

**FOURTH AMENDMENT
TO THE
WAYNE COUNTY DEFINED CONTRIBUTION PLAN**

January 1, 2016 Restatement

The Wayne County Defined Contribution Plan, originally effective as of January 1, 1998, as presently maintained under an amendment and restatement made effective as of January 1, 2016, is hereby amended, effective as of August 1, 2019, in the following respects:

1. The definition of "Compensation" in Section 1.1, "Plan Definitions", is hereby amended to read as follows:

The "**Compensation**" of a Member or Participant for any period means the salary and wages paid as defined in Ordinance Section 141-3 as governed by Chapter 141 of the Wayne County Code of Ordinances – Retirement Ordinances, and/or the applicable collective bargaining agreement or benefit plan document.

Notwithstanding any other provision of the Plan to the contrary, effective for Plan Years beginning on and after July 1, 2007, if a Member or Participant has a severance from employment (as defined in Treasury Regulations Section 1.415(a)-1(f)(5)) with the Employers, Compensation shall not include amounts received by the Member or Participant following such severance from employment except as provided below:

- Compensation shall include amounts that would otherwise have been paid to the Member or Participant in the course of his employment and are regular compensation for services during the Member's or Participant's regular working hours, compensation for services outside the Member's or Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or other similar compensation, but only to the extent such amounts (1) would have been includable in Compensation if his employment had continued and (2) are paid before the later of (a) the close of the "limitation year" (as defined in Section 7.1) in which the Member's or Participant's severance from employment occurs or (b) within 2 ½ months of such severance.
- Compensation shall include amounts that are payments for accrued bona fide sick, vacation or other leave, but only if (1) the Member or Participant would have been able to use such leave if his employment had continued, (2) such amounts would have been includable in Compensation if his employment had continued, and (3) such amounts are paid before the later of (a) the close of the "limitation year" (as defined in Section 7.1) in which the Member's or Participant's severance from employment occurs or (b) within 2 ½ months of such severance.

Notwithstanding any other provision of the Plan to the contrary, Compensation does not include differential pay, as defined hereunder. For purposes of this paragraph, "differential pay" means any payment made to the Member or Participant by an Employer after December 31, 2008, with respect to a period during which the Member or Participant is performing service in the uniformed services, that represents all or a portion of the wages the Member or Participant would have received if he had continued employment with the Employer as a Covered Employee.

In no event, however, shall the Compensation of a Member or Participant taken into account under the Plan for any Plan Year exceed the limit in effect under Code Section 401(a)(17) (\$265,000 for Plan Years beginning in 2016, subject to adjustment annually as provided in Code Sections 401(a)(17)(B) and 415(d); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year). If the Compensation of a Member or Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Member or Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided, however, that no proration is required for a Member or Participant who is covered under the Plan for less than one full Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months.

2. The definition of "Covered Employee" in Section 1.1, "Plan Definitions", is hereby amended to read as follows:

A "**Covered Employee**" means any Employee of an Employer. Notwithstanding the foregoing, the term "Covered Employee" shall not include the following:

- any individual with respect to whom the Employer does not withhold income or employment taxes and file Form W-2 (or any replacement Form) with the Internal Revenue Service because such individual has executed a contract, letter of agreement, or other document acknowledging his status as an independent contractor who is not entitled to benefits under the Plan or is otherwise not classified by the Employer as a common law employee, even if such individual is later adjudicated to be a common law employee of the Employer, unless and until the Employer extends coverage to such individual;
- reclassified employees; and
- any employee who selected membership in another retirement plan sponsored by the Employer. As defined in the Ordinance Section 141 positions compensated on a basis not subject to withholding of federal income tax or FICA, under employment contract, unless specifically included, retired member, temporary or seasonal as defined in County personnel and salary plan, position appointed aide to member of board of commissioners unless to be included, position with authority whose employees are deemed to be Participants.

3. A new definition titled "Disabled" has been added to Section 1.1, "Plan Definitions", to read as follows:

"Disabled" means physically or mentally disabled because of a duty-related injury such that he can no longer continue in the service of an Employer, and workers compensation benefits are paid on account of the same disability, on the basis of a written certificate of a physician acceptable to it. A Participant shall be considered Disabled only if the Administrator determines he is Disabled based on a written certificate of a physician acceptable to it as governed by Chapter 141 of the Wayne County Code of Ordinances – Retirement Ordinances, and/or the applicable collective bargaining agreement or benefit plan document.

4. The definition of "Employer" in Section 1.1, "Plan Definitions", is hereby amended to read as follows:

An **"Employer"** means the County, Wayne County Airport Authority and the Wayne County Circuit Court.

5. The definition of "Predecessor Employer" in Section 1.1, "Plan Definitions", is hereby amended to read as follows:

A **"Predecessor Employer"** means any company that is a predecessor organization to an Employer under the Code. In addition, the following shall be treated as Predecessor Employer(s) for purposes of crediting Service under the Plan:

- service prior to 2002 with Airport Authority, but only with respect to Employees who chose employment with Airport (DOH 1990-2002).

6. The last paragraph in Section 12.2, "Collateral for Loan", is hereby amended to read as follows:

A loan shall not be granted unless the Member or Participant consents to the charging of his Account for unpaid principal and interest amounts in the event the loan is declared to be in default.

7. Section 12.9, "Special Rules Applicable to Loans", is hereby amended at subsection (e) to read as follows:

(e) Effect of Termination of Employment: Upon a Participant's termination of employment, loan repayments may continue via personal check payable to the Plan until such time as the Participant's Account Balance is withdrawn or distributed from the Plan. After termination of employment, whether the participant chooses to continue to repay the loan or chooses not to repay the loan, the remaining loan balance will be offset against the Participant's Account upon the earlier of (1) a distribution of the Account to the Participant, or (2) expiration of the grace period. Loans may continue to be paid when a Participant transfers to another entity covered under this Multiple Employer Plan.

8. Section 15.1, "Distributions to Participants", is hereby amended to read as follows:

Subject to the provisions of Section 15.4, a Member or Participant whose Settlement Date occurs shall receive distribution of his vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following his Settlement Date or the date his application for distribution is filed with the Multiple Employer Administrator, if later.

9. Section 15.2, "Partial Distributions to Retirement or Terminated Participants", is hereby amended to read as follows:

A Member or Participant whose Settlement Date has occurred, but who has not reached his Required Beginning Date may elect to receive distribution of all or any portion of his Account at any time prior to his Required Beginning Date in a cash withdrawal or in any other form provided in Article XVI.

10. Section 16.6, "Reemployment", is hereby amended to read as follows:

If a Member or Participant is reemployed by an Employer prior to receiving distribution of the entire balance of his vested interest in his Account, his prior election of a form of payment hereunder shall become ineffective. Notwithstanding the foregoing, if a Member or Participant had elected to receive distribution through the purchase of an annuity contract that provides for payment over his life, it shall continue to apply to that portion of his Account attributable to his prior employment.

11. Section 17.1, "Designation of Beneficiary", is hereby amended to read as follows:

The Beneficiary of a Member or Participant who does not have a Spouse shall be the person or persons designated by such Member or Participant in accordance with rules

prescribed by the Multiple Employer Administrator. The Beneficiary of a Member or Participant who has a Spouse shall be his Spouse, unless the Member or Participant designates a person or persons other than his Spouse as Beneficiary. For purposes of this Section, a Member or Participant shall be treated as not having a Spouse if the Member or Participant does not have a Spouse on his Benefit Payment Date.

If no Beneficiary has been designated pursuant to the provisions of this Section, or if no Beneficiary survives the Member or Participant and he has no surviving Spouse, then the Beneficiary under the Plan shall be determined under Probate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him in full, and if the Member or Participant has not designated another Beneficiary to receive the balance of the distribution in that event, the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution.

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EXECUTED at 1900 Detroit, MI 48226
WCEBS 27W Adams suite this 1st day of

August, 2019.

WAYNE COUNTY

By: Robert J. Graden

Title: Executive Director