

**OED Agreement Number 17-196****STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

In compliance with the Americans with Disabilities Act, the Oregon Employment Department offers alternate formats, auxiliary aids and services, and language services to individuals with disabilities free of cost upon request. Individuals with limited English proficiency may also request language services free of cost upon request. To request any of these services, please send an e-mail to FPDR_INTERPRETER@oregon.gov, or call (503) 947-1794 (voice), or dial 7-1-1 for TTY/TDD toll free relay service, or access free online relay service at: www.sprintrelayonline.com and enter phone number (503) 947-1794.

This Agreement is between the City of Portland, acting by and through its Bureau of Fire and Police Disability and Retirement, hereinafter referred to as "FPDR" and

**The State of Oregon
Acting by and through its Employment Department
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309
Agreement Administrator: John Mann
Telephone: 503-612-4311
Facsimile: 503-612-4340
E-mail address: john.m.mann@oregon.gov**

hereinafter referred to as "OAH."

FPDR's Agreement Administrator:

**Samuel Hutchison
1800 SW First Avenue, Suite 450
Portland, OR 97201
Telephone: 503-823-5500
Facsimile: 503-823-5166
E-mail address: sam.hutchison@portlandoregon.gov**

EXHIBIT "A"

1. Definitions.

- a. **"Agreement"** means all terms and conditions herein and all Exhibits attached hereto
- b. **"Authorized Representative"** means a person representing a party to this Agreement who is authorized to make commitments and decisions on behalf of the party regarding the performance of this Agreement.
- c. **"Documentation"** means all documents, including documents that are Deliverables described in the Statement of Work that are to be delivered by the parties under this Agreement.
- d. **"DOJ"** means the State of Oregon acting through its Department of Justice.
- e. **"Services"** means all effort to be expended by OAH under the Agreement
- f. **"State"** means the State of Oregon.
- g. **"Work"** means the tasks or services and deliverables accepted by FPDR as described in Exhibit A, Part 1, "Statement of Work."
- h. **"Work Product"** means everything that is specifically made, conceived, discovered, or reduced to practice by OAH or OAH's subcontractor or agents (either alone or with others) pursuant to the Agreement. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product is not OAH Intellectual Property, FPRD Intellectual Property, or Third Party Intellectual Property.

2. Effective Date and Duration.

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice or on July 1, 2017, whichever date is later. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on June 30, 2021. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

3. Agreement Documents.

- a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions

There are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibit A, Exhibit B.
- c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by OAH as set forth in Exhibit A.

4. Consideration.

- a. The maximum not-to-exceed amount payable to OAH under this Agreement, which includes any allowable expenses, is **\$400,000.00**. FPDR will not pay OAH any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties. OAH will not complete any Work in excess of the work that can be completed for the maximum not-to-exceed amount.
- b. FPDR will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

5. Signatures.

State of Oregon, acting by and through its Oregon Employment Department
By:

Authorized Signature

Date

Authorized Signature

Designated Procurement Officer

Date

City of Portland acting by and through its Bureau of Fire and Police Disability and Retirement
By:

Authorized Signature

Title

Date

Approved for Legal Sufficiency (OAH):

Assistant Attorney General

Date

OAH Program Section:

Authorized Signature

Date

Approved As To Form:

Portland City Attorney

Date

EXHIBIT A**Part 1
Statement of Work****1. Services to be Provided by OAH shall include:**

- a. Conduct all contested case hearings regarding disability and retirement benefits and appellate reviews arising from appeals of Final Orders concerning disability benefit claims filed under Chapter 5 of the Charter of the City of Portland, Oregon and referred to OAH by FPDR in accordance with Charter provisions and FPDR's administrative rules. Those services include, but are not limited to, the following:
 - (1) Promptly scheduling prehearing conferences and hearings, and issuing notices to FPDR's attorney and the member or the member's attorney or representative;
 - (2) Conducting the hearing or prehearing conference by telephone or in-person;
 - (3) Supplying one or more hearing officers who are members of the Oregon State Bar who have, or who can attain within a reasonable time, the relevant disability and/or pension training and experience;
 - (4) Continuing to timely appoint members of the appellate panel who are members of the Oregon State Bar and who have, or who can attain within a reasonable time, the relevant disability training and experience, to terms consistent with Chapter 5 of Portland's Charter.
 - (5) Maintaining records identifying each hearings officer (administrative law judge) and appellate panel member, and the terms of each appellate panel member's assignment;
 - (6) Promptly delivering to the parties and the FPDR Director a copy of all Final Orders and Final Orders on Appeal;
 - (7) Returning to FPDR all paper and hard copy records of the case either once the hearings officer's Final Order becomes final by operation of law or 70 days after issuance of a Final Order on Appeal, if FPDR has not notified OAH that a petition has been filed with the Circuit Court for Writ of Review;
 - (8) Appointing a certified or qualified interpreter whenever it is necessary to interpret the proceeding.

- b. Hearing dates will be set as soon as reasonably practicable after referral. If FPDR or the member has an emergency, every effort will be made to set hearings as soon as possible.
 - c. The hearings officers and appellate panel members shall issue orders consistent with applicable law, including but not limited to the FPDR Plan and FPDR administrative rules.
2. FPDR agrees to, at the time of referral, forward to OAH documents relevant to the referral of the contested case hearing, including an information sheet containing names, addresses, telephone numbers of parties (including updating OAH on new names, addresses and telephone numbers of parties).

EXHIBIT A**Part 2****Payment and Financial Reporting****1. Payment Provisions.**

- a. Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum not-to-exceed amount stated in Section 3, "Consideration" of this Agreement, for the term of this Agreement.
- b. Interim payments shall be made to OAH following FPDR's review and approval of invoices submitted by OAH, but not later than 30 days after the invoice is sent to FPDR.
- c. FPDR will reimburse OAH for Work completed under this Agreement per the schedule of fees and funding mechanisms established by ORS 183.655 and ORS 183.665.
- d. FPDR will reimburse OAH for all appropriate and actual costs incurred to provide said Work under Agreement. Such costs include, but are not limited to:
 - (1) Interpreter fees
 - (2) Postage
 - (3) Long-distance telephone calls; and
 - (4) Reasonable copying costs.
- e. OAH Invoice.
 - (1) OAH shall submit monthly invoices for Work performed. The invoices shall describe all work performed with particularity, indicating by whom the work was performed and shall itemize and explain all expenses for which reimbursement is claimed. OAH shall send invoices to FPDR's Agreement Administrator with the Agreement number noted.
 - (2) FPDR will not pay any amount in excess of the maximum not-to-exceed amount. The maximum compensation may be increased by written amendment of this Agreement, signed by both parties. In no event is OAH required to perform work for which it will not be paid because the not-to-exceed amount has been reached, and no amendment has been agreed upon. No payment will be made for any Work performed under the terms of this Agreement before the beginning date or after the expiration date of this Agreement, as it may be amended from time to time in accordance with its terms.

- (3) If, while this Agreement is in effect, OAH increases hourly rates being charged to FPDR, that increase may only be applied with FPDR's written consent. If FPDR chooses not to consent to the increased rates, FPDR may terminate OAH's services under this Agreement.

EXHIBIT A**Part 3
Special Terms and Conditions****1. Confidentiality of Information.**

- a. OAH acknowledges that it and any of its officers, directors, employees, agents and subcontractors may, in the course of performing the Work under this Agreement, be exposed to or acquire information that is confidential to FPDR or FPDR's clients. To the extent permitted by law, any and all information of any form provided to OAH or its officers, directors, employees, agents and subcontractors in the performance of this Agreement that reasonably could at the time of its disclosure be understood to be confidential shall be deemed to be Confidential Information.
- b. Confidential Information shall be deemed not to include information that:
 - (1) OAH is permitted or required by law to disclose;
 - (2) Is or becomes publicly known or is contained in a publicly available document except to the extent applicable law still restricts disclosure;
 - (3) Is furnished by FPDR to others without restrictions similar to those imposed on OAH under this Agreement;
 - (4) Is obtained from a source other than FPDR without the obligation of confidentiality;
 - (5) Is disclosed with the written consent of FPDR; or
 - (6) Is independently developed by OAH, its officers, directors, employees, agents or subcontractors who can be shown to have had no access to the Confidential Information.
- c. These confidentiality obligations do not restrict disclosure of information otherwise qualifying as Confidential Information if OAH can show that either of the following conditions exists: (i) the information was disclosed in response to a subpoena or court order duly issued in a judicial or legislative process, in which case OAH shall notify the originating party of the subpoena five days prior to the disclosure, unless such notice could not reasonably be given; or (ii) the disclosure was required to respond to a request for the information made under the Oregon Public Records Law, ORS 192.410 to 192.505. OAH shall notify the originating party of a public records request five days prior to the disclosure.

This Section 1. shall survive Agreement expiration or termination.

2. Amendments.

- a. The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement signed by both parties.

- b. However, both parties reserve the right to extend the Agreement for additional periods of time up to a total agreement period of 5 years, and for additional money associated with the extended period(s) of time.

EXHIBIT B**Standard Terms and Conditions**

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement. **Compliance with Law.** In connection with their activities under this Agreement, the parties shall comply with all applicable federal, state, and local laws.
2. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that neither party is an officer, employee, or agent of the other party as those terms are used in ORS 30.265 or otherwise.
3. **Representations and Warranties.**
 - a. FPDR represents and warrants to OAH that:
 - (1) FPDR is a city duly organized and validly existing. FPDR has the power and authority to enter into and perform this Agreement;
 - (2) The making and performance by FPDR of this Agreement (a) have been duly authorized by all necessary action of FPDR, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of FPDR's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which FPDR is party or by which FPDR may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by FPDR of this Agreement, other than those that have already been obtained;
 - (3) This Agreement has been duly executed and delivered by FPDR and constitutes a legal, valid and binding obligation of FPDR enforceable in accordance with its terms;
 - (4) FPDR shall, at all times during the term of this Agreement, be qualified to perform its obligations under this Agreement.
 - b. OAH represents and warrants to FPDR that:

- (1) OAH has the power and authority to enter into and perform this Agreement;
 - (2) The making and performance by OAH of this Agreement (a) have been duly authorized by all necessary action of OAH, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which OAH is party or by which OAH may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by OAH of this Agreement, other than those that have already been obtained; and.
 - (3) This Agreement has been duly executed and delivered by OAH and constitutes a legal, valid and binding obligation of OAH enforceable in accordance with its terms.
- c. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided.
4. **Recovery of Overpayments.** If payments to OAH under this Agreement exceed the amount to which OAH is entitled, FPDR may, after notifying OAH in writing, withhold from payments due OAH under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.
 5. **OAH Default.** OAH shall be in default under this Agreement upon the occurrence of any of the following events:
 - a. OAH fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.
 - b. Any representation, warranty or statement made by OAH herein or in any documents or reports relied upon by FPDR to measure the delivery of services, or the expenditure of payments is untrue in any material respect when made;
 6. **FPDR Default.** FPDR shall be in default under this Agreement upon the occurrence of any of the following events:
 - a. FPDR fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
 - b. Any representation, warranty or statement made by FPDR herein is untrue in any material respect when made.
 - c. FPDR (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition

seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or

- d. A proceeding or case is commenced, without the application or consent of OAH, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of FPDR, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of FPDR or of all or any substantial part of its assets, or (3) similar relief in respect to FPDR under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against FPDR is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

7. Termination.

- a. This Agreement may be terminated at any time by mutual written consent of the Parties.
- b. OAH Termination: Agency may terminate this Agreement as follows:
 - (1) Upon 60 days advance written notice to FPDR;
 - (2) Immediately upon written notice to FPDR, if OAH fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in OAH's reasonable administrative discretion, to perform its obligations under this Agreement;
 - (3) Immediately upon written notice to FPDR, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that OAH's performance under this Agreement is prohibited or OAH is prohibited from paying for such performance from the planned funding source;
 - (4) Immediately upon written notice to FPDR, if FPDR is in default under this Agreement and such default remains uncured 15 days after written notice thereof to FPDR; or
 - (5) As otherwise expressly provided in this Agreement.
- c. FPDR Termination: FPDR may terminate this Agreement as follows:
 - (1) Upon 60 days advance written notice to OAH
 - (2) Immediately upon written notice to OAH, if FPDR fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in FPDR's reasonable administrative discretion, to perform its obligations under this Agreement;

- (3) Immediately upon written notice to OAH, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that FPDR's performance under this Agreement is prohibited or FPDR is prohibited from paying for such performance from the planned funding source;
 - (4) Immediately upon written notice to OAH, if OAH is in default under this Agreement and such default remains uncured 15 days after written notice thereof to OAH; or
 - (5) As otherwise expressly provided in this Agreement.
- e. **Return of Property.** Upon termination of this Agreement for any reason whatsoever, OAH shall immediately deliver to FPDR all of FPDR's property (including without limitation any Work Products for which FPDR has made payment in whole or in part) that are in the possession or under the control of OAH in whatever stage of development and form of recordation such FPDR property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, OAH shall immediately cease all activities under this Agreement, unless FPDR expressly directs otherwise in such notice of termination. Upon FPDR's request, OAH shall surrender to anyone FPDR designates, all documents, research or objects or other tangible things needed to complete the Work Products.
8. **Effect of Termination.**
- a. **Entire Agreement.**
 - (1) Upon termination of this Agreement in its entirety, FPDR shall pay to OAH all amounts currently owing.
 - (2) Upon termination of this Agreement in its entirety, OAH shall have no further obligation to perform Work under this Agreement.
 - b. **Obligations and Liabilities.** Notwithstanding Section 8.a. above, any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
9. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
10. **Records Maintenance; Access.** The parties shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, OAH shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of OAH, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document OAH's performance. All financial records, other records, books, documents, papers, plans,

records of shipments and payments and writings of OAH whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." OAH shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

11. **Force Majeure.** Neither FPDR nor OAH shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, act of nature, or war which is beyond the reasonable control of FPDR or OAH, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Either party may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or default will likely prevent successful performance of this Agreement.
12. **Assignment of Agreement, Successors in Interest.** FPDR may not assign or transfer its interest in this Agreement without the prior written consent of OAH and any attempt by FPDR to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OAH's consent to FPDR's assignment or transfer of its interest in this Agreement will not relieve FPDR of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
13. **No Third Party Beneficiaries.** FPDR and OAH are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that OAH's performance under this Agreement is solely for the benefit of FPDR to assist and enable FPDR to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
14. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
15. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
16. **Survival.** All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 9, 11, 15, 16 and 24 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this

Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

17. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, facsimile, or mailing the same, postage prepaid to OAH or FPDR at the physical address, or fax number, or email address set forth in this Agreement. Any communication or notice so addressed and mailed by regular mail or email shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day if transmission was outside normal business hours of the recipient. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.
18. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
19. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
20. **Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.
21. **Waiver.** This Agreement and all exhibits and attachments constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement will bind a party unless signed by an authorized person representing the consenting or waiving party. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
22. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
23. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a

party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which OAH is jointly liable with the FPDR (or would be if joined in the Third Party Claim), any contribution from OAH is capped in accordance with the Tort Claims Act and payable solely from the Insurance Fund established by ORS 278.425. With respect to such claims, OAH shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by FPDR in such proportion as is appropriate to reflect the relative fault of OAH on the one hand and of the FPDR on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OAH on the one hand and of the FPDR on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OAH's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OAH had sole liability in the proceeding.

- 24. Indemnification by Subcontractors.** FPDR shall take all reasonable steps to cause its contractor(s), that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of FPDR's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.