

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Study Session Worksheet

**Presentation Date:** May 6, 2014 **Approx Start Time:** 2:30 **Approx Length:** One hour

**Presentation Title:** Sheriff's Office Retiree Medical Fund

**Department:** Department of Employee Services & Sheriff's Office

**Presenters:** Nancy Drury, Director of Employee Services  
Matt Ellington, Undersheriff  
Kathi Rastetter, Senior County Counsel  
Steve Steinberg, CCPOA President  
Mark Stotik, Assistant Director of Employee Services  
Carolyn Williams, Benefits Manager

**Other Invitees:** Shari Anderson, County Treasurer  
Marc Gonzales, Director of Finance  
Craig Roberts, Sheriff

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

We are requesting that the Board provide authority to implement the terms of the Independent Retiree Medical Trust (IRMT) document. Such implementation would require the seating of trustees by the Board who would represent the County on the IRMT Board. The POA union would also seat an equal number of trustees. The Sheriff's Office Retiree Medical Fund assets would be transferred from the Treasurer to the IRMT upon selection by the IRMT trustees of an investment firm and administrative support.

### EXECUTIVE SUMMARY:

In 1980, the County created a retiree medical fund as part of a collective bargaining agreement with the Clackamas County Peace Officers Association. The purpose of the fund was to subsidize medical insurance premiums for POA retirees between the date of their retirement and Medicare eligibility. In 1985, the County created another retiree medical fund to provide similar subsidies to management retirees from the Sheriff's Office.

These funds were financed by a 0.5% percent contribution of payroll from the Sheriff's Office budget. The percentage of payroll was increased several times, but the escalating cost of health insurance caused the funds to become nearly depleted. In 2005, the funds were combined into a single retiree medical fund and the County made a one-time contribution of \$150,000 and increased the payroll contribution again. The current contribution is 3.25% of payroll for all Sheriff's Office employees.

The Sheriff's Retiree Medical Fund is invested by the Treasurer's Office which maintains accounts with the State Treasury Investment Pool and various banks. These are very conservative investments with rate of return below 0.5% over the past several years. The fund balance at the end of FY 2012/13 was \$2,384,900 and interest was \$7,541 or about 0.3%.

Under the current contribution rate of 3.25%, the fund has a positive cash flow. However, according to an actuarial study projecting a 10-year cash flow, the positive cash flow will peak in FY 2018/19 and then begin declining. In order to avoid fund depletion in the future or increasing the contribution rate, the fund must produce greater investment returns. The only method to increase the return on investments would be to form a separate trust with fewer restrictions on investment options.

Similar trusts have been formed by other public sector agencies, including the City of Portland, State of Washington, San Bernardino County and the City of San Diego.

As part of the 2012/14 collective bargaining agreement with POA, the County agreed "...to form a committee to review and make a recommendation to the Board of County Commissioners about the establishment of an Independent Retiree Medical Trust... Such recommendation shall include (a) the County's obligation is to solely provide the agreed upon funds as outlined in the Collective Bargaining Agreement and shall have no obligation to provide additional funds should the IRMT not have sufficient money to meet its obligations or is in deficit for any other reason; and (b) direction of an IRMT should be based on the principle of equal representation from the County and the Association."

The committee was comprised of POA President Steve Steinberg, Deputy Steve Shelley, Corrections Deputy Jaime Ingham, Retired Sergeant Ed Mura, Undersheriff Matt Ellington, Captain Mike Alexander, Employee Services Director Nancy Drury, Assistant Employee Services Director Mark Stotik, Benefits Manager Carolyn Williams and Senior Legal Counsel, Kathi Rastetter.

The Committee met several times over the course of almost two years. Members conducted a Request for Proposal, interviewed two trust attorneys and four investment advisors, and educated themselves on how to make an independent trust feasible.

Joseph Reinhart, Trust Attorney, has worked with the Committee and created a legal trust document. The trust document includes the provision that the County and POA would appoint an equal number of trustees. The trustees would be responsible for selecting an investment consultant to provide advice and fiduciary oversight, creating an investment policy statement and determining the administrative procedures for the trust.

#### **FINANCIAL IMPLICATIONS (current year and ongoing):**

The County no longer would bear any financial risk for holding and investing funds designated for providing retiree medical benefits. The Sheriff's Office would continue to have budget stability with a known contribution rate of 3.25% (unless changed by future collective bargaining).

The IRMT also would pay all administrative costs related to its operation. These include an actuarial study at approximately \$4,000 every other year and internal administration, both of which are currently subsidized by the Department of Employee Services at no cost to the Sheriff's Office or the Retiree Medical Fund. The IRMT would also pay the costs of its attorney fees, investment consultant fees, fiduciary insurance and administration fees. *The IRMT would not be subject to claims of County creditors in the event of County insolvency or bankruptcy.*

**LEGAL/POLICY REQUIREMENTS:**

The Trust would be a legal entity separate and independent of the County, and would be governed by the law pertaining to trusts. The Trust would take legal title to the funds paid each month by the County, and would be required to hold the funds for the benefit of the *of the trust beneficiaries. The beneficiaries would be the current and prospective retirees of the Sheriff's Office and their qualifying family members.*

The Board of Trustees would be appointed as provided in the trust document. The trustees would each have a fiduciary obligation to act as a reasonable and prudent person to serve the interests of the beneficiaries and avoid conflicts of interest. The Trust would have the legal capacity to sue and be sued. Individual trustees could also be sued *for breach of their legal duties. The administration and all the business of the Trust would be conducted subject to the requirements of the trust document.*

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

None.

**OPTIONS:**

Approve immediate implementation of the terms of the Independent Retiree Medical Trust. Authorize County Administrator to select management trustees in consultation with the County Sheriff.

Delay implementation of the terms of the Independent Retiree Medical Trust.

**RECOMMENDATION:**

We recommend that the Board approve the implementation of the previously approved independent retiree medical trust fund for current and future retirees from the Sheriff's Office. We also recommend authorizing the County Administrator to select management trustees *in consultation with the County Sheriff.*

**ATTACHMENTS:**

- Independent Retiree Medical Trust document
- Collective Bargaining Agreement Article 11 – Health and Welfare, Section 8 – Retiree Medical Benefits
- Memorandum of Understanding – April 8, 2014
- Actuarial Study – 10-year cash flow return assumptions at 0.5% and 4.0%
- Sheriff's Fund Monthly Financial Report for FY 2012/13 (unaudited)
- Agreement between County and POA dated February 25, 2005

**SUBMITTED BY:**

Division Director/Head Approval CPW  
Department Director/Head Approval J. P. Finn  
County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact  
Carolyn Williams at 503-742-5470 or Nancy Drury at 503-655-8812.

Draft: 3/25/2014

**CLACKAMAS COUNTY INDEPENDENT**

**RETIREE MEDICAL TRUST**

*July*

**Effective January 1, 2014**

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## PLAN INTRODUCTION

The Parties agree to establish a jointly administered health and welfare trust, called the Clackamas County Independent Retiree Medical Trust (hereinafter referred to as "Plan"). The Plan shall be for the exclusive benefit of Retirees and their Beneficiaries.

The Plan terms are intended to comply with Section 501(c)(9) of the Internal Revenue Code and applicable regulations in order that the Plan may qualify as a tax exempt health and welfare plan.

## DISCLAIMER REGARDING ELIGIBILITY AND BENEFITS

Benefits and/or coverage under this Plan are not guaranteed. Benefits and/or coverage may be changed, revised, reduced or terminated by the Board of Trustees at any time, for any reason. Eligibility for Plan participation does not guarantee benefits or result in "vesting" of benefits.

## ARTICLE I

### PLAN OBJECTIVES

The objectives and purposes of this Plan are as follows:

- 1.1 **GENERAL OBJECTIVE.** To provide health and welfare benefits for eligible Retirees and their Dependents according to sound actuarial and underwriting principals under the joint administration of Employer and Union Trustees.
- 1.2 **BENEFITS FOR COVERED RETIREES.** To provide Retirees with health insurance and other benefits in the amount and coverage determined by the Board of Trustees.
- 1.3 **BENEFITS FOR DEPENDENTS.** To make available to Retirees coverage and benefits for their Dependents, as determined by the Board of Trustees. The Board shall determine the premium cost of Dependent coverage. At discretion of the Board of Trustees, a portion of the Employer contributions may be allocated to pay for Dependent coverage.
- 1.4 **RESERVES.** To establish and maintain reserves reasonably required to provide security and stability to the Plan according to generally accepted accounting and actuarial standards and practices.
- 1.5 **EMPLOYER CONTRIBUTIONS.** To collect Employer Contributions required under: (a) the collective bargaining agreement between the Union and the Employer, with regard to represented employees; and (b) the Board Order, with regard to Command Staff.



## ARTICLE II

### DEFINITIONS

When used herein the following words shall have the following meaning unless the context clearly indicates otherwise:

- 2.1 **“Administrator”** means the person or business entity appointed by the Board of Trustees to supervise the administration of the Plan under control of the Board of Trustees.
- 2.2 **“Beneficiary”** means a Retiree entitled to receive benefits from the Plan; or a spouse or a Dependent of a Retiree who is entitled to receive benefits from the Plan.
- 2.3 **“Benefits”** means medical benefits and/or coverage provided to Retirees and their Dependents by the Trust.
- 2.4 **“Board of Trustees”** means the Board of Trustees established and designated under Article IV to administer this Plan.
- 2.5 **“Board Order”** means the order of the Clackamas County Commissions (“Board Order”) dated \_\_\_\_\_ regarding contributions on behalf of active members of the Command Staff.
- 2.6 **“Carrier”** means any commercial insurance company or service organization issuing a contract under the terms of which benefits are provided to Retirees and their Dependents, and may include the Plan itself if the Plan self-insures benefits.
- 2.7 **“Command Staff”** means the active employees of the Clackamas County Sheriff’s Office who are nonsworn and not represented by the Union.
- 2.8 **“Compensable Hour”** means an hour for which a member of the bargaining unit or Command Staff is entitled to receive compensation from the Employer and on which the Employer is required to make a contribution the Plan under Section 1.5.

2.9 “Custodian” means the person, people, corporation or entity authorized by the Board of Trustees to hold the Trust’s assets. The Custodian shall be a corporation selected pursuant to Article V.

2.10 “Dependent” means a dependent of an eligible Retiree as defined in any policy or other form of coverage selected by the Board of Trustees, including the Retiree’s children. “Dependent” shall include a Retiree’s spouse and children. Coverage for Dependents under the Plan shall terminate when the Retiree is no longer an Eligible Retiree.

(a) Retiree’s Spouse. A Retiree’s “spouse” shall include an opposite sex spouse or a same-sex spouse, provided the marriage is legal in the state in which the marriage took place. A common-law spouse may be treated as a spouse only if the state in which you reside recognizes common-law marriages and you satisfy the state requirements at the time of enrollment. A spouse shall also include domestic partner recognized by Clackamas County.

(b) Retiree’s Children. A child may be up to age 26. A Retiree’s “child” or “children” include the following:

(1) Biological children of the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(2) Children adopted by the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(3) Children placed for adoption with the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(4) Foster children placed with the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner.

(5) Children and/or grandchildren for whom the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner has legal guardianship (provided a court order showing legal guardianship is filed with the Administrator). The child must be related to the Retiree, the Retiree’s spouse and/or the Retiree’s domestic partner by blood or marriage.

- (6) Children for whom coverage is required under a Qualified Medical Child Support Order applicable to the Retiree.
  - (7) Children who qualify as the Retiree's dependent under IRC §152.
- 
- 2.11 **"Effective Date"** means the date on which this Trust shall be effective, which is January 1, 2014.
  - 2.12 **"Employer"** means Clackamas County, Oregon.
  - 2.13 **"Employer Contributions"** means contributions required to be made to this Plan under Section 1.5.
  - 2.14 **"Parties"** means the Employer and the Union.
  - 2.15 **"Retiree"** means a retiree of the Clackamas County Sheriff's Office who is eligible to participate in this Plan pursuant to Article 3.
  - 2.16 **"Plan"** means this health and welfare Plan.
  - 2.17 **"Plan Year"** means the calendar year starting on January 1<sup>st</sup> and ending on December 31<sup>st</sup> of that year.
  - 2.18 **"Policy"** means an insurance policy or any contract issued pursuant to this Plan under which benefits are provided to a Retiree and/or a Dependent.
  - 2.19 **"Trust"** means the Trust established for this Plan.
  - 2.20 **"Union"** means the Clackamas County Peace Officers Association.

## ARTICLE III

### ELIGIBILITY AND BENEFITS

- 3.1 **ELIGIBLE EMPLOYER.** The eligible Employer shall be Clackamas County, Oregon.
- 3.2 **ELIGIBLE RETIREES.** The following individuals are "Eligible Retirees" and shall be eligible for benefits under this Plan:
- (a) The individual retired from the Clackamas County Sheriff's Office with at least 10 Years of Employment at the Clackamas County Sheriff's Office;
  - (b) The individual meets, at the time the individual retired, the minimum requirements for service or disability retirement under the rules of either the Oregon Public Employee Retirement System or the Oregon Public Employee Service Retirement Plan; and
  - (c) The individual is not eligible for Medicare.
- 3.3 **YEAR OF EMPLOYMENT.** An individual shall accrue a "Year of Employment" for determining eligibility under this article by completing 12 months of employment with the Clackamas County Sheriff's Office. The 12 month period shall start on the individual's hire date and each subsequent anniversary of that date. An individual shall receive credit for months of employment, which may be used to establish a Year of Employment. Employment shall be counted for purposes of determining a Year of Employment only if the employment is covered by either: (a) the collective bargaining agreement between the Union and the Employer, with regard to represented employees; or (b) the Board Order, with regard to Command Staff.
- 3.4 **MEDICARE ELIGIBILITY.** The Plan assumes a Retiree (or Dependent) who, at any time, becomes eligible for Medicare, has applied for and is eligible for Medicare benefits. A Retiree or Dependent who fails to apply for Medicare when he/she is eligible will be treated as having applied for and received Medicare. In that case, the

Retiree or Dependent may be responsible to repay the Plan for Plan benefits received while the Retiree or Dependent is eligible for Medicare.

**3.5 BENEFIT PERIOD.** Eligible Retirees under Section 3.2 shall be entitled to Benefits under this Plan for the following time periods.

(a) Normal Early Retirement. An Eligible Retiree who retires before becoming eligible for Medicare by age or disability shall receive Benefits for the following periods:

<u>Years of Employment</u>	<u>Years of Retiree Benefits</u>
10 years	up to 10 years*
11 years	up to 11 years*
12 years	up to 12 years*
13 years	up to 13 years*
14 years	up to 14 years*
15 years	Until eligible for Medicare by age or disability

\* or until eligible for Medicare by age or disability, if earlier.

(b) Disability Early Retirement. A disabled Eligible Retiree shall be eligible for Benefits for a period not to exceed 29 months (or until eligible for Medicare by age or disability, if earlier). In order to qualify for disability early retirement an Eligible Retiree must: (a) have fewer than 10 Years of Employment; and (b) retire with a disability retirement under either the Oregon Public Employee Retirement System or the Oregon Public Employee Service Retirement Plan.

**3.6 INELIGIBLE DEPENDENTS.** Coverage under this Plan is not available for the following individuals, who are ineligible dependents:

- (a) Any Dependent on active duty in the uniformed services or armed forces of any country.
- (b) A former spouse or the former spouse's dependents after a divorce, even if the divorce decree or settlement agreement requires Retiree to provide coverage under the Plan (the former spouse and/or dependents may be entitled to continue coverage under COBRA).

- (c) A former domestic partner and/or the former domestic partner's dependents after termination of the domestic partnership, even if a court order or settlement agreement requires Retiree to provide coverage under the Plan (the former domestic partner and/or dependents may be entitled to continue coverage under COBRA).
- (d) Parents, even if they are your dependents for federal income tax purposes. This rule also applies to the parents of your spouse and/or domestic partner.
- (e) The spouse and/or domestic partner of a child or grandchild.

**3.7 TERMINATION OF COVERAGE.** Coverage under this Plan for a Retiree and the Retiree's Dependents may end under the following situations.

- (a) Plan Termination. Coverage ends on the date the Plan terminates. No participant has a vested right to benefits under the Plan.
- (b) Loss of Eligibility. Coverage ends on the last day of the month in which a Retiree and/or Dependent no longer meets the Plan's eligibility requirements.
- (c) Terminated by Retiree. A Retiree may end coverage for any of the Retiree's dependents by giving the Administrator written notice of the termination. Coverage ends on the last day of the month in which the Retiree gives the termination notice.
- (d) Death. Coverage for a Retiree's Dependents ordinarily ends on the last day of the month in which the Retiree dies. However, surviving spouses and/or dependent children may be able to continue coverage under federal COBRA rules and/or Oregon law relating to survivors of retired public employees.
- (e) Divorce. Coverage ends for a spouse and the spouse's stepchildren on the last day of the month when a divorce or annulment is final, or in the case where the decree is appealed, the date the divorce or annulment would have been final but for the appeal.
- (f) Termination of Domestic Partnership. Coverage ends on the last day of the month for a domestic partner and the domestic partner's children when a

domestic partnership is terminated or dissolved by court order. A nonregistered domestic partnership is considered terminated if the partnership no longer meets any of the qualifying conditions under the Affidavit of Domestic Partnership. A domestic partnership registered in Oregon is considered terminated when a decree of dissolution is ordered.

ARTICLE IV  
BOARD OF TRUSTEES

- 4.1 **MEMBERSHIP.** The Board of Trustees shall be composed of up to 8 members. The Union and the Employer shall each appoint an equal number of Trustees, not to exceed four each. Trustees appointed by the Union shall be known collectively as "Union Trustees." Trustees appointed by the Employer shall be known collectively as "Employer Trustees."
- 4.2 **TERM OF OFFICE.** The term of office of each member of the Board of Trustees shall be for a designated period of time, or until a successor is appointed. However, any member may voluntarily resign.
- 4.3 **APPOINTMENTS AND CHANGES IN BOARD OF TRUSTEES.** All appointments, removals, replacements and resignations from the Board of Trustees shall be in writing and filed in the Administrator's office and with the Custodian. Any individual or entity, including the Custodian, dealing with the Board of Trustees shall not be required to inquire into the status or authority of any Trustee. The Custodian may rely upon the written evidence in its possession of the Trustees of the Board of Trustees and shall not be required to acknowledge a change in the Trustees until notified in writing of a change.
- 4.3.1 **Vacancies.** The appointing party shall select appoint a Trustee to fill a vacancy on the Board of Trustees.
- 4.3.2 **Removal.** A Trustee may be removed by either: (a) the party that appointed the Trustee; or (b) the Board of Trustees, by majority vote. For example, a Trustee appointed by the Union may be removed by the Union, but cannot be removed by the Employer.



- 4.4 **BOOKS AND RECORDS.** A former Trustee shall, upon the Trustee's resignation or removal, or at the request by the Co-Chairs, return to the Plan all Plan records, books, documents and assets which were provided to the former Trustee.
- 4.5 **CO-CHAIRS.** The officers of the Board of Trustees shall be determined as provided in this section.
- 4.5.1 Co-Chairs. The Co-Chairs of the Board of Trustees shall consist of one Employer Trustee and one Union Trustee selected by the following parties: the Employer Co-Chair shall be selected by the current Employer Trustees; and the Union Co-Chair shall be selected by the current Union Trustees. The party selecting the Co-Chair shall determine: (a) the method the party uses for selecting and/or removing the party's Co-Chair; and (b) the Co-Chair's term. A party may change the party's Co-Chair at any time. The Co-Chairs shall have authority to sign all documents relating to the Plan's operations.
- 4.5.2 Presiding Officer. The Co-Chairs shall preside at alternate meetings of the Board of Trustees. However, if a Co-Chair shall not be present at a meeting, the other Co-Chair shall preside at the meeting.
- 4.6 **VOTING AND QUORUM.** Two Employer Trustees and Two Union Trustees shall constitute a quorum for the transaction of all business at any meeting of the Board of Trustees. All decisions of the Board of Trustees shall be by majority vote. If a dispute shall arise under the Plan which cannot be settled by the Board of Trustees, the Board of Trustees shall appoint an impartial temporary Chair who shall have one vote to be cast after hearing of the matter in dispute at a meeting of the Board of Trustees. If the Board of Trustees shall be unable to agree upon an impartial temporary Chair, each side shall appoint an arbitrator and the two appointed arbitrators shall select a third arbitrator to serve as the temporary Chair. The fees and expenses of the application and the services of the arbitrators and/or the impartial Chair shall be paid by the Plan.
- 4.7 **BOARD OF TRUSTEE MEETINGS.** The time, place and manner of all meetings of the Board of Trustees shall be determined as provided in this section.

- 4.7.1 Regular Meetings. All regularly scheduled meetings of the Board of Trustees shall be held at the time and place, and in the manner, designated by the Board of Trustees. A "regularly scheduled meeting" shall mean a regular quarterly meeting the time, place and manner for which is designated by the Board of Trustees when adopting the Board's annual calendar. Publication of the Board's annual calendar in meeting minutes distributed to all Trustees shall serve as Notice for all regularly scheduled meetings during the year.
- 4.7.2 Special Meetings. A special meeting may be called by: (a) the Co-Chairs at any time after giving five days' Notice; or (b) any three Trustees after giving at least 10 days' Notice.
- 4.7.3 Electronic Meetings. A regular or special meeting of the Board of Trustees may be held by conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other.
- 4.7.4 Attendance. A Trustee may participate in a regular, special or electronic meeting of the Board of Trustees by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and the Trustee's participation in the meeting shall constitute presence in person at the meeting.
- 4.7.5 Notice. The term "Notice" shall mean advance written notice that designates the time, place, purpose and manner of the meeting and satisfies the following delivery requirements:
- (a) Notice may be delivered in one or more of the following methods: (1) by personal hand delivery; (2) by U.S. mail or private delivery service that tracks delivery, provided the postage and/or delivery costs are prepaid; or (3) by fax or email.
  - (b) Notice shall be considered delivered as follows: (1) if personal, upon delivery; (2) if mailed, when deposited in the United States mail addressed to the Trustee, at the address listed in the Board's records, with first class or faster postage prepaid; (3) if by private delivery

service, when deposited with the delivery service addressed to the Trustee at the address listed in the Board's records, with delivery costs prepaid; (4) if by facsimile, when faxed to the Trustee's fax number listed in the Trust's records and upon receipt of a fax confirmation slip; (5) if by email, when sent to the email address listed in the Board's records.

4.7.6 Meeting Records. Meeting minutes shall be prepared at the direction of the Co-Chair presiding at the meeting. In the alternative, the Board of Trustees may designate a Trustee, the Board's third party administrator or other service provider to act as secretary to record the minutes of the Board's proceedings and to maintain the Board's records.

4.7.7 Action without Meeting. The Board of Trustees may act without a meeting; provided, however, that the action shall be in writing and unanimously approved by all Trustees of the Board of Trustees. Any action taken without a meeting shall be reported in the minutes of the next Board of Trustees' meeting.

4.8 **LIABILITY OF TRUSTEES**. A Trustee shall not be personally liable for any obligation to pay premiums or any expense incurred by the Board of Trustees or the Plan. A Trustee shall not be liable or responsible for the acts of commission or omission of another fiduciary unless: (a) the Trustee knowingly participated or knowingly attempted to conceal the act or omission of another fiduciary and the Trustee knew the act or omission was a breach of fiduciary responsibility by the other fiduciary; or (b) the Trustee has knowledge of a breach by the other fiduciary and shall not make reasonable efforts to remedy the breach; or (c) the Trustee's breach of the trustee's fiduciary responsibility permitted the other fiduciary to commit a breach. Except as set forth in the preceding sentence, a Trustee shall not be liable for a breach of a fiduciary responsibility, for acts or omissions committed before or after the Trustee became a Trustee, or for the acts of omission or commission of an investment manager appointed pursuant to paragraph 5.5. From the Plan's assets, the Board of Trustees may indemnify a Trustee against any and all

claims, losses, damages, expenses and liabilities arising from any act of commission or omission on behalf of the Plan if the act is determined, by either a court or neutral party, not to be a breach of fiduciary responsibility by the Trustee. The indemnification shall include reasonable attorney's fees and all other costs and expenses reasonably incurred by the trustee in defense of any action brought against the trustee arising from the act of commission or omission.

**4.9 EXPENSES AND COMPENSATION OF TRUSTEES.** A Trustee may not receive per diem compensation for attendance at meetings of the Board of Trustees, except as permitted by law. A Trustee may receive reimbursement for all reasonable expenses which are incurred for the benefit of the Plan. The expenses shall include, but shall not be limited to, attendance at Board of Trustees meetings, attendance at educational meetings and representation by an attorney because of service as a Trustee. The amount of reimbursement shall be determined by the Board of Trustees and shall be paid as a Plan expense.

**4.10 FILING LIST OF COMMITTEE TRUSTEES.** The Co-Chairs and/or Secretary of the Board of Trustees may file periodically, and as necessary, with the Carrier or Carriers and the Custodian, a list of the name and address of each member of the Board of Trustees.

## ARTICLE V

### DUTIES, POWERS AND AUTHORITY OF THE BOARD OF TRUSTEES

- 5.1 ACTUARIAL PRINCIPLES.** The Board of Trustees shall administer the Plan according to sound actuarial and underwriting principles to provide, with available funds, benefits to Retirees.
- 5.2 ESTABLISHMENT OF CONTRIBUTION RATE.** The Board of Trustees shall have discretionary authority to establish the rate of contribution for dependent coverage and for self-pay. The rate shall be adequate, when added to the employee contribution, if any, for dependent coverage, to pay the premium for the benefits, the reasonable allocable portion of administrative costs and a contribution to the Plan's reserve fund. The Board of Trustees shall have discretionary authority to determine the portion of the cost for dependent coverage and self-pay that may be paid from Employer contributions and/or the Plan's assets and the portion that shall be the responsibility of the dependent or Retiree.
- 5.3 RESERVE.** The Board of Trustees shall establish and maintain from contributions and other Plan assets a reserve fund that the Board of Trustees shall, in its discretion, determine to be adequate to maintain the financial stability and security of the Plan, according to generally accepted accounting and actuarial standards and practices.
- 5.4 INTERPRETATION.** The Board of Trustees shall have discretionary authority to interpret and construe the provisions of the Plan; to decide any disputes which may arise relative to the rights of retirees, past and present, and beneficiaries, under the terms of this Plan; to determine an individual's eligibility for benefits and the amount of any benefits; to give instructions and directions to the Custodian as necessary; and to direct the administration of the Plan. The Board of Trustees shall not, through interpretation of the Plan or action under the Plan, increase the Custodian's duties without the consent of the Custodian.

- 5.5 EMPLOYMENT OF AGENTS.** The Board of Trustees shall have the right to employ or discharge agents, the Custodian, and an investment manager and may rely upon the written opinions or certificates of the Custodian or any agent, counsel, actuary, investment manager, physician, or fiduciary. The cost of all agents, the Custodian or an investment manager shall be paid by the Plan.
- 5.6 ALLOCATION OF FIDUCIARY RESPONSIBILITIES.** The Board of Trustees may allocate fiduciary responsibilities, other than the Trustee's responsibilities, to other fiduciaries. If the Board of Trustees shall make an allocation, then the specified Trustee or fiduciary shall be responsible for the duties allocated to the Trustee or fiduciary and the other fiduciaries shall not be liable for any breach of fiduciary responsibility for the duties allocated except as set forth in section 4.8. If the Board of Trustees allocates responsibilities to other Trustees or fiduciaries, the Board shall periodically review the performance of the person performing the allocated duties.
- 5.7 DETERMINATION OF BENEFITS.** The Board of Trustees shall have discretionary authority to determine, increase, decrease or terminate, in whole or in part, the benefits and coverage provided by the Plan. The Board of Trustees shall have the right to select the Carrier providing the benefits and to exercise all rights granted to a policy holder. Any change in Plan benefits shall not change the rate of employer contributions.
- 5.8 ELIGIBILITY RULES.** The Plan eligibility rules shall conform to the eligibility provisions in the (a) the collective bargaining agreement between the Union and the Employer, with regard to represented employees; and (b) the Board Order, with regard to Command Staff. The Board of Trustees shall have discretionary authority to interpret the eligibility provisions and to establish and/or modify uniform administrative rules for applying the eligibility provisions.
- 5.9 ADMINISTRATION.** The Board of Trustees shall have the right to enter into agreements with any party to administer the Plan or to maintain all Plan records.

- 5.10 DELEGATION OF DUTIES.** The Board of Trustees shall have the right to delegate duties to a third party or a subcommittee which shall be composed of an equal number of Employer Trustees and Union Trustees. The subcommittee shall have the duties and rights delegated to it by the Board of Trustees. If the Board of Trustees delegates duties to a third-party, the Board shall periodically review the performance of the third-party performing the delegated duties.
- 5.11 COLLECTION OF PAYMENTS.** The Board of Trustees shall be responsible to collect all required payments to the Plan. To implement this responsibility, the Board of Trustees may require audits or reports in a number and a form which it deems necessary or desirable from all parties associated with the Plan. Moreover, the Board of Trustees may assign for collection or institute legal proceedings to collect any amount due to the Plan.
- 5.12 AUTHORIZATION OF EXPENSES.** The Board of Trustees shall authorize all payments for the Plan's expenses which the Board of Trustees shall determine to be reasonable, necessary or desirable. The expenses shall be expenses of the Plan.
- 5.13 PAYMENT OF BENEFITS.** The Board of Trustees may authorize payment of Benefits to which a Beneficiary is entitled to receive.
- 5.14 CLAIMS REVIEW COMMITTEE.** The Board of Trustees may appoint a Claims Review Committee to provide a full and fair review of Beneficiary claims.
- 5.15 OTHER ACTS.** The Board of Trustees shall perform all other acts, whether or not expressly described or referred to above, which may be necessary, proper and desirable to implement the objectives and provisions of the Plan.

## ARTICLE VI

### INVESTMENT MANAGER

- 6.1 SELECTION OF INVESTMENT MANAGER.** The Board of Trustees may select an investment manager or managers for all or a portion of the Plan's assets. The investment manager shall acknowledge in writing it is a fiduciary of the Plan and shall be: (a) registered as an investment advisor under the Investment Advisors Act of 1940; (b) a bank organized under federal law; or (c) an insurance company qualified to manage, acquire or dispose of assets of an employee benefit plan under the laws of more than one state. The Board of Trustees shall be furnished with a written statement that the investment manager is a qualified investment manager and the investment manager's acceptance of the appointment. An investment manager may be removed by the Board of Trustees at any time upon written notice to the investment manager. An investment manager shall have the right to resign at any time by giving the Board of Trustees sixty (60) days written notice. A retiring or terminated investment manager shall immediately file with the Board of Trustees a written account of its transactions from the date of its last account to the date of its removal or resignation.
- 6.2 INVESTMENT DECISIONS.** The Board of Trustees shall periodically advise the investment manager of additional assets available for investment. An investment manager shall exercise all investment decisions for the assets under its control pursuant to Article VII. The Board of Trustees shall not be under any duty to question any direction from an investment manager or to review any investment.
- 6.3 ORDERS FOR PURCHASE OR SALE.** An investment manager may issue orders for the purchase or sale of securities directly to a broker and the Custodian shall execute and deliver appropriate trading authorizations. Written notification of the issuance of each order shall be given promptly to the Custodian by the investment manager and the execution of each order shall be confirmed by written advice of the broker to Custodian. The notification from the investment manager shall be



authority for the Custodian to pay for the securities against the receipt or to deliver securities sold against the payment for the securities.

- 6.4 RESIGNATION OR REMOVAL OF INVESTMENT MANAGER.** If an investment manager shall resign or be removed, the Board of Trustees shall manage the investment of the Plan previously under the control of the investment manager until the Board of Trustees shall be notified of the appointment and acceptance of another investment manager.
- 6.5 MULTIPLE INVESTMENT MANAGERS.** If the Board of Trustees shall appoint more than one investment manager, each investment manager shall be responsible for the investment of the Plan's assets allocated to the investment manager. An investment manager shall not be liable for the acts or omissions of another fiduciary unless: (a) the investment manager knowingly participates in, or knowingly attempts to conceal the act or omission of another fiduciary, and the investment manager knows the act or omission is a breach of a fiduciary responsibility by the other fiduciary; or (b) the investment manager has knowledge of a breach of a fiduciary responsibility by the other fiduciary and does not make reasonable efforts to remedy the breach; or (c) the investment manager's breach of its own fiduciary responsibility permits the other fiduciary to commit a breach.
- 6.6 SEGREGATION OF ASSETS.** The Plan's books, records and accounts may reflect the segregation of the Plan's assets in separate accounts for the investment managers.

## ARTICLE VII

### INVESTMENT OF TRUST FUNDS

- 7.1 **GENERAL.** Plan assets shall be invested and reinvested as a pooled fund. The Board of Trustees or the investment manager shall consider the effect of any investment upon the tax exempt status of the Plan or the income tax consequences to the Plan. The Board of Trustees or the investment manager shall invest the assets with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- 7.2 **TYPES OF INVESTMENTS.** The Board of Trustees, or the investment manager, is and shall be authorized and empowered in its discretion, but not by way of limitation, to:
- (a) invest and reinvest the Plan's assets in bonds, insurance policies, mortgages, debentures, preferred or common stocks, stock options, mutual funds, a common trust fund maintained by a fiduciary which is a bank or an insurance company, or other real or personal property, or deposit the Plan's assets in an interest bearing account in a financial institution supervised by the United States or a state if the financial institution is a fiduciary of the Plan;
  - (b) sell, exchange, convey, transfer, or dispose of, and to grant all options with respect to, any property, real or personal, at any time held by the Plan. Any sale may be made by private contract or public auction, and for cash or upon credit; no person dealing with Plan assets shall be bound to supervise the application of the proceeds of any transaction or to inquire into the validity, expediency or propriety of the transaction;
  - (c) retain, manage, operate, repair, improve, mortgage or lease for any period, any real or personal property, and to purchase and carry insurance in such amount and against such hazards as may be desirable;

- (d) vote in person or by general or limited proxy with respect to any bonds, stocks or other securities held by the Plan; to exercise any options applicable to any bonds, stock or other securities for the conversion thereof into other securities; to exercise any rights, to subscribe for additional bonds, stocks or other securities, and to make any and all necessary payments therefore; to join in, or to dissent from, or oppose the reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which the Plan may be interested and upon the terms and conditions as may be prudent;
- (e) accept and hold any securities or other property received by the Board of Trustees under the provisions of this Article, whether or not the Board of Trustees would be authorized to invest in such securities;
- (f) make, execute, acknowledge and deliver any and all appropriate deeds, leases, assignments and other instruments;
- (g) cause any investments to be registered in, or transferred into, its name as trustee, or the name of the Board of Trustees' nominee or nominees, or to retain the investment in unregistered form or in a form permitting transfer by delivery only; however, the books and records of the Board of Trustees shall at all times show that all investments are part of the Plan's assets;
- (h) invest in all forms of insurance, including without limitation, health and dental insurance, annuity contracts or life insurance contracts on the lives of Beneficiaries, or surrender such policies for their cash value; and
- (i) perform all acts, whether or not expressly described or referred to above, which may be necessary, proper or desirable for the protection or enhancement of the Plan's assets.

## ARTICLE VIII

### ACCOUNTING PROCEDURES

- 8.1 **MAINTENANCE OF RECORDS.** The Board of Trustees shall maintain accurate records and accounts of all transactions which shall be available at all reasonable times for inspection by the Board of Trustees, Participating Employers or Beneficiaries.
- 8.2 **VALUATION OF PLAN'S ASSETS.** The Board of Trustees shall value the Plan's assets at least annually as of the close of the Plan Year. The account shall contain a list of all transactions since the Board of Trustees' last report, the book and market value of the Plan's assets and additional information which the Board of Trustees deems necessary to complete all disclosure and reporting requirements to all governmental agencies or Beneficiaries. The Board of Trustees may determine the fair market value of the Plan's assets from sources it deems reliable, including but not limited to, information reported in newspapers, financial publications or the records of security exchanges or brokerage firms.

## ARTICLE IX

### INTEREST IN PLAN'S ASSETS AND SPENDTHRIFT PROVISIONS

- 9.1 INTEREST IN PLAN'S ASSETS.** A Retiree, Employer, Dependent, a party to the Plan or any other person or entity shall not have any right, title or interest in the Plan's assets.
- 9.2 SPENDTHRIFT.** A Retiree and/or Dependent shall not have a right to assign any benefits provided by this Plan. The benefits provided by this Plan shall not be subject to seizure by legal process and shall not be in any way subject claims of a Retiree's, Employer's or Dependent's creditor(s).

## ARTICLE X

### EMPLOYER CONTRIBUTIONS AND REPORTS

- 10.1 CONTRIBUTIONS.** The Employer shall pay to the Plan an amount of money at the rate determined by: (a) the collective bargaining agreement between the Employer and the Union; and (b) the Board Order regarding Command Staff.
- 10.2 PAYMENT.** Contributions shall be paid monthly to the Plan and shall be due and payable at the place designated by the Board of Trustees not later than the twentieth day of the month following the month for which the contribution is owed.
- 10.3 PAYMENT BY MISTAKE OF FACT OR LAW.** The Board of Trustees shall have the right to return to payment to the Employer provided: (a) the Board determines that the payment was made by mistake of fact or law; and (b) the payment is returned within six months after the date of the Board's determination.
- 10.5 CONTRIBUTIONS AS DEBT OF EMPLOYER.** All payments required from Employer under this Plan shall constitute a debt payable by the Employer. However, Employer's payment shall not accrue to any Retiree or Dependent or be deemed a Plan asset until the payment shall be received by the Plan.
- 10.6 REPORTS.** The Employer, at the time of each payment, shall complete schedules and reports as required by the Board of Trustees to enable the Board of Trustees to administer the Plan.
- 10.7 FAILURE TO PAY.** If the Employer fails to pay its monthly contribution within five days after the due date, the Board of Trustees shall have the discretion to suspend the Employer from participating in the Plan. The Board of Trustees shall notify Employer that it will be suspended, as of the date specified by the Board of Trustees, unless payment is received by a specified date. The notice shall be given to the Employer by certified mail and a copy sent to the Union representing the Retirees. The Employer's suspension shall not relieve the Employer of its

continuing obligations to make contributions to the Plan, including any delinquent contributions, as required by the Employer's collective bargaining agreement with the Union and or the Board Order with regard to Command Staff.

**10.8 COLLECTIONS.** The Board of Trustees may take whatever action it deems necessary to collect arrearages. The Employer shall pay, in addition to the amount owing, interest at the rate of the lower of the prime rate plus 2 percent or the maximum permitted by law on the indebtedness from the due date until paid, liquidated damages in the amount of 20 percent of the amount of the arrearages, and all costs incurred by the Plan in the collection including court costs, reasonable attorney's fees and reasonable audit fees. The attorney's fees and audit fees shall be payable whether or not legal proceedings shall be instituted to collect the debt. Attorney's fees paid by the Plan shall be presumed to be reasonable.

**10.9 FAILURE TO REPORT.** If the Employer shall fail to file the required reports within five days after the due date, the Board of Trustees may audit all the payroll records of the Employer and prepare the report. If the Board of Trustees shall elect to suspend the Employer's participation in the Plan, the Board of Trustees shall, before the end of the month in which the default occurred, give notice to the Employer that it will be suspended as of the end of the month unless the report is filed prior thereto. The notice shall be given by certified mail and a copy sent to the Union. The Plan shall not be liable for the payment of premiums covering retirees of the employer during the period of time of the suspension. If the Board of Trustees elects to audit the payroll records and prepare the report, the Employer shall pay all of the costs of the audit in preparation of the report. Payment of the costs shall be due and payable upon demand by the Board of Trustees. If the costs shall not be paid within five days from the date of demand, the Employer shall be liable for all costs incurred by the Board of Trustees to collect the debt, including reasonable attorney's fees whether or not legal proceedings shall be instituted.

**10.10 REINSTATEMENT.** If the Employer is suspended from participating in the Plan, the Employer may be reinstated as a participating Employer upon payment of all

arrears, costs, including liquidated damages, attorney's fees and audit fees, and upon terms and conditions which the Board of Trustees may impose.

**10.11 SATISFACTION OF EMPLOYER'S FINANCIAL LIABILITY.** The Employer's payment of the contributions required by this Plan shall be a complete discharge of the Employer's financial obligations under the Plan. However, the Employer shall not be relieved of any liability to the Plan, a Retiree and/or a Dependent for failure to make timely contributions to the Plan.

**10.12 PREMIUMS FOR DELINQUENT EMPLOYERS.** The Board of Trustees, in its discretion, may pay the premiums which may be required to preserve and extend for a reasonable period of time the benefits for retirees if the Employer is delinquent.



## ARTICLE XI

### TERMINATION OF RETIREE COVERAGE

11.1 **RETIREE COVERAGE.** The Plan shall not be responsible for the payment of premiums for Retirees, or for dependent coverage, unless the payment shall be received by the Plan. The Plan shall not be liable for the payment of claims if the Carrier refuses to accept the premiums.

## ARTICLE XII

### DISPUTES NOT SUBJECT TO COLLECTIVE BARGAINING

- 12.1 **DISPUTES.** The Board of Trustees shall determine the resolution of disputes, which shall not be subject to the grievance procedure or the arbitration provisions of any collective bargaining agreement between Employer and the Union. As use in this paragraph, the term "disputes" shall mean disagreements between the Parties involving the terms and operation of the Plan, the Plan's trust, any insurance contract issued in connection with the Plan or any claim for Benefits.

## ARTICLE XIII

### AUDITS AND REPORTS

- 13.1 ANNUAL CERTIFIED REPORT.** An annual certified audit of the Plan shall be made by a competent firm of certified accountants selected by the Board of Trustees. A statement of the results of the annual audit shall be made available to the Employer and Union and a copy shall be available for inspection at the Plan's administrative office and at such other places as the Board of Trustees may designate. The cost of the audit shall be paid by the Plan.
- 13.2 EMPLOYER RECORDS.** The Employer shall furnish, upon request, to the Board of Trustees (or its designated auditor) any and all records pertaining to Retirees, including, without limitation, records of names, Social Security numbers of Retirees, the number of Compensable Hours for which payment has been made or is payable to the Plan; federal, state and local payroll tax reports; payroll check registers and cancelled payroll checks; and such other information pertaining to the Retirees as the Board of Trustees may require in connection with the proper administration of the Plan.

## ARTICLE XIV

### FIDELITY BOND

14.1 **BOND REQUIRED.** All members of the Board of Trustees shall be bonded in an amount not less than \$50,000 and such additional amount as the Board of Trustees may determine.

## ARTICLE XV

### PLAN AMENDMENT

- 15.1 AMENDMENT PROCEDURE.** The Board of Trustees may amend this Plan from time to time, at the Board's discretion.
- 15.2 LIMITATION UPON AMENDMENTS.** The Plan shall not be amended to permit the Plan's assets, or any part thereof to revert, or be diverted, to the benefit of the Employer or the Union, or any person other than the Retirees or their dependents (to the extent contributions were made for the benefit of the dependents). An amendment, by its terms, may be retroactive.
- 15.3 DISTRIBUTION OF COPIES OF AMENDMENTS.** The Board of Trustees shall distribute to the Employer and the Union a copy of each amendment to the Plan.

## ARTICLE XVI

### SITUS, CONSTRUCTION OF PLAN AND MISCELLANEOUS

- 16.1 **PRINCIPAL OFFICE.** The principal office, place of administration and situs of the Plan and Trust shall be located in the state of Oregon.
- 16.2 **GOVERNING LAW.** All questions relating to the validity, construction and administration of this Plan shall be determined according to the laws of the state of Oregon, subject to applicable and controlling laws of the United States.
- 16.3 **INVALIDITY OF A PROVISION.** If any provision of the Plan shall be declared invalid or unenforceable the remaining provisions shall be effective.
- 16.4 **ENROLLMENT FORM.** Each Retiree, by executing an enrollment form, agrees for the Retiree and the Retiree's beneficiaries and successors, to be bound by all Plan provisions.