

**RESOLUTION NO. 08/09-16
CITY OF DAYTON, OREGON**

Title: A Resolution Authorizing Participation in the Oregon Savings Growth Plan

WHEREAS, the City of Dayton wishes to encourage its employees to actively participate in saving toward their retirement; and

WHEREAS, the City Council authorized staff to research information on various deferred compensation plans; and

WHEREAS, the City Council concurs with the staff recommendation that the City participate in the State of Oregon Deferred Compensation Plan known as the Oregon Savings Growth Plan;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of Dayton, Oregon, that:

- 1) The Council hereby adopts the Oregon Savings Growth Plan Resolution for Inclusion Under the State of Oregon Deferred Compensation Plan (attached hereto as Exhibit A and by this reference made a part hereof) and designates the City Manager as the Agent for the City, and the City Recorder as Alternate Agent; and
- 2) The Council hereby authorizes the City Manager to execute the 457 Deferred Compensation Program Administrative Services Agreement (attached hereto as Exhibit B and by this reference made a part hereof) and Schedule A (attached hereto as Exhibit C and by this reference made a part hereof); and
- 3) The City Manager is authorized to provide certifications or any other documents and information required to allow employees to participate in the Oregon Savings Growth Plan;
- 4) This Resolution shall become effective immediately upon adoption.


ADOPTED this 2nd day of **September, 2008**.

In Favor Dickson, Evers, Hensley, Webb, White

Opposed None

Absent Blackburn

Abstained None

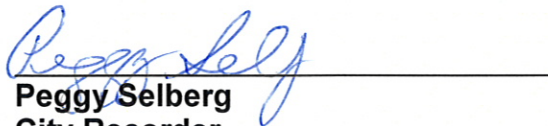


Jolie White, Mayor

9/5/08

Date of Signing

ATTESTED BY:



Peggy Selberg
City Recorder

9/2/08

Date of Enactment

Attachments:

- Exhibit A - Resolution for Inclusion Under the State of Oregon Deferred Compensation Plan
- Exhibit B - 457 Deferred Compensation Program Administrative Services Agreement
- Exhibit C - Schedule A

WKS4\RESOLUTIONS\08-09\R0809.16.ADOPTED

LOCAL GOVERNMENT PROGRAM

The Dayton City Council (Governing Body) of the City of Dayton (Employer), pursuant to the provisions of Oregon Revised Statutes (ORS) 243.474, which provides in part that:

"A local government that establishes a deferred compensation plan may invest all or part of the plan's assets through the deferred compensation investment program established by the Oregon Investment Council (OIC) under ORS 243.421,"

Hereby determines to be included in the State of Oregon Deferred Compensation Investment Program, also known as the Oregon Savings Growth Plan, established by the OIC under ORS 243.421 and administered by the Public Employees Retirement Board according to ORS 243.435 for its eligible personnel.

Be it further resolved that the proper officers are herewith authorized and directed to take all actions and make such reductions and submit such deferrals as are required by the Public Employees Retirement Board of the State of Oregon pursuant to ORS 243.478 (1), and

Be it further resolved that Employer agrees to be bound by the terms and conditions of the contracts between the State, its investment providers and record keeping company, and the "Plan Document" as identified in ORS 243.401 to 243.507 and TPA services as amended from time to time. Specifically, without limitation, Employer agrees to appoint its governing body as Trustee of its Plan, as required by Section 457(g) of the Internal Revenue Code (IRC), 26 USC 457(g)(2). The Employer certifies it is an "eligible employer" under IRC Section 457(e)(1) and has received a copy of the Plan Document and TPA Services.

Be it further resolved that Employer shall submit a certified copy of this resolution and "Notification Memo" to the State of Oregon, Public Employees Retirement System (PERS) as the Plan Administrator.

Be it further resolved that the Governing Body and Employer, recognize the PERS Board's responsibility for maintaining the integrity of the Plan and hereby agree to cooperate fully with the Plan Administrator in accordance with procedures established by PERS, including without limitation in processing requests for withdrawal in case of an unforeseeable emergency as defined in IRC Sec. 457(b)(5) and Treasury Regulations 1.457-2(h)(4) and (5).

DESIGNATION OF AGENT

The person in the following position is hereby designated as the agent in matters pertaining to the State of Oregon Deferred Compensation Investment Program.

Title City Manager
Agent Sue C Hollis
Address PO Box 339
Dayton OR 97114-0339
Phone Number (503)864-2221
E-mail address suehollis@ci.dayton.or.us
Office Hours 9 AM to 5 PM, weekdays
Alternate Agent Peggy Selberg, City Recorder
Phone Number (503)864-2221
Fax Number (503)864-2956



Local Government Entity
CITY OF DAYTON, OREGON

This Agreement for administrative services is by and between the City of Dayton (the "Employer"), with its principal place of business at 416 Ferry St, Dayton OR, the State of Oregon, acting by and through its Public Employees' Retirement System ("PERS"), and CitiStreet LLC ("CitiStreet"), a Delaware limited liability company with its principal place of business in Quincy, Massachusetts, the Third Party Administrator ("TPA"). This Agreement shall be effective on the date it has been fully executed by every party.

WHEREAS, the Oregon Investment Council ("OIC") has established a deferred compensation investment program pursuant to ORS 243.421 (the "Program") and known as the Oregon Savings Growth Plan ("OSGP"), consisting of a "State Deferred Compensation Plan" available to eligible state employees and "Local Government Deferred Compensation Plans" available to eligible employees of local governments;

WHEREAS, PERS administers the Program in accordance with policies adopted by the Public Employees Retirement Board ("PERB") pursuant to ORS 243.435.

WHEREAS, PERS and TPA are parties to State of Oregon Personal/Professional Services Contract #2003-26, effective September 1, 2004, and entered pursuant to Request for Proposal #6051 issued September 19, 2003, under which Contract TPA provides third party recordkeeping and plan administration services for the OSGP;

WHEREAS, Employer has established a Deferred Compensation Plan (the "Plan") pursuant to Internal Revenue Code Section 457, 26 USC 457 ("IRC 457");

WHEREAS, Employer desires to invest the Plan's assets through the Program;

WHEREAS, ORS 243.474 authorizes PERS to permit Employer to invest the Plan's assets through the Program upon satisfaction of certain conditions;

WHEREAS, as a condition precedent to Employer's investment of the Plan's assets through the Program and in accordance with ORS 243.474(2) and ORS 243.478, Employer is required to enter into an Administrative Services Agreement with PERS pursuant to which Employer will receive administrative services in connection with the investment of the Plan's assets through the Program;

WHEREAS, PERS has requested TPA to provide certain administrative services directly to Employer in connection with Employer's investment of the Plan's assets through the Program;

WHEREAS, TPA has agreed to provide such services to Employer and PERS upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:



ARTICLE I - SCOPE OF AGREEMENT

- 1.1 This Agreement sets forth the terms and conditions pursuant to which PERS and TPA agree to provide, and Employer agrees to purchase, administrative services for the Plan. TPA shall provide directly to Employer the administrative services set forth on Schedule A attached hereto and incorporated herein by this reference (the "TPA Services"). PERS shall provide directly to Employer the administrative services set forth on Schedule B attached hereto and incorporated herein by this reference (the "PERS Services"). TPA shall render the TPA Services and PERS shall render the PERS Services in accordance with data, documents, policies, interpretations, directives, rules, practices and procedures of the Program and in accordance with the terms and conditions of this Agreement.
- 1.2 TPA and Employer each acknowledge and agree that PERS may, in its sole and absolute discretion and with or without cause, terminate the services of TPA hereunder and select another person or entity to become party to this Agreement as the TPA hereunder. Any such termination shall be in accordance with the provisions of Articles XII and XIII.

ARTICLE II - RESPONSIBILITIES OF EMPLOYER

- 2.1 Prior to the commencement of the TPA Services specified in Schedule A and the PERS Services set forth on Schedule B, Employer shall furnish or cause to be furnished to the TPA, in a timely manner and in accordance with the specifications in Schedule A, all necessary information and data ("Employer Data") for the Plan as established in Schedule A. Employer data includes, but is not limited to, copies of the Plan and any amendments thereto and any demographic, payroll or other participant data necessary for the performances of TPA Services under this Agreement. Employer shall provide to TPA such additional policies, interpretations, practices, procedures and directions (collectively "Directions") as TPA may reasonably request to enable it to perform the TPA Services in accordance with Schedule A. Directions shall include any participant directions given in accordance with the terms of the Plan or related documentation.
- 2.2 Notwithstanding any other provision to the contrary, PERS and the TPA are not obligated to provide PERS Services and TPA Services, respectively, unless and until Employer provides timely, accurate and complete Employer Data to the TPA. Employer shall furnish or cause to be furnished to TPA all Employer Data specified in Schedule A in a timely manner and in accordance with the specifications of Schedule A. PERS' and the TPA's agreement to provide Services as contemplated in Schedule A and Schedule B is contingent upon the timely receipt of accurate and complete Employer Data from the Employer.
- 2.3 Employer shall be solely responsible for the accuracy and completeness of any Employer Data provided to the TPA. Upon request of the TPA, Employer shall promptly furnish or cause to be furnished accurate and complete Employer Data to correct any inaccuracies or incompleteness with respect to Employer Data previously provided to the TPA.
- 2.4 Employer shall review the Employer Data processed by the TPA and shall verify any such data and shall promptly notify the TPA and PERS in writing of any claimed error with respect to any processed Employer Data or report.
- 2.5 The Employer agrees to cause appropriate deductions to be made from the pay of participants in the Plan and to send by check or wire transfer the amount of the total deductions to the TPA or to such other facility or in such other manner as may be mutually agreed to between the Employer and PERS.
- 2.6 The Employer shall provide to the TPA, in such form as agreed upon by PERS and the Employer, a deferral listing with respect to each Plan participant's account to include, but not be limited to, name, address, Social Security number, and annual salary. This process is set out in more detail in Schedule A.
- 2.7 The Employer represents and warrants that it is an eligible public employer under IRC 457 and ORS 243.401 (11) and that its employees are persons in the employ of a public employer. The Employer acknowledges that it is utilizing the services and investments offered by the Program.
- 2.8 The Employer shall require its employees participating in the Plan to use enrollment forms and other documents required by PERS including, but not limited to, the Plan and Agreement, Acknowledgment Form and Designation of Investment Options, and Designation of Beneficiary, as they may be amended.

- 2.9 The Employer agrees to enforce limitations on any employee's individual transfers to or from any investment option that are imposed by PERS as described in Schedule A, section B.7 and Schedule B.
- 2.10 Notwithstanding any other provision of this Agreement, the Employer shall remain the responsible administrator of its Plan in accordance with ORS 243.478(2).
- 2.11 PERS may require the Employer to provide proof that its Plan complies with IRC 457, and may require an opinion of counsel or other assurances satisfactory to PERS that participation by Employer does not cause the State of Oregon to violate any federal or state laws or regulations related to investments and securities.

ARTICLE III - TPA'S OBLIGATIONS

- 3.1 TPA shall provide the TPA Services directly to Employer in accordance with the terms and conditions of this Agreement. TPA is directly liable to Employer for its failure to provide the TPA Services in accordance with the terms and conditions of this Agreement and for its breach of any other duty or obligation owed to Employer hereunder. Employer alone or with PERS may initiate legal action directly against TPA to enforce this Agreement against TPA.
- 3.2 TPA shall establish an account for each participant in the Plan and shall credit the amounts sent by the Employer on behalf of such participants to the investment options selected by such participants.
- 3.3 TPA shall withhold from distributions approved federal and state income taxes, according to instructions set forth on form W-4P completed by the participant. TPA shall remit such withholding to proper taxing authorities, and issue net funds to participant(s) or beneficiary(ies) in accordance with the withdrawal instructions in the Benefit Application Packet supplied by the participant. TPA shall issue a Form 1099R to those participants and beneficiaries who receive distribution(s) during the preceding year and retain a copy of such information on file for the period required by law.
- 3.4 TPA represents and warrants to Employer and PERS that
 - (a) The TPA Services will conform to the description set forth in Schedule A as such schedule may be amended from time to time.
 - (b) TPA will use due care in providing the TPA Services.
 - (c) TPA shall render the TPA Services (and maintain its automated systems to render the TPA Services) in a manner that complies with all applicable federal and state laws and regulations.
- 3.5 A breach of TPA's duty of due care in the performance of TPA Services hereunder includes, but is not limited to, the following:
 - (a) Any processing error that results from a malfunction of TPA's automated systems or from errors or omissions of TPA or TPA's officers, employees, agents or contractors; or
 - (b) Any direct monetary loss suffered by the Plan as a result of a malfunction of TPA's automated systems or from errors or omissions of TPA or TPA's officers, employees, agents or contractors.
- 3.6 In the event of any breach of the duty of due care described in section 3.5, TPA shall, at TPA's sole expense, promptly correct any processing errors described in section 3.5(a) and reimburse to any impacted participant any direct monetary loss.
- 3.7 TPA will attempt to correct processing errors resulting from Employer's error, error by Employer's staff, or otherwise caused by the negligent acts of Employer's officers, employees and agents. TPA will bear reasonable costs of correcting TPA's records and correcting erroneous payments resulting from Employer's error provided that Employer promptly notifies TPA of such error and furnishes all data to TPA reasonably necessary to make such changes.

ARTICLE IV - PERS' RESPONSIBILITIES AND LIMITATION OF LIABILITY

- 4.1 PERS shall provide the PERS Services directly to Employer in accordance with the terms and conditions of this Agreement.
- 4.2 PERS shall notify Employer and Plan participants of all investment options included in the Program. The investment options available as of the date of this agreement are outlined in Schedule B. The investment options offered by the OSGP may be changed by the OIC at any time.
- 4.3 Pursuant to ORS 243.421, the OIC has exclusive authority for the design and implementation of the Program and PERS has exclusive authority for the administration of the Program in accordance with ORS 243.435.
- 4.4 All assets of the Plan invested by Employer through the Program will be held in the Deferred Compensation Fund created by ORS 243.411.
- 4.5 The State of Oregon, the State Treasurer, the OIC, PERS and its officers and employees shall not be liable by reason of:
 - (a) Any loss resulting from or caused by events or circumstances beyond PERS' reasonable control such as nationalization, expropriation, currency restrictions, acts of war or terrorism, riot, revolution, acts of God or other similar events or acts;
 - (b) (1) Acts or omissions of a Securities System, or (2) acts or omissions of, or related to, a Securities System. A Securities System shall mean securities that are held in the Federal Reserve book-entry system, in a clearing agency that acts as a securities depository or in another book-entry system for the central handling of securities.
- 4.6 A civil action for damages may not be brought against the State of Oregon, the State Treasurer, the OIC, PERB, or the officers or employees of the board by reason of any of the actions set forth in ORS 243.482.

ARTICLE V - FEES AND EXPENSES

- 5.1 In consideration of the PERS Services and TPA Services furnished hereunder, PERS may charge an annual Administrative Fee of up to two (2) percent of the assets of the Plan invested in the Program. The Administrative Fee will be assessed against the account of each Plan participant and the amount of the fee will depend on the investment options selected by the Plan participant. The Administrative Fee includes fees for record keeping, communications, counseling, customer services and custodial services. The current fee schedule is attached hereto as Schedule C. Employer understands and agrees that the fee schedule may be modified, periodically, to reflect any adjustments such as reduction/increase of mutual funds fees. Any new fee schedule shall become effective immediately upon written notice from PERS to Employer.
- 5.2 PERS may charge an additional fee assessed to a Plan participant's account when processing Plan-to-Plan Transfers-Out (from the Plan to another state, city, county, etc. in or out of the State of Oregon) and when processing Domestic Relations Orders.
- 5.3 If, in the performance of Services or Additional Services hereunder, TPA holds uninvested cash pending investment or distribution, TPA shall incur no liability for the payment of interest thereon to any other party, notwithstanding TPA's receipt of "float" from such uninvested cash. Such float shall constitute a part of TPA's overall compensation for Services and Additional Services hereunder.
- 5.4 The Administrative Fee includes a fee for TPA Services (custodial services and record keeping services). A portion of the Administrative Fee will be paid to TPA for the TPA Services. The amount of the fee for TPA Services is set in a separate agreement between PERS and TPA. PERS, Employer and TPA agree the amount of the fee set in the PERS – TPA agreement shall apply to the TPA services provided in this agreement.

ARTICLE VI - PLAN AMENDMENTS

- 6.1 PERS shall be under no obligation to process Plan amendments proposed by the Employer. Employer shall provide PERS with such amendments ninety (90) calendar days prior to the effective date of such amendment for PERS to review and accept or reject such amendments. If PERS accepts any amendments that materially affect any Plan record keeping or data processing requirements, which are also accepted by the TPA, PERS and Employer shall mutually agree upon appropriate adjustments to the administrative fee within the limits stated in Article V, 5.1.
- 6.2 Approvals of Plan amendments by PERS shall constitute PERS' acquiescence to the use of the documents involved and not its approval of their contents or their effect. The Employer shall assume full responsibility to PERS and to all interested persons for such contents and such effect.
- 6.3 The Employer shall be responsible for preparation and submission of any Plan(s) and Plan amendments for Internal Revenue Service determination. The Employer shall take all measures required under current federal law and applicable provisions of the Internal Revenue Code and Regulations, to assure the Plan(s) qualify as tax deferred retirement plan(s). PERS and the TPA shall be under no duty to question the measures taken by the Employer pursuant to Section 6.2 hereof, and this Section 6.3.

ARTICLE VII - CONFIDENTIALITY

- 7.1 PERS, Employer and TPA agree that all confidential information communicated to each other during the term of this Agreement shall be received in strict confidence, shall be used only for the purposes of this Agreement, and no such information shall be disclosed to third parties by the recipient party, its officers, employees, consultants, or agents without the prior written consent of the other parties. Each party agrees to take all reasonable precautions to prevent the disclosure to third parties of such information, including without limitation, the provisions of this Agreement and any incorporated Schedules, except as may be necessary by reason of legal, accounting or regulatory requirements as the case may be. The obligation to treat information and data as confidential shall not apply to information which:
- (a) is in the public domain, other than by any breach of this Agreement,
 - (b) is in the possession of a party to this Agreement on the effective date hereof, and if it shall not have been obtained from the other party,
 - (c) shall be developed by a party outside the scope of any agreement with the other party,
 - (d) shall be obtained rightfully from third parties.
- 7.2 The provisions of this Article VII shall survive the expiration or termination of this Agreement and continue for so long as either party is in possession of data or information protected hereunder.
- 7.3 No party shall be bound under this Article to the extent that it acts under compulsion of law (such as the Oregon Public Records Law) or in accordance with the requirements of any national or local government or government instrumentality or any other body with whose requirements the parties may be required by law or practice to conform.
- 7.4 TPA shall use the information communicated by PERS or Employer to TPA pursuant to this agreement solely for purposes of performing this agreement.

ARTICLE VIII - COMPUTERIZED REPORTING SERVICES

- 8.1 The Employer agrees to use the equipment, computer programs and other information supplied by the TPA solely for its own internal use and benefit and not for resale or other transfer or disposition to, or use by or for the benefit of, any other person or organization without prior written approval of PERS and the TPA.

The Employer acknowledges that the databases, computer programs, screen formats, screen designs, report formats, interactive design techniques, and other information furnished to the Employer by the TPA may constitute copyrighted trade secrets or proprietary information of substantial value to the TPA. Such databases, programs and other information are collectively referred to below as "Proprietary Information" provided "Proprietary Information" does not include Employer data supplied by Employer or PERS, data and information TPA is required to provide Employer or PERS pursuant to the terms of this agreement, formats, screen designs, report formats, and other information Employer or PERS utilized prior to TPA being retained to provide its services. Also "Proprietary Information" does not include information listed in section 7.1 (a)-(d). Subject to the Oregon Public Records Law, the Employer agrees that it shall treat all Proprietary Information as proprietary to the TPA and that it shall not divulge any Proprietary Information to any person or organization except as expressly permitted hereunder. Without limiting the foregoing, the Employer agrees for itself and its employees and agents:

- (a) to use such programs and databases (i) solely on equipment at Employer's locations agreed to between the Employer and PERS and (ii) solely in accordance with the TPA's applicable user documentation;
 - (b) to refrain from obtaining unauthorized access to any programs, data or other information owned by the TPA, and if such access is accidentally obtained, to respect and safeguard the same as Proprietary Information;
 - (c) to refrain from causing or allowing information transmitted from the TPA's computer to the Employer's terminals to be retransmitted to another computer, terminal or other device except to the extent such information was originally provided by Employer or is information Employer or PERS is paying TPA to provide pursuant to this agreement;
 - (d) that the Employer shall have access to only those authorized transactions as agreed to between the Employer and PERS;
 - (e) to honor reasonable written requests made by TPA to protect at TPA's expense the rights of TPA in Proprietary Information at common law, under the federal copyright statutes and under other federal and state statutes.
- 8.2 Notwithstanding the provisions of Articles VII and VIII, in the event the contract with the present TPA is not renewed or is otherwise terminated, TPA agrees in accordance with Articles XII and XIII to cooperate with Employer, PERS, and the newly selected TPA in transferring data and information to the newly selected TPA. Such data shall be in a format reasonably requested by PERS.
- 8.3 The Employer hereby acknowledges that the TPA data and information available to Employer may include unaudited information.

ARTICLE IX - OWNERSHIP OF WORK PRODUCT

- 9.1 All work product that results from this agreement (the "Work Product") is the exclusive property of PERS. PERS and TPA intend that such Work Product be deemed "work made for hire" of which PERS shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," TPA hereby irrevocably assigns to PERS all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. TPA shall execute such further documents and instruments as PERS may reasonably request in order to fully vest such rights in PERS. TPA forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modification.

ARTICLE X - SECURITY CODES

10.1 If the TPA has issued to the Employer, or to any agent appointed by the Employer, security codes or passwords in order that the TPA may verify that certain transmissions of information, including directions or instructions, have been originated by the Employer or its agent, as the case may be, Employer shall indemnify and hold harmless PERS and the TPA, to the extent and in the manner provided in Section 11.2 hereof, for any actions or omissions by PERS or the TPA made in reliance upon receipt by PERS or TPA of transmissions of information with the proper security code or password, including communication purporting to be directions or instructions, which PERS or TPA reasonably believes to be from the Employer or its agents.

ARTICLE XI - INDEMNIFICATION

11.1 (a) **GENERAL INDEMNITY.** The Employer, to the extent permitted by the Oregon Constitution, any Oregon Statute and the Employer's Charter and ordinances, and TPA shall defend, save, hold harmless, and indemnify the State of Oregon and PERS and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys fees, resulting from, arising out of, or relating to the activities of Employer or TPA, as the case may be, or their officers, employees, subcontractors, or agents under this Agreement.

(b) **INDEMNITY FOR INFRINGEMENT CLAIMS.** Without limiting the generality of section 11.1(a), Employer and TPA expressly agree to defend, indemnify, and hold PERS, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the work, the work product or any other tangible or intangible items delivered to PERS by Employer or TPA that may be the subject of protection under any state or federal intellectual property law or doctrine, or PERS' use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that state shall provide Employer or TPA, as the case may be, with prompt written notice of any infringement claim.

(c) **CONTROL OF DEFENSE AND SETTLEMENT.** Employer or TPA, as the case may be, shall have control of the defense and settlement of any claim that is subject to sections 11.1(a) or 11.1(b); however, neither Employer, TPA, nor any attorney engaged by Employer or TPA shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Employer or TPA, as the case may be, is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

11.2 To the extent permitted by the Oregon Constitution, any Oregon Statute and The Employer's Charter and ordinances, the Employer shall indemnify and hold the TPA harmless from any and all liability claims, damages, costs or expenses (including reasonable attorney's fees) arising from or claimed to have arisen from; (i) actions the TPA performs upon any direction, instruction, request or representation of the Employer (including any direction, instructions, request or representation of the Employer to the TPA to perform TPA Services other than as provided in this agreement); (ii) claims arising from any action or omission of a prior TPA, trustee or investment manager; (iii) a breach of any duty by PERS in administering or investing of funds in the Deferred Compensation Fund, a breach of any duty by PERS in administering or investing of the funds for participating local governments; (iv) any losses suffered by a local plan participant because of participant's choice of an investment option available through the deferred compensation investment program established under ORS 243.421; (v) any claim PERS, its officers, employees or agents violated federal or state security laws. This right to indemnification does not cover any liability, claims, damages, costs or expenses arising from the TPA's negligence or bad faith, or failure to perform its obligations under this agreement.

ARTICLE XII - TERMINATION

- 12.1 Employer or PERS may terminate this Agreement upon 30 days advance written notice to all other parties to this Agreement. Any termination by Employer or PERS pursuant to this section 12.1 shall terminate this Agreement in its entirety except for those obligations that expressly survive termination provided in Article XX.
- 12.2 TPA may terminate TPA's rights and obligations under this Agreement upon 180 days advance written notice to all other parties to this Agreement. Any termination pursuant to this section 12.2 shall terminate only the rights and obligations of TPA under this Agreement, other than the obligations of TPA that expressly survive termination. Termination of TPA's rights and obligations under this Agreement pursuant to this Section 12.2 shall not terminate this Agreement as between PERS and Employer and this Agreement shall remain in full force and effect between PERS and Employer until terminated in accordance with Section 12.1. TPA shall not, without the consent of PERS, terminate its rights under this agreement without also terminating its rights under its agreement with PERS with respect to the State Deferred Compensation Plan.
- 12.3 PERS may terminate TPA's rights and obligations under this Agreement upon 30 days advance written notice to all other parties to this Agreement. Any termination pursuant to this Section 12.3 shall terminate only the rights and obligations of TPA under this Agreement, other than the obligations of TPA that expressly survive termination. Termination of TPA's rights and obligations under this Agreement pursuant to this Section 12.3 shall not terminate this Agreement and this Agreement shall remain in full force and effect between PERS and Employer until terminated in accordance with Section 12.1.

ARTICLE XIII - EFFECT OF TERMINATION

- 13.1 Following notice of termination of this Agreement pursuant to Section 12.1 or notice of termination of TPA's rights and obligations under this Agreement pursuant to Sections 12.2 or 12.3, TPA shall:
- (a) Prepare and deliver stored Employer Data files and related materials, in TPA's format or, at PERS' option, in a format reasonably requested by PERS, to Employer or its agent at the time reasonably requested by PERS and otherwise cooperate with PERS and Employer in the transmission of data to a successor TPA.
 - (b) TPA shall fully cooperate with PERS and Employer and the successor TPA in performing all actions necessary to effect the transfer to the successor TPA on the date of termination all assets, funds and property held by TPA under this agreement. Such assets, funds and property shall be delivered in a form acceptable to PERS.
- 13.2 Following notice of termination of TPA's rights and obligations under this Agreement pursuant to Sections 12.2 or 12.3, PERS shall:
- (a) Select a successor TPA ("New TPA"); and
 - (b) Coordinate the transfer of the Employer Data files and related materials and fund assets to the New TPA.
- 13.3 Employer acknowledges and agrees that PERS has sole power and authority to select any New TPA under this Agreement. Employer agrees that any New TPA will become a party to this Agreement as the TPA and with all the rights and obligations of the TPA hereunder upon execution by PERS and the New TPA of an Addendum to Administrative Services Agreement in the form attached hereto as Exhibit A (the "Addendum") and delivery of the executed Addendum to Employer in accordance with the notice provisions of this Agreement.
- 13.4 Employer further acknowledges and agrees that PERS has the right and power to negotiate changes in the TPA Services ("New TPA Services") with the New TPA and that such changes shall be binding on Employer under this Agreement so long as the New TPA Services are substantially similar to the TPA Services. The New TPA Services shall become the TPA Services under this Agreement upon the delivery of a new Schedule A to Employer.

- 13.5 Transfer of Employer Data files (and any other information or records governed by this Agreement) and Fund assets pursuant to termination shall be at no additional cost to PERS or Employer; provided, however, that if TPA incurs extraordinary costs to transfer Employer Data files (or any other information or records governed by this agreement), Employer shall reimburse TPA for such extraordinary costs. TPA shall submit monthly invoices to Employer for such extraordinary costs. The invoices shall describe all work performed for which the extraordinary costs are incurred with particularity, by whom the work was performed, and shall itemize and explain all extraordinary costs for which TPA claims reimbursement. Each invoice also shall include the total amount invoiced to date by TPA prior to the current invoice. Extraordinary costs shall not include the following:
- (a) costs to transmit data in readable form in TPA's format or a format TPA is already using with respect to TPA Services provided to Employer or PERS.
 - (b) costs to transmit data or reports that TPA is being paid to provide pursuant to this agreement.
 - (c) costs similar to costs incurred by previous TPA, when CitiStreet became the new TPA under the present OSGP.
- 13.6 The TPA, PERS and Employer agree to cooperate with each other to ensure an orderly termination process.
- 13.7 Upon termination TPA shall be entitled to pro rata fees, except as provided in paragraph 3.7.
- 13.8 If PERS is delayed by causes other than those caused by the TPA, its agents or subcontractors, in phasing out the services provided by this agreement beyond the effective date of termination, the TPA shall provide (at PERS' request) extended operation services for a period not to exceed six (6) months from the effective date of termination. Such services shall be provided at the same compensation rate as provided under this agreement.

ARTICLE XIV - FORCE MAJEURE: OTHER FAILURES OR DELAYS

- 14.1 Neither party shall be liable to the other for any failure to comply with the terms of this Agreement, for any delay in the performance thereof or for failure to perform under the terms and provisions of this Agreement, where such failure or delay is due to causes beyond such party's reasonable control, provided the party whose performance is so delayed promptly notifies the other party of the cause of such delay, the delay is of no greater scope or of no greater duration than required by the circumstances and the party claiming such delay promptly employs all reasonable efforts to remove or avoid the cause of delay and resumes performance of its obligations hereunder.

ARTICLE XV - GOVERNING LAW, VENUE; CONSENT TO JURISDICTION

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between any of PERS (and/or any other agency or department of the State of Oregon), Employer and TPA that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EMPLOYER AND TPA, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

ARTICLE XVI - COMPLIANCE WITH APPLICABLE LAW

- 16.1 Employer and TPA shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. Without limiting the generality of the foregoing, Employer and TPA expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the this Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated. PERS' performance under this Agreement is conditioned upon Employer's and TPA's compliance with the provisions of ORS 279.312, 279.314, 279.316 and 279.320, which are incorporated by reference herein. Employer and TPA shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279.545(4)), recycled PETE products (as defined in ORS 279.545(5)), and other recycled products (as "recycled product" is defined in ORS 279.545(6)).

ARTICLE XVII - SCHEDULES

- 17.1 The Schedules attached to this Agreement and referred to herein shall be deemed to be a part hereof. If there is any conflict between the terms of the Agreement and the terms of the schedules, the terms of this Agreement shall have precedence.

ARTICLE XVIII - TERM OF AGREEMENT

- 18.1 This Agreement shall become effective as of the date stated in the first paragraph of this Agreement and shall continue in full force and effect until terminated as provided in Article XII.

ARTICLE XIX - SEVERABILITY

- 19.1 If any provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be fully effective, provided that the parties shall exercise their best efforts in good faith to replace by mutual agreement any such invalid or unenforceable provision that in the opinion of either party materially affects their position under the Agreement.

ARTICLE XX - MISCELLANEOUS

- 20.1 The Employer represents and warrants that the Deferred Compensation Investment Program in which participants will be investing is held in trust with the Employer acting as trustee for the exclusive benefit of participants and their beneficiaries in accordance with IRC 457(g).
- 20.2 No party to this Agreement shall assign its rights or delegate its duties or responsibilities under this Agreement, or subcontract any of its responsibilities, except as expressly provided in this Agreement, without the prior written approval of the other parties. Such approval shall not be unreasonably withheld. Unless otherwise expressly stated in such approval by a party, any such assignment or delegation shall not relieve the assignor or delegator of any of its duties or obligations under this Agreement.

- 20.3 This agreement and the provisions thereof shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.
- 20.4 This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

ARTICLE XXI - SURVIVABILITY

21.1 The provisions of Articles VII, XI, XIII, XV, XIX and sections 3.4, 3.5, 3.6, 4.5, 4.6, 8.2, 9.1 and 11.2 shall survive the termination of this agreement.

ARTICLE XXII - NOTICES

22.1 Notices and demands to be given under this Agreement by one party to another shall be given by United States mail, certified, addressed to the party to be notified or upon whom a demand is being made, at the respective addresses set forth in this Agreement or such other place as any party may, from time to time, designate in writing to the other parties. Notice shall be deemed to be effective on the day the notice is mailed.

If to Employer: Peggy Selberg, City Recorder
PO Box 339
Dayton OR 97114-0339

If to PERS: **Oregon Public Employees' Retirement System**
Attn: Gay Lynn Bath, OSGP Manager
800 Summer Street N.E., Suite 200, Salem, OR 97301

If to CitiStreet: **CitiStreet LLC**
Attn: Nick Katsikis
One Heritage Drive, North Quincy, MA 02171

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

City of Dayton (Employer)

| | |
|------------------------------|-----------------------|
| Signature | Date |
| Printed Name Sue C Hollis | Title City Manager |

Oregon Public Employees' Retirement Services

| | |
|--------------|-------|
| Signature | Date |
| Printed Name | Title |

CitiStreet

| | |
|---------------------------------|----------------------|
| Signature | Date |
| Printed Name Anthony Signorello | Title Vice President |

EXHIBIT A

ADDENDUM TO ADMINISTRATIVE SERVICES AGREEMENT

This Addendum to Administrative Services Agreement (the "Addendum") is executed as of _____ by _____ ("New TPA"). By execution of this Addendum, New TPA agrees to become a party, as the "TPA" thereunder, to that certain Administrative Services Agreement dated as of _____ by and among the Oregon Public Employees' Retirement System ("PERS"), _____ ("Employer") and a TPA (the "Administrative Services Agreement"). New TPA shall become a party to the Administrative Services Agreement as the TPA thereunder and shall have all the rights and obligations of the TPA thereunder on the date PERS delivers this executed Addendum to Employer in accordance with the notice provisions of the Administrative Services Agreement (the "Effective Date"). If PERS and TPA have agreed to any changes to the TPA Services from those in existence prior to the Effective Date, a full description of the TPA Services as agreed to between PERS and TPA is set forth on the Schedule of TPA Services attached hereto and this Schedule of TPA Services shall become Schedule A to the Administrative Services Agreement on the Effective Date, replacing in its entirety any Schedule A to the Administrative Services Agreement in existence prior to the Effective Date. All capitalized terms used but not defined herein or in the TPA Services replacing Schedule A to the Administrative Services Agreement shall have the meanings assigned thereto in the Administrative Services Agreement.

(NEW TPA)

| | |
|------|-------|
| By | Date |
| Name | Title |

ACCEPTED AND AGREED TO:

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

| | |
|--------------|-------|
| Signature | Date |
| Printed Name | Title |

LOCAL GOVERNMENT PROGRAM

Retirement Investment Services Recordkeeping

EXHIBIT C

Except where responsibilities have been expressly allocated to PERS or Oregon State Treasury, the TPA is responsible for ensuring that the services described in this Schedule A are performed. TPA understands and agrees that PERS is relying on TPA's superior knowledge and expertise with respect to the services described in this Schedule A. In providing advice and services to PERS and Employers pursuant to this Schedule, TPA shall exercise the skill and expertise called for by the work to be performed. Without limiting, but in addition to, any other representations or warranties provided under this Agreement, TPA specifically represents and warrants that it has the necessary skill, qualifications, and expertise to provide the services required under this Schedule A.

TPA agrees to advise PERS of and make available to PERS any future enhancements and improvements to TPA's recordkeeping services. PERS may amend this contract to include additional, enhanced or improved services for such additional compensation as may be mutually agreed upon. This agreement may also be amended for reasons not expressly set out above upon written approval of all of the parties.

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I. BUSINESS REQUIREMENTS

A. Payroll Interface

A.1 Transmission Modes

Payroll Demographic Data, as defined in Section A.3, below, must be manually transmitted (handwritten or digitized image) to TPA from Employer in order to process in a timely manner. TPA will work with PERS and Employer to determine the proper file transfer mode to be used. The proper security access will be set up between TPA and Employer according to TPA data security guidelines.

A.2 Employer Payroll Feed to TPA

Overview

The payroll contribution files will be posted and sent by Employer to TPA and appropriate payment (wire or check) sent to TPA for each payroll period. The trade date for the transactions will be the date on which the contributions are posted to TPA's Recordkeeping System. The "Recordkeeping System" is the database owned and operated by the TPA that tracks all activity in the Plan including, but not limited to, contributions, distributions, fund transfers, earnings and losses, and Demographic Data. One week prior to this day, the payroll contribution files will be transmitted (handwritten or digitized image) by Employer to TPA in TPA's format. TPA will use its best efforts to resolve any discrepancies with the Employer from the Edit Report. The "Edit Report" is used by the TPA to ensure that any transaction recorded in the Recordkeeping System contains no errors. If a discrepancy cannot be resolved or explained by TPA to PERS and the Employer's satisfaction within two (2) weeks, such discrepancy shall be resolved in favor of Employer.

Demographic updates will be sent from Employer to TPA with payroll file using the same format. This file will be a "changes only" update of Participant Demographic Data.

TPA will create a separate document describing the detailed programming specifications for the payroll interface files, if applicable. TPA will determine the programming specifications based on number of active deferrals under the Plan.



Detailed Participant Contributions

The payroll deferral records are at the Participant level. TPA will capture and store the election percentages of each employee enrolled in OSGP and participating in one or more OSGP investment options ("Participant") through the Demographic Data update. Deferral amounts on the contribution record should reflect amounts split by source only. TPA will then allocate the amounts to the appropriate investment funds based on the Participant election percentages stored on the system.

A batch totals record reflecting the totals, by source, of the Participant payroll records will accompany each payroll sent to TPA by Employer.

TPA will perform the following contribution eligibility edits:

- Allocation percent is zero for contributions source - *reject contribution*
- Deferral limit exceeded - *reject contribution*
- Terminated status - *warning message*
- Negative contributions exceed fund balance - *reject portion of contribution and contact Oregon Savings Growth Plan to resolve. A negative balance will not be created.*
- Employee not in Plan - *reject contribution*
- Duplicate Participant contribution record - *reject duplicate unless employee is working for two (2) employers. In that case, a second account would be created using a "999" Social Security number.*

A special report is required to identify Participants with a deferral percent/dollar amount and missing contribution amount or Participants with a contribution amount and missing a deferral percent/dollar amount. The report will also identify any contributions that are not equal to the deferral dollar amounts stored in TPA's Recordkeeping System. The comparison will be made to the deferral information that was on the Recordkeeping System at the time of the last Feedback Transmission, or other similar report, to PERS. A "Feedback Transmission" is a file that contains any updates to deferral information.

New Enrollees

Transactions for any newly enrolled employee should be sent before the date on which the employee's first deferral is eligible to be processed. The "Local Government Coordinator" (LGC), who is the PERS employee whose duties include liaison with Employer, will send to the TPA via hard copy or digitized image in an agreed upon format via electronic transmission the enrollment form, demographic information, beneficiary information, and the initial investment election for each Participant. An initial PIN will be generated and a PIN self-sealed confirmation sent to the Participant with an enrollment package within two (2) Business Days.

Frequencies

LGC and Employer will feed payrolls to TPA according to the payroll calendar.

A.3 TPA Payroll Feedback to Employer

Overview

TPA and Employer are currently system of record. No Feedback Transmissions are scheduled.

Demographic Interface

Demographic Data will be sent (handwritten or digitized image) to the TPA by PERS and Employer according to a schedule determined by Employer and TPA. "Demographic Data" includes the following information for each Participant:

- | | | |
|---------------------------|--------------------------|-------------------------------------|
| 1. Social Security number | 7. Birth Date | 13. Contribution dollar |
| 2. Name | 8. Payroll Location Code | 14. Catch-up Provision Flag |
| 3. Address | 9. Termination Date | 15. Employer Location (PERS Number) |
| 4. City | 10. Termination Reason | 16. QDRO flag |
| 5. State | 11. Participant Status | 17. Catch-up Provision Flag |
| 6. Zip Code | 12. Contribution percent | |

Demographic Data will be posted in recordkeeping system by TPA immediately upon receipt from Employer.

B. Plan Processing

B.1 Contributions

Contributions will be sent by Employer via handwritten or digitized image and received by TPA according to payroll frequency. Employer will send contribution information for the following sources:

- Employee deferral contribution.
- Employer contribution.

TPA will receive funding prior to posting the contribution data.

B.2 Enrollments/Re-enrollments and Eligibility

LGC and Employer will determine the eligibility of an employee. The Participant will enroll via form through the LGC or Employer who will notify TPA. An employee may be eligible to participate in the OSGP immediately. Upon receipt of the enrollment transaction from LGC or Employer, TPA will send the Participant a PIN, which will confirm the Participant's enrollment elections.

Newly enrolled Participants may contact the TPA at the OSGP website (WEB), by the Interactive Voice Response System (IVR) or by Customer Service Representatives employed by TPA (CSR) daily and change investment options, subject to any trading restrictions and limitations.

B.3 PIN Generation and Issuance

- As new Participants are enrolled, PINs will be generated and issued to them.
- PIN reminders can be requested by a Participant through the WEB/IVR/CSR.
- The PIN generation algorithm will be defined by TPA.

B.4 Deferral Contribution Percent/Dollar Change

Contribution percent/dollar changes will be made via the WEB/IVR/CSR. They must be in increments of one percent or \$1.00.

Subject to any catch-up elections, set forth in Section B.5, deferral contribution percentages range from 0% to 100% of compensation. The minimum contribution dollar amount is \$25. In addition to the monthly limitations of deferral, in no event shall the amount deferred for any employee's taxable year exceed the applicable IRC limits. TPA will monitor contribution percent/dollar changes to Plan rules.

B.5 Catch-Up Provision

Under certain conditions set out below, and subject to changes that may be made by PERS, including changes required by law, Participants may make extra contributions to the Plan. A Participant may elect one of the following options, but may not exercise both simultaneously:

Three-Year Catch-Up

- (a) The earliest date a Participant may utilize this catch-up provision is up to three years before the Participant's normal retirement age as defined under the plan sponsor's retirement system. Within one to three years prior to the Participant's normal retirement age, the Participant may make additional contributions not to exceed the lesser of:
- (i) twice the dollar amount in effect under Internal Revenue Code section 457(b)(2)(A) (\$14,000 in 2005, increasing by \$1,000 until 2006, as adjusted from time to time); or
 - (ii) the sum of the maximum contribution level available to the employee (the lesser of 100% of income or the applicable dollar amount which in 2005 is \$14,000) plus so much of the annual maximum contribution level as was not previously used; or

50-Plus Catch-Up

- (b) A Participant who has obtained the age of fifty (50) before the close of the plan year may defer an amount in addition to the maximum contribution level, not to exceed:
- (i) the dollar amount stated by the Internal Revenue Service (\$4,000 in 2005, and increased by \$1,000 each year until 2006)

Participant will request the forms from and return the forms to PERS or Employer.

B.6 Investment Election Percent Change

Investment election percent changes will be made using the WEB/IVR/CSR. They must be in increments of 1 percent and may be made daily, but the investment election last selected prior to the posting of the contribution will be used for that contribution investment, subject to any trading restrictions or limitations.

TPA will monitor investment election percent change frequency according to Plan rules.

B.7 Fund Transfers

Spot Transfers

Spot transfers will be processed with the following criteria:

- One (1)% increments.
- Percent out, percent in, or dollar out, dollar in.
- As spot transfers, i.e. transfer 50% out of Fund A moving 50% (of the 50%) into Fund B and 50% into Fund C; transfers must total 100%.
- Cannot transfer “out of” and “into” the same fund in the same transaction.
- Participant may transfer once a day.
- Transfer are subject to the following restrictions on how often a Participant can transfer moneys among the funds:
 - o *Ninety (90)-day equity wash between the Stable Value Option and the Short-Term Fixed or the Intermediate Bond Option. An automated enforcement mechanism will insure the transferred balances remain in the “non-competing” investment vehicle for a period of three (3) months prior to being moved to the competing option. This “tags” the amount to be restricted and does not freeze the entire amount in the option.*
 - o *Transfers from the Stable Value Option may be limited on an annual basis as determined by Employer/LGC.*
 - o *No more than an average of two trades per month over a three-month consecutive calendar period in the International Stock (IS) Option. If flagged for exceeding this limit, a participant’s account will be flagged and he/she will be limited to only one redemption per month in the IS Option.*
 - o *Trading activity is monitored by the Plan Administrator who has the authority to implement the further restrictions, that could include, but are not limited to, the following:*
 - o *Restricting the number of trades during a given time period.*
 - o *Limiting the dollar amount of a trade.*
 - o *Imposing a 90-day “round-trip” restriction (investment in and out of the same option).*
 - o *Implementing redemption fees.*
 - o *Additional limitations on transfers that may be imposed as a result of industry regulation, investment manager contract terms, or PERS policy, whether those restrictions apply Plan-wide or to specific Participants.*

Plan Participants are subject to transfer guidelines outlined by each Investment Option Prospectus, as they may be amended from time to time. Guidelines are strictly enforced by Plan Administrator and TPA.

B.8 Plan Benefit Payments

The TPA shall disburse benefits from assets under the Plan to Participants in accordance with instructions given by PERS and/or the Employer in compliance with the Plan and applicable requirements of the Internal Revenue Code, including appropriate withholding taxes and reporting of distributions. Distributions shall be made monthly or on a more frequent basis as shall be mutually agreed upon by the TPA, PERS and Employer in writing. The TPA shall offer direct deposit services to Participants electing periodic payments. A complete reporting and tracing process for distributions is identified in the confirmation procedures and processes provided in Section IV of this Schedule A.

B.9 In-Service Withdrawals

De Minimis Withdrawals

If a Participant’s account balance is less than \$5,000, and the Participant has not contributed to the Plan for a minimum of two years, the Participant may request that the balance of the account be distributed to the Participant. This option may be elected only once.

Emergency Withdrawals

Active Participants will initiate emergency withdrawals through the WEB/IVR/CSR. TPA will mail the appropriate form(s) to Participants. Participants will return completed form to PERS for review. If form is missing information, TPA/PERS will contact Participant to request additional documentation. Completed forms will be forwarded promptly to PERS and/or Employer for review. If forms are sent to TPA, TPA will forward completed forms promptly to PERS for review by PERS Deferred Compensation Manager or designee. Manager or designee has the authority to approve or reject the request. Emergency withdrawals will be taken pro-rata among Investment Options and a check will be sent to the Participant's address on record unless direct deposit information has been provided.

Withdrawal Restrictions

There is a required 6-month suspension of contributions following any in-service withdrawal. A reinstatement confirmation will be generated and mailed to the Participant instructing Participant to contact WEB/IVR/CSR to elect a contribution percent or contribution dollar amount.

B.10 Terminations

PERS or Employer will notify TPA of terminated Participant via the monthly refresh of Demographic Data or by other means acceptable to TPA and PERS. TPA will mail a severance package to Participant. Participant will return completed forms to PERS or Employer. There is an automatic freeze period of 30 days before any type of distribution can be processed. PERS or Employer will monitor the 30-day freeze period, and only forward completed severance from employment forms to TPA that are eligible for immediate processing. TPA will process all such forms promptly and mail all checks directly to the Participant's address maintained on TPA recordkeeping System. Death benefit checks will be mailed to the beneficiary.

Types of Payment

(a) Lump Sum/Rollovers

- Reason for termination must be due to death, retirement, or separation of service.

(b) Installments

- Reason for termination must be due to death, retirement or separation of service.
- Installments will be available in annual, semi-annual, quarterly, or monthly intervals.
- Installment Types (Account balances equal to or greater than \$1,000):
 - a. *Fixed number of payments.*
 - b. *Specific dollar amount.*
 - c. *Required Minimum Distributions*

(c) Partial Lump Sum with Installments to Follow

- Reason for termination must be death, retirement or separation from Service.
- Installments will be available in annual, quarterly, monthly or semi-monthly intervals.
- Participant will select an initial payment amount, and select an installment option for the remainder of the balance to be paid out.
- Account balance of \$1,000 or greater.

Installment Payment Special Notes

If a plan sponsor employs a Participant, that Participant is eligible to receive only allowable in-service distributions. A Participant who severs employment from a plan sponsor and returns to work with the same plan sponsor, the Participant may receive only allowable in-service distributions.

(d) Partial Lump Sum

- Reason for termination must be death, retirement or severance from employment.
- Participant will select an initial payment amount and may or may not request subsequent withdrawals.

(e) Defaults

The date on which TPA sends a severance from employment package to a terminated employee will be flagged on recordkeeping system as the Termination Notification Date. At 30 days after the Termination Notification Date, if TPA has not received a severance from employment form providing distribution instructions, the following default payouts will occur:

Balance Less Than \$1,000

- If Participant's balance is less than \$1,000, a distribution shall be made in lump sum to the Participant within one year after the date of severance.

Through the settlement agreement, Participants may choose to defer payouts and may choose to start payments anytime before April 1 of the year following the year the Participant attains the age of 70^{1/2}.

A Participant who is not employed by a plan sponsor must begin to receive distributions no later than April 1 following the calendar year in which the Participant reaches age 70^{1/2}. If a Participant has not severed employment from a plan sponsor, then Participant may begin to receive distributions upon severance of employment.

Withholding:

For eligible rollover distributions, a mandatory 20% federal withholding will apply, and if no state withholding election is made, the default will be zero withholding for Oregon. If the Participant makes no election, periodic payments that are not eligible for rollover will be set up with a default of Married/3 federal withholding and Single/0 Oregon state tax withholding; non-periodic payments that are not eligible for rollover will be set up with a default of 10% federal withholding and 8% Oregon state tax withholding.

B.11 Transfers and Rollovers

a) Plan-to-Plan Transfers and Rollovers

- If a Participant transfers to a position within another jurisdiction that offers a plan eligible to receive rollovers from a 457 plan, PERS or Employer will provide TPA with appropriate instructions to complete the transfer. Such transfer is subject to the terms and conditions of the plan receiving the funds.
- If a Participant previously worked in a position within another jurisdiction that offered a plan eligible for rollover distributions into a 457 plan, PERS or Employer will provide TPA with appropriate instructions to complete the transfer from the outside plan into the PERS Plan. Participant may also rollover pre-tax contributions from an IRA into the Plan. IRAs funded with after-tax dollars are not eligible to be rolled over or transferred into the Plan.

b) Provider to Provider Transfers

- Participant may transfer funds between investment providers. Employer/LGC will provide TPA with appropriate instructions to complete transfer.
- PERS or TPA may assess a Fee to the Participant for this transaction in the sole discretion of PERS and subject to any notice requirements under state or federal law.

B.12 Adjustments

As-of or backdated transactions will be used for processing adjustments, reflecting as-of price. Incorrectly processed transactions and inaccurate transactions will always be corrected, regardless of how much time has passed since the original transaction was processed. The Participant will always be held harmless from errors for which the Participant is not responsible.

B.13 Court Orders
Qualified Domestic Relations Orders

Upon notification by Employer or LGC of a pending Qualified Domestic Relations Order (QDRO), TPA will flag the Participant's account to restrict him/her from taking any distributions or withdrawals. Once Employer or LGC has determined an order to be qualified, they will direct TPA to set up the receiving person on their recordkeeping system. Employer or LGC may decide to place additional restrictions on QDRO accounts, of which it shall inform TPA and with which TPA shall comply.

If the receiving person is also a Participant in the Plan, TPA will set up a fictitious Social Security account for the account resulting from the QDRO. The receiving person will have two (2) accounts in the Plan, the account resulting from the QDRO and the account the receiving person has as a Participant in the Plan. When such a receiving person elects payment, payment from the person's regular Participant account and payment from the QDRO account shall be made by separate checks and reported on separate 1099-R forms.

There will be an administrative fee of \$300 for all QDRO accounts processed. This fee will be processed after the account has been split and will be taken out pro rata from each account according to the ratio removed from the employee's account. This fee is a PERS administrative fee. TPA will remit any such fees collected to PERS.

B.14 Death Benefits

Upon notification by PERS of the death of a Participant, beneficiary, or alternate payee, TPA will flag the account to suspend all activity on the account including distributions and issuance of quarterly statements. Upon notification by PERS, TPA will immediately move assets in the affected account as directed by PERS. PERS will direct TPA to establish accounts for the receiving beneficiary or beneficiaries on the Recordkeeping System.

If the beneficiary or beneficiaries are also participating in the Plan, Contractor will establish a fictitious Social Security account. The beneficiary will have two (2) accounts in the Plan, one for the death benefit account and the other as a normal Participant. When beneficiary elects payment, payment from the death benefit account and payment from the person's regular Participant account shall be made by separate checks and reported on separate 1099 forms.

B.15 Beneficiaries

Employers will maintain beneficiary data for all Participants. TPA's CSRs shall provide beneficiary forms to Participants upon request. TPA shall process distributions to beneficiaries, including designated beneficiaries, in accordance with section 401(a)(9) of the Internal Revenue Code.

B.16 Loan Program

If the Addendum to Schedule A has not been signed and incorporated into this Agreement, this Employer elects not to participate in the Loan Program authorized by OAR 459-050-0077. The Loan Program is not available to Participants employed by Employer.

C. Special Processing
Retention Periods

TPA will perform a Participant purge of Participant terminations (zero balance accounts based on termination date) after plan year-end processing.

Records Maintenance; Access

TPA shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, TPA shall maintain any other records pertinent to this Contract in such a manner as to clearly document TPA's performance. TPA acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of that are pertinent to this, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts, shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law and as described in the next paragraph, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

The following retention periods greater than six (6) years apply: Account reconciliations, eight (8) years; employee contribution reports, 30 years; payroll registers, eight (8) years. These records may be maintained by any party, provided that they are made available to PERS as it deems necessary.

II. EDUCATION AND COMMUNICATIONS

TPA will be responsible for the on-going generation and mailing of PIN letters and PIN reminders, daily transaction confirmations and quarterly Participant account statements. The OSGP website and voice response unit will be available for daily account information as well as certain plan and fund information. Customer service representatives will be available to handle Participant inquiries.

PERS will be responsible for communicating plan features through employee meetings.

Communication materials on the OSGP shall be designed, produced and distributed at the TPA's expense and shall be filed with and approved in advance by PERS. Communication materials to be provided by TPA shall include the following:

Employee Education Kit that includes a Core Booklet that explains the Plan and the investment options, background information on the Plan, a letter to employees, and enrollment forms. The enrollment forms include a Plan and agreement, acknowledgment form, and beneficiary agreement. The forms used in the Plan have been developed by PERS, but are subject to review by the TPA. However, PERS shall make the final determination as to the form content. It is TPA's responsibility to review with PERS periodically to assure contents are current and to recommend revisions as appropriate.

On-going communication to include: Quarterly newsletters to Participants and non-Participants, Program Highlights brochure for new employees, Plan enhancement communications, and Participant statements.

Education is to include assisting with on-site employee education meetings for public employees during the inception of the Plan; to provide on-site employee education meetings and investment education workshops for local jurisdictions, as requested by PERS or Employer.

Meetings. PERS shall conduct education and enrollment meetings for local jurisdictions around the state and shall participate in meetings scheduled by departments and agencies within the various local governments, as requested.

Internet Web Site. The TPA will maintain and operate an interactive Web Site for Participants. The site will allow for Personal Information, Statement Management, Resource Center, and all transactions available on IVR/CSR. TPA and PERS will work together on content and any changes to the site.

Voice Response Unit. The TPA will design and operate an interactive voice response telephone system for Participants. The voice response technology should satisfy at least 85 percent of all Participant calls. The TPA will work with PERS to assure that Participant calls are easily transferred to the Customer Service Representatives for those individuals desiring to talk to persons.

Customer Service Representatives. The CSRs will be responsible for maintaining a quality relationship with the program's Participants by responding to incoming telephone inquiries from Participants in an accurate and timely manner. Participant calls are to be answered within two rings, and research item response time should be no longer than three business days. If additional time is needed, a call to the Participant will be made. TPA shall make reasonable efforts to maintain current addresses for all Participants. The TPA will ensure that only qualified CSRs will respond to calls from the Participants. Qualified CSRs will have had experience in servicing customer's needs, and will have a Bachelor's Degree, an NASD Series 6 training, three years customer service training, and knowledge of defined contribution/benefit plans (knowledge of IRC 457 plans is preferred). The CSRs will have scripts provided them. These scripts are to be approved and reviewed by PERS, and revised periodically. The CSRs will consist of approximately 15 representatives and 6 backup representatives. Within the group will be one (1) Operations Manager and two (2) Senior Participant Service Representatives who will assist the group as the Plan and technical experts.

On-Going Education for Customer Service Representatives. The Customer Service Representatives will receive periodic training on the OSGP, IRC 457 and applicable regulations, investment education, and customer service techniques. This training is to be provided by the TPA and PERS as requested by PERS through telephone conference calls, written materials, or in person.

Monitoring Calls. A tape will be provided to PERS by the TPA on a monthly basis that will include a minimum of 60 recorded minutes of random calls to the Customer Service lines from Oregon Participants.

Employer Reports. The TPA shall provide the following reports to PERS and such additional reports as are agreed to by the TPA and the Employer from time to time.

- a. Financial information required for reporting of deferred compensation plans as outlined in the most recent applicable Governmental Accounting Standards Board statement.
- b. Quarterly and fiscal year-to-date financial statements by plan and by investment detailing beginning balance, receipts (specifying new deferrals, external transfers in received, and investment earnings), and disbursements (specific benefit withdrawals, death benefit withdrawals, hardship withdrawals, internal transfers out, external transfers out, market value adjustments, investment losses, and administrative fees).
- c. Monthly and quarterly plan summary financial reports summarizing monthly activity, year-to-date activity, and inception-to-date activity for each investment.
- d. Monthly reconciliation reports of plan records to investment provider records.
- e. Monthly reports of performance of each investment option and applicable benchmarks for each option.
- f. Annual reports of IRS compliance activity, including:
 1. number of Participants and beneficiaries receiving distributions through the calendar year, number of 1099 forms issued, total state and federal taxes withheld and remitted to the IRS and state revenue departments, and if requested by Employer, copies of report forms;
 2. report to Employer detailing Participants potentially exceeding annual contribution limits by October 31 of year;
 3. report detailing names, or Social Security numbers, addresses, and account balances of inactive Participants over age 70½ who are not currently receiving distributions complying with IRS Code Section 401(a)(9).

III. WEB/INTERACTIVE VOICE RESPONSE (IVR)/CUSTOMER SERVICE (CSR) INQUIRY FEATURES

WEB/IVR/CSR OVERVIEW

The implementation of an OSGP Web Site and voice response network supported by CSRs allows Participants access to information and transaction processing on a daily basis by making a telephone call. CSRs are able to provide assistance to Participants by utilizing a Windows-based workstation that allows them to answer Plan questions, input research requests, and process Participant requests.

General VRS/Customer Service Representative

- The WEB and IVR are available 24 hours a day, seven (7) days a week with minimal scheduled down time for the Voice System between 12:00 A.M. and 6:00 A.M. (PT) on Sundays for maintenance.
- The 800 telephone number to access the IVR is **800-365-8494**. Participants may enter the IVR using their Social Security number and a personal identification number.
- TPA shall provide the OSGP Participants access for the hearing impaired, and dialogues in foreign languages. (There may be an additional fee for dialogues in foreign languages).
- CSRs are available Monday through Friday, 7:00 A.M. to 5:00 P.M. (PT), excluding New York Stock Exchange holidays.
- Transactions completed at or before 3:59:59 P.M. (ET) are effective the same Business Day on days when the New York Stock Exchange is on its normal schedule.
- Transactions completed after 3:59:59 P.M. (ET) are effective the next Business Day on days when the New York Stock Exchange is on its normal schedule.
- Transactions are not processed on New York Stock Exchange holidays.
- Transaction cut-off times will correspond to any early closing of the New York Stock Exchange.
- Participants have the ability to change or cancel transactions made that day prior to 3:50:50 P.M. (ET) of the same Business Day.

IV. REPORTING

A. Participant Reporting

Confirmation Statements

All confirmation statements will be generated on a daily basis as transactions are performed over the WEB, the IVR or the CSR workstation. Any confirmation number generated through the WEB, IVR or the CSR workstation will be printed on the confirmation. The confirmation will also contain the trade date of the transaction.

A customized Plan logo shall be used on all confirmation statements if a camera-ready logo is provided to TPA.

All confirmation statements will contain the name and the address of record, and they will be mailed directly to the Participant within two business days.

The following is a brief description of each confirmation statement offered:

Contribution percentage change confirmation

- This confirmation will be generated when a Participant changes their contribution percent/dollar amount through the WEB/IVR/CSR platform.
- The statement will show the new deduction percent/dollar amount.

Distribution confirmation

- This confirmation will be produced when a termination payment is made for a Participant.
- These payments include lump sum payments, rollovers, required minimum distributions.
- The confirmation will contain the fund breakdown of the termination payment as well as any applicable tax basis information.

Election percentage change confirmation

- The election percentage change confirmation will be generated when a Participant changes the percentage of the funds in which they want to invest.
- This confirmation will reflect the old and new percentage elections between the funds.

Eligibility/or reinstatement confirmation

- This confirmation will be produced when a Participant has completed an in-service withdrawal suspension.
- This confirmation will notify the Participant that he is again eligible to re-enroll by electing a contribution percent or contribution dollar amount by contacting WEB/IVR/CSR. The confirmation will include the eligibility date for re-enrollment.

Newly enrolled confirmation

- This confirmation statement will be issued the first time a Participant becomes enrolled to participate in the Plan.
- The confirmation will include the contribution and investment election percentages selected by the Participant. The Participant's PIN will be mailed in a separate sealed mailer.
- The confirmation will include the Web site address and 1-800 number to call.
- For security purposes, the PIN notice will not show the Participant's Social Security number.

PIN Request Confirmation

PIN confirmations will be generated for the following reasons:

- When a Participant requests a PIN reminder, the Participant's current PIN will be reported on the confirmation.
- When a Participant changes their PIN through the VRS, only the new number will be reported on the confirmation.
- Participant enters incorrect PIN three (3) times.

For security purposes, the PIN confirmation will not show the Participant's Social Security number.

Severance from employment confirmation

- A confirmation will automatically be generated when TPA receives termination transactions along with a termination withdrawal kit.
- The confirmation will list a Participant's options and the default payout depending on the account balance.

Transfer confirmation

- Transfer confirmations are issued daily when WEB, IVR or CSR interfund transfers are made by the Participant.
- Confirmation statement will contain the dollar value that was transferred, the amount that was transferred in and out of each fund, and the breakdown of the balance in each fund after the transfer is completed.
- Transfer confirmations will be issued for both spot and reallocation transfers.

Unforeseeable Emergency withdrawal package confirmation

- A confirmation can be generated when a Participant requests an Unforeseeable Emergency withdrawal package through the WEB, IVR, or CSR.
- TPA's Plan administration unit will mail confirmation to the Participant along with the withdrawal package.

Unforeseeable Emergency withdrawal confirmation

- This confirmation will be produced when an emergency withdrawal is processed.
- The confirmation will contain the breakdown between funds of the total amount withdrawn and will also provide the applicable tax basis information.

B. Participant Statements

Participant statements will be issued on a quarterly basis and shall be available via the Internet.

C. Plan Reporting

TPA shall provide the following report(s):

Participant Valuation Summary (Totals Only)

This quarterly Participant summary of all Plan assets by Participant in the aggregate is sent to PERS and may be sent to Employers upon request. Activity listed includes opening balance for the period, contributions, earnings, payments, other activity, closing balance, and vested balances. Subtotals are provided for each investment vehicle. Optional features available with this report, upon Employer's request, include: printing certain Participant information such as dates and salary, sorting criteria, and selective reporting based on status and/or sources of contributions.

Reconciliation

A copy of the monthly Plan reconciliation will be sent to PERS. This reconciliation details any transactions backdated into the system that did not appear in the original Participant Valuation Summary.

Deferral Report

Deferral Report as listed in the payroll section.

V. COMPLIANCE
Minimum Distribution Processing
Required Minimum Distributions At Age 70 1/2

TPA will provide PERS with a report for review in October of each year that identifies, by status code, those Participants over 70 1/2, and those turning 70 1/2 in the current year. PERS will solicit employees on the report who have terminated for payment information and submit to the TPA via hard copy for processing.

VI. EMPLOYER/TPA ASSIGNMENT LIST

Employer: CITY OF DAYTON

| Services | Responsible party |
|--|-------------------|
| Provide Enrollment Kits | City |
| Process Increase/Decrease/Cancel of Deferral | City |
| Process Unforeseeable Emergency Withdrawals | City |
| Process De Minimis Withdrawals | City |
| Process Catch-Up Application Packets | City |
| Process Severance Packets | PERS |
| Process Transfers and Rollovers | City |
| Conduct Educational Workshops | PERS |
| Offer Small Group Meetings On Site | PERS |
| Process Qualified Domestic Relations Orders | City |
| Process Death Benefits | PERS |

Verified by signatures

X _____

Employer's Signature (Do not print)

Sue C Hollis, City Manager

Printed Name

Date

X _____

PERS Signature (Do not print)

Printed Name

Date