

MULTNOMAH COUNTY, OREGON  
EMPLOYEES' DEFERRED  
COMPENSATION PLAN

*(As Amended September 2016)*

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MULTNOMAH COUNTY, OREGON  
EMPLOYEES' DEFERRED COMPENSATION PLAN  
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ARTICLE 1: INTRODUCTION

1.1 RESTATEMENT OF EXISTING PLAN.

The County previously adopted the Multnomah County, Oregon Employees' Deferred Compensation Plan ("Plan") that was established February 15, 1980, pursuant to Section 457(b) of the Internal Revenue Code, as amended ("Code"). The County amended the Plan in its entirety, generally effective as of January 1, 2012. Subsequent amendments may occur and are identified by date in Article 12.

1.2 PURPOSE OF THE PLAN.

The purpose of the Plan is to attract and retain eligible employees by permitting them to enter into agreements with the County which will provide for the payment of deferred compensation on retirement or separation from service as well as death benefits in the event of death before or after retirement.

1.3 PLAN IS NOT A CONTRACT OF EMPLOYMENT.

Nothing contained in the Plan shall be deemed to constitute an employment agreement for services between the Participant and the County nor shall it be deemed to give a Participant any right to be retained in the employ of the County. Nothing in this Plan shall be construed to modify the terms of any employment agreement for services between a Participant and the County as this Plan is intended to be a supplement to such employment agreement.

## ARTICLE 2: DEFINITIONS

### 2.1 ADMINISTRATOR

the County's Chief Financial Officer or designee who is responsible to administer the Plan and perform fiduciary functions for the Plan on behalf of the County.

### 2.2 ALTERNATE PAYEE

a spouse, former spouse, child, or other dependent of a Participant who has a right to receive all or part of a Participant's benefits pursuant to a Qualified Domestic Relations Order (QDRO). To the extent required by Oregon law and permitted under the Code, a domestic partner (as that term is defined under Oregon or other applicable law) shall be deemed a spouse.

### 2.3 APPROVED INSTITUTION

any organization that has been approved by the Committee to provide services or Investment Product(s) to the County under the Plan. The Committee is to procure services according to Public Bid laws and County rules.

### 2.4 BENEFICIARY

the recipient of a Participant's Plan benefits upon the death of such Participant. The Beneficiary will be designated by the Participant in the Participation Agreement. Nothing herein shall prevent the Participant from designating more than one Beneficiary or primary or secondary Beneficiaries or changing the designation of a Beneficiary. If two or more, or fewer than all designated Beneficiaries survive the Participant, payments shall be made equally to all such Beneficiaries, unless otherwise provided in the Beneficiary designation. If no designated Beneficiary survives the Participant or no valid designation is in effect at the time of the Participant's death, the Beneficiary shall be the residual beneficiaries of the estate of the Participant (and if the residual beneficiaries include a trust, the beneficiaries of such trust) in the proportions they would share in the residue of the estate. Elections made by a Participant in the Participation Agreement shall be binding on any such Beneficiaries except for the right of a Beneficiary as provided in Sections 5.04 and 5.05.

### 2.5 COMMITTEE

the Deferred Compensation Committee appointed pursuant to Section 3.01 of this Plan.

### 2.6 COMPENSATION

the portion of total annual remuneration for employment paid by the County that is eligible for deferred compensation under Code Section 457.

### 2.7 COUNTY

Multnomah County, Oregon, the employer of Eligible Employees participating in this Plan.

### 2.8 DEFERRED COMPENSATION

the amount of Compensation not yet received, as designated in the Participation Agreement which is made a part hereof, which the Participant and the County mutually agree shall be deferred in accordance with the provision in this Plan, subject to the following limitations:

- (a) Except as provided in Section 2.08(e), the maximum amount which may be deferred by a Participant in any taxable year shall not exceed the lesser of the dollar amount provided under Code Section 457(b)(2) or 100% of the Participant's Includible Compensation.
- (b) Compensation may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available. A new employee may defer compensation payable in the calendar month during which the participant first becomes an employee if an agreement providing for the deferral is entered into on or before the first day on which the participant performs services for the eligible employer.
- (c) The County allows Participants to defer accumulated vacation and compensatory time pay.
- (d) A Participant who participates in the Plan and in another 457(b) plan of another employer shall be responsible for complying with the deferral limits of this Article. In the event of an excess amount, the Participant shall notify the Administrator so that the excess may be distributed as soon as practicable.
- (e) In the event that the limit on deferral contributions is exceeded, the Administrator shall direct the Approved Institution as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions.
- (e) The maximum amount which may be deferred may be increased above the limitation set forth in Section 2.08(a), but no greater than the Participant's Compensation for such Plan Year, under one of the following "catch up" provisions.
  - (1) For each one of the Participant's last three consecutive taxable years ending prior to Participant's Normal Retirement Age, the maximum shall be the lesser of:
    - (A) Two times the applicable dollar amount under Code Section 457(b)(2) allowed by the Code for catch up contributions; or
    - (B) The annual limitation amount in Section 2.08(a), plus so much of the annual limitation amounts in Section 2.08(a) which were underutilized by the Participant in all prior Plan Years in which the Participant was a Participant in this Plan and had his or her Deferred Compensation subject to the Code Section 457 limitations. (To include underutilized amounts for years prior to 2002, the underutilized amount is determined under Treas. Reg. 1.457-4(c)(3) to include other 457 plans the Participant participated in, and such Participant is responsible for providing documentation of eligibility and participation in other 457 plans for years before 2002).
  - (2) If a Participant will attain age 50 by the end of the calendar year, the Participant may defer such additional amounts as permitted under Code Section 414(v) if the "catch up" contribution under (1) above applies and is less than such amount.
  - (3) Upon return from qualified military service, a Participant may make such additional contributions as allowed under the Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA).

any individual who is an elected official of the County or who is employed by the County in a benefit eligible (medical & dental) position, who performs services for the County for which compensation is paid and who meets the criteria set forth in Section 4.01 shall become eligible after completing 30 days of continuing service. An employee who terminates, surrenders his or her account, and later starts a new period of employment must again satisfy the 30 day requirement. An employee who terminates, has maintained his or her account, and later starts a new period of employment in a benefit eligible position or who transfers from another plan shall become eligible immediately.

2.10 EMPLOYMENT

an agreement between the County and an individual who occupies a benefit eligible position with the County and who performs services for which Compensation is paid.

2.11 INCLUDIBLE COMPENSATION

the amount of Compensation includible in the Participant's federal taxable income, reduced by amounts of Compensation deferred under this Plan pursuant to Code Section 457.

2.12 INVESTMENT PRODUCT

any product issued by or obtained from an Approved Institution for the purpose of satisfying the County's obligations under the Plan. A self-directed brokerage account is eligible to be an Investment Product.

2.13 MAJOR PLAN REVISION

any amendment to the Plan that impacts Participants' eligibility, contributions, benefits, or participation.

2.14 NORMAL RETIREMENT AGE

Any of the following as elected by the Participant at any time prior to Separation from Service prior to the use of Catch-up Limitation provision described in Section 2.08(e)(1) by the execution of a revised Participant Agreement:

Any age which is (i) not earlier than the earliest age at which the Participant has the right to retire and receive unreduced retirement benefits under the Code Section 401(a) defined benefit pension plan covering the County's employees and (ii) not later than the date the Participant attains age 70-1/2

2.15 PARTICIPANT

any individual who has executed a Participation Agreement, or is deemed to have executed a Participation Agreement pursuant to the automatic enrollment provisions, while serving as an Eligible Employee and who has not yet received a distribution of his entire Participant Account under the Plan.

2.16 PARTICIPANT ACCOUNT

the total of the Participant Deferral Account, Roth Account, the Participant 457 Rollover Account, and the Participant Non-457 Rollover Account for each Participant under the Plan.



- 2.17 PARTICIPANT DEFERRAL ACCOUNT  
the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his or her pre-tax deferral of Compensation to the Plan, including any amounts transferred into the Plan.
- 2.18 PARTICIPANT 457 ROLLOVER ACCOUNT  
the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to amounts rolled over from another employer's Code Section 457(b) plan.
- 2.19 PARTICIPANT NON-457 ROLLOVER ACCOUNT  
the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to amounts rolled over from all rollover eligible plans other than from another employer's Code Section 457(b) plan.
- 2.20 PARTICIPATION AGREEMENT  
a written agreement between the County and a Participant setting forth certain provisions and elections relative to the Plan, establishing the amount of Deferred Compensation and the manner and methods of paying benefits under the Plan, incorporating the terms and conditions of the Plan and establishing the Participant's participation in the Plan.
- 2.21 PLAN YEAR  
the calendar year.
- 2.22 QUALIFIED DOMESTIC RELATIONS ORDER OR QDRO  
is a judgment, decree, or order that is made pursuant to state domestic relations law, including community property law, and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a Participant, and which the Administrator determines satisfies the requirements of Code Section 414(p) as applied to governmental plans.
- 2.23 RETIREMENT  
means the severance of the Participant's employment with the County on or after attainment of the Participant's Normal Retirement Age.
- 2.24 ROTH ACCOUNT  
the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his or her Roth Deferrals, including any amounts transferred into the Plan.
- 2.25 ROTH DEFERRALS  
Deferred Compensation which is designated irrevocably as a Roth Deferral by the Participant at the time the deferral election is made, and which is included in the Participant's taxable income at the time the Participant would have received such amount in Compensation. All Roth Deferrals will be made in compliance with Code Section 402A.

2.26 SEPARATION FROM SERVICE

the severance of the Participant's employment in a benefit eligible position with the County for any reason.

## ARTICLE 3: ADMINISTRATION

### 3.1 APPOINTMENT OF COMMITTEE.

This Plan shall be administered by a Deferred Compensation Committee ("Committee"). The Committee shall consist of the County's Deferred Compensation Plan Administrator, who will chair the Committee, the designated County Attorney, and three members, who are participants in the plan and are appointed by the County Chair with the approval of the Board of County Commissioners. The committee members, with exception to the Plan Administrator and attorney, shall serve one five (5) year term. Committee members may be reappointed at the end of the designated term. The County may remove a Committee member for any reason by giving such member ten (10) days written notice and may thereafter fill any vacancy thus created. The Committee shall represent the County in all matters concerning the administration of this Plan.

### 3.2 COMMITTEE POWERS.

The Committee shall have full power and authority to adopt rules and regulations for the administration of the Plan, provided they are consistent with the provisions of this Plan and Code Section 457; to interpret, alter, amend, or revoke any rules and regulations so adopted; to enter into contracts on behalf of the County with respect to this Plan; to make discretionary decisions under this Plan such as called for in Article VII; 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; and to perform any and all administrative duties under this Plan. Notwithstanding the foregoing, the Plan Administrator is authorized to execute any and all necessary Plan documents, including contracts, on behalf of the Plan without the authorized signatures of the other Committee members.

### 3.3 CONFLICT OF INTEREST.

A Committee member shall be eligible to participate in the Plan, but such person shall not be entitled to participate in discretionary decisions under Article VII relating to such person's own participation in the Plan.

### 3.4 CONTRACTING FOR SERVICES.

The Committee acting on behalf of the County may contract with an Approved Institution (a) to issue to the County an Investment Product as described in Article V of the Plan or (b) to provide services under the Plan to the County including, but not limited to, the enrollment of Eligible Employees as Participants on behalf of the County, the maintenance of individual or other accounts and other records, the making of periodic reports and the disbursement of benefits to Participants and Beneficiaries. In selecting an Approved Institution, the Committee must adhere to Public Bid laws and County rules.

### 3.5 INVESTMENT PRODUCTS.

- (a) Selection of Investment Products. The Committee will contract with Approved Institutions to make available Investment Products in which Participants and Beneficiaries may invest their Deferred Compensation.
- (b) Deferred Compensation Separate from County Assets. All Deferred Compensation under this Plan, all property and rights which may be purchased with such amounts and

all income attributable to such amounts, property or rights shall be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. All such amounts deferred shall not be considered to be assets of the County nor subject to the claims of the County's general creditors.

- (c) Participant Selection of Investment Products. Each Participant shall choose among the available Investment Products in which to invest his or her Participant Account, subject to reasonable administrative times to implement such instructions. An Alternate Payee or Beneficiary shall have the same right to choose among the Investment Products, and if no choice is made, the amounts will remain invested as last selected by the Participant.

### 3.6 BENEFITS LIMITED BY INVESTMENT PRODUCTS.

The amount payable to a Participant or Beneficiary under this Plan is limited to the value of the Investment Products in which the Participant's Account is invested. The County shall have no liability to pay benefits under this Plan from its general assets, with all such benefits being paid from the Investment Products. The County, Committee and Administrator are not responsible for and provide no guarantee with respect to the investment or performance results of any Investment Product.

## ARTICLE 4: PARTICIPATION IN THE PLAN

### 4.1 ELIGIBILITY.

- (a) Except as provided in Section 4.01(b) below, any Eligible Employee who executes a Participation Agreement with the County is eligible to participate in the Plan.
- (b) A Participant will become ineligible upon a court order to withhold earnings for any reason, including but not limited to child support in arrears, bankruptcy, and/or garnishment with private companies. The Participant becomes eligible after such time as the court order has been satisfied and an update form or participation agreement has been received by the Administrator.

### 4.2 ENROLLMENT IN THE PLAN.

- (a) Participation Agreement. An Eligible Employee may become a Participant and agree to defer Compensation not yet received by entering into a Participation Agreement.
- (b) Minimum and Maximum Deferral. In order to have amounts withheld from a Participant's Compensation, such Participant must agree to defer a minimum amount of one percent (1%) of their Compensation or no less than \$10.00 per pay period. The maximum amount that a Participant may defer in a year is described in Section 2.08.
- (c) Right to Terminate Deferrals. A Participant may at any time revoke the Participation Agreement to defer Compensation with respect to Compensation not yet earned. Amounts previously deferred shall be paid only as provided in this Plan.
- (d) Restarting Deferrals. A Participant who has made a withdrawal in accordance with Article VII, or has revoked the Participation Agreement, as set forth in (d) above, or who returns to perform services for the County after a Separation from Service, may again become a Participant in the Plan and agree to defer future Compensation by entering into a new Participation Agreement.
- (e) Roth Designations. A Participant may designate a portion of his or her deferral amount as a Roth Deferral.
- (f) Death Terminates Participation Agreement. A Participation Agreement will be deemed revoked upon the Participant's death, if the date of death is prior to commencement of benefits.

### 4.3 AUTOMATIC ENROLLMENT IN THE PLAN.

#### (a) COLLECTIVE BARGAINING AGREEMENT REQUIRING AUTOMATIC ENROLLMENT.

- (1) If the County and a labor organization representing a unit of County employees agree in collective bargaining, the Eligible Employees in such bargaining unit will be automatically deemed to have executed a Participation Agreement. With respect to then currently Eligible Employees such deemed executed Participation Agreement will be effective commencing with the payroll period designated in such collective bargaining agreement. If no payroll period is designated in the collective bargaining agreement, the Participation Agreement will be effective the first payroll period after the effective date of such collective bargaining agreement.
- (2) New Eligible Employees who are covered by such a collective bargaining agreement will be automatically deemed to have executed a Participation

Agreement effective for the first payroll period in which they could complete a Participation Agreement, unless another date is specified in the applicable collective bargaining agreement.

- (3) Notwithstanding the preceding in this Section 4.03(a), the deemed executed Participation Agreement will not be effective prior to the time described in the required notice described in 4.03(b).
- (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 elect to not 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 each Plan Year or before such other time when the automatic provision will first become applicable to an Eligible Employee.
- (c) OPTING OUT OF AUTOMATIC ENROLLMENT. A Participant shall have the right to opt out of automatic enrollment at any time by completing a Participation Agreement or by providing written notice of the election to not have any amount withheld from his or her Compensation.
- (d) 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, and the applicable minimum and maximum deferral percentages.

## ARTICLE 5: DISTRIBUTION, DETERMINATION AND TRANSFER OF BENEFITS

### 5.1 DISTRIBUTIONS UNDER THE PLAN

- (a) A Participant Account may be paid to a Participant (or, if applicable, the Beneficiary) after one of the following events has occurred:
  - (1) The Participant's Separation from Service;
  - (2) The Participant's death;
  - (3) An unforeseeable emergency with respect to the Participant within the meaning of and subject to Article VII; or
  - (4) The election of a small balance distribution as defined in section 7.02.
- (b) Participant Account that has been transferred to an Alternate Payee pursuant to a Qualified Domestic Relations Order may be distributed to the Alternate Payee before the occurrence of a distributable event as described in Section 5.01(a).

### 5.2 FORM OF DISTRIBUTION OF BENEFITS.

- (a) Subject to the restrictions on choice of benefit contained in Sections 5.02(b) and (c), 5.03(c), and 5.04(d), the options available for selection by the Participant or Beneficiary as the manner and method of payment are:
  - (1) Lump sum;
  - (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 life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse; or
  - (6) Such other option which is approved by the Code and as the County may, in its sole discretion, offer to the Participant prior to the commencement of benefits;
- (b) The County shall cash out any account under \$1,000 at any time after Separation from Service. Payment received will be the balance of the account less any applicable taxes.
- (c) Periodic payment may be monthly, quarterly, semiannually, or annually. The amount of each payment may be fixed or may fluctuate with the performance of the Investment Product.

### 5.3 DETERMINATION OF BENEFITS PAYABLE TO THE PARTICIPANT.

- (a) Upon occurrence of a distributable event described in Section 5.01(a), but in no event later than the date payments are required to begin under Code Section 401(a)(9), a Participant may elect a benefit distribution option as permitted in Section 5.02(a). If a Participant does not make an election of benefit distribution, any benefits payable to the Participant during a year will be made on a schedule that satisfies the minimum distribution for such year under Code Section 401(a)(9) based solely on the Participant's life expectancy.
- (b) Minimum distribution payments under Code Section 401(a)(9) must begin by April 1 of the year following the later of:
  - (1) The year in which the Participant attains the age 70 ;or
  - (2) The year of the Participant's Retirement.

5.4 DETERMINATION OF BENEFITS UPON DEATH.

- (a) Death benefits payable to a Beneficiary shall be made in a form as selected by the Beneficiary in Section 5.02 above. In the event that a Beneficiary does not make an election to the form of death benefit payments, such Beneficiary's death benefit will be paid as determined by the Administrator.
- (b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9).
- (c) If minimum payments under Code Section 401(a)(9) have not begun upon the death of a Participant and the Beneficiary is not the Participant's surviving spouse, death benefit payments 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.
- (d) 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 a Participant, minimum payments to the surviving spouse must begin by the later of the:
  - (1) December 31 of the calendar year immediately following the calendar year in which the Participant dies; or
  - (2) December 31 of the calendar year in which the Participant would have attained age 70.
- (e) Payments to the surviving spouse under (d) 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.
- (f) If minimum payments under Code Section 401(a)(9) have begun prior to the death of the Participant, the remaining portion of the Participant Account shall be distributed to the Beneficiary(ies) at least as rapidly as under the method of distribution in effect prior to the death of the Participant.

5.5 DISTRIBUTION FOR MINOR BENEFICIARY.

In the event a distribution is made to a minor, the Administrator may direct that such distribution be paid to the legal guardian, or if none, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains his residence, or to the custodian for such Beneficiary under the Uniform Gift [Transfers] to Minors Act, if permitted by the laws of the state in which the Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Approved Institution, other providers of the Plan, Committee, Administrator, County, and Plan from further liability on account thereof.

5.6 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN.

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary shall, on or after the Participant's Separation from Service, remain unpaid solely by reason of the



inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be paid, after such reasonable administrative time period as determined by the Administrator, to the estate of such Participant or Beneficiary, if an estate can be found. If an estate cannot be found for such Participant or Beneficiary, the amount so distributable shall be deemed abandoned and paid to the State of Oregon Unclaimed Property Fund pursuant to ORS 98.332.

#### 5.7 ROLLOVERS FROM THE PLAN.

- (a) Notwithstanding any provision of the Plan to the contrary, a Participant shall be permitted to elect to have any "eligible rollover distribution" rolled directly to an "eligible retirement plan" specified by the Participant. The Participant shall, in the time and manner prescribed by the Administrator, specify the amount to be rolled over and the eligible retirement plan to receive the rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.
- (b) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except
  - (1) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's Beneficiary, or for a specified period often (10) years or more;
  - (2) Any distribution to the extent such distribution is required under Code Section 401(a)(9); or
  - (3) Any portion of a distribution that is an unforeseeable emergency withdrawal described in Article VII.
  - (4) Amounts that are considered "ineligible rollover distributions" in accordance with Code Section 402(c)(4) may not be rolled over by a Participant from an "eligible retirement plan."
- (c) For purposes of this Section, the term "eligible retirement plan" means any other Code Section 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(A), a Code Section 403(b) program, a Code Section 401(a) plan, an individual retirement account as described in Code Section 408(a), an individual retirement annuity as described in Code Section 408(b), and a Roth individual retirement account under Code Section 408A.
- (d) The election described in Section 5.07(a) also applies to the surviving spouse in accordance with Code Section 401(a)(9) after a Participant's death or a spouse or former spouse who is the Alternate Payee. For eligible rollover distributions to a non-spouse designated Beneficiary made on or after January 1, 2008, a Participant's non-spouse designated Beneficiary may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution transferred by a direct rollover to an inherited individual retirement account or annuity (including Roth accounts after January 1, 2012).
- (e) Upon a distribution event under Section 5.01(a) that qualifies as an eligible rollover distribution under Section 5.07(b), a Participant may elect to have the portion of such

eligible rollover distribution that is not part of the Participant's Roth Account rolled into the Participant's Roth Account.

5.8 PURCHASING SERVICE CREDITS UNDER A STATE OR LOCAL RETIREMENT PLAN.

A Participant may direct the Administrator to transfer amounts under his Participant Account tax-free under the Plan in accordance with Code Section 457(e)(17) and applicable Oregon law to a state or local government retirement plan in order to enable the Participant to purchase service credits under such plan or repay amounts previously cashed out under such plan even if the Participant is not eligible for a distribution under Section 5.01. The Administrator shall take such reasonable measures as required to ensure that the intended recipient plan will accept such transferred amounts.

5.9 TRANSFERS TO OTHER CODE SECTION 457(B) PLANS UPON SEPARATION FROM SERVICE.

If a Participant incurs a Separation of Service and subsequently performs services for another employer described in Code Section 457(e)(1)(A) which maintains a Code Section 457(b) plan, the amounts deferred under the Plan shall, at the Participant's election, be transferred to such other Code Section 457(b) plan, provided:

- (a) The Code Section 457(b) 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.

5.10 QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO).

- (a) Effective January 1, 2002, the Plan recognizes QDROs issued by state authorities and allows for distributions to Alternate Payees. The Plan or the Plan's designee shall adopt reasonable, written procedures to determine the qualified status of domestic relations orders and to administer the distributions hereunder. QDROs must be submitted in a form acceptable to the Plan or its designee, and may order Participant Plan assets be divided into a separate account for the benefit of an Alternate Payee. Distribution of those assets are allowed as provided in Subsection 5.10(b) and (c).
- (b) If the Plan administers distributions to an Alternate Payee, the responsibility for the fees provided for under ORS 243.507 shall be apportioned to the Participant and Alternate Payee based on the fraction of the plan assets received by the participant and the Alternate Payee at the time the Alternate Payee's interest in the Plan is established. The apportioned fees shall be immediately paid to the Plan out of the distributions to the Participant and out of the distributions to the Alternate Payee.
- (c) Any QDRO submitted to and accepted by the Plan or its designee may provide that an Alternate Payee may take an immediate distribution of some or all of the assets established in the separate account, may make any distribution election from the payout options available to Plan Participants, or may elect to leave the separate account in the Plan, in which case, the Alternate Payee shall have the same rights as a Participant under the Plan.
- (d) To the extent required by Oregon law and permitted under the Code, a domestic partner (as defined under applicable law) shall be treated as a spouse for purposes of determining

the validity of a QDRO and administering a QDRO.

5.11 DISTRIBUTION OF TAXABLE ACCOUNTS.

If the Internal Revenue Service rules that any amounts deferred under this Plan will be subject to current income tax all amounts to which the ruling is applicable shall be paid as soon as practicable to the Participants. The Participant is responsible for any tax liability.

## ARTICLE 6: TRANSFERS AND ROLLOVERS BETWEEN RETIREMENT PLANS

The Plan accepts rollovers of distributions to and from the following plan types: governmental 457(b), 403(b), 401(a), profit sharing, stock bonus or Individual Retirement Account

### 6.1 ROLLOVERS TO THE PLAN.

- (a) Amounts that are considered "eligible rollover distributions" in accordance with Code Section 402(c)(4) may be rolled over by a Participant from an "eligible retirement plan." The amounts rolled over from an eligible retirement plan other than a Code Section 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(A) shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another Code Section 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(A) shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account shall be accounted for separately from the amounts in the Participant 457 Rollover Account.
- (b) For purposes of this Section, the term "eligible retirement plan" shall mean any other Code Section 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(A), a Code Section 403(b) program, a Code Section 401(a) plan, an individual retirement account as described in Code Section 408(a), and an individual retirement annuity as described in Code Section 408(b). For purposes of this Section, the term "amounts rolled over from an eligible retirement plan" means:
  - (1) Amounts rolled to the Plan directly from another eligible retirement plan;
  - (2) Distributions received from an Eligible Employee from another eligible retirement plan that are eligible for tax deferred rollover to a Code Section 457(b) plan maintained by an employer which satisfies the definition of Code Section 457(e)(1)(A) and that are rolled over by the Eligible Employee to the Plan within sixty (60) days, following his receipt thereof; or
  - (3) Amounts rolled over to the Plan under Sections 6.01(b)(1) and (2) by an Eligible Employee who is also a surviving spouse in accordance with Code Section 401(a)(9) or a spouse or former spouse who is the alternate payee as defined in Code Section 414(p)
- (c) Distributions from accounts "rolled over" from other retirement plans are allowed without the requirement of an event which entitles a participant to a distribution from the plan provided such rollover accounts are segregated in a separate account by the provider.

### 6.2 PURCHASE OF SERVICE CREDITS.

As described Section 5.08, a Participant may direct the Plan to transfer assets from the Participant's Plan Account to another government plan, if the other plan provides for receipt of such a transfer of assets.

## ARTICLE 7: WITHDRAWALS

### 7.1 UNFORESEEABLE EMERGENCY WITHDRAWALS.

- (a) In the case of an unforeseeable emergency prior or subsequent to the commencement of benefit payments, a Participant may apply to the Committee for withdrawal of an account reasonably necessary to satisfy the emergency need. If such application for withdrawal is approved by the Committee 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. 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. The approved amount will be reduced by all applicable withholding taxes, or at the Participant's election (and provided there are sufficient funds in the Participant's Account), will be increased by an amount sufficient to pay all applicable withholding taxes.
- (b) The term "unforeseeable emergency" means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant, the Participant's spouse or a dependent (as defined in Section 152(a) of the Code) 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. For purposes of this Plan, a Participant's primary Beneficiary will be treated the same as the Participant's spouse or dependent in determining whether the participant has incurred an unforeseeable emergency based on guidance by the Secretary of Treasury, as directed by the Pension Protection Act of 2006. Withdrawals for foreseeable expenditures normally budgetable, such as a down payment on a home, payment of credit debt, payment of income taxes, purchase of or maintenance costs for an auto, or college expenses, will not be permitted.
- (c) The Committee shall not permit withdrawal for an unforeseeable emergency to the extent that such hardship is or may be relieved as follows:
  - (1) Through reimbursement of compensation by insurance or otherwise;
  - (2) By liquidation of the Participant's assets, to the extent that liquidation of such assets would not itself cause severe financial hardship; or
  - (3) By cessation of deferrals under the plan.
- (d) The Participant shall apply for withdrawal under procedures fixed by the Committee and by using the approved hardship withdrawal request form. The Committee may require a minimum advance notice and may limit the frequency of emergency withdrawals.
- (e) The Committee shall require a Participant to produce comprehensive supporting documentation of the emergency including but not limited to, tax returns, bank statements, hospital bills, and other financial statements as requested.
- (f) If a Participant has a 457 Rollover Account or Non-457 Rollover Account, funds may be withdrawn from such account to meet the emergency needs prior to a withdrawal from other accounts of the Participant's Account. A withdrawal from a 457 Rollover Account or Non-457 Rollover Account will not require stopping current deferrals unless funds are withdrawn from the Participant's other Plan accounts.
- (g) In no event shall the amount of a withdrawal for unforeseeable emergency exceed the

amount of benefits which would have been available to the Participant at the time of withdrawal. Notwithstanding any other provision of this Plan, if a Participant makes a withdrawal, the value of benefits under the Plan shall be appropriately reduced to reflect such withdrawal, and the remainder of any benefits shall be payable in accordance with applicable provisions of the Plan.

- (h) A Participant's ability to defer Compensation under the Plan will be suspended for 12 months after the date of the hardship withdrawal.

## 7.2 OTHER WITHDRAWALS.

- (a) A Participant may request withdrawal of all benefits if all of the following conditions are met:
  - (1) The amount of benefits at the time of withdrawal does not exceed the maximum allowed by the Code for de minimis withdrawals (currently no more than \$5,000);
  - (2) The Participant has made no contributions to the Plan for the two year period prior to withdrawal; and
  - (3) There have been no prior withdrawals under this option for the Participant.
- (b) A Participant may re-enroll in the Plan after a period of twelve (12) months from the date of such distribution.

## ARTICLE 8: ANTI-ALIENATION RULES

### 8.1 NO ASSIGNMENT OF BENEFITS.

Except as provided in Section 8.02, 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 under the Plan, which payments and rights thereto are expressly declared to be unassignable and non-transferable. 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.

### 8.2 EXCEPTIONS TO ANTI-ALIENATION RULES.

The anti-alienation rules of Section 8.01 will not apply to payments required under a QDRO or other payments legally required to be made from a Participant's Plan Account.

## ARTICLE 9: AMENDMENT OR TERMINATION OF PLAN

### 9.1 RIGHT TO TERMINATE PLAN.

The County may terminate this Plan effective the first day of any month after notice to the Participants. Upon termination the following shall apply except as provided in Sections 9.02 and 9.03:

- (a) Amounts deferred through the last month before the effective date of the termination shall remain deferred and be credited to the accounts in accordance with the Plan.
- (b) Deferral elections shall terminate as of the effective date of termination and no further deferrals shall be allowed.
- (c) Amounts in an account shall remain to the credit of the account, shall continue to be adjusted for investment results and shall be paid out in accordance with this Plan, which shall continue for that purpose.

### 9.2 DISTRIBUTION OF ACCOUNTS UPON TERMINATION.

The County may elect any time after termination under Section 9.01 to distribute all accounts to Participants as follows:

- (a) The first day of the second month after notice of the election to distribute shall be the payment date for all Participants whose regular payment date is not earlier than that date.
- (b) Distribution may be made in accordance with the payment options selected by the Participants under Section 5.02.

### 9.3 PLAN AMENDMENTS.

- (a) The Committee is authorized to amend the Plan if it determines that amendments are necessary to comply with Code 457 and would not do any of the following:
  - (1) Affect investment options available to Participants.
  - (2) Affect compliance of the Plan with the Code.
  - (3) Expose the County to potential liability.
- (b) An amendment shall be effective the first day of any month by notice to the Participants. An amendment may be retroactive except that the right of employees to defer compensation may not be reduced for any period before the first of the month after the notice is given. The Committee shall communicate to the Multnomah County Board of County Commissioners within six months any amendment it adopts.
- (c) The Committee shall formally report to the Multnomah County Board of County Commissioners any Plan amendment that the Committee deems to be a Major Plan Revision.



## ARTICLE 10: CLAIMS PROCEDURE

### 10.1 WRITTEN REQUEST.

A person claiming a benefit, requesting an interpretation or ruling under this Plan, or requesting information under the Plan shall present the request in writing to the Committee, which shall respond in writing as soon as practicable.

### 10.2 WRITTEN RESPONSE

If the claim or request is approved, the notification of the approval shall be in writing. If the claim or request is denied, the written notice of denial shall state:

- (a) The reasons for denial, with specific reference to the Plan provisions on which the denial is based.
- (b) If applicable, a description of any additional material or information required and an explanation of why it is necessary.

### 10.3 REQUEST FOR REVIEW OF DENIED CLAIM

Any person whose claim or request is denied or who has not received a response within 30 days may request review by notice in writing to the Committee. The original decision shall be reviewed by the Committee which may, but shall not be required to, grant the claimant a hearing. On review, whether or not there is a hearing, the claimant may have representation, examine pertinent documents and submit issues and comments in writing.

### 10.4 TIME TO DECIDE APPEAL

The decision on review shall ordinarily be made within 60 days. If an extension of time is required for a hearing or other special circumstances, the claimant shall be so notified and the time limit shall be 120 days. The decision shall be in writing and shall state the reasons and the relevant Plan provisions. All decisions on review shall be final and bind all parties concerned.

## ARTICLE 11: GENERAL PROVISIONS

### 11.1 WRITTEN NOTICES.

Any notice under this Plan shall be in writing and shall be effective when actually delivered to the County at the appropriate County office or to a Participant or Beneficiary at the last address shown in the records of the County or the Committee. Notices to the Committee shall be sent to the County's address.

### 11.2 PLAN TERMS BINDING.

This Plan shall inure to the benefit of and be binding on all Participants and their Beneficiaries, successors and personal representatives.

### 11.3 PAYMENTS UNDER PLAN DO NOT CONSTITUTE EMPLOYMENT.

Following Separation from Service, payments under this Plan shall not constitute employment by the County for any purpose.

### 11.4 INCAPACITATED PARTICIPANTS AND BENEFICIARIES.

The Committee may decide that because of the mental or physical condition of a Participant or Beneficiary entitled to payments, or because of other relevant factors, it is in the Participant's or Beneficiary's best interest to make payments to others for the benefit of the person entitled to payment. The Committee's actions will be carried out in accordance with applicable laws and any court orders issued relevant to the circumstances. In that event the Committee may in its discretion direct that payments be made as follows:

- (a) To a parent or spouse or a child of legal age;
- (b) To a legal guardian; or
- (c) To one furnishing maintenance, support, or hospitalization.

### 11.5 APPLICABLE LAW.

The Plan shall be construed under the laws of the State of Oregon. The Plan and the Participation Agreement is intended to comply with and be administered in a manner consistent with Code Section 457. All references to a Code section includes any amendments to such section and applicable regulations and rulings issued pursuant to such Code section.

### 11.6 INDEMNIFICATION OF COMMITTEE.

The County and the Committee shall have no liability for action taken in good faith under this Plan. The County shall indemnify and defend any Committee member from any claim or liability that:

- (a) Arises from any action or inaction in the administration of this Plan absent willful misconduct or bad faith; and
- (b) Is not covered by insurance.

### 11.7 ALLOCATION OF COSTS OF ADMINISTRATION

The Committee shall determine the costs of administration of this Plan for deferrals investments,

distributions and other matters. The County may elect to pay any or all costs or may require the Approved Institutions to reimburse the County for administration costs. Otherwise the costs shall be deducted ratably by the Committee from amounts deferred by all Participants.

## ARTICLE 12: EFFECTIVE DATE

This Plan was effective February 15, 1980. The Plan was adopted June 5, 1980 by resolution of the Board of County Commissioners; amended July 16, 1981, November 7, 1985, June 30, 1987, March 8, 1989, March 26, 1990, October 31, 1990, October 11, 1991, February 27, 1996, November 19, 1996, May 28, 1997, April 10, 1998, April 24, 2001, December 23, 2002, March 25, 2005, September 21, 2006, October 23, 2008, August 12, 2010, June 14, 2012, September 17, 2015 and September 8, 2016.

## SIGNATURES

This Plan is signed and attested to by its duly authorized officers effective as of the most recent Effective Date.

Deferred Compensation Committee:



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Chris Yager, Plan Administrator, Committee Chair



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Kathryn Short, Assistant County Attorney

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Tim Lichatowich, Sheriff's Office Representative

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Dan Arenholz, Labor Representative



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Tom Guiney, Retiree Representative