

YAMHILL COUNTY

and

YAMHILL COUNTY

JUVENILE DETENTION WORKERS ASSOCIATION

("YCIDWA")

AGREEMENT

June 9, 2018

through

June 30, 2020

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## PREAMBLE

THIS AGREEMENT is entered into by Yamhill County, a political subdivision of the State of Oregon ("County") and the Yamhill County Juvenile Detention Workers Association (the "Association"). The parties acknowledge that there is a statutory division of authority and responsibility between the Board of Commissioners and certain elected officials or department heads with respect to the administration of the department affected by this Agreement and that the statutes shall control in the event of conflict with any provision of this Agreement. Unless otherwise indicated, the term "County" shall include the Board of Commissioners and elected officials.

This document represents the full agreement between the County and the Association. The purpose of this Agreement is to set forth those matters pertaining to rates of pay, hours of work, fringe benefits, and other matters pertaining to employment and to promote general efficiency of the employees covered in providing services to the citizens of County and to promote mutual respect between Association employees and County management. All previous agreements between the parties or individual employees covered by this Agreement are hereby superseded.

## ARTICLE 1 – SCOPE OF AGREEMENT AND RECOGNITION

### **1.1 Recognition**

Subject to Article 1.2, the County recognizes the Yamhill County Juvenile Detention Workers Association (referred to hereafter as "Association") as the sole and exclusive bargaining unit representative for ALL Juvenile Corrections Specialists and Juvenile Corrections Technicians employed by Yamhill County and who are considered prohibited from striking within the definition of ORS 243.736.

### **1.2 Scope of bargaining unit**

The bargaining unit, through agreement, shall apply to all non-supervisory Juvenile Corrections Specialists and Juvenile Corrections Technicians employed by the County, excluding elected officials, supervisory employees, confidential employees, irregular part-time Juvenile Corrections Specialists and Juvenile Corrections Technicians and part-time Juvenile Corrections Specialists and Juvenile Corrections Technicians working less than 20 hours per week, persons hired for a period of six months or less, persons hired for temporary positions intended to be less than one year, and all other employees represented by other bargaining units. Employees renewed for a temporary position for more than one year of continuous employment shall be reviewed by both parties.

### **1.3 Intent**

The intent of this Agreement is to set forth and record herein the basic and full agreement between the parties on those matters pertaining to employment relations which includes, but is not limited to matters concerning direct or indirect monetary benefits, hours, paid leave time, grievance procedures, and other conditions of employment.

#### 1.4 Copies

There shall be at least two signed copies of the final Agreement for records. At least one copy shall be retained by the County and one by the Association.

#### 1.5 Changes In Unit Composition

The County and Association will meet during labor negotiations and discuss inclusion and exclusion of employees in the bargaining unit so that transfers can be made when the Collective Bargaining Agreement is implemented.

### ARTICLE 2 – MANAGEMENT RIGHTS

#### 2.1 Rights Retained by County

The County retains all the customary, usual and exclusive rights, decision-making prerogatives, functions, and authority connected with or in any way incident to its responsibility to manage the affairs of the County and any County Department. The rights of employees in the bargaining unit and Association are limited to those specifically set forth in this Agreement, and County retains all prerogatives, functions and rights not specifically limited by the terms of this Agreement. The County shall have no obligation to bargain with the Association with respect to any such subjects or the exercise of its discretion and decision-making with regard thereto, any subjects covered by the terms of this Agreement and closed to further bargaining for the term hereof, and any subject which was, or might have been, raised in the course of the collective bargaining. The Association, however does not waive express or implied rights as entitled under PECBA and the Employment Relations Board including bargaining obligations for mandatory subjects of bargaining.

#### 2.2 Illustrations

Without limitations, but by way of illustration, the exclusive prerogatives, functions and rights of County shall include the following:

- (a) To direct and supervise all operations, functions, and policies of the departments in which employees in the bargaining unit are employed, and operations, functions and policies in the remainder of County as they may affect employees in the bargaining unit.
- (b) To close or liquidate an office, branch, operation of facility, service or combination thereof, or to relocate, reorganize or combine the work of divisions, offices, branches, operations or facilities for budgetary or other reasons.
- (c) To determine the levels of service and methods of operation, including subcontracting and the introduction of new equipment, the right to hire, lay off, transfer, promote, determine duties and qualifications to be required, job classifications, discipline and discharge for cause, determine work schedules and assign work, and any other such rights not specifically referred to in this Agreement.

### 2.3 Limitation on Applicability of Grievance Procedure

The exercise of any management prerogative, function or right which is not specifically modified by this Agreement is not subject to the grievance procedure or, as set forth above, to bargaining during the term of this Agreement. The application of the above management rights with respect to a particular employee or group of employees shall not be subject to settlement of disputes. Nothing in this Article is intended to inhibit or restrict informal, routine discussion of working conditions between the Association and the County representatives. Such discussions are encouraged for the purpose of providing mutually advantageous conditions and a high level of service to the Citizens of Yamhill County.

## ARTICLE 3 -- STRIKE

### 3.1 Strike Prohibited

The employees of the Association who work for the County as Juvenile Corrections Technicians and Juvenile Corrections Specialists are considered "guards" within the definition of ORS 243.762 and are prohibited from striking. The parties agree that the Association employees are subject to the collective bargaining arbitration process according to ORS 243.742.

The Association and its members, as individual's or as a group will not initiate, cause, permit, or participate or join in any strike, work stoppage, or slowdown, picketing, or any other restriction of work affecting the operations of any County department at any location in the County. Employees in the bargaining unit, while acting in the course of their employment, shall not refuse to cross any picket line established by any labor organization when called upon to cross such picket line in the line of duty. The County shall not lock out any employee during the term of this Agreement.

Upon notification confirmed in writing by County to Association that certain bargaining unit employees covered by this Agreement are engaged in strike activity in violation of this Article, the Association shall, upon receipt of a mailing list, advise such striking employees in writing with a copy to the County to return to work immediately. Such notification by the Association shall not constitute an admission that it has caused or counseled such strike activities.

Disciplinary action, including discharge, may be taken by the County against any Association employee or employees engaged in a violation of this Article. Such disciplinary action may be undertaken selectively at the option of the County and shall not preclude or restrict recourse to any other remedies, including an action for damages, which may be available to the County. This section applies during the express terms of the Agreement and does not limit protected rights after the termination of this Agreement.

## ARTICLE 4 – HOURS OF WORK

### 4.1 Regular Hours

The regular hours of work each day shall be consecutive. For employees working full time, eight (8) or ten (10) hours of work on consecutive days, shall constitute an employee's assigned shift and each shift shall have regular starting and quitting times excluding those employees on flexible or irregular schedules. Changes in an employee's shift times shall require ten (10) days advance notice, except in emergency work situations. Nothing in this Article shall restrict an employee and the County from temporarily modifying the work schedule when necessary and/or the parties mutually agreeing to the change. Employees on ten (10) hour shifts may also be assigned a single eight (8) hour shift during the work week.

### 4.2. Modified Work Week

Whenever the normal work week is modified, the employee will be given ten (10) days advance notice. The notice shall contain the effective date of change.

### 4.3 Rest Periods

Employees shall be allowed one rest period of 15 minutes duration in each one-half work shift which, insofar as is practicable, shall be in the middle of each half-shift. Such rest periods shall normally be on a scheduled basis so that activities of the department shall be staffed at all times.

Employees who are required to work beyond their regular quitting time shall be allowed a 15 minute rest period before commencing overtime work, provided that it can be reasonably foreseen that such overtime will exceed two hours in duration.

### 4.4 Meal Periods

Employees who work in continuous duty assignments will have a paid period for meals. Employees may be interrupted during these meal times.

### 4.5 Special Work Hours

(a) The parties recognize that at times variances from this Article may be desirable to meet the specific needs of the department. In such cases the parties shall meet and negotiate an acceptable hour-of-work agreement to meet such needs. If no such agreement is reached, the terms of this Agreement, including sections 4.1 through 4.4, shall prevail. Those variations presently existing are recognized by this section and no new negotiations are required.

(b) Flexible work hours. Employees of the department may work a flexible work schedule. A flexible work schedule is a schedule which varies the number of hours worked on a daily basis, but not necessarily each day, or a work schedule in which starting and stopping times vary on a daily basis but not necessarily each day, or a work schedule in which you may not have consecutive days off, but does not exceed 40 hours in a work week, and is mutually agreed upon by the employee and employer, and approved in advance by the department head. Such schedules shall be signed by the affected employee and the department head and placed in the employee's personnel file. An employee of the department

may request a flexible work schedule by submitting a proposal in writing to their supervisor outlining the proposed schedule. Flexible schedules shall be considered in good faith by both parties, however, final approval or denial of a flexible schedule is in the sole reasonable discretion of the department head and is subject to the needs of the department, as determined by management. All schedules are subject to change based on the changing needs of the department, as determined by management. Requests that are denied will be in writing with an explanation for the denial.

#### 4.6 Waiver

For purposes of Sections 4.1, 4.5(b), and 6.4(d), the provisions of ORS 653.268 are expressly waived.

### ARTICLE 5 – ASSOCIATION SECURITY AND CHECK OFF

#### 5.1 Right to Organize

Employees shall have the right to self-organize, to form, join or assist the Association, or to refrain therefrom, and there shall be no discrimination exercised against any employee covered by this Agreement because of his/her membership or Association activities.

#### 5.2 Deduction of Membership Dues or Monthly Service Fee

The County agrees to deduct and pay to the Association from the pay of employees covered by this Agreement (I) a base fee of \$40 each month or (II) a monthly service fee equivalent to membership dues from any employee who is a member of the bargaining unit and who has not joined the Association within 30 days of employment. The service fee will be segregated by the Association and used on a pro rata basis solely to defray the cost of its service in negotiating and administering this Agreement.

The employer will remit the aggregate of all deductions for all employees, together with an itemized statement showing the name of each employee from whose pay deductions have been made and the amount(s) deducted during the period covered by the remittance.

The Association shall indemnify and hold harmless the County against any and all claims, damages, suits or other forms of liability which may arise out of any actions taken or not taken by the County for the purpose of complying with the provisions in this section.

#### 5.3 Rights of Non-Association

The Association expressly agrees that it will safeguard the rights of non-association of employees based upon bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay the in-lieu-of-dues payment to a non-religious charity mutually agreed upon by the employee making such payment and the Association. When an employee elects to exercise the right of non-association allowed by this section, the employee must submit a form provided by the County to the County's accounting department. The form shall contain the endorsement of an Association officer or shall demonstrate the service of the form upon an Association officer. Upon receipt of the endorsement or two weeks after receipt of a form which demonstrates service of the form upon the Association, whichever comes first, the employees shall make such payment directly to the charity with proof of payment to the Association.

#### 5.4 Segregation of Monthly Service Fee

Monthly service fee equivalent payments (service fee) shall be segregated from regular Association dues for accounting purposes.

#### 5.5 Limitation on Use of Service Fee

Funds derived from the monthly service fee equivalent payment (service fee) shall not be expended for partisan political purposes by the Association.

### ARTICLE 6 – WAGES AND SALARY

#### 6.1 Wages

Effective the first day of the pay period after November 15<sup>th</sup> 2017 the County will increase the salary schedule by two percent (2%)

Effective the first day of the pay period after July 1, 2018 the County will increase the salary schedule by two percent (2%)

Effective the first day of the pay period after July 1, 2019 the County will increase the salary schedule by two percent (2%)

#### 6.2 Reporting Time

Any employee who is scheduled to report to work and who presents for work as scheduled, but where in the discretion of the County, work is not available for the employee, shall be excused from duty and paid for a minimum of two hours at the employee's regular rate.

#### 6.3. Call Out Pay

Any employee called to work outside his/her regular shift shall be compensated for a minimum of two hours at the rate and in the manner as set forth in sections 6.4 and 6.5 of this Agreement. Said call-out pay shall be paid on a portal to portal basis from and to the following: the shorter distance of the employee's residence or the County-line to the reporting location, whichever is less.

Any employee called to work on any day other than their regularly scheduled work day shall be compensated for a minimum of two hours at the rate and in the manner set forth in sections 6.4 and 6.5 of this Agreement. Call-out pay pursuant to this subsection shall be paid on a portal to portal basis from and to the following: the shorter distance of the employee's residence or the County-line to the reporting location, whichever is less.

#### 6.4 Overtime

To the extent practical, overtime should be equalized among employees affected, in the classification affected. Employees shall be compensated at the rate of time and one-half or the applicable overtime rate (whichever is greater) for work under the following conditions but in no event shall such compensation be received twice (pyramided) for the same hours.

- (a) All assigned work authorized by a department head in excess of either 8 hours a day for employees on a 5 day work week, or 10 hours a day for employees on a 4-day work week.
- (b) All assigned work authorized by department heads in excess of 40 hours in any work week.
- (c) All overtime must have prior approval by department head (or designee) or departmental policy – including policies that preauthorize activities as compensable with comp time as defined under this section 6.4. An employee may choose to be compensated in either cash or comp time on a case by case basis subject to operational and/or budgetary needs.
- (d) Compensatory Time (“Comp Time”)
  - (i) Comp time shall be defined as time off awarded in lieu of compensation pay for overtime. Compensation for authorized overtime work shall be paid in the form of compensatory time off, or at the option of the employee, in the form of compensatory pay at the applicable rate, subject to operational needs, budgetary limitations, and to the Fair Labor Standards Act. Overtime worked shall be computed daily to the nearest quarter hour and shall not be carried forward from day to day.
  - (ii) Comp time may be accumulated up to a maximum of 40 hours. Any hours in excess of the maximum accumulation as computed at the end of a regular payroll period will be paid to the employee as part of that payroll. Departmental policies (or allowable special arrangements that are mutually agreed upon between the employee and department head) may increase the maximum accumulation allowed.
  - (iii) An employee may cash out compensatory time on a fiscal year basis. Any accrued comp time shall be used or paid in cash by the end of the last full pay period of the fiscal year (pay period ending on June 23). Any remaining balance of comp time as of June 23 will be paid out in the last paycheck of the fiscal year.

#### 6.5 Shift Differential

The County and the Association recognize that a work week may contain three different shifts: day, swing, and graveyard. The County agrees to apply the following shift premium pay in addition to the established wage rate:

- (a) An hourly premium of \$.40 to employees for all hours worked on shifts beginning between the hours of noon (12:00pm) and 6:59 pm; or
- (b) An hourly premium of \$.80 to employees for all hours worked on shifts beginning between the hours of 7:00pm and 5:59 am.
- (c) When computing the overtime rate due an employee receiving shift differential pay, such pay must be included in the overtime rate.
- (d) Employees are not entitled to shift differential pay for a single shift change that is done by request of and for the benefit of the employee.

(e) Any employee regularly receiving shift differential pay shall receive their normal shift premium when paid for FET, compensatory time, and Holiday Time.

#### 6.6 Trade Time

By mutual agreement between an employee and the employee's supervisor, the work day may be temporarily adjusted within the work week only. The Intent of this section is to cover unexpected or occasional changes in work hours to accommodate either individual employee needs or employer work needs. However, in no case will an employee be required by the employer to use trade time if required to work hours outside their normal schedule. In no case shall the number of hours in any work day exceed the employees' regular work shift by more than 2 hours without the payment of overtime.

#### 6.7 Promotional Increase

Any employee who is promoted shall be paid at a rate of no less than that step on the salary schedule which is closest to but higher than the current rate.

#### 6.8 Performance Evaluations

(a) Evaluation. Yearly evaluation will be provided during the anniversary month of the affected employee. Such evaluation shall be a determination of satisfactory or unsatisfactory performance as noted on the personnel action form. Satisfactory performance will result in a yearly step increase as eligible. A step increase may be denied for unsatisfactory performance. Unsatisfactory performance may lead to counseling, work improvement plans or disciplinary action if authorized by this Agreement. Should the yearly evaluation not occur within the anniversary month, the work performance will be deemed satisfactory unless time lines are extended by mutual agreement between the County and the Association. Copies of the yearly performance evaluations will be kept in an employee's personnel file.

(b) It is recognized that the department may continue additional evaluation activities; however these intermittent evaluation records shall be kept in the working files of managers and employees and not in the County personnel file. The department shall attempt to meet annually with each employee on a one-to-one basis to cover goals and expectations of the employee and department.

(c) Satisfactory Performance: Employees receiving a satisfactory evaluation shall receive a merit increase equal to one step on the salary schedule. Employees at the top step of the salary schedule will not receive a merit increase pursuant to this section. Nothing in this section shall prohibit a supervisor from recommending to the County Administrator that an employee receive an early step increase where the supervisor believes that the employee is deserving of early merit recognition. The County Administrator shall have authority to accept or reject the supervisor's recommendation. In the event the employee receives a merit increase prior to the applicable date, the employee's new evaluation date for the purposes of further merit increase shall be twelve months from the date of the last merit increase.

(d) Unsatisfactory Annual Evaluation: Management shall provide substantiating evidence of an unsatisfactory evaluation. Unsatisfactory performance may lead to counseling, working improvement plans or disciplinary actions if authorized by this Agreement. Where the step increase has been denied, a work improvement plan (not to exceed a total of 180 days as per Article 6.9) shall be developed which identifies timelines under which the decision to deny the step increase shall be reconsidered. In the

event the performance is deemed sufficient to warrant a step increase, the effective date of the step increase shall be the date of reconsideration. Nothing in this section shall change the anniversary date and is not subject to 6.10c.

(e) An employee may submit comments or rebuttal to an evaluation.

#### 6.9 Work Improvement Plans

(a) The County may issue a work improvement plan where an employee's performance or behavior is unsatisfactory. Work improvement plans themselves are not considered disciplinary unless attached to a disciplinary action. Such work improvement plans shall include; job description expectations, performance deficiencies, criteria or objectives and how they will be measured in order to complete the plan, and the consequences, and time lines if not completed successfully. Monthly reviews of the progress of the employee in satisfying the work improvement plan will be required. The County may issue a work improvement plan where an employee's performance or behavior is unsatisfactory. Failure by a supervisor to conduct the stated periodic review will result in the plan becoming null and void for the purpose of imposing discipline for a failure to complete the work improvement plan. The supervisor may adjust the timing of the reviews provided that the intent of giving the employee updates on their progress is met. This provision does not prohibit the employer from imposing a new work plan.

(b) Work improvement plans shall have a specified duration not to exceed 180 days. When a work improvement plan is imposed, Human Resources and the Association shall be notified of such action.

#### 6.10 Merit Raise

(a) Eligible employees will receive merit raises in accordance with this section on their next regular anniversary date.

(b) Employees receiving a satisfactory with merit or higher evaluation on their annual evaluation shall receive a merit increase equal to one step on the salary schedule. Employees at the top step of the salary schedule for their job classification will not receive a merit raise, pursuant to this section.

(c) The annual evaluation date for employee under this section shall be as follow.

(i) An annual merit increase shall be on the basis of 1 year from the date of the last merit or step increase. Except for an employee on probationary status, an annual evaluation pursuant to this section shall be 1 year from the date of the last merit or step increase.

(ii) Notwithstanding subsection (i) in the event an employee receives a merit increase in less time than the 12-month period provided herein, the employee's new annual evaluation date for the purpose of further merit increases shall be twelve months from the date of the last merit increase.

(iii) Nothing in this section shall prohibit a supervisor from recommending to the County Administrator that an employee receive an early step increase where the supervisor believes that the employee is deserving of such early merit recognition. The County Administrator shall have authority to accept or reject the supervisor's recommendation.

#### 6.11 Effect of Redlined Salary

It is the intent that an employee's actual salary is at a step that is within the salary range established for the classification. When an employee is paid a salary above the maximum of the salary range of his/her current position e.g. due to re-allocation or reassignment, the employee's salary shall be redlined until it is equal to, or lesser than, a salary step within the salary range established for the classification. When an employee's salary is redlined, no step increases or COLAs will be paid or will become due as a result of non-payment. When the employee's salary range is commensurate with the applicable range and step for the classification, steps and COLAs, as are applicable, will be granted on the next applicable dates, consistent with this Agreement.

#### 6.12 Longevity Premium

(a) Employees with the following years of continuous service who are then employed by Yamhill County shall receive the stated pay as a longevity premium in the paycheck following their anniversary date, except as provided in subsection (b)

10 years plus topped out for min. one year -- \$150 on anniversary date

15 years plus topped out for min. one year -- \$300 on anniversary date

20 years plus topped out for min. one year -- \$600 on anniversary date

25 years plus topped out for min. one year -- \$900 on anniversary date

(b) Employees not eligible for the longevity premium are stated below under the following circumstances:

(i) The employee is on a work plan on the anniversary date; however the longevity premium will be paid once the employee has satisfactorily completed the work plan.

(ii) The employee has received formal discipline within the year preceding the anniversary date and the discipline has not been removed from the personnel file following a grievance under Article 13.

#### 6.13 Mileage and Travel Expenses

When an employee is authorized to use his/her own car on official County business, the employee shall be reimbursed at the then-current County mileage reimbursement rate for all business miles. The County will review the mileage rate yearly in comparisons with other jurisdictions and the IRS rate.

Meals will be, when necessary, reimbursed by the employer in accordance to the schedule on the reimbursement form.

ARTICLE 7 – HOLIDAYS

**7.1 Holidays**

The following shall be recognized as paid Holidays:

New Year's Day	Veteran's Day
Martin Luther King's Birthday	Thanksgiving day
President's Day	Christmas Day
Memorial Day	2 Floating Personal Holidays**
Independence Day	1 Commissioner's Day***
Labor Day	

Association employees shall be granted two additional personal holidays as they are part of a 24 hour continuous operations division. These personal holidays may be used at the discretion of the employee with the consent of the department head between November 1<sup>st</sup> and January 31<sup>st</sup> in the applicable year. Any personal holiday named in this paragraph not taken prior to termination or January 31<sup>st</sup> of the applicable year, whichever occurs first, is lost. Personal holidays have no cash value.

\*\* Floating Personal Holidays may be used at the discretion of the employee with the consent of the supervisor, provided however the employee must be employed for at least three months before the floating personal holidays may be used. In lieu of taking one or two floating personal holidays, an employee may elect to take cash payment equivalent to 8 hours pay per floating personal holiday not taken. In all cases, personal holidays must be taken by the end of the fiscal year (June 30<sup>th</sup>). If not taken before the end of the fiscal year, the floating personal holiday is forfeited, and if the election for cash payment has not been made, the cash payment is also forfeited.

\*\*\* Commissioner's Day may be taken during the months of November, December, or January with consent of the supervisor. If the Commissioner's day is not taken prior to January 31<sup>st</sup> the Commissioner's day is forfeited. A Commissioner's day has no cash value.

**7.2 Holiday Pay**

(a) Eligible employees shall receive 8 hours pay for each of the holidays listed in 7.1 on which they perform no work. If any employee is on authorized leave when a holiday occurs, the holiday shall not be charged against such leave. Unless on a bona fide authorized leave with pay, an employee, to be eligible for holiday pay, must work their full assigned shifts next preceding and following the holiday. Holiday pay shall be prorated for regular part-time employees.

(b) Holiday pay is for an eight (8) hour day; (10) hour days shall be supplemented with comp time, FET, trade time, or leave without pay if the employee has exhausted all paid leave.

**7.3 Holiday Work**

If an employee is required to work any of the holiday's as defined in section 7.1 they shall receive holiday pay and, in addition to the regular holiday pay, compensation for all hours worked at one and

one half their regular rate of pay, or at the option of County compensatory time off with pay equivalent to one and one-half times the time worked on the holiday. Compensatory time off accrued by reason of authorized work on a holiday as provided herein shall be paid for at the employee's regular rate of pay at the time work was performed if now scheduled or taken as compensatory time off within 30 days.

**ARTICLE 8 -- FLEXIBLE EARNED TIME (FET)**

**8.1 FET Credit**

(a) Full time employees shall accrue flexible earned time (FET) as follows

<u>MONTHS (YEARS) OF SERVICE</u>	<u>HOURS (FET) Per Month</u>
1-12 (0-1)	12.38
13-59 (1-4.9)	13.71
60-119 (5-9.9)	15.71
120-179 (10-14.9)	17.71
180-239 (15-19.9)	19.71
240+	21.71

(b) Part-Time employees covered by this Agreement shall accrue FET in proportionate amounts to that earned by full time employees.

(c) Employee's FET entitlement shall be calculated on a calendar month basis. For this purpose only, employees whose anniversary date is between the first and fifteenth day of a month shall be considered to have been hired on the first day of the month. Employees whose anniversary date is between the 16th and last day of the month shall be considered to be hired on the first day of the next month.

**8.2 Continuous Service**

Continuous service, for the purpose of accumulating FET, shall be service unbroken by separation from employment by the County. Time spent by an employee on a paid leave or job-related illness or injury shall be included as continuous service. Time spent on unpaid authorized leave will not be counted as part of continuous service for accrual purposes, but employees returning from such leaves and from layoff status shall be entitled to credit for service prior to the leave or layoff.

**8.3 Maximum Accumulation**

The maximum FET that may be accumulated by an employee is a number of hours equivalent to 24 times the employee's monthly accrual rate. All FET earned in excess of the maximum shall be placed in the Personal Extended Leave (PEL) Account.

**8.4 Payout of FET**

(a) Upon termination, bargaining unit members shall be compensated for accrued FET in cash at the employee's then-current salary level according to the following schedule.

<u>Months (Years) of Service</u>	<u>Percentage Of FET Paid Out</u>
0-12 (0-1)	0%

13-60 (1-5)	50%
61-72 (5-6)	55%
73-84 (6-7)	60%
85-96 (7-8)	65%
97-108 (8-9)	70%
109-120 (9-10)	75%
121-132 (10-11)	80%
133-144 (11-12)	85%
145-156 (12-13)	90%
157-168 (13-14)	95%
169+ (14+)	100%

- (b) Upon retirement, as noted in section 9.4, all FET shall be paid out at 100% of current value.
- (c) In the event of the employee's death, all FET shall be paid out at 100% of current value to the employee's estate.

#### 8.5 FET Sell Back

(a) An employee with at least one year and up to 14 years of continuous service may elect to sell back up to 40 hours of FET once per fiscal year. An employee with 14 years or more of continuous service may elect to sell-back up to 80 hours of FET once per fiscal year. The employee must have a remaining FET balance of 80 plus hours after the sell back. Said request shall be in writing on a County approved form and Department head approval shall be required. Payment shall be made as part of the regular paycheck.

(b) Sell back may not be used in conjunction with donated leave.

(c) Part-time employees. The provisions of this article will apply to part time employees as prorated. Employees selling back FET must maintain a remaining balance of 80 hours after the sell back.

#### 8.6 Minimum Use of FET

Employees must use at least 60 hours of FET per year unless waived by mutual agreement of the employee and the department head.

#### 8.7 Uses of FET

FET may be used for vacation, illness (employee or family member residing in house) personal business, or family medical leave or other statutory designations. Accrued FET may be taken in units of one quarter hour or more. Whenever possible FET usage shall be scheduled in advance.

#### 8.8 Employee Responsibility (FET Bank/Leave Without Pay)

Employees are required to manage FET leave within their FET allocations except for authorized family medical leave or other exigent circumstances. Leave without pay shall be strictly restricted, be based on totality of circumstances and subject to department head approval. Failure to manage FET leave as demonstrated by past use of FET and requests for leave without pay, absent justified circumstances, may be subject to progressive discipline.

#### 8.9 FET Scheduling

Approval of FET request for vacation purposes are subject to the operational needs of the facility and employer. Requests for one week or longer should normally be made at least 14 days in advance. Other requests for shorter periods (less than 5 days) should normally be made at least 24 hours in advance. If an employee has insufficient FET on the books for the request the employer may conditionally approve subject to the employee having sufficient FET at the time of the vacation. Shorter notice does not prevent the employer from approving the leave.

#### 8.10 Leave Donations

The current donation of leave program shall continue as per County policy, but the employee must have exhausted all leaves before donations can be accepted.

### ARTICLE 9 – PERSONAL EXTENDED LEAVE (PEL)

#### 9.1 Personal Extended Leave (PEL)

- (a) All FET accrued in excess of the maximum accrual limits stated in Article 8 shall be placed in the employee's PEL account.
- (b) There is no accumulation limit to the PEL account.

#### 9.2 Utilization of PEL

- (a) Employees suffering an illness or injury in excess of 5 consecutive work days may draw upon their PEL account after the 5th day. PEL is provided by County solely in the nature of insurance against an employee's loss of income due to illness or injury. Employees may utilize their PEL when unable to perform their work duties because of illness or injury, exposure to contagious disease under circumstances by which the health of the employees with whom associated or members of the public necessarily dealt with would be endangered by attendance of the employee, or by illness to the employee's family members in the employee's immediate household. In such event, the employee shall notify their immediate supervisor, with a copy to Human Resources. The notice will include the reasons for the absence, the nature and expected length thereof, as soon as possible and in no event later than the first half the first regular work shift unless unable to do so because of the injury or illness. A physician's statement of the nature of the injury or illness, the employee's disability from performing work, the need for the employee's absence, and the estimated duration of the absence may be required at the option of the department head, other supervisor or Human Resources for absences of over three days, prior to the payment of PEL benefits. A physician's statement may also be required at the option of the department head, other supervisor, or Human Resources when an employee has had three or more

non-consecutive absences within a given calendar month, prior to the payment of any further PEL benefits for that month, provided that the employee is notified in writing that a physician's statement will be required. If a physician's statement is required, it shall be directed to Human Resources.

(b) Notwithstanding subsection (a), an employee with available PEL may exercise a one-time option to sell back up to 40 hours of the PEL once per fiscal year. In the alternative, employees with over 500 hours may sell back PEL up to 80 hours once per fiscal year. Payment shall be made as part of the regular paycheck. Request for PEL sell back are the sole responsibility of the employee and such request must be made in writing on the County approved form.

### 9.3 Retirement from Employment

PEL has no cash-out value upon termination except at retirement, layoff as under article 15.4, permanent and total disability because of a work-related injury, death of the employee, or as provided in Section 9.4, "Sell Back of PEL, Prior to Retirement" in the event of retirement, and where the employee has not elected to exercise rights under Section 9.4, the value of the PEL will be placed in a Retirement Health Savings Plan for the benefit of the employee. Maximum pay-out will be 880 hours of PEL. Pay-out at death will be to the employee's estate. Pay-Out of PEL to the Retirement Health Savings Plan at retirement will be allowed providing the following conditions are satisfied.

- (a) The employee is at least 55 years old; and
- (b) The employee has served as a County employee for at least 7 years of continuous service immediately prior to retirement; and
- (c) The employee is eligible for the County provided retirement program and does not intend to take a full-time job elsewhere.

### 9.4 Sell-Back of PEL Prior To Retirement

(a) An employee who has reached the age of 55 and who has 7 or more continuous years of service with Yamhill County, and who is eligible for the County provided retirement program and intends to retire and does not intend to take a full-time job elsewhere may elect a one-time option to sell back all or part of accrued PEL within the window period described below prior to the date of retirement.

(b) An employee qualified to sell back PEL under this section must advise the accounting division of their intent to sell back PEL no earlier than November 24th and no later than December 23rd in the calendar year prior to the year the employee retires. The income earned from the sell back shall be paid in the next regular paycheck due the employee subject to the time needed to process the payroll.

(c) Any employee who has more than 880 hours of PEL on the books at the time they request this one time sell back of PEL shall forfeit all PEL more than 880 hours which is the maximum payout upon retirement.

(d) If this option is exercised, the employee is responsible for all employee state and federal income, FICA and Medicare, and any other employee paid taxes imposed on the income earned from the sell back. Persons who elect this sell back feature may utilize the County's deferred compensation program to defer income taxes on their earnings subject to federal deferred compensation limits and the policies of the deferred compensation provider.

## ARTICLE 10 – OTHER LEAVES AND ABSENCES

### 10.1 Criteria and Procedure

(a) Leave of absence without pay, not otherwise protected by law, not to exceed 90 calendar days may be granted upon establishment of reasonable justification therefore in instances where the work of the department will not be seriously handicapped by the temporary absence of the employee. Requests for such leave must be made in writing. Normally such leave will not be approved for an employee for the purposes of accepting employment outside the County. Such leaves may be renewed or extended upon request and in the discretion of the County Administrator.

(b) Leave of absence without pay, as provided for in section 10.1(a), is not allowed until the employee has used all accrued leave, including available holidays in Article 7.

### 10.2 Jury Duty

Employees shall be granted leave, for service on a jury. The compensation paid to such an employee for the period of such absence shall be reduced by the amount of money received by him/her for such jury duty. Upon being excused from jury service before the end of their normal shifts, employees shall immediately contact the department head or other supervisor for assignment for the remainder of the work day.

### 10.3 Appearances

Leave without pay shall be granted for appearances, in connection with an employee's officially assigned duties, before a court, legislative committee, judicial or quasi-judicial body as a witness in response to a subpoena or other direction by proper authority. The compensation paid to such employee shall be reduced by an amount equal to any compensation he/she may receive as a witness fee.

### 10.4 Required Court Appearances

Leave of absence with pay shall be granted for the appearance in court in connection with an employee's officially assigned duties, including the time required for travel to the court and return to the employee's headquarters. Employees whose normal duties require court appearances shall normally be compensated in the form of compensatory time off.

### 10.5 Association Business

(a) The union will provide a list of the names of union officers, position held, and union stewards to the County Administrator no later than January 1st of every year. The union will promptly notify the County Administrator of any changes to the above-described list. The Association or its representatives shall have the right to conduct official Association business on County property at such time and in a manner which does not interrupt County operations or efficiency with supervisor approval. Nothing herein is to be construed as right of an employee to leave his/her station without supervisory approval. To gain supervisor approval, a written description of the specific reason for the need to leave the work station, the purpose of the absence and the estimated duration of the absence, is required. The Association shall conduct all business on other than County time except as expressly authorized elsewhere in this Agreement.

Union meetings on County property will only be allowed so long as they do not interfere with County business needs and break and lunch periods of County employees. Before scheduling a union meeting on County property, the use of the planned meeting space will be scheduled in advance with approval through the department supervisor responsible for that facility.

(b) A maximum of 3 Association Officers or steward's shall be granted use of their FET, or Comp time for other Association related meetings, provided 30 days written notice is given to the department head or supervisor and is approved by the County Administrator. No more than one given employee from the department shall be on leave at the same time pursuant to this provision, unless approved by the department head and the County Administrator.

#### 10.6 Workers Compensation

The County shall pay to the employee the difference between what the employee receives from Workers' Compensation insurance and his/her regular salary rate. The dollar value paid by the County shall be converted to the employee's hourly wage rate and charged on an hourly basis against the employees' accrued paid leave. If the employee has no accrued leave, or upon exhaustion of the employee's leaves, the County's supplemental payments shall cease.

#### 10.7 Family Medical Leave

Family medical leave shall be granted in accordance with applicable law. Employees shall be required to use, in order, any accrued FET, compensatory time, available personal holidays, or PEL at the beginning of a period of leave. Extensions of leave beyond the statutory period shall be provided in section 10.1

#### 10.8 Educational Leave

After completing one year of continuous service a full-time employee, upon written request, may at the discretion of the department head and the County Administrator be granted a leave of absence without pay by the County for the purpose of upgrading his/her professional ability through enrollment at an accredited school or course of study. The period of such leave of absence shall not exceed one year but may be renewed or extended upon request of the employee and approval of the department head and the County Administrator. One-year leaves of absence, with requested extension, for educational purposes may not be provided more than once in a three-year period.

#### 10.9 Conferences

Employee's may also be granted time off with pay for educational purposes, for reasonable lengths of time, to attend conferences, seminars, briefing sessions, training programs, and other programs of a similar nature that are intended to improve or upgrade the employee's skill and professional ability when approved by the supervisor and/or the department head having supervision of the employee. Attendance at such conferences shall be subject to budget limitations and all non-budgeted expenses shall require approval by supervisor and/or the department head. No employee shall be authorized to attend school, training, or educational program in excess of one week, unless such employee first agrees in writing to either continue in the active employment of the County for one full year following completion of the program or, if his/her employment is voluntarily terminated within that year or while in attendance at the program, to reimburse the County for the salary paid to him/her while attending such program.

#### 10.10 Military Leave

Military leave shall be granted in accordance with State and Federal Law.

#### 10.11 Bereavement Leave

An employee may be granted up to 5 days paid bereavement leave to be used within sixty (60) days following the death of the employee's fiancé, spouse, same sex domestic partner, parents, children, brother, sister, grandparent(s), stepmother, stepfather, stepchild, and the spouse same (i.e. spouses parents, grandparents, etc.) or any other family member residing in the employee's immediate household. The purpose of the leave is to make household arrangements and to attend the funeral. Bereavement leave may be taken intermittently within the time allowed so long as the leave is taken in full-day increments, with the approval of the supervisor. However, once the leave is commenced, the complete amount of the leave must be used within a two-week period. The above-described bereavement leave is concurrent with any other bereavement leave allowed by law.

An employee may also be granted paid bereavement leave to attend the funeral of a current fellow employee. Unpaid bereavement leave may be granted in the event of the death of a close friend. Time taken off to attend such friend or fellow employee's funeral may be scheduled in half-day increments and shall be limited to no more than one day.

Bereavement leave will not be unreasonably denied and any denial can be appealed to the County Administrator. The County Administrator can make exceptions to the two-week period based on special circumstances.

#### 10.12 Continuation of Benefits

Upon termination, an employee may continue at the employee's expense County benefits as provided by state and federal law.

#### 10.13 Right to Reinstatement for Leave Under Article 10

At the expiration of an authorized leave of absence granted under this Article, the employee shall be returned to the employee's former or similar position. Provided however, that if the employee returns after 12 months (except for workers compensation leaves), the employee may be placed on a rehire list and be reinstated when an opening occurs in a job the employee is qualified to perform.

### ARTICLE 11 -- HEALTH AND WELFARE

#### 11.1 Medical – Dental

(a) From September 1, 2017 through June 30, 2020, the County shall offer Association members the same medical and dental packages, including VEBAs, offered to the Yamhill County Employee Association, hereinafter referred to as "YCEA" bargaining unit members in the same period. The County shall pay for medical/dental coverage of Association employees and their dependents up to the maximum monthly premium County agrees with YCEA to pay on behalf of YCEA members.

(b) Payments above the maximum monthly premium allowed under subsection (a) will be made by the employee by payroll deduction.

(c) The employee shall have choice of coverage under a given plan within a package and may select the plan at the time of employment or at the annual open enrollment period.

(d) As used in this section, "maximum monthly premium" means the maximum amount County will pay in a given month for the combined cost of the medical and dental plan.

#### **11.2 Life Insurance**

County shall provide \$6,000 term life insurance for each employee and \$2,000 for his/her dependents under a plan selected by the County. Employees shall designate their beneficiaries. The County will provide an option for additional life insurance at the employee's cost.

#### **11.3 Short Term Disability**

The County will pay the full premiums for short-term disability insurance administered through a private carrier in accordance with standards determined and approved by the Joint County and YCEA Benefits Committee.

#### **11.4 Retirement**

As determined by PERS, eligible employees shall become members of Yamhill County PERS non-police and fire retirement plan. The County shall pick up the employee contribution unless prohibited by law.

#### **11.5 Deferred Compensation**

The County shall provide for deferred compensation plans offered by a qualified financial institution such as those offered by Nationwide Retirement, ICMA Retirement Corporation and Oregon Savings Growth Plan.

#### **11.6 Eligible Employees**

Full time employees shall be eligible for the health and welfare benefits set forth in this Article on the first day of the calendar month following the month of employment if the employee is hired on or before the 15th day of the month. If the employee is hired on or after the 16th day of the month, then the employee shall be eligible on the first day of the calendar month following the month after the month of employment.

#### **11.7 Part Time Employees**

Regular part time employees shall receive the prorated percentage in proportionate amounts to that received by full time employees.

#### **11.8 Early Retirement Benefit**

An employee who has served the County for a minimum of 10 years continuous service immediately prior to retirement at or after the age of 58 will be entitled to an early retirement benefit in the form of severance pay in the sum of \$100 for each year of his/her age less than 70.

#### 11.10 Optional Insurance Fee

Any employee purchasing optional insurance coverage shall pay as part of the cost of coverage a service fee of \$.50 per month for each plan employee participates in. No fee shall be charged for participation in a County-sponsored deferred compensation program.

### ARTICLE 12- DISCIPLINE AND DISCHARGE

#### 12.1 Cause for Discipline or Discharge: Types of Discipline, Representation and Rights

(a) The County may discipline, discharge, suspend, or reduce the pay of an employee for just cause. Discipline shall normally be progressive. Suspension shall not exceed two weeks. The county may impose sanctions based on the totality of circumstances and severity of the conduct. Reduction in pay means a lower step on the employee's salary range.

(b) Employee's engaging in behavior that disrupts the orderly, efficient, or safe operation of business or reduces their performance or the performance of co-workers that reasonably might be expected by management may be subject to discipline. Such behaviors may be defined in the employee handbook or by department policy.

(c) Formal Discipline: Forms of formal discipline include, but are not limited to: letter of reprimand, suspension, reduction in salary, demotion, and termination. Discipline will normally be progressive; however, any level of discipline may be imposed based upon the totality of the circumstances and just cause. The County may terminate, suspend, or reduce the pay of an employee for the following actions which do not require prior discipline: dishonesty, including theft, drinking or being under the influence of intoxicants, when related to employment activity, use or sale of illegal drugs, gross insubordination, conviction of a felony, conviction of a misdemeanor related to work, obtaining leave or benefits under a false pretense, deliberate or reckless destruction of County property, gross misconduct or sexual conduct in connection with work or other similar conduct which reflects poorly on County employment.

(d) Informal Discipline: Forms of informal discipline include, but are not limited to counseling, verbal warnings, letters of instruction, and work improvement plans. These forms of informal discipline may serve as evidence for future formal disciplines. Information regarding informal discipline shall be kept in the managers working file. Informal discipline is not subject to the grievance process. If the informal discipline is reduced to writing, the employee may provide a written rebuttal.

(e) Employees involved in disciplinary actions have the right to request Association representation or Association counsel in any investigatory interviews with management regarding formal discipline. Other representatives in disciplinary actions are permitted only through the agreement of the County and the Association.

#### 12.2 Definitions

The following definitions shall apply for this Article

(a) "Gross Insubordination" is the refusal of any employee to obey a lawful order after such order has been communicated both verbally and in writing.

(b) "Gross Misconduct" means any conduct constituting a substantial disregard for the standards of behavior which a reasonable employer has the right to expect. Such conduct may include violation of confidentiality agreements or release of confidential materials contrary to department policy.

(c) "Sexual Misconduct in connections with work" Means any conduct constituting sexual harassment or any overt sexual activity occurring in the work place.

### **12.3 Due Process Required Prior To Issuing Letter of Reprimand**

Prior to issuing a letter of reprimand, the manager shall discuss the infraction with the employee. Should any part of the interview involve potential criminal conduct, the employee will be given one of the written "Garrity" warnings provided in a memorandum to this Agreement before discussing the infraction with the employee. If during the discussion, the employee believes formal discipline may result, the employee may request and be granted an Association representative. Following the discussion, the manager will determine whether to proceed with formal discipline. If the manager tentatively elects to issue a letter of reprimand, the manager will so inform the employee. The employee may then request the manager delay issuing the letter of reprimand until the employee prepares a rebuttal. Upon such request, the manager is obligated to refrain from issuing the letter or reprimand for at least one working day or as mutually agreed. A time shall then be set by the manager to receive the employee's rebuttal for consideration before the letter of reprimand is issued. An Association representative may, upon request, be present when the employee presents the rebuttal to the manager. After considering the rebuttal the manager will determine if to issue the letter of reprimand.

### **12.4 Due Process Required Prior To Issuing Formal Discipline Other Than a Letter of Reprimand: Investigatory Interview and Notice**

In the event the Employer believes an employee has engaged in conduct that may result in formal discipline other than a letter of reprimand, the following due process will be provided:

(a) The employee and the Association's president, or designee, will be given at least 24 hours advance written notice of intent to interview the employee under investigation for formal disciplinary action. The interview will be termed "investigatory interview" The notice will include the nature of the allegations or sufficient information to determine the alleged misconduct, the approximate date of the incident, giving rise to the interview, and the employee's right to request an Association representative be present during the interview. If such a request is made, it will not be unreasonably denied.

(b) Interviews will take place at a County facility, or elsewhere if mutually agreed, unless an emergency exists which requires the interview to be conducted elsewhere.

(c) The Employer shall make a reasonable good faith effort to conduct an investigatory interview during the employee's regular working hours, except for emergencies or where interviews can be conducted by telephone.

(d) Employees may be compelled to answer all questions in the pre-disciplinary investigatory interview that are reasonably related to the subject matter under investigation. The employee may be disciplined for refusing to answer such questions. Should any part of the interview involve potential criminal conduct, the employee will be given one of the written, "Garrity" warning provided in a memorandum to this Agreement before interviewing the employee. The Employer may compel the employee to answer questions, however, any responses may not be used in any proceeding other than the internal investigation unless the employee knowingly provides false statements or information in response to the questions. Garrity warnings are included in an appendix to this Agreement.

(e) Interviews shall be conducted professionally without intimidation or abuse.

(f) The employee shall be entitled to such reasonable intermissions as reasonably necessary.

(g) All interviews shall be limited in scope to activities, circumstance, events, conduct or acts pertaining to the incident that is the subject of the investigation. Nothing in this section shall prohibit the Employer from questioning the employee about information that is developed during the course of the interview.

(h) If the Employer or the Association tape records the interview, all participants will be so notified before the interview begins. A complimentary copy of the complete interview of the employee shall be furnished, upon request, to either party. If the interviewed employee is subsequently disciplined and any part of any recording is transcribed by the Employer or the employee, the other party shall be given a complimentary copy.

#### 12.5 Notice of Possible Formal Discipline: Requirement for Pre-Disciplinary "Loudermill" Meeting for Discipline Exceeding a Letter of Reprimand

(a) Notice of Possible Formal Discipline. At the option of the Employer, the Employer may propose a Notice of Possible Formal Discipline to resolve a disciplinary matter by agreement in lieu of the pre-disciplinary, "Loudermill" meeting described in subparagraph (b). The Notice of Possible Discipline may be offered with or without an investigatory interview. A Notice of Possible Discipline will describe the facts, alleged misconduct and proposed discipline. The employee may either accept or reject the proposed discipline. If the proposed discipline is accepted, discipline will be imposed in accordance with the notice. If the proposed discipline is rejected, the Employer may proceed to give written notice of a disciplinary "Loudermill" meeting as described in subparagraph (b).

(b) "Loudermill" meeting. Following the investigatory interview or Notice of Possible Formal Discipline process described above, if the Employer elects to proceed with formal discipline, the Employer will provide the employee and Association representative with written Notice of Disciplinary Meeting. The notice will include the time and place of the meeting, a summary of the preliminary findings, the alleged misconduct, and a range of the possible discipline. The parties will attempt to set the meeting by mutual agreement. At the meeting, the employee or the employee's designee will be given the opportunity to provide any explanation desired, including mitigating evidence or circumstances. At any time during or before the Loudermill meeting, the Employer, Association or affected employee may request a collaborative discussion as provided in subparagraph (c) to attempt to

resolve the issues leading to the possible discipline. The collaborative discussion will only take place upon mutual agreement of the parties.

(c) The parties by mutual agreement may enter into the collaborative discussion authorized by this section. The parties will set a time frame for completion of the collaborative discussion. The purpose of this discussion is to provide either party the opportunity to provide additional evidence, mitigating or aggravating circumstances related to the potential discipline. The parties agree to maintain an informal setting for the meeting. Either party may record the meeting. The employer may not decide on the final discipline to be imposed until after such meeting. The parties may agree to alternative forms of discipline or other resolution as they deem appropriate. Such solutions shall not constitute a precedent for other disciplinary cases. The collaborative discussion is subject to the following terms:

- (i) While the collaborative discussions are taking place, all other contractual time frames in Article 12 are to be frozen.
- (ii) The Employer, Association, or affected Employee may terminate the collaborative discussions at any point. If collaborative discussions are terminated, the time frames in article 12 resume.
- (iii) Where a disciplinary action may result due to a conflict between bargaining unit employees, the manager or supervisor may solicit the assistance of the Association in mediating the conflict as an alternative to imposing discipline.

#### 12.6 Imposition of Formal Discipline

(a) If the Employer determines that discipline is warranted, the Employer will issue written Notice of Discipline to the affected employee. The notice will include a summary of the facts, the policy violations or misconduct determined to have occurred and explanation of the discipline imposed.

(b) The employee or Association representative, upon request shall be furnished with a copy of the reports of the investigation which shall contain all known material facts of the matter, witness statements, tape recordings, and any other materials relied upon to impose discipline. The employee shall also be given all the names of witnesses and complaints who provided testimony against him or her and/or whose statements may be used against him or her. These will be provided at no cost to the employee or the Association.

(c) When the Employer issues a letter of reprimand, reduction in pay, suspension without pay, or discharge, it must do so within 30 calendar days of the day of the Employer first had knowledge of the conduct giving rise to the discipline; otherwise the discipline will be disallowed. If the County is unable to meet the 30-day deadline, it will so advise the Association and request an extension of time in which to issue the discipline. Mutual agreement to the extension will not be unreasonably withheld. A copy of the notice of discipline shall be given to the Association and affected employee immediately.

(d) In no event will an employee be discharged or suffer loss of pay due to disciplinary action until the County has given at least three days (which may be extended by mutual consent of the parties) prior written notice to the employee and Association of the alleged misconduct leading to the discipline.

### **12.7 Minimum Monitoring Requirements Following Formal Discipline**

In the event that the County imposes formal discipline, excluding termination, the discipline will provide for two dates approximately six months and one year in the future to review the progress the employee is making resolving the issues for which discipline was imposed. Nothing shall preclude meetings on a more frequent basis if desired. A brief summary of said meetings will be reduced to writing by management. In the event that the supervisor fails to meet the timeline set for the meeting, the employee or the Association shall have 30 days in which to request the meeting. In the event that the supervisor fails to hold the meeting at the employee's request, the formal discipline shall have no further force or effect. The employee shall be given the opportunity to have a YCJDA representative present at said meetings. However, it is not the County's responsibility to make such arrangements. Timelines begin from imposition of discipline regardless of grievance filing.

### **12.8 Records**

(a) An employee subject to discipline shall be given a copy of any disciplinary action entered in their personnel file within five days of such action. Employees may place statements of rebuttal or mitigation in their personnel files.

(b) Letters of reprimand shall be removed from the personnel file after 24 months, and other formal disciplines after three years. The removed discipline shall then go into a confidential file, maintained by Human Resources and will be effective for the disciplinary process only if the employee commits the same offense within the next 24 months.

(c) The contents of the personnel file shall be limited to the employment application, personnel actions formal disciplines, yearly performance evaluations, or other records (i.e., certifications, releases of information, work-related training records.) as required by law or lawful purpose. Employees may elect to include evaluations and other records in their personnel file upon mutual agreement of the employee and the manager.

### **12.9 General**

(a) The Employer and Association may mutually agree, in writing, to extend any timelines of this article.

(b) Lie Detector Test: No employee will be directly or indirectly compelled to provide polygraph or voice stress tests in any disciplinary proceeding under Article 12.

## ARTICLE 13 – SETTLEMENT OF DISPUTES

### **13.1 Grievance and Mediation Procedures. Alternative Resolution of Grievance Through Collaborative Resolution.**

Any grievance or dispute which may arise between the parties concerning the application, interpretation or meaning of this Agreement, shall be settled in the following manner.

**Informal Initial Review:** Before filing a written grievance, the employee or Association shall discuss the complaint with the supervisor and/or department heads to informally resolve the dispute.

**Collaborative Resolution Process:** At any state of the grievance process, prior to arbitration hearing, parties may mutually agree to enter into a collaborative resolution process, freezing timelines established in each grievance step. Upon agreeing to this process, parties shall, in writing, mutually agree upon time frames for completion of the process. The parties may mutually agree to extend those time frames. If the parties are unable to resolve the dispute via collaborative resolution, the grievance may be advanced to the next step. All grievance settlements reached through the collaborative resolution process are non-precedential and shall not be cited by either party or their agents or members in any arbitration or fact-finding proceedings. Grievance settlements reached through this process shall be reduced to writing and signed by the Association's representative, grievant, and management representative. Actions taken pursuant to the resolution of grievances through the collaborative resolution process shall not be deemed to establish or change practices under the Collective Bargaining Agreement or ORS Chapter 243, and shall not give rise to any bargaining or other consequential obligations.

**Step 1:** If the grievance has not been resolved in the informal process above, it may be presented in writing by an authorized Association Representative to the Department Head within twenty-one (21) calendar days after the initial occurrence which gave rise to the grievance. However, the twenty-one (21) days may be waived in step one by mutual written agreement of the parties.

A grievance regarding a disciplinary matter that resulted in the imposition of a demotion, suspension without pay, or termination shall be initiated at Step 2 of the grievance process.

The grievance shall clearly set forth the specific basis of the grievance including the relevant facts and the name(s) of the aggrieved employees, the specific CBA Article(s), and subsections if applicable, alleged to be violated and the requested remedy, whether filed at Step 1 or Step 2. If the Association is unable to articulate the above-described specific information, it will so advise the County and request an extension of time in which to provide that information. Mutual agreement to the extension will not be unreasonably withheld.

The Department Head shall respond in writing to the grievance within seven (7) calendar days of receipt. The response shall be submitted to the Association and grievant.

**Step 2:** If the grievance remains unadjusted, it may be presented by the Association to the County Administrator within seven (7) calendar days after the response specified in Step 1 is due. The Association's presentation shall not be considered a grievance unless it states specifically that it is a grievance being filed at Step 2 and recites the specific information outlined above. Failure of the Association to so specify will alleviate the County of any obligation to proceed further.

The County Administrator or designee shall respond in writing to the Association within seven (7) calendar days.

Any grievance by the County shall be filed with the Association at Step 2 within fourteen (14) calendar days of its occurrence, and shall be subject to the same requirements contained herein with regard to the form of the grievance. Association shall respond to any County grievance filed pursuant to Step 2 within fourteen (14) calendar days.

Step 3:

Board of Adjustment or Mediation

- (a) If the grievance does not pertain to an imposition of economic discipline and remains unadjusted, it may be presented by County or Association to a Board of Adjustment consisting of two persons appointed by County and two persons appointed by Association. The grievance shall be submitted within seven (7) calendar days after which the response specified in Step 2 is due. The Board shall, within fourteen (14) calendar days of the date the grievance is received, set a date for a hearing. The Board shall set a hearing date as expeditiously as possible. The Board shall hold a hearing at which evidence shall be received, testimony taken, and the right of cross-examination provided. The Board shall respond to the parties in seven (7) calendar days after the hearing is held. The grievance shall be fully settled if three or more members of the Board of Adjustment agree upon a settlement which may be a compromise position of the parties. This decision shall be final and binding upon the parties.
- (b) If the grievance pertains to an imposition of economic discipline and remains unadjusted, it may be presented by either party for mediation. The parties will agree to a mutually acceptable mediator or agree to use either a mediator appointed by the ERB or another agreed provider. Mediation will have a cap of 60 days from notice of election to mediate. If the grievance remains unsettled within 60 days, either party may move to Step 4(c), Binding Arbitration. The parties may mutually agree to extend the 60 days, but such must occur before the expiration of the initial 60 days.

Step 4:

- (a) If a majority of the Board of Adjustment cannot agree upon a decision and the grievance remains unsettled, the members of the Board of Adjustment shall select a fifth member, with a desired background in labor, to cast a deciding vote. If the members of the Board of Adjustment cannot agree to a fifth member within twenty-one (21) calendar days, Association and County shall meet and agree upon a fifth member.
- (b) The parties hereto may, by mutual agreement in writing, suspend or modify the time limits specified above about the resolution of any particular grievance or dispute.
- (c) Notwithstanding subsections (a), in grievances involving the imposition of economic discipline or the discharge of an Association member from employment with the County, a single arbitrator shall hear the grievance at Step 4. In such an event, the arbitration shall be governed by the following procedure.
  - (i) Selection of an Arbitrator. County and Association shall jointly request from the Employment Relations Board the names of seven qualified arbitrators. County and

Association will select an arbitrator by alternatively striking names. The order of striking names shall be determined by which party requests arbitration. That party will make the first strike. One name at a time shall be struck until only one name remains on the list. The name remaining on the list shall be accepted by the parties as the arbitrator.

- (II) Binding nature; authority. The parties agree that the decision or award of the arbitrator shall be final and binding on each party and that they will abide thereby. The arbitrator shall have no authority to add to, subtract from or change any terms of this Agreement. The arbitrator's decision will be based on at least the following factors: Just cause, due process, and flaws for lack of just cause, the totality of circumstance, public policy, and a reasonable person standard when applicable.
- (III) The arbitrator's fee and expenses shall be paid seventy-five percent (75%) by the losing party and twenty-five (25%) by the winning party. Each party is otherwise responsible for their own expenses and all other expenses shall be borne exclusively by the party requiring the service or item for which payment is to be made.

### 13.2 Association Representatives

(a) Authorized Association representatives shall be permitted to reasonably investigate and process grievances without loss of pay. Such persons will notify and gain written approval of his/her supervisor before leaving the work site to process a grievance, their purpose for said absence and their reasonable approximate return time. Activities of its representatives in connection with the Association, excepting attendance at meetings with supervisory personnel and aggrieved employees arising out of a grievance already initiated by an employee shall not interfere with their or other employee's arising out of a grievance already initiated by an employee shall not interfere with their or other employee's regular work assignments as employees of the County.

(b) Case which involve discipline action that includes termination may involve up to 2 representatives on County time.

(c) Official grievance activities shall be limited to affected parties.

(d) Only designated YCJDWA representatives may represent the employee in the grievance process. However, both YCJDWA and management may agree to bring in other parties to assist in resolving the grievance.

### 13.3 Grievance Meeting

(a) Grievance investigation and processing shall be scheduled in a manner that minimizes disruption to the department operations.

(b) When because of operational reasons, an Association representative is denied participation in a grievance investigation or meeting, the representative's supervisor will accommodate a new meeting time.

- (c) Whenever possible, a grievance investigation shall be performed in a confidential setting apart from on-going office operations.
- (d) Official grievance activities shall be limited to affected parties
- (e) All grievance processing and information should be confidential between the parties.
- (f) Association representatives shall not actively seek grievances on County time.

#### ARTICLE 14 – PROBATIONARY PERIOD

##### **14.1 Purpose**

The probationary period is an integral part of the employee selection process and provides the County with the opportunity to upgrade and improve the quality of its service by observing a new employee's work, training and aiding new employees to adjust their positions and by providing an opportunity to reject any employee whose work performance fails to meet required work standards.

##### **14.2 Duration of Probationary Period**

- (a) Every new employee hired into the bargaining unit shall serve a probationary period of twelve (12) full months. Except for vacation leave and sick leave less than five consecutive days, time spent on leave is not included in the probationary period. During the probationary period for a newly-hired employee the County may terminate the probationary employee for any reason. Any termination of a probationary employee is not subject to the grievance process and shall in no event constitute a violation of this Agreement.
- (b) An employee's initial probationary period may be extended up to six (6) additional months if the department head has reasonable cause to believe that the candidate's training, certification, or experience dictate a longer probationary period.

##### **14.3 Probationary Conditions**

- (a) The Association recognizes the right of the County to terminate probationary employees defined in sections 14.2 above for any reason and to exercise all rights not specifically modified by this Agreement with respect to such employees, including but not limited to, the shifting of work schedules, the assignments of on the job training, cross training to other classifications, the assignment to educational courses and training programs, and the requirement that such employees attend training programs on their off-duty time for which they will be compensated on a straight time basis by granting compensatory time off to the extent allowed by the 7(k) exemption, if applicable.
- (b) Probationary employees shall meet not less than monthly with his or her supervisor to review performance expectations.

(c) Nothing in section 14.2 diminishes the County's right to terminate a probationary employee at any time.

#### 14.4 Probation in Promotional Position

Persons promoted or reclassified to a higher position shall serve a promotional probationary period of six months. In the event the employee is unsuccessful in the new position, the employee shall be returned to the former position or another suitable and available position as determined by the County Administrator. The supervisor will meet with the promoted employee monthly to review performance expectations.

#### 14.5 Notice to Association

The County shall provide notice to Association's president or designee prior to the County Administrator's authorization of the hiring of an employee into the bargaining unit at pay level Step 3 or above to provide the opportunity for the Association to comment on such hiring to the County Administrator. Nothing in this section is intended to grant the Association the right to become involved in the hiring process beyond the ability to voice concerns.

### ARTICLE 15 – LAYOFF AND RECALL

#### 15.1 Definition of Seniority

"Seniority" as used in this article is determined by the length of an employee's continuous service with the County since the employee's last date of hire. "Continuous service" means the period of service with the County unbroken by separation from employment with County. Time spent by an employee on a paid leave or job-related illness or injury shall be included as continuous service. Time spent on unpaid authorized leave will not be counted as continuous service, but employees returning from unpaid authorized leave and from layoff status shall be entitled to credit for service prior to the leave or lay off.

#### 15.2 Application of Seniority in Promotions

Determinations of individuals to be promoted within the bargaining unit shall be based upon the skills and abilities of the employees involved. Where skills and abilities of two or more employees are equal, the employee with the greater seniority will be promoted.

#### 15.3 When Layoffs Occur

In the event layoffs become necessary, the layoffs shall be by inverse order of seniority within the classification.

#### 15.4 Recall

Employees shall be called back from layoff according to seniority in the classification which is re-funded. A laid-off employee shall retain the right to recall for a period of twelve (12) months from the date of layoff. Laid-off employees shall be recalled only by certified or registered mail, addressed to the employee's last address of record with the County, and the employee shall have five (5) days following the first attempt at delivery of such notification in which to inform the County of intent to return to work, and an additional ten (10) days thereafter in which to report to work.

## ARTICLE 16 – GENERAL PROVISIONS

### 16.1 No Discrimination

(a) The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without discrimination as to age, sex, marital status, race, color, creed, national origin, political affiliation, membership or non-membership in the Association, sexual orientation, as also reflected in the employee handbook. The Association shall share equally with County the responsibility for applying the provisions of this Agreement.

(b) All references to employees in this Agreement designated both sexes and gender identities. Wherever one gender is used it shall be construed to include male, female and other gender identities of employees.

(c) Employees shall have the right to form, join, and participate in the activities of the Association or any other labor organization, or to refrain from any of all such activities, and there shall be no discrimination by either County or Association by reason of the exercise of such right except as specifically provided herein.

(d) Nothing in this Agreement shall be construed as precluding or limiting the right of an employee to represent him or herself in individual personnel matters.

### 16.2 Existing Conditions

Only such existing and future work rules and benefits as are specifically covered by the terms of this Agreement shall be affected by recognition of the Association and the execution of this Agreement. If modification of work rules or benefits covered by a specific provision of this Agreement is proposed, any such modification may be negotiated between the parties hereto. Whenever any conditions are changed or new conditions are established, they shall be posted prominently on all employee bulletin boards for a period of fourteen (14) calendar days. The benefits provided by this Agreement shall be exclusive and shall be in lieu of all economic or related benefits heretofore provided by the County. Nothing in this Agreement, however, shall be construed to prohibit or limit the right of the County to grant bonuses, time off with pay for personal reasons, natural disasters, rescue work or property damage, consistent with the County's prior practice or orders.

### 16.3 Negotiations Meetings

County and Association shall notify each other of the names of the persons authorized to negotiate for the parties. Negotiations shall, to the extent possible, be conducted during normal working hours. Association negotiators shall be allowed time off with pay for the purpose of attending negotiation meetings with the County, and so long as such meetings do not interfere with performance or the employee's job. The allowed time off with pay may include one-half hour prior to the start of the negotiation meeting and one-half hour after the end of the negotiation meeting. The paid time off does not include any additional time spent prior to or after adjournment of negotiation meetings. When management establishes a negotiating team, the Association bargaining team will be paid to have an equal number (or as mutually agreed) of representatives on the team, however the association may have no less than three (3) team members attend on paid time.

#### 16.4 Pay Day

Pay days will be on the 15<sup>th</sup> and last working day of each month. Each employee's pay will be 50% of the regular monthly salary and premium pay with deductions for the relevant withholdings. Reporting periods will be from the 24<sup>th</sup> through the 8<sup>th</sup> and 9<sup>th</sup> through the 23<sup>rd</sup> of each month.

#### 16.5 Copy Machine and Bulletin Board

The County agrees to set up a monthly charge account on behalf of association for use of the County copy machine at the same rate charged other non-County authorized users. Upon receipt of a quarterly statement, Association agrees to promptly pay all costs accrued during that quarter. County business shall be given priority over non-County business.

The union may use County-provided space for the placement of a bulletin board for the posting of union related materials. All such postings must be dated and have the name of the posting individual clearly displayed. The postings will be limited to notice of union meetings and other official union business. The County reserves the right to remove any non-complying material, with notice to the union. The union will not block County access to the bulletin board. Union postings shall be confined to being posted on these bulletin boards.

#### 16.6 Outside Employment

No employees shall apply for, or accept, part time or full-time work, with or without compensation, whether permanent or temporary, with any employer other than Yamhill County where said work either adversely affects the employee's jobs performance or presents a conflict of interest.

#### 16.7 Protective Clothing

(a) Coveralls, protective shoes and gloves shall be made available without cost to those employees who work around hazardous materials.

(b) The County will furnish employees who perform work outdoors with adequate rain gear selected by the County for the employee's position. The County will repair or replace rain gear damaged or destroyed in the performance of the employee's duties or as a result of normal wear and tear. If the rain gear is damaged or destroyed in some other manner than the performance of the employee's duties or as a result of normal wear and tear, the County has no obligations to repair or replace the rain gear damaged it furnished.

#### 16.8 Inclement Weather

(a) The County Administrator or designee has the discretion of closing County offices in the event of inclement weather.

(b) If the County Administrator or designee closes the County offices he/she shall use specific radio/television/email or other agreed upon communication channels. In the event of closure every attempt will be made to notify employees of closure in a timely manner. Employees shall not be made to use comp or vacation time and employees will not suffer a loss in pay. Employee who already had the day scheduled as off prior to the inclement weather designation, will not be eligible for the inclement weather pay.

(c) If conditions are such that individual employees feel travel to and from work is inappropriate for safety reasons the employee is authorized to use comp time, FET, or leave without pay. In order to use leave without pay the employee must have exhausted all paid leave time and not be approved for the use of trade time under the provisions of this Agreement.

(d) An employee choosing optional time off under this inclement weather policy shall notify the employer prior to the start of the shift or prior to leaving the work place.

(e) In the case of Juvenile Detention as it is a legal mandate to protect the safety of the public, the service shall be staffed on a rotational basis unless outweighed by safety considerations. After the emergency, employees will be given a minimum of eight (8) hours between the end of their last shift and the start of their next shift.

#### **16.9 Use of County E-mail System and Other County Equipment/Services**

(a) Subject to subsection (b), Association employees are authorized to use the County email system to communicate to other Association employees' on an infrequent basis, with limited, factual Association business information such as meeting notices. Use of the County email system is not authorized to communicate any political information. The use of the County email system is not authorized for the collection of data for use in Association activities or bargaining without advance written permission of the department head.

(b) Use of the County email system is subject to County email policies, including review by department heads and other persons authorized by County policy. All County email is a public record and is subject to disclosure unless exempted from disclosure by Oregon law in accordance with the County email policy.

(c) Use of County computers and software, County inter-office mail, and any other County equipment or services is not authorized for Union activities without the express written authorization of the County Administrator, except as allowed under section 16.5 of this Article.

#### **16.10 Use of Personal Communication Devices**

(a) It is recognized that there is an existing County policy that determines the appropriate use of County owned communications devices.

(b) **Non-County Owned Devices:** The use of non-County owned personal communication devices during work hours for purely social purposes is prohibited. On an occasional and infrequent basis, employees may utilize cell phones or other personal communication devices (for example: text messaging, etc.) to make brief communications where it is necessary for personal business during work hours. Employees shall make every effort to conduct such personal business on their breaks or during lunch periods. Individuals experiencing unique situations that may require exceptions to this policy should consult with the department head or designee for approval of exceptions. However, no such use of devices shall occur where the department head has determined and communicated to employees that there is a need to refrain from the use of such devices due to safety, security concerns or negative public perception.

#### 16.11 Drug and Alcohol Testing Policy

The policy attached and incorporated into this Agreement as Appendix A and labeled "Drug and Alcohol Testing Policy" is hereby made a part of this Agreement.

### ARTICLE 17 – TRAINING

#### 17.1 Department Training

The Juvenile Detention Division shall develop a specific training policy for continuing education. The policy shall define for each classification annual limits for paid time off, annual limit for tuition, other expense reimbursements, specific conditions which may limit the employee's freedom of choice and a process for approval of an employee's training plan which shall include required certification. When establishing Division policy on training and continuing education, the Division shall seek employee input.

#### 17.2 Job Enhancement Training

(a) Job enhancement training need not be provided or time off granted if an employee has used his/her defined share of training as per Division policy and/or because of operational need. However, by mutual agreement, the Division and the employee may agree to provide time off with or without pay, tuition, or other expenses for training or education which enhances an employee's job skills.

(b) Training opportunities shall be offered equitably within a classification within the Division.

(c) Job enhancement training, funded by the County, may be contingent on continuous service with the County.

(d) Overtime pay shall not be provided for classroom attendance on voluntary training, unless due to the nature of the Division's need for continuous watch, operational needs to the facility require the employee complete his/her workweek, thus placing the employee over their forty (40) hour work week.

#### 17.3 Mandated Training

Training which is required by the County will be provided by the County. The exception is for continuing education units which are required to maintain a current license for FLSA professional classifications, certification training, or continuing education.

### ARTICLE 18 – SAVINGS CLAUSE AND FUNDING

#### 18.1 Savings Clause

Should any Article, Section, or portion thereof of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall apply only to the specific Article, Section or portion thereof directly specified in the decision, or should any Article, Section or portion thereof of this Agreement be unlawful, unenforceable, or made illegal through state or federal law, the parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section, or portion thereof.

## 18.2 Funding

The parties recognize that revenue needed to fund wages and benefits provided by the Agreement must be approved annually by established budget procedures and in certain circumstances by vote of the citizens of County. All such wages and benefits are therefore contingent upon sources of revenue and, where applicable, voter budget approval. County has no intention of reducing the wages and benefits specified in this Agreement because of budgetary limitations, but cannot and does not guarantee any level of employment in the bargaining unit covered by this Agreement. County agrees to include in its annual budget request amounts sufficient to fund wages and benefits provided by this Agreement, but makes no guarantee as to passage of such budget requests pursuant to established budget procedure. This section and County action thereunder shall not be subject to Article 13.

## ARTICLE 19 – FILLING OF VACANCIES

### 19.1 Filling of Vacancies

When a job opening occurs within the bargaining unit, other than a temporary (30 days or less) position in any existing job classification, a notice of such opening shall be posted for at least 5 working days. During this period, employees who wish to apply for the open position or job, including employees who may be on layoff, may do so. The application shall be in writing and shall be submitted to the Human Resources office.

### 19.2 Lateral Transfer Within the Same Classification

- (a) It shall be the policy of the County to notify employees of vacancies and allow both inter and intra departmental transfers within the same classification. Approval is subject to the determination of the department head in his or her sole judgment that the current employee applying for the transfer is well-qualified for the vacant position and that the transfer is in the best interests of the employee and the County. When two or more current employees qualify for a lateral transfer, the transfer will be awarded to the employee deemed best qualified by the department head.
- (b) An interview will be afforded to any applicant for lateral transfer who meets the minimum job qualifications.
- (c) Trial period for inter-department transfers. An employee who is awarded a lateral transfer between departments shall serve a trial period in the position as defined in Article 14.4 (Probation in Promotional Position). The length of the trial period shall be set by mutual agreement between the department head into which the employee is transferring, the department head from which the employee is transferring, and the transferring employee in consultation with a union representative. The trial period shall not be less than 15 days or longer than six months. In the event the employee is unsuccessful in the trial service period, the supervisor shall notify the employee in writing of the reasons for failure to successfully complete the trial service period.
- (d) Department Definition. For purposes of Article 18.4, a department is defined as an entity in which employees ultimately report to a Department Head who in turn reports to the County Administrator, or in which employees ultimately report to an elected official.

(e) Trial period for intra-department transfers. When an employee transfers within a department, said employee shall serve a trial period in the position as defined in Article 14.4 (Probation in Promotional Position). The length of the trial service period shall be determined by the department head, subject to the 15-day minimum period and the six-month maximum period.

(f) Voluntary Reclassification to a Lower Classification (VRLC). An employee may apply for a position in a lower classification. The process for application, selection, and determination of the trial service period for a VRLC shall be the same as for a lateral transfer as noted in sections 18.4 a. through 18.4 c.

(g) Use of process. This process shall not be used as a substitute to the regular disciplinary process to terminate employees.

ARTICLE 20 - DURATION

(a) This Agreement shall be effective as of \_\_\_\_\_, or the first day of the pay period following execution, whichever is later and shall remain in full force and effect until June 30, 2020, or until a successor agreement is reached. Notice to bargain a new contract shall be provided by both parties prior to January 31 of the expiring year.

(b) This Agreement was ratified for County by the Board of Commissioners.

FOR YCJDWA

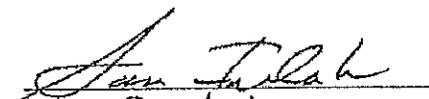
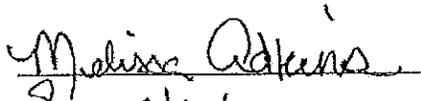
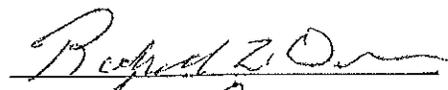
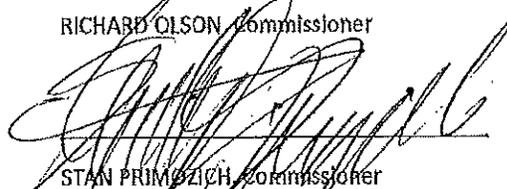


ERIC IMLAH, President

FOR THE COUNTY:



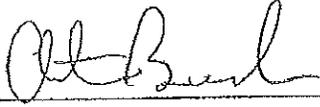
MARY STARRETT, Chair

  
Eric Imlah, Bargaining team member  
Melissa Adkins, Bargaining team member  
RICHARD OLSON, Commissioner  
STAN PRIMOZICH, Commissioner

\_\_\_\_\_, Bargaining team member

LAURA TSCHABOLD, County Administrator

APPROVED AS TO FORM:

By: 

CHRISTIAN BOENISCH

Yamhill County Legal Counsel

Accepted by Yamhill County  
Board of Commissioners on  
5-31-18 by Board Order  
# 18-172

## APPENDIX A – DRUG AND ALCOHOL TESTING POLICY

As provided in Section 16.11 of this Agreement, the following policy shall apply to all bargaining unit members: YAMHILL COUNTY DEPARTMENT OF COMMUNITY JUSTICE

### **DRUG AND ALCOHOL TESTING POLICY**

#### **Section I. PHILOSOPHY**

1. County believes its citizens are entitled to a professional juvenile detention division with staff who are alert and free from drugs or alcohol while on duty. County also believes County employees are entitled to a safe work environment. To ensure staff are alert and free from drugs or alcohol while on duty, and that a safe work environment exists, all employees, during working hours, must be free from any substance, whether illegal or legal, that can adversely affect job performance or place the health and safety of co-workers or the public at risk.
2. This policy is a critical step in establishing and maintaining an efficient and safe work force and will be applied in conjunction with all established County policies, procedures and programs. County will vigorously pursue the enforcement of this policy while protecting the privacy of its employees to the greatest extent possible. It is the intent of this policy to encourage and support employee recovery from substance abuse through the Employee Assistance Program (EAP) unless the EAP proves ineffective for that employee.

#### **Section II. VOLUNTARILY SEEKING HELP**

1. The primary objectives of this drug and alcohol policy are to maintain employee performance and good health, and a safe work environment. If, prior to a requirement by County that the employee submit to any of the tests in this policy, the employee notifies a supervisor that the employee has a drug or alcohol problem that requires treatment, then in that event the employee shall immediately submit to a medical evaluation by a qualified drug and alcohol medical provider selected and paid by County. If recommended by the qualified drug and alcohol medical provider, the employee shall enroll in a rehabilitative treatment program. While in the treatment program, the employee will be granted an unpaid leave of absence. The employee is responsible for costs of the treatment program.
2. If an employee has previously enrolled in voluntary rehabilitative treatment described in this section and subsequently again volunteers for such treatment in advance of being required to submit to any of the tests specified in this policy, then the employee shall immediately submit to a medical evaluation by a qualified drug and alcohol medical provider selected and paid by County and shall successfully complete the treatment program recommended by the qualified drug and alcohol medical provider. While in the treatment program, the employee will be granted an unpaid leave of absence. The employee is responsible for costs of the treatment program. If the employee fails to complete the treatment program successfully, the employee shall be terminated.

#### **Section III. PRESCRIPTION DRUGS AND OVER-THE-COUNTER DRUGS.**

1. The use of medically prescribed or over-the-counter drugs during working hours is approved, provided there is no medical impediment or side effect which prevents the employee from performing the employee's job safely and effectively. If there are any side effects which could prevent the employee from performing in a safe and effective manner, the employee is required to notify a

supervisor via email. An employee may not work under the influence of a drug without the permission of a supervisor, even if the drug is a prescription drug or an over-the-counter drug.

2. Association members must report to their supervisor their use of any medication that may cause any impairment of physical or mental faculties.

**Section IV. DEFINITIONS** The following definitions apply to terms used in this policy:

**"ALCOHOL"** - means any alcoholic beverage containing more than one-half of one percent alcohol by volume.

**"BLOOD TEST"** - means a chemical test of a person's blood by a qualified laboratory to measure the levels of a drug or its metabolites.

**"BREATH TEST"** - means a chemical test of a person's breath to determine blood alcohol content conducted with equipment recognized as adequate for use by certified law enforcement officers to enforce the provisions of ORS Chapter 813.

**"CONTROLLED SUBSTANCE"** - means a drug or its immediate precursor as defined in ORS 475.005, 2007 replacement part. Under this policy, marijuana is also a controlled substance. "Marijuana" has the meaning given in ORS 475.005(16) (2007 replacement part).

**"DIRECTOR"** - means the Yamhill County Director of Community Justice.

**"INTOXICANTS"** - means alcohol or a drug.

**"INTOXICATED"** - means to excite or stupefy by alcohol or a drug especially to the point where physical and mental control is markedly diminished.

**"LAST CHANCE AGREEMENT"** - means an agreement between the Director, the Association and the employee governing the conditions of the employee's reinstatement to work following satisfactory completion of a treatment plan. A last chance agreement may not remain in effect for a period longer than one year.

**"LEGAL DRUG"** - means controlled substances prescribed by persons authorized to prescribe drugs under Oregon law and over-the-counter drugs which have been legally obtained and are being used for their intended purpose or as prescribed.

**"MANAGEMENT REPRESENTATIVE"** - means the Director or a supervisor appointed by the Director to administer this policy.

**"MEDICAL EVALUATION"** - means an evaluation by a qualified drug and alcohol medical provider to determine whether an employee should be referred to a rehabilitative treatment program.

**"POSITIVE ALCOHOL TEST"** - means a Breath Test, Blood Test or Urine Test as defined in this section that results in a determination that the blood alcohol content of the person tested is 0.02% BAC or greater.

**"POSITIVE DRUG TEST"** - means a Blood Test or Urine Test as defined in this section that results in a determination that the blood or urine specimen contains levels of a drug or its metabolites in excess of the "AGC/MS Confirmation Threshold Levels" (the "Threshold Matrix") set forth in the most recent Threshold Matrix published by the United States Food and Drug Administration.

**"QUALIFIED DRUG AND ALCOHOL MEDICAL PROVIDER"** - means a physician board-certified in addiction medicine; or a substance abuse treatment counselor meeting the requirements of OAR 415-051-0055(3)(a) or 415-51-0057(3); or a state licensed therapist who has at least 60 contact hours of academic or continuing professional education in the treatment of alcohol and drug-related disorders.

**"QUALIFIED LABORATORY"** - means a laboratory qualified to conduct tests to determine the presence of given levels of drugs and their metabolites within a blood or urine specimen. A qualified laboratory must be certified by the National Institute on Drug Abuse (NIDA). Any change in the qualified laboratory selected by the parties on implementation of this Agreement shall be made by mutual agreement.

**"REASONABLE SUSPICION"** - means that a person holds a belief that is reasonable under the totality of the circumstances existing at the time and place the person acts as authorized by this policy. By way of example, but not by limitation, a reasonable suspicion sufficient to allow a Management Representative to order a test under this policy may exist under the following circumstances.

1. Erratic job performance or behavior indicated by slurred speech, odor, stumbling, physical appearance or bloodshot eyes.
2. An employee is involved in a significant job-related accident or incident that either injures or threatens to injure any worker, the employee or a third party, or causes or threatens to cause property damage. Being in an accident, in and of itself, does not establish reasonable suspicion to test. Being in an accident may be considered, along with all the facts and circumstances of the accident, to determine whether there is reasonable suspicion to test.

**"REHABILITATIVE TREATMENT PROGRAM"** - means a substance abuse treatment program approved by the Oregon Office of Mental Health and Addiction Services to provide treatment services under OAR Chapter 415, Division 051 and listed in the most recent "Oregon Alcohol & Other Drug Services Directory" published by the Oregon Department of Human Services.

**"TESTING"** - means the testing method authorized or required by this policy. In general, testing is the analysis of urine, blood, or breath to determine chemical content.

**"UNDER THE INFLUENCE"** - means that a person's physical or mental faculties are adversely affected by the use of alcohol or a controlled substance or an over-the-counter drug to a noticeable degree. "Under the influence" includes not only the well-known and easily recognized conditions and degrees of intoxication, but also any abnormal mental or physical condition that results from consumption of alcohol or a controlled substance and that noticeably deprives the person of that clearness of intellect or control that the person would otherwise possess.

**"URINE TEST"** - means a chemical test of a person's urine by a qualified laboratory to measure the levels of a drug or its metabolites.

**Section V. PROHIBITED CONDUCT.** The following conduct is prohibited:

1. The buying, selling, providing, or possession for the purpose of buying, selling or providing Controlled Substances, including marijuana while on County property or in County vehicles or equipment or during work hours, including paid/unpaid rest and meal periods.

2. Being at work under the influence of alcoholic intoxicants, or consuming alcoholic intoxicants while in County vehicles or equipment at any time or on County property during work hours, including paid/unpaid rest and meal periods.
3. Being at work with a blood alcohol content that reaches or exceeds .02% by weight of alcohol in the blood.
4. Possession of any Controlled Substance, including marijuana (but excluding any substance lawfully prescribed for the employee's use which has not been obtained for the purpose of abuse), while on County property or in County vehicles or equipment at any time during work hours, including paid/unpaid rest and meal periods. However, this excludes substances that have been legally prescribed for an employee's own use.
5. Being at work under the influence of any alcohol or a Controlled Substance, including marijuana, or having a Controlled Substance "present in the body" (excluding any substance lawfully prescribed for the employee's use which has not been obtained for the purpose of abuse) while on County property or in County vehicles or equipment at any time during work hours, including paid/unpaid rest and meal periods. An employee has a Controlled Substance "present in the body" when the employee tests "positive" in any Blood Test or Urine Test administered.

An employee shall be deemed to test "positive" for cannabinoids (marijuana or hashish) if the employee's Urine Test indicates 50 or more nanograms THC metabolites/ml.

6. Abusing any substance which is lawfully prescribed by regularly taking it in excessive quantities or by unlawfully obtaining it for purposes of abuse.

**Section VI. CAUSE FOR DISCHARGE FROM EMPLOYMENT.** In addition to grounds set forth in this Agreement, the following violations shall be cause for discharge from employment:

1. An employee engages in prohibited conduct described in Sections V1 and V4.
2. An employee who previously received a Positive Drug Test or Positive Alcohol Test thereafter receives a Positive Drug Test or Positive Alcohol Test.
3. An employee fails to comply with a rehabilitative treatment plan recommendation after notice and opportunity to cure the noncompliance.
4. An employee fails to satisfy any condition of a last chance agreement.
5. An employee breaches of any condition of a last chance agreement.
6. An employee who previously refused to submit to an order by a Management Representative for a Breath Test, Blood Test or Urine Test refuses to submit to an order by a Management Representative for a Breath Test, Blood Test or Urine Test in a different case.

**Section VII. DRUG AND ALCOHOL TESTING; PROCEDURE; WHEN ALLOWED**

1. GENERALLY.
  - a. If allowed by this section, the Management Representative may order an employee to submit to a Blood Test or Urine Test to determine whether there exists within the employee's system amounts of

a drug or its metabolites in excess of the "GC/MS Confirmation Threshold Levels" (the "Threshold Matrix") set forth in the most recent Threshold Matrix published by the United States Food and Drug Administration.

b. If allowed by this section, the Management Representative may require an employee to submit to a Breath Test, Blood Test or Urine Test to determine whether the employee's blood alcohol content is 0.02% or greater.

2. PROCEDURE. The employee shall give consent to a Blood Test, Urine Test or Breath Test by signing a consent form. The form shall contain the following information:

a. Employee's consent to release test results to County;

b. The procedure for confirming an initial positive test result for a Controlled Substance, including marijuana;

c. The consequences of a confirmed positive test result for a Controlled Substance, including marijuana;

d. The consequences of a positive test for alcohol, including one at or above 0.2%;

e. A listing provided by the employee of legally prescribed and over-the-counter medications which may be in the employee's body;

f. The right to explain a confirmed positive test result for a Controlled Substance, including marijuana, or a positive test for alcohol;

g. The consequences of refusing to consent to the blood, urine or intoxilyzer test;

h. In the case of a Positive Alcohol Test or a Positive Drug Test, the employee's authorization for the qualified drug and alcohol medical provider to release a copy of the evaluation and recommended treatment plan to the Management Representative upon completion.

3. TESTING FOR REASONABLE SUSPICION.

a. The Management Representative may order a County employee to undergo drug or alcohol testing when the Management Representative has a reasonable suspicion that an employee has violated any of the prohibitions stated in Section V of this policy. In the case of a violation related to alcohol, the employee will submit to a Breath Test upon notice by the Management Representative. In the case of a violation related to drugs, the Blood Test or Urine Test will not be administered sooner than 2 hours following notice to the employee by the Management Representative that a testing order may be issued.

b. In the case of a Breath Test related to alcohol, the testing will take place at a place designated by the Management Representative. In the case of a Blood Test or Urine Test related to drugs or alcohol, the testing will take place at a Qualified Laboratory.

c. County will pay all expenses of the Breath Test. If the employee desires a Blood Test in addition to the Breath Test, the employee will have reasonable opportunity, upon request, for an additional chemical test for blood alcohol content to be performed at the employee's own expense at a Qualified Laboratory.

d. County will pay all expenses of the Initial Blood Test or Urine Test for testing related to drugs. If the employee desires a second Blood Test or Urine Test, the employee will have reasonable opportunity, upon request, for an additional chemical test to be performed at the employee's own expense at a Qualified Laboratory.

4. TESTING ON LAST CHANCE AGREEMENT. The Management Representative may require an employee then on a last chance agreement to be tested at any time with or without cause. The Management Representative shall confidentially arrange for the testing of the employee at a Qualified Laboratory. County shall pay all expenses of testing. Testing shall occur within 2 hours of an order for testing. The employee shall be entitled to see the results of the testing.

5. POST-TESTING REQUIREMENTS. Section IX applies to any testing performed under this section.

6. MISCELLANEOUS TESTING REQUIREMENTS.

a. The Management Representative will receive test results and notify the Director. No test results shall appear in an employee's personnel file except as necessary to substantiate the basis for a discharge or suspension from employment.

b. In the event that the Blood Test or Urine Test results are positive for Controlled Substance(s), including marijuana, County shall require that a second confirmatory test from the same sample be conducted, using gas chromatography mass spectrograph techniques or equivalent, which also must be positive before concluding the employee has such substance(s) present in their body.

c. If a Blood Test or Urine Test is positive, County will instruct the laboratory to retain the blood or urine sample for a period of not less than 30 calendar days from the date the tests are complete for the purpose of allowing the employee to conduct an independent test at the employee's own expense at a Qualified Laboratory approved by County.

d. The procedure followed under this policy to obtain, handle and store blood and urine samples and to conduct laboratory tests shall be documented to establish procedural integrity and chain of evidence. Such procedures shall be administered with due regard for the employee's privacy and the need to maintain the confidentiality of test results to an extent which is not inconsistent with the needs of this policy. The employee shall be notified of the results of all tests conducted pursuant to this policy.

#### Section VIII. REFUSAL TO SUBMIT TO DRUG OR ALCOHOL TEST.

1. Whenever the Management Representative has authority under this policy to require an employee to submit to a drug or alcohol test and the employee refuses to submit to the test after being so directed, the employee will be presumed to have tested positive.

2. FIRST REFUSAL. In a case in which the employee had not previously refused an order for testing, the employee will be granted an unpaid leave of absence and directed to participate in an alcohol and drug abuse evaluation arranged and paid for by County and conducted by a qualified drug and alcohol

medical provider. Sections IX and X govern the rights of the employee and County after a qualified drug and alcohol medical provider has conducted the evaluation.

3. **SUBSEQUENT REFUSALS.** In a case in which the employee had previously refused an order for testing and thereafter refuses an order for testing a subsequent time, the employee is subject to immediate discharge from employment.

**Section IX. CONSEQUENCES OF TEST RESULTS.**

1. Test results which do not positively establish that the employee has engaged in prohibited conduct as described in this policy shall result in no further action against the employee related to an alleged violation of those sections. The employee shall be informed of such test results.

2. If the result of a Management Representative's order for testing of an Employee is a Positive Alcohol Test or Positive Drug Test, the employee shall submit to a medical evaluation by a qualified drug and alcohol medical provider selected and paid by County. If recommended by the qualified drug and alcohol medical provider, the employee shall enroll in a rehabilitative treatment program. While in the treatment program, the employee will be granted an unpaid leave of absence. The employee is responsible for costs of the treatment program.

3. Section X governs the employee's return to work after treatment is recommended under subsection (2) of this section.

**Section X. PROCEDURE FOR RETURN TO WORK AFTER TREATMENT ORDERED UNDER SECTION IX.**

1. **GENERALLY.** An employee will not be disciplined solely for receiving a Positive Alcohol Test or Positive Drug Test that results in the first recommendation by a qualified drug and alcohol medical provider to enroll in a rehabilitative treatment program so long as the employee enrolls in a rehabilitative treatment program. The employee is eligible to return to work as provided in this section after successfully completing the rehabilitative treatment program.

2. At such time the rehabilitative treatment program provider has determined that the employee is currently capable of performing the employee's job, the employee will be returned to work with back pay so long as the employee agrees to abide by further treatment recommended by the provider. If the employee does not agree to abide by further treatment recommended by the provider, the employee will not be reinstated and will not be paid back pay.

3. Except for County's obligation to pay for a medical evaluation by a qualified drug and alcohol medical provider, all costs of initial and future treatment shall be at the expense of the employee.

4. The Management Representative shall monitor the employee's treatment progress and report noncompliance to the Director for further action.

**Section XI. SEARCH AND INVESTIGATION.**

1. In order to meet the objectives of this Policy, County reserves the right to carry out reasonable searches of individual employees and their personal effects when employees are on County property or in a County vehicle. If an employee refuses to cooperate in the search, the refusal will be considered gross insubordination.

2. Searches which do not reveal the presence of alcohol or Controlled Substances shall result in no further action against the employee related to an alleged violation of Section V. The employee shall be informed of such search results.

3. Searches which reveal the presence of alcohol or Controlled Substances (but excluding any substance lawfully prescribed for the employee's use which has not been obtained for the purpose of abuse) shall result in those consequences specified in Sections VI, IX and X as though a positive Blood Test or positive Urine Test had been administered.

**Section XII. APPLICATION OF GRIEVANCE PROCEDURE.** The Association may submit any dispute arising under this testing policy to the Grievance Procedure established in this Collective Bargaining Agreement between the parties.

**Section XIII. LAST CHANCE AGREEMENT.** A model last chance agreement will be approved by COUNTY and Association bargaining teams in due course after this Agreement goes into effect. Individual last chance agreements will be approved by the County and Association modified to include treatment plans or other matters pertaining to a particular case.

APPENDIX B

GARRITY WARNING FOR COMPELLED STATEMENT

If the County elects to compel a statement under Article 12, the supervisor shall give the following warning to the employee:

This interview is an official inquiry under Article 12, Discipline and Discharge, of the labor agreement. This interview is being conducted because of allegations or information that you may have engaged in misconduct or improper performance of official duties, and your actions or involvement may have constituted criminal conduct.

This inquiry pertains to (state the general nature of the inquiry).

The purpose of this interview is to obtain information which will assist in the determination of whether disciplinary action under Article 12 is warranted.

You will be asked a number of specific questions regarding the performance of your official duties. You are being compelled to answer these questions for this interview. Disciplinary action, including dismissal, may be undertaken if you refuse to answer or fail to reply fully and truthfully.

Your answers and any information or evidence gained by reason of your answers cannot be used against you in any criminal proceeding nor provided to any law enforcement agency unless mandated by law or court order. The notes and information obtained from this interview are considered confidential between the employer, Association and employee. If you knowingly and willfully provide false statements or information in your answers, you may be disciplined up to and including discharge. The answers you furnish and any information or evidence resulting from false testimony may be used in the course of disciplinary proceedings under Article 12.

You are hereby advised of your right to have an Association Labor Representative present during this interview.

\_\_\_\_\_

Signature of Supervisor or Investigator

Date:

Signature of Employee

Date:

GARRITY WARNING FOR VOLUNTARY STATEMENT

If the County elects to seek a voluntary statement under Article 12, the supervisor shall give the following warning to the employee:

You are being contacted seeking your cooperation in an inquiry regarding information pertaining to or allegations of misconduct or improper performance of official duties.

The matter under investigation could also constitute a violation of law which could result in criminal prosecution of responsible individuals.

This inquiry concerns (state the general nature of the matter)

You have the right to remain silent if your answers may incriminate you. If you decide to answer questions or make a statement, you may stop answering at any time.

Although you would normally be expected to answer questions regarding your official duties in this instance, you are not required to do so. This is a voluntary meeting. Your refusal to answer on the ground that the answers may incriminate you will not subject you to disciplinary action by the County.

Any statement you furnish may be used as evidence against you, or others, in any future criminal proceeding or disciplinary proceeding, or both.

WAIVER

I understand these warnings and assurances stated above. I also have been advised of my right to have an Association Labor Representative present during this interview.

I knowingly and voluntarily answer questions or make a statement concerning this matter.

\_\_\_\_\_

Signature of Supervisor or Investigator

Date:

Signature of Employee

Date:

[END OF 2017-2020 AGREEMENT]