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**PUBLIC SERVICES BUILDING**  
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August 4, 2016

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Clackamas County Deferred Compensation Plan and the  
Housing Authority of Clackamas County Deferred Compensation Plan

<b>Purpose/Outcome</b>	Approval of the Plan Documents to amend the Clackamas County Deferred Compensation Plan and the Housing Authority of Clackamas County Deferred Compensation Plan
<b>Dollar Amount and Fiscal Impact</b>	\$0
<b>Funding Source</b>	N/A
<b>Duration</b>	Effective January 1, 2016
<b>Previous Board Action/Review</b>	Approved as part of the collective bargaining process
<b>Strategic Plan Alignment</b>	Builds public trust through good government
<b>Contact Person</b>	Kristi Durham, Benefits Manager, 503-742-5470

**BACKGROUND:**

In the last round of negotiations with AFSCME and the Employees Association, the County and the unions agreed to automatic enrollment in the Deferred Compensation plan for new employees. We are required to document this change in the official Plan Documents. The resulting updates to the Plan Documents require formal approval by the Board of County Commissioners.

**RECOMMENDATION:**

Staff recommends the Board approve the changes to the Clackamas County Deferred Compensation Plan and the Housing Authority of Clackamas County Deferred Compensation Plans.

Respectfully submitted,

Kristi Durham  
Benefits Manager

# **Clackamas County**

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## **Deferred Compensation Plan**

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**Amended and Restated  
Effective January 1, 2016**

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## **ARTICLE 1 INTRODUCTION**

The County of Clackamas, Oregon (“Employer”) hereby amends and restates this Deferred Compensation Plan (“Plan”), effective January 1, 2016, pursuant to Section 457 of the Internal Revenue Code of 1986, as amended (“Code”). The primary purpose of the Plan is to enable the Employer’s employees to enhance their retirement security by permitting them to enter into agreements with the Employer to defer compensation (both on a pre-tax and after-tax basis), receive Employer contributions (if any) and receive benefits at retirement, death, termination of employment, and for financial hardships due to unforeseeable emergencies.

Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement for services between the Participant and the Employer, nor shall it be deemed to give a Participant any right to be retained in the employ of, or under contract to, the Employer. Nothing herein shall be construed to modify the terms of any employment contract or agreement for services between a Participant and the Employer.

## **ARTICLE 2 DEFINITIONS**

- 2.1 Account.** The Account (and subaccounts) established for each Participant pursuant to Section 5.1.
- 2.2 Alternate Payee.** A Participant’s spouse, former spouse, child, or other dependent who acquires an interest in the Participant’s Account pursuant to a court decree of annulment or dissolution of marriage or of separation, or a court-approved settlement agreement incident to annulment or dissolution of marriage or of separation. Where the context so requires, reference to the “Participant” in this Plan shall be deemed to include an Alternate Payee.
- 2.3 Approved Institution.** Any organization that has been recommended by the Committee and approved by the Employer to provide services or Investment Product(s) to the Employer under the Plan.
- 2.4 Beneficiary.** The person(s), trust(s) or estate(s) entitled to receive benefits under the Plan upon death of a Participant in accordance with a suitable designation of Beneficiary filed with the Employer (or its delegate) and subject to applicable law.

- 2.5 Code.** The Internal Revenue Code of 1986, as amended from time to time, and including all valid regulations adopted pursuant to the Code.
- 2.6 Committee.** The committee appointed by the Employer as provided in Article 11 below to administer the Plan and perform administrative functions for the Plan as specified by the Employer.
- 2.7 Compensation.** All cash compensation paid to an Employee for employment services rendered to the Employer including salary, wages, fees, commissions, bonuses and overtime pay that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election under Article 3 to defer Compensation under this Plan).
- 2.8 Deferrals.** The amount of Compensation deferred by a Participant to the Plan, consisting of Elective Deferrals and effective January 1, 2014, Roth 457(b) Contributions.
- 2.9 Designated Institution.** As designated by the Employer, any Approved Institution whose Investment Product is used for purposes of measuring the benefits due that Participant pursuant to the Plan.
- 2.10 Elective Deferral.** Deferrals of Compensation made by the Employer to the Plan on a voluntary pre-tax basis pursuant to a Participation Agreement entered into by a Participant.
- 2.11 Eligible Deferred Compensation Plan.** An Eligible Deferred Compensation Plan within the meaning of Code Section 457(b).
- 2.12 Eligible Employee.** An Employee who has been appointed to a budgeted, allocated position and who is regularly scheduled to work at least twenty (20) hours per week, or for at least eighteen and three-quarters (18.75) hours in a Job Share status, and is scheduled to be in a paid status for twelve (12) months per year.
- 2.13 Eligible Individual.** Any Eligible Employee, any elected official, and any individual performing services for the Employer pursuant to an Employment Agreement, who performs services for the Employer for which Compensation is paid and who meets the criteria set forth in Section 3.1.

**2.14 Employee.** An individual who performs services for the Employer as a common-law employee.

**2.15 Employer.** Clackamas County, a political subdivision of the state of Oregon.

**2.16 Employment Agreement.** A written agreement between the Employer and an Employee pertaining to the Employee's performance of services for the Employer in exchange for remuneration.

**2.17 Includible Compensation.** An Employee's actual wages as reported in box 1 of Form W-2 for the Employer, but increased (up to the dollar maximum) by any Compensation reduction election under Code section 125, 132(f), 402(g)(3) or 457(b). The amount of Includible Compensation is determined without regard to any community property laws.

Pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participant who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2½ months after the Participant's Severance from Employment or the end of the calendar year that contains the date of such Participant's Severance from Employment.

In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(5)) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service.

Includible Compensation will not include any Employee pick-up contributions described in Code Section 414(h)(2).

**2.18 In-Plan Roth Rollover.** A rollover contribution to the Plan that consists of a distribution from an Elective Deferral Account, a 457(b) Rollover Account or a non-457(b) Rollover Account under the Plan that the Participant rolls over to the Participant's In-Plan Roth 457(b) Rollover Account in the Plan, in accordance with Code Section 402A(c)(4).

**2.19 Investment Product.** Any product issued by or obtained from an Approved Institution for the purpose of investing amounts deferred or contributed under the Plan.

**2.20 Normal Retirement Age.**

- (a) The Normal Retirement Age shall be 70½, unless the Participant makes an election under Section 2.20(b) below.
- (b) The Participant may, at any time prior to Severance from Employment or prior to the use of the Catch-up Limitation provision described in Section 4.2, elect in writing in the form established or approved by the Employer a Normal Retirement Age that is not earlier than the earlier of age 65 or the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits from the Employer's basic pension plan and not later than the date the Participant attains age 70½.

**2.21 Participant.** Any Eligible Individual who fulfills the eligibility and enrollment requirements of Article 3.

**2.22 Participation Agreement.** A written agreement between the Employer and a Participant in a form satisfactory to the Employer setting forth certain provisions and elections relating to the Plan, establishing the amount of Compensation to be deferred, specifying whether the elected Deferral is an Elective Deferral or, effective January 1, 2014, a Roth 457(b) Contribution, incorporating the terms and conditions of the Plan, and establishing the Participant's participation in the Plan. Enrollments and enrollment changes made through electronic means, such as the Employer's employee self service portal, or a contracted third party administrator's web site shall be deemed to meet the definition of this section.

**2.23 Payout Request.** A written agreement between the Employer and a Participant in a form satisfactory to the Employer setting forth the manner and method of paying benefits under the Plan.

**2.24 Plan.** The Clackamas County Deferred Compensation Plan effective December 15, 1977, as amended. The effective date of this amended and restated Plan is January 1, 2016.

**2.25 Plan Year.** The twelve (12) month period beginning January 1 and ending December 31.

**2.26 Roth 457(b) Contributions.** Deferrals that are: (1) made by the Employer to the Plan pursuant to a Participation Agreement entered into by a Participant, which qualifies as a "designated Roth Contribution" within the meaning of code section 402A; (2) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth 457(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and (3) treated by the Employer as

includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a "cash or deferred" election.

**2.27 Severance from Employment.** The Participant ceases to be employed by the Employer that maintains the Plan.

### **ARTICLE 3 PARTICIPATION IN THE PLAN**

**3.1 Eligibility.** Any Eligible Individual to whom Compensation is paid and who executes a Participation Agreement, or is deemed to have executed a Participation Agreement pursuant to the automatic enrollment provisions, is eligible to participate in the Plan.

**3.2 Enrollment/Deferrals.**

- (a) An Eligible Individual may become a Participant and agree to make Deferrals by entering into a Participation Agreement. Effective January 1, 2014, any such election to defer Compensation shall specify whether such Deferrals are to be Elective Deferrals or Roth 457(b) Contributions or a combination thereof; in the absence of any such specification, the Participant's Deferrals shall be deemed to be Elective Deferrals. The effective date of participation in the Plan shall be no sooner than the first day of the calendar month immediately following the latest of the date (i) an individual becomes an Eligible Individual; (ii) the execution and processing of a Participation Agreement with respect to that individual; or (iii) the execution and processing of any required agreements with the Designated Institution(s) selected by the Participant for investment of the Participant's Account.
- (b) At the time of entering into or modifying the Participation Agreement hereunder to make Deferrals or at the time of reentry following a withdrawal under Article 7, a Participant must agree to defer a minimum amount of \$338 annually.
- (c) All Deferrals made under the Plan are fully vested and nonforfeitable at all times.
- (d) A Participant who elects to make Deferrals may modify the Participation Agreement to change the amount deferred only for a subsequent calendar month and only if the new Participation Agreement has been executed and processed prior to the first day of the month during which it is to be effective. The effective date of the modified

Participation Agreement shall be the later of: (i) the first day of the calendar month immediately following the execution and processing of the modified Participation Agreement; (ii) the date specified in the Participation Agreement; or (iii) the last day of the waiting period described in Section 7.3, if applicable.

- (e) A Participant may suspend further Deferrals with respect to Compensation not yet earned by submitting a revised Participation Agreement. The revocation of a Deferral election will be effective on the first day of the calendar month immediately following the execution and processing of the written revocation of participation. Amounts previously deferred shall be paid only as provided in this Plan. Any Employer-provided contributions made under the Plan may not be revoked by the Participant.
- (f) A Participant who is subject to the limitation on Deferrals under Section 7.3, has revoked his or her Participation Agreement as set forth in Section 3.2(d), or who returns to perform services for the Employer after a Severance from Employment, may again become a Participant in the Plan and agree to make Deferrals of Compensation not yet earned by submitting a new Participation Agreement as provided in Section 3.2(a).

### **3.3 Employer Contributions.**

- (a) Subject to the limitations set forth in Article 4, the Employer may contribute to the Plan on behalf of Participants the amounts set forth in Attachment A.
- (b) Employer contributions shall be made to the Plan each payday for the pay period in which the services to which the contribution relates were performed. Participants on whose behalf an Employer contribution is made to the Plan are not permitted to receive the Employer contribution as current Compensation.
- (c) Employer contributions are fully vested and nonforfeitable immediately upon payment to the Plan.
- (d) In the event that a Participant who is both making Deferrals under Section 3.2 and receiving an Employer contribution under Section 3.3 exceeds the limits set forth in Article 4, the amount in excess of the limit will be refunded to the Participant as soon as administratively practicable. The refund shall be made first from amounts contributed by the Participant as Deferrals under Section 3.2 in the amount necessary to comply with the limits set forth in Article 4. If the contributions made on behalf of

the Participant still exceed the limits set forth in Article 4, then the Employer contribution will be reduced until the contributions to the Plan on behalf of the Participant comply with the limits set forth in Article 4.

**3.4 Transfers from Eligible Deferred Compensation Plans.** The Plan will accept incoming transfer of amounts previously deferred under another Eligible Deferred Compensation Plan if (1) the transferor plan provides for the transfer of such amounts, and (2) the Participant has a benefit equal to the amount immediately after the transfer at least equal to the amount under the Plan immediately before the transfer. The Employer may require such documentation from the transferor plan as it deems necessary to effectuate the transfer in accordance with Treasury Regulations Section 1.457-10(b) and to confirm that the transferor plan is an Eligible Deferred Compensation Plan within the meaning of Treasury Regulations Section 1.457-2(f). The amount so transferred will be credited to the appropriate sub-account under the Participant's Account and will be held, accounted for, administered and otherwise treated in the same manner as amounts as held in the transferor plan, except that the transferred amounts will not be taken into consideration for purposes of Code Section 457 (b)(2) for the year of transfer.

**3.5 Automatic Enrollment in the Plan.**

- (a) Collective Bargaining Agreement Requiring Automatic Enrollment.** If the County and a labor organization representing a unit of County employees agree in collective bargaining, new Eligible Employees of that unit will be deemed automatically to have executed a Participation Agreement with an effective date of the first of the month following two (2) full months of employment.
- (b) Advance Notice.** An Eligible Employee will be provided the required advance notice of automatic enrollment pursuant to Code Section 414(w), including the amount of contributions that will be made, the employee's right to change the amount of contributions, the employee's right not to have automatic contributions made, a description of how the contributions will be invested, and when such contributions may be distributed. The notice shall be provided within a reasonable period before such time when the automatic provision will become first applicable to an Eligible Employee.

- (c) **Opting Out of Automatic Enrollment.** A Participant may opt out of automatic enrollment at any time by completing a Participation Agreement or by providing written notice of the election not to have any amount withheld from his or her Compensation.
- (d) **Permissible Withdrawals.** A Participant may elect the return of automatic deferrals if the request is made in writing within 90 days from the date of the first deduction.
- (e) **Deferral Amount.** The amount deferred from an Eligible Employee's Compensation shall be the amount specified in the applicable collective bargaining agreement, provided that the requirements of Code Section 414(w) are satisfied, including the requirement that the percentage of pay deferred will be uniform for employees with the same years of employment.

#### **ARTICLE 4 LIMITATIONS ON AMOUNT DEFERRED**

- 4.1 Annual Maximum.** The maximum amount of Compensation that may be deferred under this Plan (the "Normal Limit") for a Participant's taxable year (except as provided in Sections 4.2 and 4.3) is the lesser of the applicable dollar amount within the meaning of Code Sections 457(b)(2)(A) and 457(e)(15)(A), as adjusted for the cost-of-living in accordance with Code Section 457(e)(15)(B) or 100% of the Participant's Includible Compensation.
- 4.2 Catch-Up Limit.** For each one or more of the Participant's last three (3) taxable years ending prior to but not including the year of such Participant's Normal Retirement Age, as elected by the Participant pursuant to or otherwise defined in Section 2.20, the limitation set forth in Section 4.1 shall be increased to the lesser of:
- (a) two (2) times the amount described in Section 4.1; or
  - (b) The sum of:
    - (1) The Normal Limit set forth in Section 4.1 for the taxable year, plus
    - (2) The amount of the Normal Limit for any prior taxable year or years since January 1, 1979, less the amount of Compensation actually deferred under the Plan for such prior taxable year or years.

For purposes of this Section 4.2, a prior taxable year can be taken into account only if:

- (1) The Participant was eligible to participate in the Plan or any similar prior plan of the same Employer during any portion of any prior taxable year since January 1, 1979; and
- (2) The Compensation deferred, if any, under such plan or the Plan during such prior taxable years was subject to a maximum deferral limitation as required by Code Section 457.

A Participant may elect to utilize the Catch-Up Limitation with respect to only one (1) Normal Retirement Age (as defined in Section 2.20) in this Plan or any other Eligible Deferred Compensation Plan notwithstanding the fact that the Participant utilizes the Catch-Up Limitation in less than all of the three (3) eligible years. This Section 4.2 shall not apply in any Plan Year in which Section 4.3 applies because the maximum deferral limit under Section 4.1, when combined with the limit under Section 4.3, is higher than the limit under this Section 4.2.

**4.3 Age 50 Catch-Up Limit.** A Participant who will have attained the age of 50 before the close of the Plan Year, and with respect to whom no other Deferrals may be made to the Plan for the Plan Year by reason of the limitation of Section 4.1, may enter into a Participation Agreement to make Deferrals in addition to those permitted by Section 4.1 in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Code Section 414(v)(2)(B), as adjusted for the cost-of-living in accordance with Code Section 414(v)(2)(C), or (2) the excess (if any) of (i) the Participant's Includible Compensation for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 4.3. The age 50 catch-up contribution is subject to adjustment for cost of living increases under Code Section 414(v)(2)(C).

An additional contribution made pursuant to this Section 4.3 shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Code Section 402(g), or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 4.3 shall not apply in any Plan Year in which Section 4.2 applies because the maximum deferral limit under Section 4.2 is higher than the maximum deferral limit under Section 4.1, when combined with the limit under this Section 4.3.

- 4.4 Another Eligible Deferred Compensation Plan.** If the Participant is or has been a participant in one or more other Eligible Deferred Compensation Plans, then this Plan and all such other plans shall be considered one plan for purposes of applying the foregoing limitations of this Article 4. For this purpose, the Employer shall take into account any other such Eligible Deferred Compensation Plan maintained by the Employer and shall also take into account any other such Eligible Deferred Compensation Plan for which the Employer receives from the Participant sufficient information concerning his or her participation in such other plan.
- 4.5 Cash Method of Accounting.** For purposes of applying the limitations in Sections 4.1, 4.2 and 4.3, Compensation deferred under the Plan for a pay period shall be treated as deferred as of the pay day for that pay period.

## **ARTICLE 5 ACCOUNTS**

- 5.1 Participants' Accounts.** A separate bookkeeping Account shall be maintained for each Participant. Within each Account, one or more sub-accounts may be established including (1) an Elective Deferral Account, (2) a Roth 457(b) Contributions Account, (3) a 457(b) Rollover Account, (4) a non-457(b) Rollover Account, (5) a Roth 457(b) Rollover Account, (6) a Roth non-457(b) Rollover Account, (7) a Rollover of In-Plan Roth non-457(b) Rollover Account, and/or (8) In-Plan Roth 457(b) Rollover Account.
- (a) Each Account shall be credited with the amount of the Participant's Compensation deferred under Section 3.2 and with any amount transferred to this Plan with respect to the Participant as provided in Sections 14.1 or 14.3.
  - (b) Each Participant's Account shall be debited with the amount of any payment to the Participant under this Plan, with any amount transferred to a separate account for an Alternate Payee with respect to the Participant as needed, and with any amount of the Participant's Account transferred to another plan as provided in Section 14.2.
  - (c) At such dates and frequency as are reasonably determined by the Employer, a Participant's Account also shall be credited with the amount of income and gain allocable to the Account and also shall be debited with the amount of loss, expenses, and charges allocable to the Account.

- (d) A written report of the status of each Participant's Account shall be furnished to the Participant at least annually.

**5.2 Investments.** Each Account shall be invested as directed by the Participant or Alternate Payee in such one or more Investment Products as are determined and approved by the Committee and allowed by Oregon law.

- (a) The amount of each Account shall be invested in such one or more of those approved Investment Products as are designated by the Participant or Alternate Payee in a manner approved by the Employer.
  - (1) A Participant's or Alternate Payee's investment designation shall apply to the amount of the Participant's or Alternate Payee's Account after the Participant's or Alternate Payee's death until the Beneficiary makes an investment designation in a manner approved by the Employer.
  - (2) A Participant's investment designation with respect to any portion of the amount of the Participant's Account transferred to an Alternate Payee's Account shall apply to the amount of the Alternate Payee's Account until the Alternate Payee makes an investment designation in a manner approved by the Employer.
- (b) Investment designations shall be implemented as soon as administratively feasible, subject to any restrictions imposed by the Designated Institution.
- (c) Neither the Employer nor the Committee shall be liable to any Participant, Beneficiary, Alternate Payee, or other person for any loss due to the Employer's determination and approval of Investment Products, due to the Employer's failure to monitor the performance of those approved Investment Products, or due to the investment performance of amounts invested in those approved Investment Products, unless committed in bad faith, intentionally, or with reckless indifference to the interest of the Participant, Beneficiary, Alternate Payee, or other person.

**5.3 Expenses and Charges.** The Committee shall determine the reasonable expenses of the Employer and the Committee that are associated with the deferral of Compensation under this Plan, investing the amount of Accounts, or administering this Plan, and also shall determine the expenses and charges associated with the Investment Products designated by the Participant, Beneficiary, or Alternate Payee. The Employer may charge such expenses and charges to and among Participants', Beneficiaries', and Alternate Payees'

Accounts in such manner as the Employer determines equitable. However, general expenses of the Employer may not be charged to this Plan or to Accounts.

## **ARTICLE 6 BENEFITS**

### **6.1 General Benefit Terms.**

- (a) Benefits payments to a Participant or Beneficiary shall be made according to the manner and method of payment as elected in the Payout Request, which election may be changed by a Participant or a Beneficiary as appropriate and as allowed by the Plan at any time.
- (b) Subject to the restrictions on choice of benefit contained in paragraphs 6.1(c) and (d), 6.4 and 6.5, the options available for selection by the Participant or Beneficiary as the manner and method of payment are:
  - (1) Lump sum(s);
  - (2) Periodic payments for a designated period;
  - (3) Periodic payments for life;
  - (4) Periodic payments for life with a guaranteed minimum number of payments;
  - (5) Periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse;
  - (6) Such other options as a Designated Institution may, in its sole discretion, offer to the Participant prior to the commencement of benefits.

Periodic payments may be monthly, quarterly, semiannually, or annually. For life annuity contracts, the amount of each payment may be fixed or may fluctuate with the performance of the Investment Products.

- (c) If participant's account balance is less than \$5,000, a distribution may be made in a lump sum to the participant within sixty-one (61) days after the close of the year in which the participant has separated from service.
- (d) In determining the amount of benefit payments, the minimum incidental death benefit rule of Code Section 401(a)(9)(G) must be satisfied. To the extent that the payment

required under this rule is greater than the amount determined under 6.1(c), the greater amount must be paid.

- (e) All distributions under the Plan must comply with Code Section 401(a)(9). Benefits under the Plan must be distributed by April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant incurs a Severance from Employment.

Notwithstanding the foregoing, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding Article 14 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, certain additional distributions in 2009 will be treated as eligible rollover distributions.

**6.2 Benefits upon Retirement.** Following the Participant's Severance from Employment on or after attainment of Normal Retirement Age, the custodian shall begin payments to the Participant in accordance with the Participant's elections made in the Payout Request; provided, however, that payments shall begin no later than April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant incurs a Severance from Employment.

**6.3 Benefits upon Severance from Employment.** If Severance from Employment occurs prior to attainment of the Normal Retirement Age determined under Section 2.20, the custodian shall begin benefit payments as soon as administratively practicable following the Participant's Severance from Employment and his or her subsequent submission of a Payout Request; provided, however, that in lieu of requesting a distribution under this

Section 6.3, a Participant instead may request a plan-to-plan transfer under Section 14.3 below. The custodian shall begin payments to the Participant in accordance with the Participant's elections made in the Payout Request; provided, however, that payments shall begin no later than April 1 of the calendar year following the later of (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant incurs a Severance from Employment.

**6.4 Elective Distributions.** Regardless of whether he or she has experienced a Severance from Employment, a Participant may choose to receive a distribution from his or her 457(b) Rollover Account, Non-457(b) Rollover Account, Roth 457(b) Rollover Account, Rollover of In-Plan Roth non-457(b) Rollover Account and Roth non-457(b) Rollover Account at any time by submitting a Payout Request.

**6.5 Payment of Benefits upon Participant's Death.**

- (a) Upon the death of a Participant, the deceased Participant's Account will be distributed to the Beneficiary in accordance with the provisions of this section.
- (b) The designation of a Beneficiary will be made in a form satisfactory to the Employer. A Participant or Beneficiary may at any time revoke his or her designation of a Beneficiary or change his or her Beneficiary by filing written notice of such revocation or change. In the event no valid designation of Beneficiary exists at the time of the Participant's death, the death benefit will be payable to the Participant's estate.
- (c) The Employer may require such proper proof of death and such evidence of the right of any person to receive payment of the value of an Account of a deceased Participant as it deems appropriate. The Employer's determination of death and of the right of any person to receive payment will be conclusive and binding on all interested parties.
- (d) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and if the Beneficiary is not the Participant's surviving spouse, death benefits payments under the Plan must, in accordance with the Beneficiary's election or, if an election is not made, in accordance with the relevant provisions in the Plan:
  - (1) Begin to be distributed to the Beneficiary no later than December 31 of the calendar year immediately following the calendar year of the Participant's death, payable over a period not to exceed the life expectancy of the Beneficiary; or

- (2) Be distributed no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (e) If the Beneficiary is the Participant's surviving spouse and minimum payments under Code Section 401(a)(9) have not begun upon the death of the Participant, minimum payments to the surviving spouse must begin by the later of:
  - (1) December 31 of the calendar year immediately following the calendar year in which the Participant dies; or
  - (2) December 31 of the year in which the Participant would have attained age 70½.
- (f) Payments to the surviving spouse under Section 6.5(e) above must be made over a period not to exceed the surviving spouse's life expectancy. However, a surviving spouse may elect to receive the death benefit payments no later than December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (g) If minimum payments under Code Section 401(a)(9) have begun prior to the Participant's death, the remaining portion of the Account shall be distributed to the Beneficiary at least as rapidly as under the method of distribution in effect prior to the death of the Participant.

**6.6 In-Service Distributions.** While still employed by the Employer, a Participant may request, and upon approval of the Employer, receive an in-service distribution from the Participant's Account, provided that:

- (a) The Participant's Account balance is \$5,000 or less (or such amount as may be designated in Code Section 457(e)(9)); and
  - (1) The Participant has made no deferrals during the two-year period ending on the date of the distribution; and
  - (2) The Participant has not received any prior in-service distribution as described in this Section 6.6 (a); or
- (b) The Participant has been approved by a tax qualified governmental defined benefit plan (as defined in Code Section 414(d)) to purchase service credits with a direct transfer from this Plan, and such in service distribution does not exceed the total amount required to purchase such service credits.

## **ARTICLE 7 HARDSHIP WITHDRAWALS**

**7.1 Application for Withdrawal.** In the case of an Unforeseeable Emergency prior or subsequent to the commencement of benefit payments, a Participant may apply for a withdrawal of an amount reasonably necessary to satisfy the emergency need. If such application for withdrawal is approved by the Committee (or its delegate), the withdrawal will be effective at the later of the date specified in the Participant's application or the date of approval by the Committee (or its delegate). The approved amount shall be payable in a lump sum within thirty (30) days of such effective date or in some other manner consistent with the emergency need as determined by the Committee (or its delegate). If the Participant's request is denied, a request for review of the determination may be made in writing to the Committee (or its delegate). If the review of the determination fails to confirm a claim of Unforeseeable Emergency, a written appeal may be made to the Committee (or its delegate). Unforeseeable Emergency withdrawals will be made in accordance with procedures established by the Designated Institution and/or Investment Product.

**7.2 Unforeseeable Emergency.** For the purposes of this Plan, the term "Unforeseeable Emergency" means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or his or her spouse, or of a dependent (as defined in Code Section 152(a)) of the Participant, or of a Primary Beneficiary of the Participant, loss of the Participant's property due to casualty, or other similar, extraordinary, and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Withdrawals for foreseeable expenditures normally budgetable, such as a down payment on or purchase of a home, purchase of an automobile, or college expenses, will not be permitted. The Committee (or its delegate) shall not permit withdrawal for an Unforeseeable Emergency to the extent that such hardship is or may be relieved:

- (a) Through reimbursement or compensation by insurance or otherwise;
- (b) By liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (c) By cessation of deferrals under the Plan.

**7.3 Limits on Withdrawals and Future Contributions.** In no event shall the amount of a withdrawal for an Unforeseeable Emergency exceed the balance in the Participant's

Account at the time of withdrawal. Notwithstanding any other provision of this Plan, if a Participant makes a withdrawal hereunder, the Participant's Account shall be appropriately reduced to reflect such withdrawal, and the remainder of any benefits shall be payable in accordance with otherwise applicable provisions of the Plan. In the event a Participant's application for a distribution under Article 7 is approved by the Committee (or its delegate), the Participant will be barred from making further Deferrals under the Plan for a period of six (6) months following the date on which such distribution is made.

## **ARTICLE 8 BENEFICIARIES**

- 8.1 Designation.** A Participant shall have the right to designate a Beneficiary, and to amend or revoke such designation at any time by designating one or more Beneficiaries in a manner approved by the Employer. Such designation, amendment or revocation shall be effective upon receipt by the Employer. Notwithstanding the foregoing, a Participant who elects a joint and survivor annuity form of payment may not elect a non-spouse joint annuitant, and may not change his or her joint annuitant after payments commence.
- 8.2 Failure to Designate a Beneficiary.** If a Participant fails to elect a Beneficiary or no designated Beneficiary survives the Participant, and benefits are payable following death, such benefits will be payable to the Participant's estate.

## **ARTICLE 9 LEAVE OF ABSENCE**

- 9.1 Approved Leave of Absence.** A Participant on an approved leave of absence (whether paid or unpaid) may continue to participate in the Plan subject to all the terms and conditions of the Plan; provided further, Compensation may be deferred for such Participant if such Compensation (or a portion thereof) continues while the Participant is on an approved leave of absence.
- 9.2 Uniformed Services Leaves.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

## **ARTICLE 10 ASSIGNMENT AND ALIENATION**

**10.1 Participant's Rights Not Assignable.** Neither the Participant nor any other person shall have any right to commute, sell, assign, pledge, transfer, or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights thereto are expressly declared to be unassignable and nontransferable. Nor shall any unpaid benefits be subject to attachment, garnishment, or execution for the payment of any debts, judgments, alimony, or separate maintenance owed by the Participant or any other person or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.

**10.2 No Loans Permitted.** Participant loans are not permitted under the Plan.

## **ARTICLE 11 ADMINISTRATION**

**11.1 Plan Administrator.** This Plan shall be administered by the Employer. The Employer may appoint a Committee of one or more individuals in the employment of the Employer for the purpose of discharging the administrative responsibilities of the Employer under the Plan. The Committee will represent the Employer in matters concerning the administration of this Plan; provided, however, that the final authority for all administrative and operational decisions relating to the Plan remains with the Employer.

**11.2 Powers of the Committee.** The Committee shall have full power and authority to:

- (a) Present recommendations to the Employer for consideration in order to adopt rules and regulations for the administration of the Plan, provided they are not inconsistent with the provisions of this Plan or Code Section 457 and any Treasury regulations promulgated thereunder, and to interpret, alter, amend, or revoke any rules and regulations so adopted;
- (b) To recommend to the Employer to enter into contracts with respect to this Plan and in accordance with the Employer's purchasing policy;
- (c) To make discretionary decisions under this Plan, including decisions under Article 7 (Hardship Withdrawals) and under Section 11.5 (Claims Procedure); and

- (d) To demand satisfactory proof of the occurrence of any event that is a condition precedent to the commencement of any payment or discharge of any obligation under the Plan.

**11.3 Disqualification of Committee Members.** If otherwise eligible, a Committee member shall be eligible to participate in the Plan, but such person shall not be entitled to participate in discretionary decisions relating to such person's own participation in or benefits under the Plan.

**11.4 Selection of Approved Institutions.** The Committee shall screen and recommend to the Employer for approval any insurance company or other entity seeking to sell an Investment Product or otherwise operate as an Approved Institution under this Plan. The Employer may contract with an Approved Institution (a) to issue to the Employer an Investment Product as described in Article 5 of the Plan, or (b) to provide services under the Plan for the convenience of the Employer including, but not limited to, the enrollment of Eligible Individuals as Participants on behalf of the Employer; the maintenance of individual or other accounts and other records; the making of periodic reports; and the disbursement of benefits to Participants, Alternate Payees, and Beneficiaries.

**11.5 Claims Procedure.**

**(a) Claims**

Upon the request of a Participant, Beneficiary, or Alternate Payee, the Employer shall provide claim forms to any Participant, Beneficiary, or Alternate Payee who is or may be entitled to benefits hereunder. Such claim form shall be completed and submitted to the Employer no later than thirty (30) days after it is received by said claimant. Upon receipt of the claim form, the Employer shall review the claim and, if the Employer determines that the claim should not be allowed, shall respond within thirty (30) days of receipt of the claim. Such response shall be in writing and shall include the specific reason or reasons for the denial, specific references to pertinent Plan provisions on which the denial is based, a description of whatever additional material or information, if any, must be supplied by the claimant to perfect the claim, and an explanation of the Plan's review procedure. If notice of the denial of a claim is not furnished within thirty (30) days of receipt by the Committee, the claim shall be deemed denied.

**(b) Review**

Within sixty (60) days after receipt of notice of denial of the claim or when the claim is deemed to have been denied, the claimant (or his or her representative) may respond to the denial by requesting, in writing, a review of the decision and a review of pertinent documents. If the claimant responds and seeks a review of the decision to deny benefits, issues and comments must be submitted in writing to the Employer. Such issues and comments shall specify the reasons that the decision of the Employer is claimed to be erroneous. The Employer shall review the contentions regarding the denial of the claim and shall, within sixty (60) days from the Employer's receipt of the request for review, respond to said request. If the Employer, in its sole discretion, determines that special circumstances warrant the holding of a hearing, it shall promptly be held and a decision shall be rendered within one hundred twenty (120) days from the date the Plan received the request for review. Any decision on review shall be in writing and shall state the specific reasons for the decision, and shall make specific references to the Plan provisions on which the decision is based.

## **ARTICLE 12 QUALIFIED DOMESTIC RELATIONS ORDERS**

**12.1 Payment to Alternate Payee.** To the extent required by and subject to the restrictions of ORS 243.507, the amount of a Participant's Account shall be paid, in whole or in part, to an Alternate Payee if and to the extent expressly provided for in the terms of any court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation.

**12.2 Required Information and Documentation.** No benefit under this Plan may be paid to an Alternate Payee under the terms of a court decree or order or court-approved property settlement agreement ("Order") until after the date the Employer receives a copy of the Order and such additional information and documentation as satisfies the Employer:

- a) That the copy is a true copy of the Order.
- b) That the Order is, within the meaning of ORS 243.507, a court decree of annulment or dissolution of marriage or of separation, or a court order or court-approved property settlement agreement incident to such a decree.

- c) Of the extent to which the terms of the Order expressly provide for payment of a benefit under this Plan to an Alternate Payee.
- d) Of any other fact or matter required for the Employer to:
  - 1) Determine the application of ORS 243.507 to the Order or the extent to which the Order applies to this Plan.
  - 2) Comply with the Order or with ORS 243.507.
  - 3) Administer this Plan under the terms of the Order.

**12.3 Coordination with Other Provisions of This Plan.** With respect to amounts payable to an Alternate Payee, the custodian shall begin benefit payments to the Alternate Payee as soon as administratively practicable after the requirements of Section 12.2 have been satisfied, in accordance with the Alternate Payee's elections made in a Payout Request made in accordance with the distribution requirements provided in Article 6.

## **ARTICLE 13 AMENDMENT OR TERMINATION OF PLAN**

**13.1 Employer's Authority.** The Employer may terminate or amend the provisions of this Plan at any time; provided, however, that no termination or amendment shall affect the rights of a Participant, Alternate Payee, or a Beneficiary to the receipt of payment of benefits with respect to any Compensation deferred before the time of the termination or amendment, as adjusted for investment experience of the Investment Product of the Designated Institution prior to or subsequent to the termination or amendment.

**13.2 Procedure upon Termination of Plan.** Upon termination of the Plan, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination. Participants will resume receipt of their full Compensation without any further deferrals pursuant to Section 3.2 of the Plan. The Employer shall not distribute Plan benefits at the time of such termination; rather, the custodian shall retain all Participant Accounts and shall pay or dispose of Participant Accounts only as otherwise provided in the Plan and according to the terms and conditions of the Plan.

## **ARTICLE 14 ROLLOVERS**

**14.1 Rollover Contributions.** An Eligible Individual (whether or not he or she is a current Participant) may rollover amounts that are considered “eligible rollover distributions” within the meaning of Code Section 402(c)(4) from an “eligible retirement plan” within the meaning of Code Section 402 (c)(8)(B).

- a) Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from another Eligible Deferred Compensation Plan will be allocated to the Participant’s 457(b) Rollover Account. Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant’s non-457(b) Rollover Account.
- b) Designated Roth contributions as defined in Code Section 402A rolled over from another eligible Deferred Compensation Plan will be allocated to the Participant’s Roth 457(b) Rollover Account. Designated Roth contributions as defined in Code Section 402A rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant’s Roth non-457(b) Rollover Account.
- c) Designated Roth contributions relating to in-plan rollovers under Code Section 402A(c)(4) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant’s Rollover of In-Plan Roth non-457(b) Rollover Account.
- d) Amounts attributable to In-Plan Rollovers will be allocated to an In-Plan Roth 457(b) Rollover Account. In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth 457(b) Contributions.

All rollovers into this Plan are subject to the approval of the Employer and the applicable Designated Institution(s).

**14.2 Direct Rollovers of Plan Distributions.** The Plan will make direct rollovers of Plan distributions at the request of the Participant, subject to the provisions of Article 6 and Article 12, to:

- a) an Eligible Deferred Compensation Plan;

- b) a qualified plan described in Code Section 401(a), 401(k) or 403(a);
- c) an annuity contract described in Code Section 403(b);
- d) an individual retirement account or annuity described in Code Section 408(a) or 408(b);
- e) a Roth individual retirement account described under Code Section 408A.

Effective for Plan Years beginning on or after January 1, 2010, a non-spouse Beneficiary may elect to make a direct rollover to an inherited individual retirement account or annuity described in Code Section 408(a) or Section 408(b), or a Roth individual retirement account described in Code Section 408A(a), that is established on behalf of the Beneficiary. Such rollover shall be made in a manner consistent with Code Section 402(c)(11) and any other applicable guidance.

**14.3 Plan to Plan Transfers.** If a Participant incurs a Severance from Service and subsequently performs services for another employer described in Code Section 457(e)(1)(A) which maintains an Eligible Deferred Compensation Plan, the amounts deferred under the Plan shall, at the Participant's election, be transferred to such other Eligible Deferred Compensation Plan, provided:

- a) The Eligible Deferred Compensation Plan to which the Participant's benefit is being transferred provides for the acceptance of such amounts; and
- b) The Participant has a benefit amount immediately after the transfer which at least equals the benefit amount under this Plan immediately before the transfer.

Upon the transfer of amounts under this Section 14.3, the Plan's liability to pay benefits to the Participant or Beneficiary will be discharged to the extent of the amount so transferred on behalf of the Participant or Beneficiary. The Employer may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 14.3 or effectuate the transfer pursuant to Treasury Regulations Section 1.457-10(b). If Roth 457(b) contributions are transferred, the receiving plan must permit designated Roth contributions as defined in Code Section 402A.

**14.4 Transfer of Entire Plan.** Subject to this Section 14.4, the Employer may direct the transfer of all assets of the Plan to another Eligible Deferred Compensation Plan that is located in the State of Oregon, provided that the requirements of Code Section 457(b) and Treasury

Regulations Section 1.457(b)-10(b)(3) are satisfied. If Roth 457(b) Contributions are transferred, the receiving plan must permit designated Roth contributions as defined in Code Section 402A.

## **ARTICLE 15 PLAN ASSETS**

- 15.1 Funding Medium for Plan Assets.** All assets of the Plan, including all amounts deferred pursuant to Sections 3.2 and 3.3 (except those that have been transferred out pursuant to Section 14.2, 14.3 or 14.4), all amounts transferred to the Plan pursuant to Section 14.1, all property and rights purchased with Deferrals, Employer contributions and transferred amounts, and all income attributable to such amounts, property, or rights shall (until made available to a Participant, Alternate Payee, or Beneficiary pursuant to the distribution provisions of Article 6) be held in a trust, custodial account, or annuity contract described in Code Section 457(g) for the exclusive benefit of Participants and their Beneficiaries.
- 15.2 No Reversion.** Except as otherwise provided in the Plan or permitted by the Code, no part of the Plan assets shall be paid over or revert to the Employer or be used for any purpose other than for the exclusive benefit of Participants, Alternate Payee's and their Beneficiaries.

## **ARTICLE 16 APPLICABLE LAW**

- 16.1 Governing Law.** The Plan shall be construed under the laws of the state of Oregon, except to the extent superseded by federal law, including the Code.

IN WITNESS WHEREOF, the Employer has caused this Plan to be signed and attested by its duly authorized officers on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Board of County Commissioners:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

## ATTACHMENT A

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The Employer shall make contributions to the Plan in the amounts set forth below, expressed as a percentage of the Eligible Employee's base compensation:

<u>Classification of Employees</u>	<u>Contribution Amount</u>
Peace Officers Association .....	Four percent (4%)
Federation of Parole and Probation Officers .....	One percent (1%)
Nonrepresented Group 1 .....	Six and twenty-seven one hundredths percent (6.27%)

The Employer shall enroll new Eligible Employees in the amounts set forth below, expressed as a percentage of the Eligible Employee's base compensation:

<u>Classification of Employees</u>	<u>Contribution Amount</u>
AFSCME - DTD .....	Five percent (5%)
AFSCME-WES .....	Five percent (5%)
Employees Association .....	Five percent (5%)
Housing Authority Employees Association .....	Five percent (5%)