

RESOLUTION NO. 96-057

A RESOLUTION ADOPTING A DEPENDENT CARE  
REIMBURSEMENT ACCOUNT FOR EMPLOYEES

WHEREAS, the City Council finds and determines that it is in the interest of the public, the City and the City's employees that the City add to it's Internal Revenue Code Section 125 Cafeteria benefit plan a Dependent Care Reimbursement Benefit for its employees; and

WHEREAS, the addition of the Dependent Care Reimbursement Account added to the Premium Conversion and Medical Reimbursment Plan (Called the Health Expense Layaway Plan (Help), set forth as Exhibit A hereafter, "The Plan" provides sufficient flexibility to permit employees of the City of The Dalles to select benefits that most suit their needs by providing a choice between cash wages and the option to set aside wages to cover the premiums in order to cover their insurance contributions, anticipated annual out-of-pocket health care expenses allowed under the Internal Revenue Code and out-of-pocket dependent care costs as allowed under the Internal Revenue Code; and

WHEREAS, the plan as set forth will allow the employees and the city to establish a partnership to educate employees and their families about appropriate health care utilization, to share responsibility for health care cost, to pursue future means of moderating insurance premium increases and to provide a means to moderate the employees dependent care needs.

INDEXED  
12/16/96

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of The Dalles that the City should, and does hereby, add a Dependent Care Reimbursement Account to it's cafeteria benefit plan, attached hereto as Exhibit A and fully incorporated by reference.

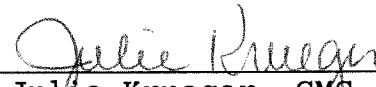
PASSED AND ADOPTED THIS 9TH DAY OF DECEMBER 1996.

Voting Yes, Councilmembers:	<u>Davis, Hill, Briggs, Koch, Van Cleave</u>
Voting No, Councilmembers:	<u>None</u>
Absent Councilmembers:	<u>None</u>
Abstaining Councilmembers:	<u>None</u>

AND APPROVED BY THE MAYOR THIS 9TH DAY OF DECEMBER 1996.

Attest:

  
\_\_\_\_\_  
David R. Beckley, Mayor

  
\_\_\_\_\_  
Julie Krueger, CMC, City Clerk

**CAFETERIA PLAN  
MODEL PLAN DOCUMENT**

**ARTICLE 1**

**Introduction**

The City of The Dalles has adopted this Plan in order to allow its eligible employees to choose among different types of benefits and cash based on their own particular goals, desires and needs.

It is the intention of the City that the Plan qualify as a "cafeteria plan" within the meaning of section 125 of the Internal Revenue Code of 1986, as amended.

The provisions of this Plan shall be effective January 1, 1997 thru December 31, 1997 and will renew each January of each subsequent plan year until such time as terminated.

## ARTICLE 2

### Definitions

Each word and phrase defined in this Article 2 shall have the following meaning whenever such word or phrase is capitalized and used herein unless a different meaning is clearly required by the context of the Plan.

**Section 2.01 Account** The individual account established on the books of the Employers under Section 15.01 in the name of each Member for the purpose of accounting for contributions allocated to and benefits paid for a Member.

**Section 2.02 Governing Body** Is the elected council that governs the City of The Dalles.

**Section 2.03 Claimant** A Participant or the Participant's eligible dependent who has submitted a claim under the plan.

**Section 2.04 Committee** The Employee Benefits Committee as described in Section 16.01.

**Section 2.05 Code** The Internal Revenue Code of 1986, as amended from time to time. Reference to any section or subsection of the Code includes reference to any comparable or succeeding provisions of any legislation which amends, supplements or replaces such section or subsection.

**Section 2.06 Employer** The City of The Dalles

**Section 2.07 Contract Administrator** The company with which the Trust and Employer has contracted to administer the H.E.L.P. and Personal Choice Account Benefits.

**Section 2.08 Compensation** A Member's basic pay, including bonuses, overtime and commissions, as determined by the Committee, for personal services rendered in the course of employment with any Affiliated Company and contributions under Sections 4.01, 4.02 and 4.03 on a Member's behalf.

**Section 2.09 Dependent** A Participant's dependent as defined in Code Section 152.

**Section 2.10 Dependent Care Expense** Amounts incurred by a Participant that are considered employment-related expenses as defined in Code Section 21(b)(2), but only to the extent that such amounts are reimbursable under the separate dependent care assistance program adopted by the Committee and are not used by the Participant to obtain a credit against the Participant's federal income tax for employment-related expenses under Code Section 21.

**Section 2.11 Dependent Care Account** The subaccount of a Member's account established under Section 10.01 for contributions and payments for dependent care reimbursement.

**Section 2.12 Election Form** The form provided by the Employer for the purpose of allowing an Eligible Employee at the commencement of each Plan Year or upon becoming an Eligible Employee to participate in the Plan by electing Salary Reduction and benefits described in Section 6.01.

**Section 2.13 Elective Contributions** An elected amount of dollars the Participant has requested to be withheld from his or her salary to be contributed to the insurance, H.E.L.P. account or the dependent care account as described in Article 4.

**Section 2.14 Eligible Employee** Any person employed who is eligible for benefits under a Medical Plan but excluding any person covered by a collective bargaining agreement unless coverage under this Plan is provided for under the collective bargaining agreement.

**Section 2.15 Employee** Any person employed who is eligible for benefits under a Medical Plan but excluding any person covered by a collective bargaining agreement unless coverage under this Plan is provided for under the collective bargaining agreement.

**Section 2.16 ERISA** The Employee Retirement Income Security Act of 1974, as amended from time to time.

**Section 2.17 FMLA** The Family and Medical Leave Act of 1993, as amended, and including all regulations promulgated pursuant thereto.

**Section 2.18 Health Care Expense** An expense incurred by a Participant on behalf of the Participant or the Participant's spouse or dependent for medical care as defined under Code Section 213(d), but only to the extent such expense is reimbursable under the separate Health Expense Layaway Plan adopted by the Committee and not used as a deduction on the Participant's federal income tax return.

**Section 2.19 Highly Compensated Member** An employee defined by Code Section 105(h)(5) or Code Section 414(q) as is appropriate.

**Section 2.20 Key Employee** An employee defined by Code Section 416(i)(1).

**Section 2.21 Medical Plan** The regular group medical plan (including dental and vision) made available to the Member by the Employer.

**Section 2.22 Member** Any employee who has become eligible to participate in the Plan in accordance with Section 3.01 and who has not ceased to be an Employee.

**Section 2.23 Non-elective Contributions** The contributions made pursuant to Section 4.05.

**Section 2.24 Participant** Any employee who has elected to participate in this Plan, the Employee's spouse and any of the Employee's dependents.

**Section 2.25 Period of Coverage** The Plan Year, except that it may be a fraction of a Plan Year as provided in Section 5.05.

**Section 2.26 Plan** The Employers' cafeteria plan, set forth herein.

**Section 2.27 Plan Year** The first Plan Year shall be from the effective date stated in Article 1 through the following December 31. Thereafter, each subsequent Plan Year shall be the 12 month calendar year.

**Section 2.28 Premium Conversion Account** The subaccount of a Participant's account established under Section 8.01 for reimbursement of group insurance premiums.

**Section 2.29 Reimbursement Account** The subaccounts of a Member's Account established under Sections 9.01 and 10.01 for contributions and payments for Reimbursement Benefits.

**Section 2.30 Reimbursement Benefits** The H.E.L.P., Dependent Care Reimbursement Benefits and Premium Conversion Benefits described in Sections 6.02, 6.03 and 6.04.

**Section 2.31 Salary Reduction Agreement** The Salary Reduction Agreement means an agreement between a Participant and the Employer under which the Participant agrees to reduce his or her Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

**Section 2.32 Trust** The Trust shall be the Employee Benefits Services Trust (EBS) and shall govern only the Health Expense Layaway portion of this plan.

**Section 2.30 Health Expense Layaway Plan (H.E.L.P.)** An elected amount of dollars the Member has requested to be withheld from his or her salary to be contributed to his or her H.E.L.P. Account as provided in Article 4.

## ARTICLE 3

### Eligibility Requirements

**Section 3.01 Eligibility** An Employee shall become eligible to participate in this plan as of the later of:

- a. The date the Employee becomes eligible for coverage under a Medical Plan; or
- b. The date of the Employee's coverage under this Plan through the adoption of this Plan by the Employee's employing entity.

**Section 3.02 Notice and Enrollment** Prior to the date an employee first becomes eligible to participate in this Plan, the Committee shall notify in writing each Employee who becomes eligible and shall explain the rights, privileges and duties of a Member of the Plan. Each Member may elect to participate as of the date on which he or she becomes eligible in accordance with Section 3.01 by completing and delivering to the Committee a salary reduction agreement and an election of benefits form on the forms provided by the Committee.

**Section 3.03 Termination of Eligibility** A participant becomes ineligible to participate in the plan if the Participant transfers to an ineligible class of employees or terminates employment with the employer. Upon the termination of eligibility, the Participant's right to participate in the Plan terminates as of the date of such transfer or employment termination, except as specifically stated in the Plan or pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), as amended.

**Section 3.04 Suspension of Participation** In the event a Participant ceases to be an eligible employee, but does not terminate employment, participation in the Plan shall be suspended and shall terminate at the end of the Period of Coverage, if active participation in the Plan is not reinstated earlier. If the Employee again becomes an Eligible Employee before the end of the Period of Coverage, active participation in the Plan shall be reinstated and the most recent Election Form shall again become effective, subject to any changes permitted pursuant to Section 5.07.

During periods of suspended participation, no contributions shall be made pursuant to Article 4, and no benefits elected pursuant to Article 6 shall be provided through this plan.

**Section 3.05 Leave of Absence**

- a. **Paid Leave** In the event a Participant takes a paid leave of absence, including paid leave pursuant to the FMLA, but does not terminate employment, participation in the Plan, including without limitation, Participant contributions pursuant to Article 4, and benefits elected pursuant to Section 6.01 shall continue during such leave of absence.

b. Unpaid Leave

- (1) Other than FMLA In the event a Participant takes an approved, unpaid leave of absence which is not FMLA leave, participation shall be suspended in the same manner as participation is suspended in circumstances described in Section 3.04.
- (2) FMLA Leave In the event a Participant takes an unpaid FMLA leave of absence, each elected health benefit shall continue during the unpaid leave but not longer than twelve (12) weeks, provided the Elective Contribution (if any) for such benefits is timely paid by the Participant. The Participant may elect to pay the Elective Contribution (if any) on an after-tax basis as due, or on a pre-tax basis either prior to commencing the leave of absence or after returning from such leave. If the Participant chooses to pay pre-tax in advance, he or she must elect in writing to temporarily accelerate his or her Salary Reduction Agreement in an amount equal to the Participant's anticipated or actual Elective Contribution during the leave of absence. If the participant chooses to pay in arrears, he or she must elect in writing to have his or her election increased by an amount equal to the actual Elective Contribution during the leave of absence. Notwithstanding the foregoing, premium expenses may only be accelerated during the Plan Year which contains the portion of the leave to which the payment relates.

- c. Return From Leave Upon return from an unpaid leave of absence before the end of the Plan Year in which the leave commenced, active participation in the plan shall be reinstated and Elective Contributions and benefits shall resume according to the Participant's most recent annual Election Form, including any changes pursuant to Section 5.07.

Upon return from an unpaid leave of absence after the end of the Plan Year the Participant shall be treated as a newly eligible employee and Section 5.02 shall apply.

If the participant does not immediately resume active employment at the conclusion of a paid or unpaid leave of absence, the participant shall no longer be considered an Eligible Employee and Section 3.04 shall apply.



## ARTICLE 4

### Contributions

**Section 4.01 Insurance Premium Conversion** For any Plan Year, each Member may elect to have contributed to his or her Account a specified amount of his or her Compensation for such Plan Year to pay for insurance premiums for plans sponsored by the Member's employer. The amount of such contributions shall be determined in accordance with such employer-sponsored plans.

**Section 4.02 Health Expense Layaway Plan** For any Plan Year, each Member may elect to have contributed to his or her Account a specified amount of his or her Compensation for such Plan Year subject to the maximum limitations set forth in Section 9.04.

**Section 4.03 Dependent Care Account Contributions** For any plan year each member may elect to have contributed to his or her account a specified amount not to exceed \$5,000 (or, if married and filing separately, \$2,500) of his compensation for such Plan Year as noted in Section 7.03 to be used to fund the dependent care reimbursement account.

**Section 4.04 Pay reduction and Payroll Withholding** A Member's compensation for a Plan Year shall be reduced by the amount of the contributions which he or she elects for such Plan Year under Sections 4.01, 4.02 and 4.03. Contributions shall be made only by way of payroll withholding which shall be made during a Member's applicable Period of Coverage.

**Section 4.05 Non-elective Contributions** For any Plan Year, the Employers may make further contributions to the Plan on behalf of Members. In the case of a Member who becomes eligible to participate in the middle of a Period of Coverage, as provided for in Section 5.05, the Employers' Non-elective Contribution will be a pro-rata amount based on the number of months left in the applicable Period of Coverage. Any such contributions shall be made only on a nondiscriminatory basis.

## ARTICLE 5

### Elections

**Section 5.01 In General** Elections of contributions and benefits shall be made at the time, in the manner and subject to the conditions specified by the Committee which shall prescribe uniform and nondiscriminatory rules for such elections.

**Section 5.02 Election to Participate** An eligible employee commences participation by filing an executed election form with his or her employer. The election form shall be signed by the employee, shall designate the benefits in which the employee elects to participate and shall designate the Plan Year (or the remaining portion of the Plan Year), as the time period for which participation will be effective. The election form shall also specify the amounts, if any, by which the employee's compensation shall be reduced.

**Section 5.03 Contributions and Benefits** Members must elect both the amount of contributions to a Premium Conversion Plan and the amount of Reimbursement Contributions, and how much of such contributions as well as Non-elective Contributions allocated to their Accounts shall be allocated to each benefit for an elected Period of Coverage. Contributions allocated to a particular benefit may never be used for any other benefit.

**Section 5.04 Period of Coverage** Except as provided in Sections 5.05 and 5.06, any Member electing contributions and benefits must make an irrevocable election for a Period of Coverage of an entire Plan Year.

**Section 5.05 Fractional Periods** Members who become eligible to participate in the middle of a Plan Year may elect to participate for a period lasting until the end of the current Plan Year. In such cases, the interval commencing the day after their elections are made and ending at the end of the current Period of Coverage shall be deemed to be their Period of Coverage. Such Members must elect to participate no later than thirty (30) days after becoming eligible to do so or within such other time limit as the Committee may prescribe.

**Section 5.06 Timing of Elections** Elections of contributions and benefits for a Period of Coverage shall be made prior to such Period of Coverage, provided that where a Member commences or recommences participation in the middle of a Period of Coverage, he or she shall make elections prior to commencement of participation.

**Section 5.07 Changes of Elections** Elections of contributions and/or benefits may not be changed in the middle of a Period of Coverage unless:

- a. In regards to insurance Premium Conversion, the cost of a health plan provided by an independent, third-party provider increases or decreases and the Participant is required to make a corresponding change in premium payments, or, if coverage of the health plan significantly curtails or ceases thereby requiring the plan to obtain another health plan with similar coverage.

- b. Such change is on account of and consistent, necessary and appropriate with a change in family status or such other change which in compliance with Code section 125 and the regulations thereunder, (examples: marriage or divorce of an employee, death of a spouse or dependent, the birth or adoption of a child of the employee, the termination or commencement of employment of the employee's spouse, the employee or spouse switching from full-time to part-time employment or vice-versa, the taking of an unpaid leave of absence by the employee or spouse or where there has been a significant change in the health coverage of the employee or spouse attributable to spouse's employment).
- c. The Committee or EBS Trust (with regards to the H.E.L.P. account only) rules permit such a change.
- d. If applicable, such change is permitted by the Medical Plan covering the Member.

For purposes of this Section, a failure to elect shall be considered an election and a change from or to a zero amount of contributions. Changes in elections shall only be effective as to contributions and benefits following the effective date of such changes.

Section 5.08 Medical Plans Elections of contributions under Section 4.01 shall be subject to the rules governing elections of benefits under a Member's Medical Plan.

## ARTICLE 6

### Benefits

**Section 6.01 Benefits Available** Subject to Article 4, Members may elect one or more of the following benefits:

- a. Group Insurance Premium Conversion
- b. Dependent Care Reimbursement Benefits
- c. Health Expense Layaway Plan Benefits
- d. Cash

**Section 6.02 Group Insurance Premiums** Contributions under Section 4.01 may be used to purchase benefits under an employer-sponsored Accident and Health Plan for the Member and his or her spouse and dependents (as defined in Code section 105(b)), subject to the limitations on coverage and benefits provided by the terms of such Plan.

**Section 6.03 Health Expense Layaway Plan Reimbursement Benefits** The Employers have adopted a Health Expense Layaway Program set forth in Article 9 designed to qualify as a nontaxable employee benefit under Code section 105(b). Members may elect benefits under such Program subject to all of the requirements and restrictions contained in that Program.

**Section 6.04 Dependent Care Reimbursement Benefits** The Employers have adopted a Dependent Care Reimbursement Program set forth in Article 10 designed to qualify as a nontaxable employee benefit under Code section 129(a). Members may elect benefits under such Program subject to all of the requirements and restrictions contained in that Program.

**Section 6.05 Cash Benefits** Members may also receive cash benefits in lieu of salary reduction to fund the benefits described in Sections 6.01 a. through 6.01 c. Cash benefits in any Plan Year shall be equal to the maximum permissible salary reduction which the Member could elect under Sections 4.01, 4.02 and 4.03 for such Plan Year less salary reduction contributions actually elected by the Member under such sections.

## ARTICLE 7

### Limitations on Benefits

**Section 7.01 Coverage** Amounts for a particular Reimbursement Benefit may only be paid for expenses incurred during the Period of Coverage elected for such benefit. Expenses shall be considered incurred when the medical or dependent care is provided or, in the case of insured benefits, during the period of insurance coverage, and not when the Member is formally billed, charged for or pays the expenses.

**Section 7.02 Amount of Benefits** The maximum amount of Reimbursement Benefits payable for a Plan Year shall be the amount of the Member's contributions plus the amount of Non-elective Contributions allocated to each benefit elected by the Member and not to exceed the amount set forth in Section 9.04.

**Section 7.03 Dependent Care Assistance Limitations** Subject to the limitations specified in Sections 7.01 and 7.02, the Dependent Care Reimbursement Benefit shall not exceed \$5,000 in a Plan Year (\$2,500 in the case of a married individual filing a separate income tax return). In addition, amounts payable for a particular Reimbursement Benefit may not exceed the balance of the Member's subaccount for dependent care assistance reimbursements less amounts necessary to pay each Member's incurred claims for such benefit. If claims for amounts in excess of such balance are made at any time, such claims may be paid when and if further Reimbursement or Non-elective Contributions allocable to such Benefit are made during the applicable Period of Coverage.

**Section 7.04 Medical Reimbursement Uniform Coverage** Subject to the maximum election permitted for Health Expense Layaway Plan benefits, the Member shall be entitled to receive at all times during the period of coverage the maximum amount of Reimbursement Benefits specified in Section 7.02 (except as properly reduced as of any particular time for prior reimbursements for the same period of coverage).

**Section 7.05 Forfeitures** Amounts remaining in a Reimbursement Benefit subaccount shall be forfeited after payment of all timely presented claims for the benefit for expenses incurred during the applicable Period of Coverage. All claims must be presented within ninety (90) days after the applicable Period of Coverage to be considered as "timely presented".

**Section 7.06 Medical Plan** Coverage and limitations for a Member's Medical Plan benefits shall be as set forth in the Member's Medical Plan.

## ARTICLE 8

Premium Conversion Program

**Section 8.01 In General** Members covered by this Program will have their employer-sponsored group health and accident plan premium paid from contributions allocated to the member's subaccount for Premium Conversion benefits.

**Section 8.02 Separate Plan** This Article is intended to qualify as a separate written accident and health plan within the meaning of Code Section 106. It is intended that reimbursements under this program be eligible for exclusion from gross income of Participants under Code Section 105(b). Accordingly, this program shall be interpreted and construed in accordance with Code Sections 105(e) and 106 and any regulations or other interpretations thereunder.

**Section 8.03 Definitions** For purposes of this Article, the following special definitions shall apply:

- a. **"Benefits"** means premiums paid for employer-sponsored group health and accident plans purchased to pay medical expenses of a Member, a Member's spouse or a Member's dependents.
- b. **"Dependent"** means a dependent as defined in IR Code Section 152.
- c. **"Highly Compensated Member"** means a Member who is defined as a Highly Compensated Employee by Code Section 105(h)(5) or Code Section 414(q) as is appropriate.
- d. **"Key Employee"** means an employee defined by Code Section 416(i)(1).
- e. **"Medical Expenses"** are incurred for the following:
  - 1. The diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body; or
  - 2. For transportation primarily for and essential to medical care referred to in 1 above.

**Section 8.04 Eligibility, Enrollment and Termination** Employees eligible for the group insurance coverage who have met the eligibility requirements specified in Article 3 are eligible to participate. Enrollment and termination of participants under the Plan shall constitute enrollment and termination of participation under this plan.

**Section 8.05 Covered Expenses** The Program shall only cover employer-sponsored group health and accident premiums incurred during the period of coverage the member has elected for benefits.

**Section 8.06 Reduction of Benefits** The Committee may reduce the amount of Benefits payable to a Member to the extent the Committee deems necessary to assure that the Program does not discriminate in favor of Highly Compensated Members in violation of Code section 105(h) or any other applicable provision of law. Any such reduction of Benefits shall be made by the Committee on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this Section 8.06 shall be forfeited.

**Section 8.07 Other Provisions** Other matters concerning contributions, elections, benefits, claims, and the like shall be governed by the general provisions of the Plan.

## ARTICLE 9

### H.E.L.P. Program

**Section 9.01 In General** Members covered by H.E.L.P. may submit claims for the reimbursement of a Member's covered Medical Expenses from contributions allocated to the Member's H.E.L.P. subaccount.

**Section 9.02 Separate Plan** This Article is intended to qualify as a separate written accident and health plan within the meaning of Code Section 106. It is intended that reimbursements under this program be eligible for exclusion from gross income of Participants under Code Section 105(b). Accordingly, this program shall be interpreted and construed in accordance with Code Sections 105(e) and 106 and any regulations or other interpretations thereunder.

**Section 9.03 Definitions** For purposes of this Article, the following special definitions shall apply:

- a. **"Benefits"** means Health Expense Layaway Plan Reimbursement Benefits under this Plan.
- b. **"Dependent"** means a dependent as defined in Code Section 152 and employer's medical plan.
- c. **"Highly Compensated Employee"** means a Member who is defined as a Highly Compensated Employee by Code Section 105(h)(5) or Code Section 414(q), as is appropriate.
- d. **"Key Employee"** means an employee as defined in Code Section 416(i).
- e. **"Medical Expenses"** means amounts not compensated for by insurance or otherwise which are paid or incurred by or on behalf of a Member, a Member's spouse or a Member's Dependents and incurred for the following items to the extent they are covered by Code Section 213(d):
  - 1. The diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body; or
  - 2. For transportation primarily for and essential to medical care referred to in 1 above.

**Section 9.04 Maximum Election** The amount of coverage that may be elected under this Health Expense Layaway Program shall not exceed \$3,000.00 for the plan year.

**Section 9.05 Eligibility, Enrollment and Termination** All Members of the Plan shall be eligible to receive benefits under this Program. This Program represents one benefit that may be elected by Participants under the employer's Cafeteria Plan and a Participant under that Plan who elects the Medical Expense Reimbursement Program thereunder is deemed to be a



Participant under this health expense layaway plan. Enrollment and termination of participation under the Plan shall constitute enrollment and termination of participation under this Plan.

**Section 9.06 Covered Expenses** The Program shall only cover Medical Expenses incurred during the Period of Coverage the Member has elected for Benefits. Expenses shall be considered incurred when the medical care is provided and not when the Member is formally billed, charged for or pays the Expenses.

**Section 9.07 Uniform Coverage**

- a. Subject to the maximum election of Section 9.04, the Member shall be entitled to receive at all times during the period of coverage the maximum amount of Reimbursement Benefits specified in Section 7.02 (except as properly reduced as of any particular time for prior reimbursements for the same period of coverage).
- b. In the event that the "uniform coverage" rule entitles a Member to receive a medical expense reimbursement which exceeds the Member's medical expense account balance at the time the claim is submitted, the claim will nevertheless be paid up to the applicable maximum H.E.L.P. Benefits as set forth in Section 7.02 (except as properly reduced as of any particular time for prior reimbursements for the same period of coverage).

**Section 9.08 Reduction of Benefits** The Committee or EBS Trust (with regards to the H.E.L.P. account only) may reduce the amount of Benefits payable to a Member to the extent the Committee or Trust (with regards to the H.E.L.P. account only) deems necessary to assure that the Program does not discriminate in favor of Highly Compensated Members in violation of Code Sections 125, 105(h) or any other applicable provision of law. Any such reduction of Benefits shall be made by the Committee or Trust (with regards to the H.E.L.P. account only) on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this Section 9.08 shall be forfeited.

**Section 9.09 Other Provisions** Other matters concerning contributions, elections, benefits, claims, and the like shall be governed by the general provisions of the Plan.

## ARTICLE 10

Dependent Care Reimbursement Program

**Section 10.01 In General** Members covered by this Program may submit claims for the reimbursement of a Member's covered Dependent Care Expenses from contributions allocated to the Member's subaccount for Dependent Care Reimbursement Benefits.

**Section 10.02 Separate Program** This Article is intended to qualify as a separate written dependent care assistant program within the meaning of Code Section 129. It is intended that reimbursements under this program be eligible for exclusion from gross income of Participants under Code Section 129(a). Accordingly, this program shall be interpreted and construed in accordance with Code Section 129 and any regulations or other interpretations thereunder.

**Section 10.03 Definitions** For purpose of this Article, the following special definitions shall apply:

- a. **"Benefits"** means Reimbursement Benefits for expenses under this Program.
- b. **"Dependent"** means
  - 1. A dependent (as defined in Code section 152) of an Employee (A) who is under the age of 13 and with respect to whom the employee is entitled to a deduction under Code section 151(c); or (B) who is physically or mentally incapable of caring for himself or herself; or
  - 2. The spouse of an Employee, if such spouse is physically or mentally incapable of caring for himself or herself.

For purposes of this Section, Dependent status shall be determined by taking into account the rules of Code section (21)(e)(5).
- c. **"Earned Income"** means earned income, as defined in section 32(c)(2) of the Code, excluding any amounts paid or incurred by the Employers for dependent care assistance to a Member.
- d. **"Dependent Care Expenses"** means, subject to the limitations in Section 10.11, amounts paid or incurred by or on behalf of a Member for household services or for the care of a Dependent, either inside or outside of the Member's home, subject to the limitations in Section 10.11, in order to enable the Member to be gainfully employed for any period for which he or she has a Dependent.
- e. **"Highly Compensated Employee"** means a Member who is defined as a Highly Compensated Employee by Code Section 414(q) as is appropriate.

**Section 10.04 Eligibility, Enrollment and Termination** All Members of the Plan shall be eligible to receive benefits under this Program. This program represents one benefit that may be elected by Participants under the employer's Cafeteria Plan and a Participant under that Plan who elects the Dependent Care Reimbursement Program thereunder is deemed to be a Participant under this dependent care reimbursement program. Enrollment and termination of participation under the Plan shall constitute enrollment and termination of participation under this Program.

**Section 10.05 Covered Expenses** The Program shall only cover Dependent Care Expenses incurred during the Period of Coverage the Member has elected for Benefits, and only from contributions made during the Period of Coverage for Benefits under this Program. Dependent Care Expenses shall be considered incurred when the dependent care is provided and not when the Member is formally billed, charged for or pays the Dependent Care Expenses.

**Section 10.06 Reduction of Benefits** The Committee may reduce the amount of benefits payable to a Member to the extent the Committee deems necessary to assure that the Program does not discriminate in favor of Highly Compensated Members or their Dependents in violation of Code section 129 or any other applicable provision of law. Any such reduction of benefits shall be made by the Committee on a reasonable and nondiscriminatory basis. The Committee may also choose to pay the benefits in which case they will be taxable to the Member.

**Section 10.07 Further Limitations** The amount of Benefits for a Member during any year shall not exceed:

- a. In the case of a Member who is not married at the close of such year, the lesser of:
  - 1. \$5,000; or
  - 2. The Earned Income of such Member for such Year.
- b. In the case of a Member who is married at the close of such year and who files a joint return with his or her spouse the least of:
  - 1. \$5,000;
  - 2. The Earned Income of such Member for such year; or
  - 3. The Earned Income of the spouse of such Member for such year.
- c. In the case of a Member who is married at the close of such year and files a separate return, the least of:

1. \$2,500;
2. The Earned Income of such Member for such year; or
3. The Earned Income of the spouse of such Member for such year.

For purposes of paragraphs b,3 and c,3, if the Member's spouse is a full-time student at an educational institution or physically or mentally incapable of caring for himself or herself, such spouse shall be deemed to be gainfully employed and to have Earned Income of \$200 per month, if the Member has only one Dependent, and \$400 per month if the Member has two or more Dependents. In the case of any husband and wife, the preceding sentence shall apply with respect to only one spouse for any one month. For purposes of this Section 10.07, marital status shall be determined by taking into account the rules of Code sections 21(e)(3) and 21(e)(4).

**Section 10.08 Principal Shareholders Limitation** Not more than 25 percent of the amounts paid by the Employers for Benefits during a Plan Year may be provided for the class of Members (or their spouses or Dependents), each of whom (on any day of such Plan Year) owns more than 5 percent of the stock or the capital or profits interest as determined under section 129 of the Code. The Committee may reduce the Benefits for such Members to the extent that it reasonably believes necessary to prevent this limitation from being exceeded.

**Section 10.09 55% Benefits Test** This test requires that the value of the average dependent care assistance benefit provided to Non-highly Compensated employees must be at least 55 percent of the value of the average dependent care assistance benefit provided to the Highly Compensated employees. The Committee may reduce the benefits for such members to the extent that it reasonably believes necessary to prevent this limitation from being exceeded.

**Section 10.10 Prohibition of Certain Payments** No benefits shall be paid to a Member during any taxable year of such Member for Dependent Care Expenses paid to an individual:

- a. With respect to whom, for such taxable year, a deduction is allowable under Code section 151(c) (relating to personal exemptions for Dependents) to such Member or his or her spouse; or
- b. Who is a child of such Member (within the meaning of Code section 151(c)(3)) under the age of 19 at the close of such taxable year.

**Section 10.11 Services Outside the Household**

- a. **Dependent Care Centers** Benefits shall not be paid for services provided outside a Member's household by a facility that provides care for more than six individuals other than individuals who reside at the facility, and receives a fee, payment or grant for providing services for any of the individuals, unless:
  1. Such facility complies with all applicable laws and regulations of a state or unit of local government; and
  2. The requirements of Section 10.11 b and c, are met.

- b. Certain Dependents Benefits shall not be paid for services outside a Member's household unless the services are provided for the care of (1) a Dependent within the meaning of Section 10.03 b,1, A & B; or (2) any other Dependent who regularly spends at least eight hours each day in the Member's household.
- c. Overnight Camp Benefits shall not be paid for services outside the taxpayer's household at a camp where the Dependent stays overnight.

Section 10.12 Annual Report to Members The Committee shall furnish to each Member on whose behalf Benefits are paid, on or before January 31 of each year, a written statement showing the amounts paid by the Employers in providing Benefits on behalf of such Member during the previous calendar year.

Section 10.13 Other Provisions Other matters concerning contributions, elections, benefits, claims, and the like shall be governed by the general provisions of the Plan.

## ARTICLE 11

### Claims for Benefits

**Section 11.01 Claims for Reimbursement Benefits** Claims for Reimbursement Benefits totaling at least \$1.00 may be made at any time. Claims for Reimbursement Benefits totaling less than \$1.00 may be made only in the event of a final claim following termination of participation or the run-out period at the end of the plan year, if any.

**Section 11.02 Reimbursable Claims** A participant may claim reimbursement for an expense only if the following conditions have been satisfied:

- a. The participant incurred the claimed expense during the effective dates of the Plan specified in Article 1.
- b. The expenses were incurred while the participant was enrolled and participating in the Plan as specified in Article 3.
- c. After deductions for previous claims during the plan year, there remains sufficient funds to pay the claim.
- d. For purposes of this Section, an expense is incurred only when the service or product is provided and not when the participant is billed for the service or product.

**Section 11.03 Claim Substantiation** The Member shall substantiate a claim for reimbursement or an expense by providing the following:

- a. a written statement from an independent third party stating that the expense has been incurred and the amount of such expense; and
- b. the written statement from the member that the expense has not been reimbursed or is not reimbursable under any other coverage.

**Section 11.04 Time Limit on Claiming Benefits** Claims for Reimbursement Benefits shall be paid only if presented ninety (90) days or less after the applicable Period of Coverage. Claims for Reimbursement Benefits presented more than ninety (90) days after the end of the applicable Period of Coverage will not be paid.

**Section 11.04 Medical Plans** Claims under a Member's Medical Plan shall be governed by the terms of such Plan.

- d. The Committee's or Trust's (with regards to the H.E.L.P. account only) decision shall include the reasons for the decision with reference to the provisions in the Plan Document which govern the decision.
- e. In the event that the Committee or Trust (with regards to the H.E.L.P. account only) shall not issue a decision within the time periods specified by this Section, the Request for Review shall be considered denied.

## ARTICLE 13

### Continuation Coverage

**Section 13.01 Non-Health Plan** A member's loss of eligibility to participate in a non-health plan shall terminate the participant's salary reduction elections as of the last day of the month in which the loss of eligibility occurs.

### **Section 13.02 Health Plans**

- a. If an event which would otherwise cause a participant to lose eligibility to participate in a group health plan is a qualified event, the participant may be entitled to elect to pay premiums and continue participation as required by federal law.
- b. Upon the occurrence of an event which terminates a participant's eligibility to participate in a group health plan, the Committee shall inform the participant of continuation rights and the procedure for electing continued coverage.
- c. The participation of a participant who is not eligible for continued coverage or who does not elect to continue will terminate on the last day of the month in which the event of ineligibility occurs. In this case, the participant may submit and be reimbursed only for claims incurred during the plan year prior to the date of termination.
- d. A participant who is eligible and elects to continue participation in a health plan may pay the premiums from pre-tax compensation, including severance pay (excluding vacation, sick leave, etc.), or from other after-tax funds.



## ARTICLE 14

### Nondiscrimination

Section 14.01 Reduction of Contributions and Benefits The Committee may reject any election and reduce the amount of contributions or nontaxable benefits to the extent the Committee deems necessary to assure that the Plan does not discriminate in favor of Highly Compensated Members in violation of Code section 125 or any other applicable provision of law or to prevent taxation of key employees under the provisions of Code section 125(b)(2). Any rejection of elections or any reduction of contributions or benefits shall be made by the Committee on a reasonable and nondiscriminatory basis. Contributions which may not be paid out because of benefit reductions imposed by this Section 14.01 shall be forfeited.

Section 14.02 Prohibition of Discrimination Any discretionary acts to be taken under the terms and provisions of this Plan by the Trust (with regards to the H.E.L.P. account only) or by the Employers shall be uniform in their nature and application to all those similarly situated, and no discretionary acts shall be taken that would be discriminatory under the provisions of the Code relating to cafeteria plans, medical reimbursement plans or dependent care assistance plans as such provisions now exist or may from time to time be amended.

Section 14.03 Curing the 55% Benefits Discrimination In the event that the Dependent Care Reimbursement Program violates the 55 percent benefits test, the violation shall be cured as specified in this Section. Any benefit amount found to be a discriminatory excess shall be allocated first to highly compensated employees who received the greatest amount of benefits. If an excess benefit remains, that excess shall be allocated among the highly compensated employees who received the next greatest amount of benefits. This process shall be repeated until the 55 percent benefits test is satisfied.

## ARTICLE 15

### Accounts

Section 15.01 Accounts A separate Account shall be maintained for each Member to reflect the amount of contributions on his or her behalf under Article 4 and the cost of all benefits paid to the Member or on the Member's behalf under the Plan with subaccounts for each of the possible Reimbursement Benefits.

Section 15.02 Contributions Made Contributions on behalf of a Member shall be credited to the Account and appropriate subaccount of such Member.

Section 15.03 Benefits Provided The cost of benefits provided to a Member shall be charged to the Account and appropriate subaccount of such Member.

Section 15.04 Assignment of Benefits Any interest in a Member's Account may not be assigned, transferred or alienated in any manner whatsoever and shall not be subject to claims, liens, garnishment or levies from any third parties.

## ARTICLE 16

### Administration of the Plan

**Section 16.01 Appointment of the Committee** The administration of the Plan, as provided herein, including the payment of all benefits to Members or their beneficiaries, shall be the responsibility of the Employee Benefits Committee, which shall be the administrator of the Plan. In addition, the Committee and each member thereof shall be named fiduciaries of the Plan. The Committee shall consist of one or more persons appointed from time to time by the Company who shall serve at the pleasure of the Board, without compensation, unless otherwise determined by the Board.

**Section 16.02 Conduct of Committee Business** The Committee shall elect its Chairperson who shall be a member of the Committee and a Secretary who may or may not be a member of the Committee. It shall appoint such subcommittees as it shall deem necessary and appropriate. The Committee shall conduct its business according to the provisions of this Article 16 and shall hold regular meetings in any convenient location. A majority of all of the members of the Committee shall have power to act, and the concurrence or dissent of any member may be by telephone, wire cablegram or letter.

**Section 16.03 Records and Reports of the Committee** The Committee shall keep such written records as it shall deem necessary or proper, which records shall be open to inspection by the Company. The Committee shall prepare and submit to the Company an annual report which shall include such information as the Committee deems necessary or advisable.

**Section 16.04 Administrative Powers and Duties** The Committee shall have the power to take all actions required to carry out the provisions of the Plan and shall further have the following powers and duties, which shall be exercised in a manner consistent with the provisions of the Plan:

- a. To construe and interpret the provisions of the Plan, and make rules and regulations under the Plan to the extent deemed advisable by the Committee;
- b. To decide all questions as to eligibility to become a Member in the Plan and as to the rights of Members under the Plan;
- c. To file or cause to be filed all such annual reports, returns, schedules, descriptions, financial statements and other statements as may be required by any federal or state statute, agency, or authority;
- d. To obtain from the Affiliated Companies and employees such information as shall be necessary to the proper administration of the Plan;
- e. To determine the amount, manner, and time of payment of benefits hereunder;

- f. To contract with such insurance carriers or other suppliers as may be necessary to provide for benefits;
- g. To communicate to the Trust (with regards to the H.E.L.P. account only) and Contract Administrator under this Plan in writing all information required to carry out the provisions of the Plan;
- h. To notify the Members of the Plan in writing of any amendment or termination of the Plan, or of a change in any benefits available under the Plan;
- i. To prescribe such forms as may be required for Employees to make elections under this Plan; and
- j. To do such other acts as it deems reasonably required to administer the Plan in accordance with its provisions, or as may be provided for or required by law.

**Section 16.05 Fiduciary Duties** The Committee and any other fiduciary within the meaning of ERISA shall discharge their duties solely in the interest of Members and their beneficiaries and:

- a. For the exclusive purpose of providing benefits to Members 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 a like capacity and familiar with such matter would use in the conduct of an enterprise of a like character and with like aims;
- c. To the extent a fiduciary possesses and exercises investment responsibilities, by diversifying investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- d. In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of ERISA.

**Section 16.06 Allocation or Delegation of Duties and Responsibilities** In furtherance of their duties and responsibilities under this Plan, the Committee or Trust (with regards to the H.E.L.P. account only) may, subject always to the requirements of Section 16.05:

- a. Contract with Administrative Contractors to carry out nonfiduciary responsibilities;
- b. Employ agents to carry out fiduciary responsibilities (other than trustee responsibilities as defined in section 405(c)(3) of ERISA);
- c. Consult with counsel, who may be of counsel to the Company; and

- d. Provide for the allocation of fiduciary responsibilities (other than trustee responsibilities as defined in section 405(c)(3) of ERISA) among Committee members, in the case of the Committee, and among members of the Board in the case of the Board.

Section 16.07 Procedure for the Allocation or Delegation of Fiduciary Duties Any action described in subsections b or d of Section 16.06 may be taken by the Committee or the Board only in accordance with the following procedure:

- a. Such action shall be taken by a majority of the Committee or the Board, as the case may be, in a resolution approved by a majority of such Committee or Board;
- b. The vote cast by each member of the Committee or the Board for or against the adoption of such resolution shall be recorded and made a part of the written record of the Committee's or Board's proceedings; and
- c. Any delegation of fiduciary responsibilities among members of the Committee or the Board may be modified or rescinded by the Committee or the Board according to the procedure set forth in subsections a and b of this Section 16.07.

Section 16.08 Administrative Contractors The Administrative Contractors allowed by this Article shall perform only administrative services in executing the terms of this Plan and shall have no other responsibility. The determination and maintenance of legal and tax issues and status of the Plan shall be exclusive duties of the Employer, the Committee or Trust (with regards to the H.E.L.P. account only). The duties of the Administrative Contractors shall not be discretionary and they shall not be Administrators nor Name Fiduciaries of the Plan as these terms are defined in ERISA.

Section 16.09 Claims Procedure Medical Plans shall be administered by the administrators of such plans and all claims for benefits under such plans shall be governed by the terms of such plans. The Committee shall establish a reasonable claims procedure.

## ARTICLE 17

### Amendment and Termination

Section 17.01 Amendment of Plan The Committee or Trust (with regards to the H.E.L.P. account only) may amend any or all provisions of this Plan at any time by written instrument identified as an amendment of the Plan effective as of a specified date.

Section 17.02 Termination of Plan This Plan may be terminated in whole or in part at any time by the Employer or Trust (with regards to the H.E.L.P. account only).

Section 17.03 Preservation of Rights Termination or amendment of the Plan shall not affect the rights of any Member in his or her Account or the right to claim reimbursement for expenses incurred prior to such termination or amendment as the case may be, to the extent such amount is payable under the terms of the Plan prior to the effective date of such termination or amendment.

## ARTICLE 18

### Adoption of Plan

Section 18.01 In General The Plan may be adopted by the Governing Body by passing a resolution which shall specify the eligibility and participation requirements under the Plan and the effective date of the Plan's adoption.

## ARTICLE 19

### Miscellaneous

**Section 19.01 Facility of Payment** If the Employer deems any person entitled to receive any amount under the provisions of this Plan incapable of receiving or disbursing the same by reason of minority, illness or infirmity, mental incompetency, or incapacity of any kind, the Employer may, in its discretion, take any one or more of the following actions:

- a. Apply such amount directly for the comfort, support and maintenance of such person;
- b. Reimburse any person for such support previously supplied to the person entitled to receive any such payment;
- c. Pay such amount to a legal representative or guardian or any other person selected by the Employer to disburse it for such comfort, support and maintenance, including without limitation, any relative who had undertaken, wholly or partially, the expense of such person's comfort, care and maintenance, or any institution in whose care or custody the person entitled to the amount may be. The Employer may, in its discretion, deposit any amount due to a minor to his or her credit in any savings or commercial bank of the Employer's choice.

**Section 19.02 Lost Payee** In the event that a benefit reimbursement check sent to a participant is returned as undeliverable or the participant or the participant's spouse and children cannot be located following a reasonable search, the amount of that check or benefit shall be forfeited and paid to the Plan as a contribution. Any forfeited amount may be reinstated by the Employer's special contribution to the Plan and shall become payable if the participant or the participant's spouse or dependents resubmits the claim during the Plan year or the runout period. If the claim is not resubmitted before the last day of the plan year or runout period, the forfeited amount shall remain forfeited. The Committee shall prescribe uniform and nondiscriminatory rules for carrying out this provision.

**Section 19.03 Indemnification** To the extent permitted by law, the Employers shall indemnify and hold harmless the Committee, Members, any Employee, and any other person or persons to whom the Employers or the Committee have delegated fiduciary or other duties under the Plan, against any and all claims, losses, damages, expenses, and liabilities arising from any act or a failure to act that constitutes or is alleged to constitute a breach of such person's responsibilities in connection with the Plan under ERISA or any other law, unless the same is determined to be due to gross negligence, willful misconduct, or willful failure to act.

**Section 19.04 Titles and Headings** The titles and headings of the Articles and Sections of this instrument are placed herein for convenience of reference only, and in the case of any conflicts, the text of this instrument, rather than the titles or headings, shall control.

**Section 19.05 Number** Wherever used herein, the singular shall include the plural and the plural shall include the singular, except where the context requires otherwise.



Section 19.06 Applicable Law The provisions of this Plan shall be construed according to the laws of the State of Oregon, except as superseded by federal law, and in accordance with the Code and ERISA. The Plan is intended to be a cafeteria plan under section 125(d) of the Code containing a medical expense reimbursement plan under section 105(h) of the Code and a dependent care assistance program under section 129 of the Code, and shall be construed accordingly.

Section 19.07 Right to Discharge Employees No provision of this Plan, whether express or implied, gives an Employee the right to remain in the employ of the Employer. All Employees shall remain subject to discharge from employment as if this Plan had never been adopted. Nothing in the establishment or modification of this Plan or payment of any benefit shall be construed as giving any participant or any other person any legal or equitable rights against the Employer except as specifically provided by this Plan.

Section 19.08 Legally Enforceable The Employer intends that the Plan Terms, including those relating to coverage and benefits, are legally enforceable. The Plan is maintained for the exclusive benefit of Employees.

IN WITNESS WHEREOF, The City of The Dalles by action of its City Council of the City of The Dalles, has caused this instrument to be executed by its officer thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

BY \_\_\_\_\_  
\_\_\_\_\_

ATTEST \_\_\_\_\_