185968

AS AMENDED

**Exhibit A**

**Voluntary Retirement Incentive Program**

April 2013

**Background**

The Bureau of Human Resources (BHR) is proposing a Voluntary Retirement Incentive Program to run through June 2013. Due to a budget shortfall bureaus are reducing their budgets for Fiscal Year 2013-2014 by 10%. This will lead to a reduction in services to the public either through elimination of programs and/or reduction in staff. Approximately one-third of the City's workforce is eligible to retire. A recent survey conducted by BHR revealed that 53% of responders listed being unable to afford the monthly premium required for retiree health care coverage as one of the reasons they were not retiring. This incentive program would give bureaus the option to offer a city-paid contribution of $20,000 into a Health Reimbursement Account (HRA) for approved retirement eligible employees who voluntarily separate from city service through retirement. The HRA funds must be used for qualified medical related expenses, which include purchasing healthcare coverage to help bridge the gap to Medicare eligibility or to the summer of 2014 when we expect the state health care exchanges to be fully implemented, providing affordable medical insurance options.

**Goals of the Program:**

- Provide an incentive for retirement-eligible employees to retire, thereby reducing the number of involuntary lay-offs and/or program reductions
- Reduce unemployment costs
- Create opportunities to restructure/realign work, thereby resulting in short and long-term savings, and avoiding future layoffs
- Legally compliant – *i.e.*, nondiscriminatory on its face or as applied
- Affordable and provides for measurable cost-savings

**General Parameters of the Proposed Program:**

Purpose:

In an effort to meet a specifically articulated business need, the incentive program aims to reduce involuntary layoffs and/or program reductions and to make more effective use of human resources. The program will be coordinated by BHR.

Availability:

The incentive program would be available to all PERS or FPDR retirement eligible individuals who retire on or before June 30, 2013 (with an effective PERS retirement date no later than July 1, 2013), subject to certain limitations as set forth below

Overall Rules:

The incentive program is a management tool, not an employee right. No employee shall have a contractual right to a financial incentive offered through the program.

Management will be able to exercise discretion to approve or deny an employee's application under the following guidelines:

- Participation is voluntary and will be made available to all employees, although to be eligible, the employee must meet the eligibility criteria
- The program must result in savings to programs or positions (*i.e.*, there must be a corresponding savings to offset the bureau contribution to the HRA)
- Individual bureaus will determine the number of incentives by classification they can offer, that will meet the above goals and ensure retention of key skills and abilities
- In the event there are too many applicants, the tie-breaker shall be total years of city service (*i.e.*, those employees with more years of city service will be given preference for approval over those with fewer years)

Eligibility:

To meet the minimum eligibility threshold, an employee must be in regular status with at least 5 years of service. In addition, an employee must be eligible for retirement under PERS or FPDR criteria.

- The employee must submit in writing their intent to retire no earlier than April 10, 2013 and no later than May 10, 2013 and must separate from the City no later than June 30, 2013. Once the letter of intent is submitted and participation in the Voluntary Retirement Incentive Program is approved, It can not be rescinded. Solely at the discretion of the employee's bureau the qualifying retiree may be allowed to work one additional month, through July 31, as a returning retiree under Human Resources Administrative Rule 3.06.
- The bureau contribution funding the HRA will be made on the last day of the eligible employee's employment with the City of Portland. Funds will be available for qualified medical expenses the day following voluntary retirement and termination of employment with the City of Portland.
- In consideration for resignation and agreement the employee will not seek re-employment with the City in any capacity for two years including as an employee, contractor, or subcontractor; the employee's bureau will contribute a 1 time lump sum payment of $20,000 into an HRA on behalf of the employee. City Council may waive the bar on reemployment by ordinance if rehiring the employee is in the best interest of the City. Employees who participate in this program acknowledge retirement is voluntary and that the City has work available to them at the time of their retirement.
- Employees covered by a collective bargaining agreement must have Union agreement to participate.

Coverage Period:

- The HRA Coverage Period will be administered by plan year; in its first year, the plan year will be condensed; beginning May 1, 2013 and ending June 30, 2013. In each subsequent plan year, the plan year will be designated as July 1st to June 30th.
- All qualifying medical expenses shall be reimbursed during the Coverage Period. A Participant shall be entitled to benefits under the Voluntary Retirement Incentive Program for expenses incurred in a prior Plan Year, but no reimbursement shall be made with respect to a request for reimbursement submitted more than 90 days following the end of the Plan Year in which expenses are incurred.
- Any unused balances will be carried over to another Coverage Period.

Ordinance Exhibit B

185968

# AGREEMENT FOR PROFESSIONAL, TECHNICAL OR ADMINISTRATIVE SERVICES
# CONTRACT NUMBER 30000523
# AMENDMENT NO. 3

BenefitHelp Solutions (hereinafter called Contractor), and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, (hereinafter called City) entered into an Agreement for Professional, Technical or Administrative Services ("Agreement") on the 1st day of July, 2009 . The City desires to amend the Agreement to provide for Health Reimbursement Account administration and to amend the consideration and compensation language of this contract as shown below.

1. Subparagraph (a) under the heading of "Consideration" in the preamble to the Agreement is deleted in its entirety and replaced with the following:

   The City is expected to pay Contractor a sum not to exceed $32,500 in administrative fees in the current plan year 2009-10. Future administrative fees will be mutually agreed by both parties on an annual basis through the contract period and will not exceed $250,000 during the contract period. In addition, the City will send employee pre-tax contributions based upon annual employee FSA elections the 1st and 2nd pay dates of each month during the plan year. Pre-tax employee contributions will be approximately $3,600,000 for plan year 2009-10 and will not exceed $18,000,000 during the contract period. In addition, the City will pay eligible claims under an HRA of up to $20,000 for each eligible participant of the HRA Plan and is estimated not to exceed $2,000,000 during the contract period. Total expected not to exceed contract amount is $3,800,000 for 2009-10 and is estimated to be $21,250,000 for the contract period.

2. The HRA Benefits Administration Agreement, a copy of which is attached hereto, is hereby added to this Agreement as Exhibit F and incorporated herein by reference.

3. The effective date of this amendment is May 1, 2013. Except as expressly modified herein, all other terms, limits and conditions of the Agreement shall remain unchanged and in full force and effect.

**Signature Page Follows**

185968

BenefitHelp Solutions

By: _____ 3/29/13
Date

Tim Gerrion - Sales Manager
(Name and Title)

Address: 601 S.W. Second Ave
Portland OR 97201

Telephone: 503-412-4213

APPROVED AS TO FORM
Approved As to Form:
James H. Van Dyke
CITY ATTORNEY
By City Attorney Date

CITY OF PORTLAND

By: _____
Mayor, City of Portland Date

Ordinance Exhibit C

185968

# EXHIBIT F

## HRA BENEFITS ADMINISTRATION AGREEMENT CONTRACT NO. 8798

## CITY OF PORTLAND

THIS AGREEMENT (hereinafter referred to as the "Agreement) is entered into by and between BenefitHelp Solutions and City of Portland ("Employer Group").

WHEREAS, the Employer Group maintains a Health Reimbursement Arrangement (HRA) Plan (hereinafter referred to as the Plan) providing IRC Section 105 medical reimbursement benefits to its employees; and

WHEREAS, BenefitHelp Solutions is a third party administrator which performs such duties related to the continuation of benefits coverage requirements in the regular course of its business operations; and

WHEREAS, Employer Group desires to retain BenefitHelp Solutions to perform the services set forth in Section 2 of this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

This Agreement is entered into between Employer Group and BenefitHelp Solutions.

WHEREAS: 1. Employer Group; wishes to retain a third party for purposes of administering benefits under the Plan; and 3. BenefitHelp Solutions desires to administer benefits under the Plan in accordance with IRS regulations and the terms set forth herein:

NOW, THEREFORE the parties agree to as follows:

## SECTION 1: TERM AND TERMINATION

1. This Agreement shall be effective on May 1, 2013 and shall continue in effect until terminated as provided in this Section.

2. Either party may terminate this Agreement at any time, with or without cause, upon providing not less than sixty (60) days advance written notice to the other party; provided, however, that: (a) in the event of fraud, criminal activities or other similar, serious cause on the part of BenefitHelp Solutions, Employer Group may terminate this Agreement upon ten (10) days written notice to BenefitHelp Solutions; (b) in the event Employer Group fails to pay BenefitHelp Solutions the administrative compensation provided herein, BenefitHelp Solutions may terminate this Agreement upon fifteen (15) days written notice to Employer Group; and (c) in the event Employer Group fails to pay BenefitHelp Solutions for the necessary deposits sufficient for reimbursement of health reimbursement arrangement within seven (7) days after the receipt of written notification from BenefitHelp Solutions

advising Employer Group of its failure to remit the necessary deposits as described herein.

3. BenefitHelp Solutions may, at its option, amend the terms of this Agreement, provided that BenefitHelp Solutions provides Employer Group with written notice ninety (90) days in advance of the effective date of the amendment(s). The new terms will go into effect unless Employer Group provides BenefitHelp Solutions with sixty (60) days advance written notice of termination of this Agreement under Subsection 2 above. Any amendment regarding the fees payable hereunder must be mutually agreed upon in writing by the parties. Notwithstanding the foregoing, if the amendment modifies the fees in response to a change in applicable laws or regulations, and such changes increases the financial burden to be borne by BenefitHelp Solutions, BenefitHelp Solutions may amend the Agreement upon ninety (90) days written notice as provided herein and mutual agreement of the parties shall not required.

4. Upon termination of this Agreement, Employer Group shall appoint a successor to whom BenefitHelp Solutions shall transfer all documents and records held by BenefitHelp Solutions along with funds in the custody of BenefitHelp Solutions; provided, however, the cost for preparation and transfer of such records shall be borne by Employer Group. BenefitHelp Solutions may retain copies of documents and records necessary to document its services and the compensation to which it is entitled. If Employer Group does not appoint a successor that is ready, willing and able to receive documents, records, and funds from BenefitHelp Solutions within ten (10) days after termination of this Agreement, BenefitHelp Solutions may return all documents, records and funds to Employer Group.

## SECTION 2: BENEFITHELP SOLUTIONS' OBLIGATIONS

1. BenefitHelp Solutions shall maintain an accounting of the HRA amounts for each eligible employee and of the amount of the reimbursements paid for each individual. The contribution and benefit accountings shall reflect cumulative totals for the year to date and shall also reflect monthly activity.

2. BenefitHelp Solutions shall, within thirty (30) days after the end of each Plan quarter, provide a quarterly information report to Employer Group showing deposits, payments and current balances for each participant, if requested by the Employer Group. Reports will be delivered via US Mail, facsimile, hand delivered, or via secure electronic file. Upon request by Employer Group, a claim history detail report will be provided.

3. Upon receipt of a completed claim form and appropriate supporting documentation for an IRC allowed expense, BenefitHelp Solutions shall issue benefit payment checks to employees within five business days. Reimbursements shall be paid in accordance with Employer Group's Plan. Claims paid will be billed to Employer Group each month along with administration fees. Claim payments may be suspended until the prior month's invoiced funds are received.

4. BenefitHelp Solutions shall provide an accounting to each Plan participant during the processing and payment of benefits. The accounting will show the contributions made, claims submitted, claims paid and claims disallowed for that particular claim. In addition, the accounting will also show the ending balance in the participant's account.

5. Non-Discrimination Testing of the IRC Section 105 Plan:

XX is
____ is not

included in the services provided by BenefitHelp Solutions. Non-Discrimination Testing is required by the IRS to determine if a Plan discriminates between i.) Highly Compensated and/or Key Employees and ii.) Non-Highly Compensated employees and/or regular employees. Failure of the Plan to comply with IRC Non-Discrimination Rules could result in significant penalties imposed by the IRS and potential tax implications for Highly Compensated and/or Key Employees

6. BenefitHelp Solutions shall provide Employer Group with employer contributions and employee reimbursement information from which Employer Group will be able to complete and file the applicable Form 5500, if needed, and a Year-end Forfeiture Report. BenefitHelp Solutions will not complete or file the Form 5500 for Employer Group.

7. BenefitHelp Solutions shall provide Employer Group a model Plan Document and a model Summary Plan Description.

8. BenefitHelp Solutions shall be responsible for providing enrollment forms, claim forms, and information describing the benefits of the program to Employer Group.

9. BenefitHelp Solutions shall maintain related funds in a designated account at a federally insured institution of BenefitHelp Solutions' selection and otherwise as required by State law. The designated account earns a service charge credit, called an earned credit that is calculated based on the average balance on the account. The earned credit is used to offset total bank service charges and fees. If the earned credit exceeds the bank service charges and fees, no amount is due. The earned credit in excess of the bank service charges and fees will not be refunded.

10. BenefitHelp Solutions shall provide notice in writing via US Mail, facsimile, or secure email to any participant or beneficiary whose claim for benefits under the Plan has been denied, setting forth the specific reasons for such denial, and coordinate with Employer Group to facilitate for the participant or beneficiary an opportunity for a full and fair review of the decision denying the claim, in accordance with the Plan. A letter of recommendation will be sent to Employer Group, via US Mail and the final decision will be send to the participant via US Mail.

11. BenefitHelp Solutions shall reply to mail and phone inquires from Plan participants.

12. BenefitHelp Solutions shall provide a staff of member specialists to assist participants with questions regarding their account. Both a local and toll-free number will be available.

## SECTION 3: EMPLOYER GROUP'S OBLIGATIONS

1. Employer Group shall provide BenefitHelp Solutions with eligibility files, delivered via US Mail, facsimile, or via secure electronic file no later than the 5th working day of each month. Contribution files include a list of the eligible employees.
2. Employer Group shall be responsible for distributing claim forms and information describing the benefits of the program to employees.

3. Employer Group shall be responsible for adding any ineligible expenses as taxable income to the employee's W-2 at the end of the year, if BenefitHelp Solutions is not successful in obtaining a refund from the participant.

4. Employer Group shall provide BenefitHelp Solutions with census data, in the required format, to perform Non-Discrimination Testing. Accurate data shall be received from Employer Group prior to the plan year, or no later than twenty working days after the plan year begins. Non-discrimination data shall be sent to BenefitHelp Solutions via US Mail, hand delivery, or via secure electronic file.

5. Employer Group has the right to request and perform benefit and claim audits, at Employer Group's expense, of BenefitHelp Solutions to ensure claim payment accuracy.

6. Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Responsibilities

   Employer Group shall comply with all applicable provisions of HIPAA and its implementing regulations. To the extent that Employer Group as the Plan Sponsor receives any Protected Health Information (PHI) from its Group Health Plan, Employer Group shall, to the extent required by HIPAA, incorporate the following provisions and agree to abide by them:

   a. Disclose PHI only as permitted by the Plan Documents or as required by law;

   b. Not use or disclose PHI for employment-related actions or decisions, or in connection with any other benefit or employee benefit plan of Employer Group;

   c. Ensure that PHI and the employment records of Employer Group are separately maintained. Employer Group shall ensure that unauthorized employees do not have access to PHI and that authorized employees maintain the confidentiality of the PHI.

   d. Ensure that agents and sub-contractors of Employer Group agree to abide by the same restrictions and conditions as Employer Group in regard to the use of PHI received from the Group Health Plan prior to sharing PHI with the agent or sub-contractor. Employer Group shall provide to agents and subcontractors only that information required to fulfill the business purpose for which it is provided.

   e. Report any use or disclosure of PHI that is in violation of this Agreement or HIPAA to the Group Health Plan as soon as reasonably possible;

   f. Allow individuals to inspect and obtain copies of PHI about themselves, to the extent required by HIPAA;

g. Allow individuals to amend PHI about themselves, to the extent required by HIPAA;

h. Provide individuals with an accounting of disclosures of PHI to the extent required by HIPAA; and

i. Make its internal practices, books and records relating to the use and disclosure of PHI available to the U.S. Department of Health and Human Services upon request for purposes of auditing the Group Health Plan's compliance with HIPAA.

## SECTION 4: FEES

1. Employer Group shall pay to BenefitHelp Solutions:

   a. A one time Set-up Fee of $225.00, payable on the effective date of the Agreement;

   b. An Annual Fee of $225.00, payable on the renewal date of this Agreement;

   c. An administrative fee of $5.00 per eligible employee per month, paid monthly. The monthly minimum participating employee per month fee is $100.00.

   d. Payment shall be made within 30 days of receiving invoice from BenefitHelp Solutions.

2. BenefitHelp Solutions is obligated to provide only the services described in this Agreement. If Employer Group requests and BenefitHelp Solutions provides any service in addition to those specified in Section 2 of this Agreement, BenefitHelp Solutions may charge and Employer Group shall pay an additional fee, provided the fee is fully disclosed to Employer Group prior to the commencement of such services.

## SECTION 5: RELATIONSHIP

1. BenefitHelp Solutions is acting only as an agent of Employer Group in administering benefits under the Plan. BenefitHelp Solutions shall not have any express or implied responsibilities whatsoever with respect to the Plan other than those set forth in Section 2 of this Agreement.

2. Notwithstanding the obligations set forth in Section 2 of this Agreement, it is expressly agreed to and understood by the parties hereto that BenefitHelp Solutions shall not be responsible for determining employee eligibility under the Plan, making reports or disclosures to employees or governmental bodies or agencies, devising Plan documents of any nature and interpreting and ensuring compliance with government rules, regulations or requirements of any type. Employer Group shall be responsible for the management and control of the operation and administration of the Plan, including any or all decisions pertaining to the granting or denial of benefit claims and any and all decisions pertaining to the review of denials of benefit claims. In order to meet its obligations as the Plan Administrator, BenefitHelp Solutions may disclose PHI to the Plan Administrator, as needed. BenefitHelp Solutions shall not be deemed a fiduciary, and nothing in this Agreement shall be construed to appoint BenefitHelp Solutions as an administrator of the Plan.

3. It is understood that Employer Group may have access to information concerning employee use of the Plan and benefits claimed thereunder, including confidential medical information, for purposes of Plan administration. Employer Group agrees to abide by applicable federal and state laws, rules and regulations relating to the use of such information.

## SECTION 6: INDEMNIFICATION/LIMITATION OF LIABILITY

1. Each party will carry out its duties under this Agreement with ordinary care and reasonable diligence. In no event shall either party be liable to the other party for special, indirect, incidental, or consequential damages which (such party or any third party may incur or experience by reason of entering into or relying on this Agreement, or the services provided under this Agreement.

2. Except as provided in subparagraph 1 of this Section, BenefitHelp Solutions agrees to indemnify Employer Group and hold Employer Group harmless against any and all loss, damage, expense and other liability to third parties resulting from or arising out of or in connection with the dishonesty, fraud, criminal acts or malfeasance of BenefitHelp Solutions in providing the services which BenefitHelp Solutions has agreed to perform, as described in Section 2 of this Agreement, whether acting alone or in collusion with others; provided, however, that BenefitHelp Solutions shall not be responsible to pay from its own funds any payment or benefit which should have been paid from the Plan according to the Plan's terms, conditions and provisions. Subject to such provisions, BenefitHelp Solutions shall defend, settle or otherwise dispose of any third party suit or other proceeding arising from any such acts or conduct described herein at its sole expense and Employer Group agrees to cooperate promptly and fully with such defense. In any such event, Employer Group shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing and at its own expense.

3. To the extent permitted under Oregon Law, the Employer Group agrees to indemnify and hold BenefitHelp Solutions harmless from any and all loss, liability, damage, expense, or other cost or obligation, resulting from or arising out of claims, demands or lawsuits brought against BenefitHelp Solutions in administering the Plan to recover benefits under the Plan, except for acts solely attributable to BenefitHelp Solutions as set forth in subparagraph 2 of this Section.

## SECTION 7: HIPAA REQUIREMENTS

1. Definitions.

a. "Breach" means the unauthorized acquisition, access, use or disclosure of protected health information where such breach compromises the security or privacy of such information.

b. "Business Associate" shall mean a person or entity providing certain functions, activities or services on behalf of Employer Group involving the use and/or disclosure of Protected Health Information (PHI).

c. "CFR" is the Code of Federal Regulations.

d. "Covered Entity" means a (1) health plan; (2) health care clearinghouse; or (3) health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.

e. "Data Aggregation" shall mean, with respect to PHI created or received by BenefitHelp Solutions in its capacity as the Business Associate of Employer Group, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as business associate of another covered entity, to permit data analyses that relates to the healthcare operations of the respective entities.

f. "Health Insurance Portability and Accountability Act" or "HIPAA" shall mean federal legislation effective in 1996 which addresses the requirements for the privacy of individually identifiable health information (IIHI) and Protected Health Information (PHI). As used herein, "HIPAA" shall also, where applicable, refer to the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) and the Security Standards (45 C.F.R. Parts 160 and 164).

g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, title XIII and Division B, Title IV.

h."Individual" shall have the same meaning as the term 'individual' in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g)

i. "Individually Identifiable Health Information" or "IIHI" shall mean Information that is a subset of health information including demographic information collected from an individual, and:

a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
b. Relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of healthcare to an individual and;
    i. Identifies the individual; or
    ii. With respect to which, there is a reasonable basis to believe that the information can be used to identify the individual.

j. "Minimum Necessary" means the disclosure of only that information which is required to accomplish the intended purpose of such use, disclosure or request. Where practicable, the information disclosed under the Minimum Necessary requirement shall be restricted to the limited data set as defined in 45 CFR 164.514(e)(2).

k. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

l. "Protected Health Information" or "PHI" shall mean individually identifiable health information that is or has been maintained in or transmitted by electronic or other media.

m. "Required by Law" shall have the same meaning as the term "required by law" as defined in 45 CFR 164.103.

n. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services, or his or her designee.

o. "Security Incident" is further defined in 45 CFR.304 and means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

p. "Security Rule" shall mean the Security Standards at 45 CFR part 160, and part 164, subparts A and C.

q. "Unsecured PHI" is further defined in Section 13402 of the HITECH Act and means protected health information that is not secured through the use of a technology or methodology that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

2. Obligations of BenefitHelp Solutions.

a. Application of Security Rule and Privacy Rule to BenefitHelp Solutions.

The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312 and 164.316, shall apply to BenefitHelp Solutions in the same manner that such sections apply to Employer Group. The additional requirement of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to BenefitHelp Solutions and are hereby incorporated into this Agreement.

b. Uses and Disclosures of Protected Health Information

i. BenefitHelp Solutions, its directors, officers, employees, contractors and agents agree to not use or further disclose PHI other than as permitted or required by this Agreement, or as required by law.

ii. Except as otherwise limited in this Agreement, BenefitHelp Solutions may use or disclose PHI to perform functions, activities, or services for or on behalf of Employer Group as specified in Attachment A, provided such use or disclosure would not violate the Privacy Rule if performed by Employer Group.

iii. BenefitHelp Solutions may use and disclose PHI:
(a) For the proper management and administration of BenefitHelp Solutions;
(b) To carry out BenefitHelp Solutions' legal responsibilities, and
(c) As necessary for data aggregation purposes relating to the health care operations of Employer Group as permitted by 45 CFR 164.504(e)(2)(i)(B), but only as separately authorized by Employer Group in writing.

iv. BenefitHelp Solutions acknowledges that, as between BenefitHelp Solutions and Employer Group, all PHI shall be and remain the sole property of Employer Group, including any and all forms thereof developed by BenefitHelp Solutions in the course of its fulfillment of its obligations pursuant to this Agreement.

v. BenefitHelp Solutions agrees that, to the extent BenefitHelp Solutions requests disclosure of PHI from Employer Group, such request is only for the minimum necessary PHI for the accomplishment of BenefitHelp Solutions' purpose. For any disclosure or use of PHI, BenefitHelp Solutions shall determine and use the minimum necessary information to accomplish the intended purpose of the use or disclosure.

c. Appropriate Safeguards

BenefitHelp Solutions agrees to:

i. Implement appropriate administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity and availability of all PHI that it creates, receives, maintains, or transmits on behalf of Employer Group;

ii. Upon request, promptly provide Employer Group with information regarding such safeguards;

iii. Ensure that any agent, including agents, contractors and subcontractors, to whom BenefitHelp Solutions provides PHI agrees to implement reasonable and appropriate safeguards as required by HIPAA and the HITECH Act to protect such PHI; and

iv. Report to Employer Group any violation of the Security Rule of which BenefitHelp Solutions becomes aware.

d. Reporting Disclosures of PHI

i. BenefitHelp Solutions shall report to Employer Group any use or disclosure of PHI not provided for by this Agreement of which BenefitHelp Solutions becomes aware. Notice of such use or disclosure shall be provided to Employer Group in writing as soon as possible, but in no event later than five (5) business days from the date on which BenefitHelp Solutions discovers the improper use or disclosure. Such notice shall include:

A. a description of the occurrence, including the date of the breach and the date of the discovery;
B. the name(s) of the individuals(s) whose PHI was used or disclosed;
C. the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,
D. description of the types of unsecured PHI that was disclosed,

E. the steps taken by BenefitHelp Solutions to discontinue and minimize the impact of any inappropriate use or disclosure.

ii. BenefitHelp Solutions agrees to mitigate, to the extent practical, any harmful effect that is known to BenefitHelp Solutions resulting from any unauthorized acquisition, use or disclosure of unsecured PHI caused by BenefitHelp Solutions' violation of the requirements of this Agreement or its failure to properly secure PHI in accordance with guidelines published by the Department of Health and Human Services.

iii. BenefitHelp Solutions agrees to take prompt and appropriate corrective action to cure any deficiencies that caused the unauthorized use or disclosure and to implement additional actions intended to prevent other unauthorized disclosure.

e. Agents, Contractors and Subcontractors

i. BenefitHelp Solutions shall ensure that any agent, contractor or subcontractor to whom BenefitHelp Solutions provides PHI received from, or created or received by BenefitHelp Solutions on behalf of Employer Group agrees to be bound by the same restrictions, terms and conditions that apply through this Agreement to BenefitHelp Solutions with respect to such information.

ii. BenefitHelp Solutions agrees to enter into a written contract with such agents, contractors or subcontractors to ensure that such agents, contractors, or subcontractors abide by the same restrictions and conditions that apply to the party when acting as a BenefitHelp Solutions with regard to PHI. BenefitHelp Solutions shall provide a copy of such contracts to Employer Group upon request.

f. Retention of PHI

BenefitHelp Solutions shall maintain and retain PHI for the term of the Agreement and make such PHI available to Employer Group as set forth in this Agreement.

g. Access to Information

Within ten (10) business days of a request by Employer Group, BenefitHelp Solutions shall make available to Employer Group the requested PHI to permit Employer Group to respond to an individual's request for access to PHI.

If BenefitHelp Solutions receives a request directly from an individual seeking access to or copies of PHI maintained by BenefitHelp Solutions for or on behalf of Employer Group, BenefitHelp Solutions shall notify Employer Group within five (5) business days. Notwithstanding the foregoing, BenefitHelp Solutions shall directly respond to such individual requests when and as directed by Employer Group.

h. Availability of Protected Health Information for Amendment

Within ten (10) business days of receipt of a request from Employer Group for the amendment of an individual's PHI, BenefitHelp Solutions shall provide such information to Employer Group for amendment and shall incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. BenefitHelp Solutions shall notify agents, contractors and subcontractors who receive PHI of any such amendments.

i. Accounting of Disclosures

Within ten (10) business days of notice by Employer Group to BenefitHelp Solutions that it has received a request for an accounting of disclosures of PHI, when such disclosures were made less than six (6) years prior to the date on which the accounting was requested, BenefitHelp Solutions shall make available to Employer Group such information as is in BenefitHelp Solutions' possession and is required for Employer Group to make the accounting required by 45 C.F.R. §164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act Section 13405(c). At a minimum, BenefitHelp Solutions shall provide Employer Group with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to BenefitHelp Solutions, BenefitHelp Solutions shall within two (2) business days forward such request to Employer Group.

j. Availability of BenefitHelp Solutions' Internal Practices, Books and Records

BenefitHelp Solutions agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created, or received by BenefitHelp Solutions on behalf of Employer Group, available to Employer Group, or to the Secretary of Health and Human Services for purposes of determining Employer Group compliance with this Agreement and the Privacy Rule.

k. Recordkeeping

BenefitHelp Solutions agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Agreement and the Privacy and Security Rules.

l. Prohibition Against Sale or Marketing of PHI

Except as otherwise provided in the HITECH Act or its implementing regulations, BenefitHelp Solutions shall not directly or indirectly receive remuneration in exchange for any PHI of an individual, or use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.

m. Report of Security Incidents

BenefitHelp Solutions shall report to Employer Group any security incident of which it becomes aware in the following time and manner:

i. Any actual, successful security incident will be reported to Employer Group in writing within five (5) business days of the date on which BenefitHelp Solutions becomes aware of such security incident.

ii. Any attempted, unsuccessful security incident of which BenefitHelp Solutions becomes aware will be reported to Employer Group in writing, on a reasonable basis, at the written request of Employer Group. If the Security Rule is amended to remove the requirement to report unsuccessful attempts at unauthorized access, this subsection shall no longer apply as of the effective date of the amendment of the Security Rule.

Any report required pursuant to this section shall: (i) identify the nature of the security incident; (ii) identify the PHI subject to the security incident; and (iii) identify what BenefitHelp Solutions has done or shall do to mitigate and correct any adverse effect of the security incident.

3. Obligations of Employer Group

a. Employer Group shall notify BenefitHelp Solutions of any limitation(s) in the Employer Group notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect BenefitHelp Solutions' use or disclosure of Protected Health Information.

b. Employer Group shall notify BenefitHelp Solutions of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect BenefitHelp Solutions' use or disclosure of Protected Health Information.

c. Employer Group shall notify BenefitHelp Solutions of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect BenefitHelp Solutions' use or disclosure of Protected Health Information.

4. Notice of Request for Data

BenefitHelp Solutions agrees to notify Employer Group within five (5) business days of BenefitHelp Solutions' receipt of any request or subpoena for PHI. To the extent that Employer Group decides to assume responsibility for challenging the validity of such request, BenefitHelp Solutions agrees to cooperate fully with Employer Group in such challenge.

5. Electronic Transactions and Code Sets

To the extent that the services performed by BenefitHelp Solutions pursuant to the Agreement involve transactions that are subject to the regulations governing electronic

transactions and code set issued pursuant to HIPAA, BenefitHelp Solutions shall conduct such transactions in conformance with such regulations, as amended from time to time.

## SECTION 8: DISPUTE RESOLUTION

Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance or interpretation of the Agreement, shall be settled by arbitration. Unless otherwise agreed, the arbitration shall be conducted in Portland, Oregon, in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held before a single arbitrator (unless otherwise agreed by the parties). The arbitrator shall be chosen from a panel of attorneys knowledgeable in the field of benefits law in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. If the arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedures both in advance of, and during recesses of, the arbitration hearings.

The parties agree that the arbitrator shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty) or consequential damages. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law. The cost of the arbitration will be divided equally by the number of parties participating in the arbitration, and each party shall be responsible for the payment of its own costs and attorneys fees relating to the arbitration.

## SECTION 9: RECORDS

For audit purposes, Employer Group will, upon reasonable prior written notice and during reasonable business hours, have reasonable access to and may reasonably inspect all of BenefitHelp Solutions' records (including bank records and other deposit records) which relate to BenefitHelp Solutions' performance of this Agreement; provided, however, that under no circumstances will Employer Group be permitted to have access to or the right to inspect any object code or source code with respect to BenefitHelp Solutions' computer software, any information that is proprietary or confidential to BenefitHelp Solutions or any information that relates to other clients of BenefitHelp Solutions. Any access to records is subject to applicable state and federal laws and regulations dealing with the confidentiality of medical information.

## SECTION 10: RIGHT TO RELY

In performing the administrative services provided under this Agreement, BenefitHelp Solutions may rely without qualification on the information provided by Employer Group.

## SECTION 11: CALL MONITORING

BenefitHelp Solutions may monitor telephone conversations and e-mail communications between its employees and HRA participants for legitimate business purposes as determined by BenefitHelp Solutions. The monitoring is to ensure the quality and accuracy of the services provided by employees of BenefitHelp Solutions to the HRA participants.

## SECTION 12: WAIVER

No waiver of any provision in this Agreement, or any performance under this Agreement, is valid unless it is in writing and signed by the party entitled to the benefit of such provision. Waiver of any breach of any provision shall not be construed, or operate as, a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

## SECTION 13: COMPLETE AGREEMENT

This Agreement constitutes the entire understanding and agreement of the parties and may be modified only as described in Section 1 of this Agreement or by a subsequent modification signed by both parties. Employer Group acknowledges that there have been no other representations or warranties made by BenefitHelp Solutions or Employer Group which are not set forth in this document.

## SECTION 14: ASSIGNABILITY

This Agreement may not be assigned by Employer Group without the prior written consent of BenefitHelp Solutions.

APPROVED AS TO FORM
James H. Van Dyke
CITY ATTORNEY

This Agreement is executed this 1st day of May, 2013.

**BENEFITHELP SOLUTIONS**

Tracie Murphy

By _____
Tracie Murphy

Sr. Vice President

3/26/2013
Date

**CITY OF PORTLAND**

By _____
(Authorized Signature)

_____
(Title)

_____
Date

185968

EXHIBIT D

# City of Portland
# HEALTH EXPENSE REIMBURSEMENT ACCOUNT

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## PLAN DOCUMENT

185968

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185968

# HEALTH EXPENSE REIMBURSEMENT ACCOUNT

As used in this Plan, the following words and phrases shall have the meanings set forth herein unless a different meaning is clearly required by the context:

## ARTICLE I
## DEFINITIONS

**1.1** "Administrator" means the Benefits and Wellness Manager as appointed by the Employer to carry out the administration of the Plan. In the event the Administrator has not been appointed, or resigns from a prior appointment, the City of Portland's Human Resource Director shall be deemed to be the Administrator.

**1.2** "Code" means the Internal Revenue Code of 1986, as amended. References to a Code section shall be deemed to be to that section as it now exists and to any successor provision

**1.3** "Coverage Period" means the time period as set forth in the Voluntary Retirement Incentive Program outlined in Exhibit A.

**1.4** "Dependent" means any individual who qualifies as a dependent of the Eligible Employee as defined by Code §152(f)(1) and who has not attained age 26, and (b) any tax dependent of a Covered Individual defined in Code §105(b) provided, however, that any child to whom Code §152(e) (regarding a child of divorced parents, etc., where one or both parents have custody of the child for more than half of the calendar year and where the parents together provide more than half of the child's support for the calendar year) applies is treated as a dependent of both parents. Notwithstanding the foregoing, the HRA Account will provide Benefits in accordance with the applicable requirements of any QMCSO, even if the child does not meet the definition of "Dependent."

**1.5** "Domestic Partner" as defined and declared in the City of Portland's Domestic Partner Affidavit and who qualifies as a "qualifying relative" of the Eligible Employee as defined by IRC Section 152 dependent, as modified by IRC Section 105(b).

**1.6** "Effective Date" means the date specified in the Voluntary Retirement Incentive Program outlined in Exhibit A.

**1.7** "Eligible Employee" means a Retired City of Portland employee who elects to retire under the provisions of the Voluntary Retirement Incentive Program offered by the Employer

**1.8** "Employee" means any person who is employed by the Employer.

**1.9** "Employer" means The City of Portland.

**1.10** "Employer Contribution" means the amounts contributed to the Plan by the Employer.

**1.11** "Participant" means any Eligible Employee, Spouse or Dependent who has satisfied the requirements of Section 2.1 and has not for any reason become ineligible to participate further in the Plan.

**1.12** "Plan" means this Basic Plan Document and the Voluntary Retirement Incentive Program outlined in Exhibit A. as adopted by the Employer, including all amendments thereto.

**1.13** "Premiums" mean the Participant's cost for any health plan coverage.

**1.14** "Spouse" means a legal spouse as recognized by the employee's state of residence.

**1.15** "Third-Party Administrator" means a company the Employer contracts to provide customer service and claims payment or reimbursement for the City's HRA Participants.

**1.16** "Qualifying Medical Expenses" means any expense eligible for reimbursement under the Health Expense Reimbursement Account which would qualify as a "medical expense" (within the meaning of Code Section 213(d) and as allowed under Code Section 105 and the rulings and Treasury regulations thereunder) of the Participant, the Participant's spouse or a Dependent and not otherwise used by the Participant as a deduction in determining the Participant's tax liability under the Code or reimbursed under any other health coverage, including a health Flexible Spending Account. Qualifying Medical Expenses covered by this Plan are limited as elected in the Voluntary Retirement Incentive Program outlined in Exhibit A. . Furthermore, a Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

**1.17** "Voluntary Retirement Incentive Program" means the program that provides for HRA contributions as described in Exhibit A.

## ARTICLE II
## PARTICIPATION

**2.1** Eligibility

Any Eligible Employee shall be eligible to participate hereunder on the date such Employee satisfies the conditions of the Voluntary Retirement Incentive Program outlined in Exhibit A.

**2.2** Effective Date of Participation

An Eligible Employee who has satisfied the conditions of eligibility pursuant to Section 2.1 shall become a Participant effective as of the date elected in the Voluntary Retirement Incentive Program outlined in Exhibit A.

If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

**2.3** Termination of Participation

This Section shall be applied and administered consistent with any rights a Participant and the Participant's Dependents may be entitled to, or any election within the Voluntary Retirement Incentive Program outlined in Exhibit A.

(a) In the case of re-employment with the City in any capacity after more than 2 years of separation, the Participant does not forfeit any remaining balance in the HRA and shall have the right to submit claims for reimbursement, and receive benefits hereunder, for any Eligible Medical Expenses arising during the Coverage Period at any time prior to the expiration of the earlier of (1) exhaustion of the account balance.

(b) In the case of the death of the Participant where there is no surviving Spouse, Domestic Partner and/or eligible Dependent, Eligible Medical Expenses incurred by the Participant prior to his or her death may be submitted within 120 days following the date of death for reimbursement up to the account balance. If there is no Spouse, Domestic Partner or eligible Dependent at the time of the Participant's death, the account balance, if any, is forfeited (reduced to zero).

(c) In the case of the death of the Participants where there is a surviving Spouse Domestic Partner and/or eligible Dependent, the Spouse, Domestic Partner and/or eligible Dependent shall have the right to submit claims for reimbursement, and receive benefits hereunder, for any Eligible Medical Expenses arising during the Coverage Period at any time prior to the expiration of the earlier of (1) exhaustion of the account balance; or (2) the end of the plan year in which the Participant deceased. If there remains an account balance after the expiration of the condition (2), above, then the account balance is forfeited (reduced to zero).

## ARTICLE III
## BENEFITS

**3.1** Establishment of Plan

(d) This Health Expense Reimbursement Account is intended to qualify as a Health Expense Reimbursement Account under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder.

(e) Participants in this Health Expense Reimbursement Account may submit claims for the reimbursement of Qualifying Medical Expenses as defined under the Plan and the Voluntary Retirement Incentive Program outlined in Exhibit A. Unless otherwise elected in the Voluntary Retirement Incentive Program outlined in Exhibit A, this Plan shall reimburse any expenses only after amounts in all other Plans that could reimburse the expense have been exhausted.

(f) The Employer shall make available to each Participant an Employer Contribution as elected in the Voluntary Retirement Incentive Program outlined in Exhibit A. , for the reimbursement of Qualifying Medical Expenses. No salary reductions may be made to this Health Expense Reimbursement Account.

(g) This Plan shall not be coordinated or otherwise connected to the Employer's cafeteria plan (as defined in Code Section 125), except as permitted by the Code and the Treasury regulations thereunder, to the extent necessary to maintain this Plan as a Health Expense Reimbursement Account.

**3.2** Nondiscrimination Requirements

(a) It is the intent of this Health Expense Reimbursement Account not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) If the Administrator deems it necessary to avoid discrimination under this Health Expense Reimbursement Account, it may, but shall not be required to reduce benefits provided to "highly compensated individuals" (as defined in Code Section 105(h)) in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner.

**3.3** Health Expense Reimbursement Account Claims

(a) The Third Party Administrator shall direct the reimbursement to each eligible Participant for all Qualifying Medical Expenses. All Qualifying Medical Expenses eligible for reimbursement pursuant to Section 3.1(b) shall be reimbursed during the Coverage Period, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Qualifying Medical Expenses were incurred during a Coverage Period. Claims must include receipts or documentation that the expense being incurred is eligible for reimbursement, in order to claim reimbursement. Expenses may be reimbursed in subsequent Coverage Periods. However, a Participant may not submit claims incurred prior to beginning participation in the Plan and/or the Effective Date of the Plan, whichever is earlier.

(b) Notwithstanding the foregoing, if elected in the Voluntary Retirement Incentive Program outlined in Exhibit A. Qualifying Medical Expenses shall not be reimbursable under this Plan if eligible for reimbursement and claimed under the Employer's Health Flexible Spending Account.

(c) Claims for the reimbursement of Qualifying Medical Expenses incurred in any Coverage Period shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within the period elected in the Voluntary Retirement Incentive Program outlined in Exhibit A immediately following the end of the Coverage Period, those Medical Expense claims shall not be considered for reimbursement by the Third Party Administrator.

(d) Reimbursement payments under this Plan shall be made directly to the Participant.

(e) If the maximum amount available for reimbursement for a Coverage Period is not utilized in its entirety, such remainder shall be carried forward to another Coverage Period or forfeited, as elected in the Voluntary Retirement Incentive Program outlined in Exhibit A.

## ARTICLE IV
## CLAIM PROCESSING PROVISIONS

**4.1** Claim for Benefits

Any claim for Benefits shall be made to the Third Party Administrator. The following timetable for claims and rules below apply:

| | |
|---|---|
| Notification of whether claim is accepted or denied | 30 days |
| Extension due to matters beyond the control of the Plan | 15 days |
| Insufficient information on the Claim: | |
| Notification of | 15 days |
| Response by Participant | 45 days |
| Review of claim denial | 60 days |

The Administrator will provide written or electronic notification of any claim denial. The notice will state:

(1) The specific reason or reasons for the denial.

(2) Reference to the specific Plan provisions on which the denial was based.

(3) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary.

(4) A description of the Plan's review procedures and the time limits applicable to such procedures.

(5) A statement that the claimant is entitled to receive, upon request and free of charge reasonable access to, and copies of, all documents, records, and other information relevant to the Claim.

(6) If the denial was based on an internal rule, guideline, protocol, or other similar criterion, the specific rule, guideline, protocol, or criterion will be provided free of charge. If this is not practical, a statement will be included that such a rule, guideline, protocol, or criterion was relied upon in making the denial and a copy will be provided free of charge to the claimant upon request.

When the Participant receives a denial, the Participant shall have 180 days following receipt of the notification in which to appeal the decision. The Participant may submit written comments, documents, records, and other information relating to the Claim. If the Participant requests, the Participant shall be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the Plan. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a Claim if it:

(1) was relied upon in making the claim determination;

(2) was submitted, considered, or generated in the course of making the claim determination, without regard to whether it was relied upon in making the claim determination;

(3) demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that claim determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants; or

(4) constituted a statement of policy or guidance with respect to the Plan concerning the denied claim.

The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the Claim, without regard to whether such information was submitted or considered in the initial claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the Plan who is neither the individual who made the adverse determination nor a subordinate of that individual.

**4.2** Named Fiduciary

The "named Fiduciaries" of this Plan are (1) the Employer and (2) the Administrator. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for providing benefits under the Plan; and shall have the sole authority to appoint and remove the Administrator; and to amend the elective provisions of the Voluntary Retirement Incentive Program outlined in Exhibit A, or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. Any person or group may serve in more than one Fiduciary capacity.

**4.3** General Fiduciary Responsibilities

The Administrator and any other fiduciary shall discharge their duties with respect to this Plan solely in the interest of the Participants and their beneficiaries and

(a) for the exclusive purpose of providing Benefits to Participants and their beneficiaries and defraying reasonable expenses of administering the Plan;

(b) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(c) in accordance with the documents and instruments governing the Plan.

**4.4** Nonassignability of Rights

The right of any Participant to receive any reimbursement under the Plan shall not be

alienable by the Participant by assignment or any other method, and shall not be subject to the rights of creditors, and any attempt to cause such right to be so subjected shall not be recognized, except to such extent as may be required by law.

## ARTICLE V
## ADMINISTRATION

**5.1** Plan Administration

The Plan and its Components shall be administered by the Administrator. The Administrator shall have responsibility for the general operation of the Plan and shall have the power and duty to decide all questions arising in connection with the administration, interpretation and application of the Plan and shall take all actions and make all decisions that shall be necessary to carry out the provisions of the Plan, including but not limited:

(a) To make and enforce such rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;

(b) To interpret the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits under the Plan;

(c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided under the Plan;

(d) Promulgating rules of procedure and keeping records necessary for the proper and efficient administration of the Plan;

(e) To limit benefits for certain highly compensated individuals if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;

(f) To authorize the payment of benefits to a Third Party Administrator;

(g) To appoint such agents, Third Party Administrators, counsel, accountants, consultants, and actuaries as may be required to assist in administering the Plan; and

(h) Furnishing the City Council, Members and insurers with information they may require;

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 105(h) and the Treasury regulations thereunder.

**5.2** Examination of Records

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

**5.3** Indemnification of Administrator

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

## ARTICLE VI
## AMENDMENT OR TERMINATION OF PLAN

**6.1** Amendment

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant.

**6.2** Termination

The Employer is establishing this Plan with the intent that it will be maintained for an indefinite period of time. Notwithstanding the foregoing, the Employer has no obligation to maintain the Plan or any component, and reserves the right to amend, change, terminate or cancel the Plan described herein, and provisions, in any manner at any time, subject to the Employer's obligations under the public employees collective bargaining act, provided however, that no amendment, change or termination shall reduce or eliminate benefits retroactively. If the plan is amended or terminated it will not affect coverage for the services provided prior to the effective date of the change.

## ARTICLE VII
## MISCELLANEOUS

**7.1** Plan Interpretation

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 7.11.

**7.2** Gender and Number

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases

where they would so apply.

**7.3** Written Document

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 105 and any Treasury regulations thereunder.

**7.4** Exclusive Benefit

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

**7.5** Participant's Rights

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

**7.6** Action by the Employer

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

**7.7** No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

**7.8** Indemnification of Employer by Participants

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Medical Expense such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal

and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

**7.9** Funding

Unless otherwise required by law, the Employer will maintain a separate fund for the benefit of any Participant and the plan. No Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer other than from the Fund in which any payment under the Plan may be made.

**7.10** Governing Law

Except to the extent that this Plan is governed by federal law, this Health Plan shall be construed, administered, enforced and governed by and in accordance with the applicable laws of the State of Oregon, even if Oregon's choice of laws otherwise would require application of the law of a different jurisdiction

**7.11** Severability

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

**7.12** Headings

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

**7.13** Continuation of Coverage

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each qualified beneficiary (as defined in Code Section 4980B) will be entitled to continuation coverage as prescribed in Code Section 4980B.

**7.14** Family and Medical Leave Act

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

**7.15** Health Insurance Portability and Accountability Act

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in

accordance with HIPAA and regulations thereunder.

**7.16** Uniformed Services Employment and Reemployment Rights Act

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with USERRA and the regulations thereunder.