

**SPECIAL COMPLIANCE AMENDMENT****TO****FIRE AND POLICE DISABILITY, RETIREMENT, AND DEATH BENEFIT PLAN**

In order to comply with changes in the requirements for tax-qualified status under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the City of Portland's Fire and Police Disability, Retirement, and Death Benefit Plan, set out in Chapter 5 of the City Charter (the "Plan"), is retroactively amended by ordinance by the City Council of Portland pursuant to authority granted to it under Section 5-403(c) of the Plan. This Special Compliance Amendment is retroactively effective as provided herein and is part of a Voluntary Compliance Program (VCP) application submitted to the Internal Revenue Service under the Employee Plans Compliance Resolution System (EPRCS) pursuant to Rev. Proc. 2008-50. In response to the Plan's VCP application, the Internal Revenue Service issued a favorable compliance statement regarding the Plan on December 21, 2010 and a favorable determination letter issued on June 7, 2012 which specifically permit this Special Compliance Amendment to be adopted retroactively.

**Article I****Direct Rollover of Eligible Rollover Distributions**

**Section 1.** Rollovers Generally. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Fund Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

**Section 2.** Definitions.

Section 2.1. Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) 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 designated beneficiary, or for a specified period of ten (10) years or more; (B) any distribution to the extent such distribution is a required minimum distribution under Code section 401(a)(9); (C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (D) any other distribution that is reasonably expected to total less than \$200 during a Plan Year. Effective for distributions made after December 31, 2001, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may only be transferred to an individual retirement account described in Code section 408(a) or to a qualified defined contribution plan described in Code sections 401(a) or 403(a) that agrees to separately account for amounts so

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transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

Section 2.2. Eligible Retirement Plan: With respect to any portion of an Eligible Rollover Distribution that is paid in a Direct Rollover, an Eligible Retirement Plan means: (A) an individual retirement account described in Code section 408(a); (B) an individual retirement annuity described in Code section 408(b); (C) an annuity plan described in Code section 403(a); (D) effective after December 31, 2001, an annuity contract described in Code section 403(b); (E) a qualified trust described in Code section 401(a); (F) effective after December 31, 2001, an eligible deferred compensation plan under Code section 457(b) which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan; and (G) effective January 1, 2008, a Roth individual retirement account as described in Code §408A(b), subject to the restrictions of Code §408A(c)(3)(B) for tax years beginning prior to January 1, 2010. However, in the case of an Eligible Rollover Distribution to a surviving Spouse made on or after January 1, 1993 but prior to December 31, 2001, an Eligible Retirement Plan is limited to an individual retirement account under Code section 408(a) or an individual retirement annuity under Code section 408(b).

Section 2.3. Distributee: A Distributee includes a Member or former Member. The term Distributee also includes a surviving Spouse or a Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p) with regard to the interest of the Spouse or former Spouse.

Section 2.4. Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

Section 2.5. Non-Spouse Designated Beneficiary: A beneficiary of a Member's death benefit who (a) is other than the Member's Spouse and (b) is considered to be a "designated beneficiary" under Code section 401(a)(9)(E).

Section 2.6. Spouse: For the limited purposes of this Article I, the term "Spouse" means a person of the opposite sex to whom a Member is legally married under applicable state law. Some states now recognize same sex marriages. However, the Plan is subject to the Code, which is a federal law. Congress has previously adopted the Defense of Marriage Act. The Defense of Marriage Act provides that under all federal laws, including the Code, same-sex partners cannot be treated as "spouses." In the instant case, this means that same-sex partners cannot be treated as spouses for Eligible Retirement Plan, Eligible Rollover, Non-Spouse Designated Beneficiary or Direct Rollover purposes. When and if Congress takes appropriate action, the Plan's definition of "Spouse" for purposes of this Article I shall be reviewed and revised, as appropriate.

**Section 3.** Rollover by a Non-Spouse Designated Beneficiary. Effective for Plan Years beginning on or after January 1, 2009, a Non-Spouse Designated Beneficiary may establish an individual retirement account under Code section 408(a) or an individual retirement annuity under Code section 408(b) (known as an "Inherited IRA") into which all or a portion of a death benefit (to which such Non-Spouse Designated Beneficiary is entitled) can be transferred in a Direct Rollover. Notwithstanding the foregoing to the contrary, any amount payable to a Non-Spouse Designated

Beneficiary that is deemed to be a required minimum distribution pursuant to Code section 401(a)(9) may not be transferred into such Inherited IRA. The Non-Spouse Designated Beneficiary may deposit into such Inherited IRA all or any portion of the death benefit that is deemed to be an eligible rollover distribution (but for the fact that the distribution is not an eligible rollover distribution because the distribution is being paid to a Non-Spouse Designated Beneficiary). In determining the portion of such death benefit that is considered to be a required minimum distribution that must be made from the Inherited IRA, the Non-Spouse Designated Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. 1.401(a)(9)-3, Q&A-4(c). Any distribution made pursuant to this Section 3 is not subject to the direct rollover requirements of Code section 401(a)(31), the notice requirements of Code section 402(f), or the mandatory withholding requirements of Code section 3405(c). If a Non-Spouse Designated Beneficiary receives a distribution from the Plan, then the distribution is not eligible for the "60-day" rollover rule, which is available to a beneficiary who is a Spouse. If the Participant's Non-Spouse Designated Beneficiary is a trust, then the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code section 401(a)(9)(E). In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution. Any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code section 401(a)(31) (including Code section 401(a)(31)(B), the notice requirements of Code section 402(f) or the mandatory withholding requirements of Code section 3405(c)). If a non-Spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover. If the Participant's named beneficiary is a trust, the Plan may make a Direct Rollover to an individual retirement account under Code section 408(a) on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code section 401(a)(9)(E).

## Article II

### Actuarial Assumptions

**Section 1.** As required by Code section 401(a)(25), the Plan's actuarial assumptions for distributions and other calculations made during a particular Plan Year are set forth as follows:

Section 1.1 Interest Rate Assumption. The Plan's interest rate assumption shall be the discount rate as applied by the Plan's actuary for purposes of Government Accounting Standards Board ("GASB") Statements No. 25 and 27 for the pension actuarial valuation (or interim valuation, as the case may be) performed as of the beginning of such Plan Year.

Section 1.2 Mortality Assumptions. The Plan's mortality assumptions shall be the mortality assumptions as applied by the Plan's actuary for purposes of GASB Statements No. 25 and 27 for the pension actuarial valuation (or interim valuation, as the case may be) performed as of the beginning of such Plan Year.

### Article III

#### Limitation Year

**Section 1.** When applying the provisions of Code section 415 to the Plan, the "limitation year" means the 12-month period commencing July 1 and ending on the next-following June 30.

### Article IV

#### Plan Termination

**Section 1.** In the event of Plan termination, the rights of each Member to the benefits accrued or credited to the date of such termination, to the extent then funded, shall become one hundred percent (100%) vested on such termination and shall thenceforth be nonforfeitable.

**Section 2.** In the event of a partial termination of the Plan, Section 1 of this Article IV shall be considered as applying, at such time, only to those Members with respect to whom the Plan has been terminated ("affected Members"). All other Members shall be unaffected by such termination to the fullest extent allowable by then-current law and regulations.

### Article V

#### Exclusive Benefit and Revision Provisions

**Section 1.** As a general matter, the Plan is completely unfunded: no contributions are made or have been made into a trust that is subject to the provisions of Code section 501(a) for purposes of funding benefits payable to Members or beneficiaries under the Plan. However, in the event any contributions are, at some point in the future, made to a trust under Code section 501(a) for purposes of funding Plan benefit obligations, the following provisions shall apply to such trust ("Trust"):

Section 1.1. Exclusive Benefit. All contributions made to the Trust, and all earnings thereon, shall be held for the exclusive benefit of the Members and their survivors and beneficiaries. Such contributions and earnings shall not be used for, nor diverted to, purposes other than for the exclusive benefit of the Members and beneficiaries and survivors.

Section 1.2. Plan Administrative Expenses. Notwithstanding anything in the Plan to the contrary, assets of the Trust may be used to defray expenses relating to the administration of the Plan and Trust and the management of any assets thereunder.

Section 1.3. Contribution Refunds. If a contribution that is deposited into the Trust is made by reason of a good faith mistake of fact or law (a "Mistaken Contribution"), such Mistaken Contribution will be returned within one (1) year of the date the Administrator determines that such mistake occurred.

Section 1.4. Reversion on Complete Plan Termination. If the Plan is completely terminated pursuant to Article IV, Section 1, and to the extent Trust assets exceed the amounts necessary to fully

satisfy the Plan's non-forfeitable benefit obligations, then such excess shall revert to the City of Portland to the extent permitted by law.

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