tax advice under any circumstances.

## 3. **Compensation & Disclosures.**

- 3.1 **General Agent and Administration Fee.** AGC or the Trust shall pay to Fulwiler, a fee equal to \$12.55 per medical employee per month ("PEPM"). The foregoing PEPM rate shall be effective through and including December 31, 2020, and may be amended annually in writing by mutual agreement of the parties.
- 3.2 **Commission Override.** Additionally, AGC or the Trust shall pay to Fulwiler, a "Commission Override" fee on renewing business. The Commission Override fee shall be an additional 1.00% of billed premium on renewing business (employers who have been in the Trust longer than 12 months at the date of premium payment). Such fee shall be paid by AGC or the Trust to Fulwiler within thirty

(30) days of receipt of the billed premium by the Trust. Renewing business shall mean employers who are renewing with the Trust and who have been participating with the Trust for the twelve (12) month (or greater) period that immediately precedes the date of the renewal in question.

**3.3 Payment Terms.** AGC or the Trust shall pay all sums required by it hereunder, in immediately available funds. Fulwiler shall not be liable to AGC or any third party in any manner, in the event AGC delays or fails to pay such amounts, as and when due.

**3.4 Disclosures.**

3.4.1 Compensation paid to Fulwiler hereunder does not include federal, state, and/or local sales, use, excise, or any other similar taxes or governmental charges which may be imposed on the services provided. For avoidance of doubt, any Oregon Corporate Activity Tax is not a tax or government charge covered by this provision. AGC or the Trust shall be responsible for paying any taxes or charges covered by this provision as agreed by the parties, excluding taxes imposed on the net income of Fulwiler or any tax on Fulwiler under the Oregon Corporate Activity Tax, now imposed or that becomes effective during the Term, as the same become due. In the event such taxes and/or charges are imposed upon or charged to Fulwiler, Fulwiler shall invoice the Trust for the same, which shall be paid by the Trust upon demand by Fulwiler, unless the Trustees provides a valid tax exemption applicable to such charges and the services rendered by Fulwiler.

3.4.2 Fulwiler is an insurance producer licensed to do business in all 50 states and the District of Columbia. Insurance producers are authorized by their license to work with the insurance purchasers and discuss the benefits and terms and conditions of insurance contracts; to offer advice concerning the substantive benefits of particular insurance contracts; to sell insurance; and to obtain insurance for purchasers. The role of an insurance producer in any particular transaction involves one or more of these activities.

3.4.3 The compensation paid to Fulwiler will vary based on the amount paid by participating members of the Trust. Depending on the insurer and insurance contract that the Trustees select, compensation to Fulwiler may be paid by the insurer selling the insurance contract or by another third party. Such compensation may vary depending on a number of factors, including the insurance contract and insurer the Trustees select and will be in addition to the Fee described above. In some cases, other factors such as the volume of business Fulwiler provides to the insurer or the profitability of insurance contracts Fulwiler provides to the insurer also may affect compensation. Any such additional compensation will be disclosed by Fulwiler to the Trustees at least annually.

3.4.4 Upon request Fulwiler will provide the Trustees with additional information about the compensation Fulwiler expects to receive pursuant to this Agreement, and (if applicable) the compensation Fulwiler expects to be received based in whole or in part on any alternative insurance options provided by the Trust.

3.4.5 The Trustees may, in the Trustees' sole discretion, utilize a third party administrator, utilization firm, or other similar service provider in connection with the insurance coverage placed by Fulwiler and/or other services rendered by Fulwiler to the Trust, at the sole cost and expense of AGC or the Trust.

3.4.6 Fulwiler may place benefits with members of a panel of insurers. Fulwiler develops panels of insurers in certain market segments. Participating insurers are reviewed on a variety of factors. Commission rates on panel placements may be higher than rates paid on business placed outside of the panel process. Fulwiler discloses its commission rates to clients on quotes obtained through the panel process prior to binding coverage. In some instances, insurers pay an administration fee to participate in the panel process. Fulwiler will disclose to the Trustees any such additional commissions or fees it may receive in connection with placement of benefits under the Trust.

3.4.7 The insurance marketplace is complex, and there could be other relationships which are not described in this Agreement which might create conflicts of interest. Notwithstanding any possible conflicts that might exist, Fulwiler will act in the Trust's best interests at all time in providing Services. If a conflict of interest arises for which there is no practicable way of resolving the same, Fulwiler will promptly inform the Trustees in writing and withdraw from the engagement, unless the Trustees provide their written consent for Fulwiler to continue to provide the Services. Absent any other written notice from the Trustees, Fulwiler will be entitled to presume that the Trustees understands and consents to provision of the Services in accordance with the above.

3.4.8 Fulwiler reserves the right to pass through to the Trust any mutually agreed reasonable costs related to the printing of Trust participant communications materials and other out-of-pocket costs and expenses.

4. **Term.** The term of this Agreement shall be from January 1, 2020 to December 31, 2020 (the "Term"). Thereafter, the Term shall automatically renew for successive periods of twelve (12) months each, unless either party provides the other with written notice of non-renewal not later than ninety (90) days prior to the last day of the preceding Term. As used herein, "Term" shall refer to the first twelve (12) month period hereunder, and any renewal, as set forth above. Any renewal of the Term, shall be on the same terms and conditions set forth herein, unless otherwise agreed in a signed written agreement between Fulwiler and the Trustees.
5. **Termination.** Notwithstanding Section 4 hereinabove, either party may terminate this Agreement upon ninety (90) days advance written notice to the other party, whereupon such termination shall be effective as of 11:59 PM (PST), on the ninetieth (90<sup>th</sup>) day of the aforementioned notice period.
6. **Intellectual Property.** Fulwiler retains all right, title, and interest, in and to (1) all information prepared by Fulwiler and furnished to the Trustees during the Term, and (2) all ideas, know-how, methodology, techniques, models, data, or other forms of trade secrets and/or intellectual property now owned or hereafter developed solely by Fulwiler while performing the Services hereunder. To the extent that the foregoing are developed

in part by Fulwiler, and provided Fulwiler complies with all terms and conditions of this Agreement and the BAA (defined below), Fulwiler shall have an irrevocable, royalty free, and perpetual license to use the same in commerce, including any derivatives thereof.

**7. Audit Rights.**

**7.1 Fulwiler.** Fulwiler retains the right, and the Trustees so consent, to audit any and all records, information, data, and/or systems, related to this Agreement, including, but not limited to, data and information used to determine and/or calculate any fee(s) payable to Fulwiler hereunder during the Term of this agreement. The Trustees shall cooperate and make available such information, data, systems, and documents during its normal business hours. Such audit shall be at the cost and expense of Fulwiler.

**7.2 Trust.** The Trustees shall be entitled to audit the records of Fulwiler which directly relate to performance of the Services and/or billing therefore, during the Term of this Agreement. Such audit shall be at the cost and expense of AGC or the Trust, and shall occur during Fulwiler's normal business hours.

**8. Foreign Account Tax Compliance Act.** The Foreign Account Tax Compliance Act ("FATCA") is a U.S. law aimed at foreign financial institutions and other financial intermediaries (including insurance companies and intermediaries such as brokers) to prevent tax evasion by U.S. citizens and residents through offshore accounts. FATCA only applies if you are a U.S. company or individual or a non-U.S. company paying premium through a U.S. insurance broker to a non-U.S. insurer. In order to comply with FATCA, insurance companies and intermediaries must meet certain legal requirements. Insurance placed with an insurance company that is not FATCA compliant may result in a 30% withholding tax on the Trust's premium. Where FATCA is applicable to the Trust, in order to avoid this withholding tax, Fulwiler will only place the Trust's insurance with FATCA-compliant insurers and intermediaries for which no withholding is required unless the Trustees instruct us to do otherwise and the Trustees provide advance written authorization to do so. If the Trustees instruct Fulwiler to place the Trust's insurance with a non-FATCA compliant insurer or intermediary, the Trust may have to pay an additional amount equivalent to 30% of the premium covering U.S. – sourced risk to cover the withholding tax. If the Trustees instruct Fulwiler to place the Trust's insurance with a non-FATCA compliant insurer but does not agree to pay the additional 30% withholding if required, Fulwiler will not place the Trust's insurance with such insurer. Please consult AGC or the Trust's tax adviser for full details of FATCA.

**9. Business Associate Agreement.** The Trust, on behalf of its group health benefits, and Fulwiler each agree to execute the Business Associate Agreement attached hereto as Exhibit B, (the "BAA"), in order to comply with requirements set forth under the Health Insurance Portability and Accountability Act, the regulations implementing the Act (the "Standards for Privacy of Individually Identifiable Health Information", codified at 45 C.F.R. Parts 160 and 164).

**10. Miscellaneous.**

- 10.1 Notices and Demands.** All notices, demands, consents, approvals and other communications which are required or desired to be given by any party to another hereunder will be in writing and will be (a) hand delivered (including by means of a professional messenger service), (b) sent by United States certified mail, postage prepaid, return receipt requested, or by next business day delivery service such as FedEx, addressed to the appropriate party at its address set forth in this Agreement, or such other address as such party will have last designated by notice to the other, (c) sent by facsimile and followed by mailing by certified mail; or (d) sent by e-mail or other electronic transmission with a delivery receipt and followed by mailing by regular mail. Notices, demands, consents, approvals and other communications will be deemed given when delivered personally or by overnight delivery service, three days after mailing, or upon delivering party's receipt of a transmission confirmation of the facsimile or electronic transmission and mailing the same day.
- 10.2 Prior Agreements.** This document and the exhibits and agreements referenced herein, constitute the entire, final and complete agreement of the parties pertaining to the subject matter hereof, and supersede and replace all written and oral agreements heretofore made or existing by and between the parties or their agents concerning this subject.
- 10.3 Applicable Law and Severance.** This Agreement is entered into in the State of Oregon. The parties hereby agree that this Agreement will be governed by the internal laws, without regard to conflicts of laws, of the State of Oregon. If any clause or provision of this Agreement is determined by a court of competent jurisdiction in a final order to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement will not be affected thereby, and it is also the intention of the parties that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and which is legal, valid, and enforceable.
- 10.4 Venue.** Any suit or action of any kind relating to this Agreement or the subject matter hereof must be brought in a court located in Multnomah County, Oregon. The parties expressly consent to personal jurisdiction over them in any such suit or action.
- 10.5 Successors and Assigns.** This agreement will be binding upon the heirs, successors and permitted assigns of the parties.
- 10.6 Time of Essence.** Time and strict performance are the essence of this Agreement.
- 10.7 Waiver.** The failure of any party at any time to require performance of this Agreement, will in no way affect his right hereunder to enforce the same, nor will

any waiver of any succeeding breach of such provision, act as a waiver of the provision itself.

- 10.8 Further Actions.** Each of the parties will execute such documents and take such actions as may be reasonably requested by the other parties to carry out the provisions and purposes of this Agreement, and will use their own best efforts to perform and carry out the terms and conditions of this Agreement.
- 10.9 Attorney Fees.** In the event of a default under this Agreement, the defaulting party will reimburse the nondefaulting party for all costs and expenses reasonably incurred by the nondefaulting party in connection with the default, including without limitation attorney fees. Additionally, in the event a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing party will be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation reasonable attorney fees at the trial level and on appeal.
- 10.10 Indemnification.** Fulwiler agrees to indemnify and hold the Trust harmless for any damages or claims incurred by the Trustees to the extent caused by Fulwiler's failure to meet the obligations and duties to provide the services under this contract. AGC agrees to indemnify and hold Fulwiler harmless for any damages or claims incurred by the Trust to the extent caused by AGC or the Trustees' failure to meet the obligations and duties to enable Fulwiler to provide the Services under this Agreement. In no event shall either party be liable for special or punitive damages.
- 10.11 Execution.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute a single agreement. Facsimile, scanned and e-mailed or electronic signatures will be treated as original signatures. At the request of any party, an originally executed document will be mailed following the sending of any facsimile or scanned and e-mailed version.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

**J.D. FULWILER & CO., INSURANCE**

Trisha Fulwiler  
Trisha Fulwiler,  
President

**AGC HEALTH BENEFIT TRUST**

By: Norman Russell  
Name: NORMAN RUSSELL  
Title: CHAIR

**AGC**

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

Exhibit A: Services  
Exhibit B: Business Associate Agreement



## EXHIBIT A

### SERVICES

#### APPENDIX A: Brokerage and Consulting Services

As your benefits advisor, we work to help you establish a comprehensive strategy for your programs. Once a strategy is determined, we develop a detailed action plan to assist with your needs. Along the way, we continually review performance to ensure your organization's goals are met. While all decisions regarding your benefit programs remain up to you, you can expect Willis to support your organization with the following activities, where appropriate:

#### Strategy Development

- Facilitate an annual planning session to assist in the creation of a human capital strategy:
  - Assist you in identifying the strengths, weaknesses, opportunities and threats in your current plan designs and program
  - Evaluate workforce demographics
  - Evaluate current programs against specific competitive benchmark data
  - Present information on current trends in plan design and market conditions
  - Interview members of senior management to gather attitudes about the role of employee benefits in the organization and the current state of benefits programs
- Provide recommendations for establishing and prioritizing objectives aligned to organizational goals
- Create and deliver a *Client Service Plan* to reflect agreed projects, to include assigned accountabilities and timeframes

#### Renewal and Placement

- Conduct a "Pre-Renewal Strategy Meeting" to determine specific goals, budget and needs to be achieved from renewal negotiations
- Review renewal methodology, experience data, and assumptions against trend analysis for accuracy and logic
- Negotiate renewals with existing incumbent carriers
- Develop RFP and market plan coverages as determined during the pre-renewal strategy discussion
- Summarize and analyze each carrier quote. Comparative analysis may include: pricing, terms, conditions, RFP / RFI responses, network access, discount analysis and plan design.
- Evaluate structure and performance of stop loss coverage, recommending alternatives as appropriate for consideration
- Evaluate existing and potential carriers, including their capabilities and support services
- Schedule and facilitate selected carrier and vendor finalist interviews and site visits, as appropriate
- Provide recommendations on vendors best suited to meet plan goals and objectives (the client makes all decisions regarding the vendors they retain)
- Assist in establishing appropriate carrier/vendor performance guarantees with monetary penalties, if requested
- When requested, provide a non-legal review of terms you agree upon with benefits vendors, to help ensure the agreement meets your benefits needs

#### Implementation and Enrollment

- Review current vendor electronic data transfer process functionality, as appropriate
- Finalize benefit program design and rates, including COBRA and fees (our work is administrative in nature and client retains full decision-making authority and discretion with respect to all plan issues)
- Assist in implementation with multiple organizational departments (HR, IT, Finance, etc.) to ensure timelines are met, systems are set-up correctly, and data transfer is operational

## APPENDIX A: Brokerage and Consulting Services

- Evaluate current communication strategy and develop an appropriate action plan in accordance to business needs and budget requirements
- Help coordinate vendor-sponsored communication material, as appropriate
- Assist in planning open enrollment meetings, including carrier participation
- Assist in the planning and coordination of a health seminar/vendor fair (if applicable)
- Provide train-the-trainer sessions for conducting annual enrollment meetings

### Account Management

- Provide ongoing service and response to inquires from HR and the Benefits team, with regards to day-to-day administration of benefit program matters, consultation on policy coverages, etc.
- Facilitate processes related to changes in coverage, including notifying insurers of changes in coverage, obtaining approvals, confirming acceptance of client, etc.
- Provide up-to-date status of all outstanding items and activities
- Act as an employee/employer advocate in the resolution of escalated service and/or claims issues when requested to do so and properly authorized
- Keep the organization informed of trends that may impact their benefit programs
- Organize and facilitate meetings, including carrier reviews, financial reporting, and vendor meetings
- Assist you in identifying and monitoring potentially catastrophic claims and work with case management to understand possible impact of large claims on plan performance

### Trust Management/Administration

- Manage overall program implementation and ongoing oversight
- Schedule regular Trustee meetings upon direction of the Board. Provide an agenda of Trust business as directed by the Board prior to the meetings and attend such meetings to provide reports on Trust activities
- Coordinate any necessary meetings or information sharing with AGC staff.
- Handle correspondence directed to the Trust, as well as telephone and personal inquiries from participants and others connected with or doing business with the Trust.
- Maintain required filing, telephone and general office facilities and receive, store and facilitate distribution of any and all printed forms and literature required and as instructed by the Trust.
- Coordinate drafting and review of your Summary Plan Description with your selected outside legal counsel.
- Provide any necessary information and support for the annual audit of the Trust by an independent audit/accounting firm.
- Coordinate sub-broker relationship to provide sales and service support to AGC insured member groups.
- Manage request for proposals and other sales functions and negotiations with sub-brokers and appropriate carrier underwriters or other personnel.
- Increase visibility and understanding of the Trust's benefit program to sub-brokers and/or current and prospective members using written media, presentations, visits, calls or other platforms as may be determined.
- Arrange for and oversee the Third Party Administrator (TPA) contracted by the Trust.
- Provide the TPA information as it is received or made available by [AGC] including, but not limited to: Plan details, rates and business rules; general administrative instructions from the carrier(s); administrations kits; and any additional information or forms necessary to enable TPA to perform its administrative service obligations to the extent such forms or information are made available to us.

**EXHIBIT B**

**BAA to be attached.**