

# **FPDR BOARD OF TRUSTEES MATERIALS**

**July 26, 2022**

## **Table of Contents**

(To see a specific document, click on the link below)

- [Agenda](#)
- [May 24, 2022, Board of Trustees Meeting Minutes](#)
- [Action Item No. 1 – Resolution No. 545 – Pregame, Inc. Management Consultant Contract](#)
- [Action Item No. 2 – Resolution No. 546 – Administrative Rule Amendments to Section 5.2](#)
- [Action Item No. 3 – Resolution No. 547 – Full-Time Claims Analyst Position](#)
- [Information Item No. 1 - FPDR Summary of Expenditures](#)
- [Information Item No. 2 – PERS ETOB Test Results](#)
- [Information Item No. 3 – Changes at FPDR](#)
- [Information Item No. 4 – FPDR Updates](#)
- [Information Item No. 5 – Future Meeting Agenda Items](#)

**Note:** There are no handouts for Information Items 2 - 5 of the agenda

**City of Portland Bureau of Fire and Police Disability and Retirement  
Agenda for Regular Meeting – Board of Trustees  
Tuesday, July 26, 2022 – 1:00 p.m.**

**Please note, the Board of Trustees is holding this meeting electronically. All members of the board are attending remotely. The meeting is available to the public on the City's eGov PDX channel on YouTube, Channel 30, and [www.portlandoregon.gov/video](http://www.portlandoregon.gov/video)**

## ADMINISTRATION

*The following consent item(s) are considered to be routine and will be acted upon by the Board in one motion, without discussion, unless a Board member, staff member or the public requests an item be held for discussion.*

1	Review of new Board meeting minutes procedure
2	Approval of Minutes – May 24, 2022 Meeting

## INTRODUCTION OF VISITORS

## PUBLIC COMMENT PERIOD

**Public comments will be heard by electronic communication (internet connection or telephone). If you wish to sign up for public comment, please register at the following link: [https://us06web.zoom.us/webinar/register/WN\\_kU1hVMU7S7OPOFFX1k6w](https://us06web.zoom.us/webinar/register/WN_kU1hVMU7S7OPOFFX1k6w)**  
*You will be asked to provide your name, phone number, email address, agenda item number(s) you wish to provide comment on and zip code. After registering, you will receive a confirmation email containing information about joining the electronic/virtual meeting. Individuals will have three minutes to provide public comment unless otherwise stated at the meeting. The deadline to sign up for the July 26, 2022 electronic board meeting is Monday, July 25, 2022 at 3:00 p.m. Individuals can also provide written testimony to the Board by emailing the FPDR Director Sam Hutchison at [sam.hutchison@portlandoregon.gov](mailto:sam.hutchison@portlandoregon.gov) by July 22, 2022.*

## ACTION ITEMS

1	Resolution No. 545 – Pregame, Inc. Management Consultant Contract <ul style="list-style-type: none"> <li>Issue: Staff recommends contracting with Pregame, Inc. for strategic planning and process improvement services.</li> <li>Expected Outcome: Board adopts resolution authorizing FPDR Director to enter into an agreement with Pregame.</li> </ul>
2	Resolution No. 546 – Administrative Rule Amendments to Section 5.2 <ul style="list-style-type: none"> <li>Issue: Amendments to Section 5.2.01 to reflect the practice of board meetings held once every other month.</li> <li>Expected Outcome: Board adopts amendments as proposed by staff.</li> </ul>
3	Resolution No. 547 - Full-Time Claims Analyst Position <ul style="list-style-type: none"> <li>Issue: Staffing level increase is needed to meet current demands.</li> <li>Expected Outcome: Board allows Director to add 1 FTE to FPDR staffing level for a new Disability Analyst position.</li> </ul>

## INFORMATION ITEMS

*The following information items do not require action by the Board and are solely for informational purposes unless a Board member, staff member or the public requests an item be held for discussion.*

1	FPDR Summary of Expenditures
2	PERS ETOB Test Results
3	Changes at FPDR
4	FPDR Updates
5	Future Meeting Agenda Items

Copies of materials supplied to the Board before the meeting, except confidential items and those referred to Executive Session, are available for review by the public on the FPDR website at [www.portlandoregon.gov/fpdr](http://www.portlandoregon.gov/fpdr) or at the FPDR offices located at: 1800 SW First Avenue, Suite 450, Portland, Oregon 97201. **NOTE:** If you have a disability that requires any special materials services or assistance call (503) 823-6823 at least 48 hours before the meeting.

<b>FIRE AND POLICE DISABILITY AND RETIREMENT BOARD OF TRUSTEES MEETING</b>	<b>MINUTES</b>
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As a result of the COVID-19 pandemic and the need to limit in-person contact and promote social distancing, the meeting was held remotely via a Zoom webinar platform.

<b>Date and Time:</b> May 24, 2022, at 1:00 p.m.; Meeting adjourned at 2:30 p.m.
<b>Board Members Present:</b> Margaret Carter (Board Chair); Catherine MacLeod (Citizen Trustee); Christopher Kulp (Police Trustee); James Huang (Citizen Trustee); Kyle MacLowry (Fire Trustee)
<b>Also Present:</b> Sam Hutchison (FPDR Director); Stacy Jones (FPDR Deputy Director/Finance Manager); Kimberly Mitchell (FPDR Claims Manager); Julie Crisp (FPDR Business Systems Analyst); Julie Hall (FPDR Office Specialist); Franco A. Lucchin (Sr. Deputy City Attorney); Lorne Dauenhauer (Outside Legal Counsel); OpenSignal PDX
<b>Motions Made and Approved:</b> <ul style="list-style-type: none"> <li>• Motion by Trustee Kulp that was seconded by Trustee Huang and unanimously passed to approve the March 15, 2022, minutes.</li> <li>• Motion by Trustee Kulp that was seconded by Trustee MacLeod and unanimously passed Resolution 544 authorizing FPDR's use of tax anticipation notes (TANs) in the amount of \$45 million to assist with cash flow and to be repaid prior to June 30, 2023. (Action Item No. 1)</li> </ul>
A text file produced through the closed captioning process for the live broadcast of this board meeting is attached and should not be considered a verbatim transcript.

Fire and Police Disability and Retirement

By \_\_\_\_\_

Sam Hutchison

FPDR Director

## **CLOSED CAPTIONING FILE**

[ Captioner on standby]

**Chair Carter:** Hello to everybody and again I hope you enjoyed the sunshine this past Weekend and are ready to move forward. I'm hoping most of all that this monkey pox doesn't raise its ugly head to the extreme in which the other parts of this pandemic have been presenting itself. So now what I'd like to do is to enter into official meeting of the Fire and Police Disability and Retirement Board. I'm Margaret Carter and our Administrator is Director Hutchinson. So, I'd like to start with the acceptance of the reading of the last minutes that includes action items that are related to resolution number 544 and information items. Are there questions or anything on those items? I am open for an acceptance motion.

**Trustee Kulp:** I'll make a motion.

**Chair Carter:** For the approval of the last minutes.

**Trustee Huang:** Second.

**Chair Carter:** Did you get that? Okay, thank you. So, Sam, what I'd like to do is -- I'm sorry, Director Hutchinson, excuse me.

**Director Hutchison:** No problem.

**Chair Carter:** Informal here. What I'd like to do is turn it over to you in terms of any items that you guys have up for discussions at this particular point.

**Director Hutchison:** Okay. Just real quick look through here. Normally we don't have any visitors here on site this time. I think you know everybody. Julie, did we have any public comment?

**Julie Hall:** Am I muted? No, we don't.

**Director Hutchison:** Okay. So, we'll jump down to action item number one - Resolution 544. Stacy, you're on.

**Stacy Jones:** Hey, everyone. For the record I'm Stacy Jones, the Finance and Pension Manager here at FPDR. So, the only action item you have before you today is a resolution authorizing our routine annual tax anticipation note issue, which the Board always authorizes at their May meeting for borrowing in July or August. But since we have three trustees who are new, since we did this last year, let me go over the TANS in a bit more detail than I normally do but I promise it will still only take five minutes probably. So, we rely almost - I think everyone knows this - that we rely almost entirely on our on dedicated tax levy to fund all our benefits and all our expenses throughout the year and although our fiscal year starts on July first, we don't receive most of our property tax revenue until mid-November. I'm sure you're all familiar with paying your property tax bills or most of you are. So, every year we borrow money in July or August to bridge that gap between July first and mid-November by issuing TANS, tax anticipation notes. Recall that notes are just short-term bonds, and we pay them off when we get our tax revenue in the fall. So many, many, many local and state governments issue TANS so there's a very well-developed market for

them. And they are of course tax exempt, which means those that buy our TANS get to keep their interest earnings tax free which means we get charged less interest which is the purpose of that provision in the Federal Internal Revenue Code. So, in addition to just being necessary from a cash flow perspective, issuing TANS has always been advantageous to the fund because we have always paid less interest in TANS than we can earn on the funds in the City investment pool. So, for example this year we paid 0.21 percent in interest on our TANS, and we earned about 0.5 percent. We are more than double on those funds in the City treasury pool.

So that is allowed. In case anyone is worried. That is allowed under the IRS arbitrage. Governments are allowed to make money on the money they borrow but there are very strict rules governing how we issue and how much we borrow to make sure that we only borrow what we need. So that's the general background on why we issue the TANS every year and the timing of it. For this year - I should also say - we usually budget to borrow about four and a half months of expenses from that July first through November fifteenth, period, less projected fund balance that we'll have at the start of the fiscal year. So last year, you know, more than a year and half, more than a year ago now, we budgeted - now what am I saying - no, you guys just adopted the budget in January. So, a few months ago we budgeted \$45 million for TANS for fiscal year '22-23 and that is the borrowing amount I'm asking you to authorize today. This is the same as you approved in the budget in January, but this is a formal resolution saying the Board authorized me to go out and borrow up to \$45 million dollars. So, before we actually borrow, we will finish a very detailed cash flow analysis and only borrow what we need plus a little bit for cushion of course. My staff have already done that preliminary analysis and it's not final, but I think right now that we'll need something more in the \$30 million range this year. It is not final, but I think right now that we will be somewhere in the \$30 million range this year. That is because you might recall from the January meeting when we talked about the budget that we are sitting on a larger fund balance than usual. That extra balance means we will not need to borrow quite so much as usual.

The last thing I want to talk about is the interest rate environment right now. Everybody is talking about the interest rate environment right now and what that looks like as we go out to actually borrow these funds later this summer. It is just changing dramatically in a week. I keep meeting with the debt manager, the City has a professional debt management staff in house, so we do not use a consultant or financial advisor for that. I keep meeting with him every couple days to kind of talk about the latest. I mentioned we only paid 0.21% on our year, but now the city debt manager thinks we are looking at paying more like 1.5-2%, which is 7-10 times more. But of course, we expect to earn more in the City investment pool next year where we will park the funds until we pay them back. So hopefully, we will continue to be in that positive arbitrage situation where we are making money on this arrangement. There are no guarantees, especially when interest rates are moving around the way that they are right now. And in times of rapid change like this, you are more likely to get divergence in the rates and different markets rather than the different markets tracking together, like they do in normal times. This has been the case for the last few years, but I am much less certain than I was in the 20 teens. It has continued to happen. We have continued to have positive arbitrage, but I just to be confident, and every year now I'm a little less sure. The interest rate environment is more unsettled at this moment than I

think it has ever been as we approach borrowing, at least in my time. I do think it will settle down as we get later into the summer and as we get past the June open market committee meeting. Speaking of divergence in different markets, it is very likely that we will do a private, direct borrowing with the bank this year rather than a full-blown public issue on the municipal bond market, which is what we usually do. But we did borrow, do a private direct placement of our TANs with the bank last year as well, because rates are just more favorable at banks right now than they are in the bond market, which is having a lot of trouble coping with inflation uncertainty and fed rate uncertainty.

So, last year it was slightly advantageous for us to go slightly with the private, with the bank directly rather than going for public issue and this year the city debt manager thinks it would be even more advantageous to do so. He thinks we might get as much as a full rate, a full hundred basis points less with the private bank placement than with the public issue. It is also cheaper from their other expenses we do not incur when we do private placement. We don't have to have movies, rates of bonds, things like that. In any event, we will make the final decision and the final decision about the amount when we are about ready to borrow, so when we have the most up-to-date information. We will make sure we have the best deal we can get our hands on before we sign on the dotted line. Today I'm asking the Board to authorize that borrowing so we are all set to do that later this summer. I am happy to answer any questions or address any concerns.

**Trustee Huang:** You mentioned earlier that, there are certainly risk solutions with the interest rates and with investment returns, so how are you proceeding or proposing to manage those potential risks.

**Stacy Jones:** There is not much, given that we absolutely have to borrow the money, because we just don't have enough money to get to that number. The way that you can manage or eliminate that risk is, you know, the Board could adopt a long-term strategy of building up enough fund balance, to just carry enough money every year to cover this every year, we build up an extra \$60 or \$70 million in fund balance, and then we will never go into the situation. That would be one way to manage or eliminate the long-term risk associated with this strategy, but we have never wanted to pursue that for two reasons.

First, there's a little bit of a legal question. The way the charter is written, it's not clear that we could go out and hit the taxpayers up for that balance. The second and perhaps more significant issue is that it has always been to our advantage. We have never had a year, at least in our record-keeping, where we were not in a positive arbitrage situation. Even if it did happen, one particular year we have an upside-down interest rate year, given that history, we are always coming out on top with this. There might be some risk in one year, but also let me characterize you on the scale of the risk. We are talking about let's say if things went sideways, maybe 1% on borrowing of \$30 million. So, we're not talking about a lot of money that we are risking, money we can easily cover. The only time I would want to start think about managing this differently is if we saw multiple years in a row in different settings where we were looking at negative arbitrage, then I would want to start looking a different way in terms of cash flow. But I feel confident that we really are as a city being as smart as we can the about how we borrow. We are not just looking to the public bond market. We are looking to the private banking markets. Our

debt manager is actively soliciting proposals as we get close to this to make sure that we're getting the best deals that we can in front of us and trying to gauge it. It's a little tough, because this year it's just tough because we are trying to gauge what the public bond market will look like in a couple months, which is virtually impossible to say right now. Does that answer your question?

**Trustee Huang:** Thank you.

**Chair Carter:** If we were to set up -- if we were to get to a point where there was an accumulation of those dollars beyond what the state or the city could measure that, we usually have done that in the last five years. Could they not borrow from this fund? The state or the city not take money from these funds, if property taxes got out of control or something?

**Stacy Jones:** Could they not borrow from our fund?

**Chair Carter:** To borrow or use dollars from this fund.

**Stacy Jones:** No because we are a fiduciary fund. That means our funds are the most legally restricted funds that exist in government. Nobody can put their hands in our pocket because they are fiduciary funds. Legally and under government accounting standards, nobody can do that for you let me caveat that a tiny bit, because could we loan money to another fund? Of our own free will at a prevailing interest rate. That's never come up before, nobody's ever asked us that before. I don't know if we could loan money, but if we did, it would have to be at a prevailing interest rate and it would have to be advantageous to the fund because we are a fiduciary fund. So, nobody can tap our dollars. Does that answer?

**Chair Carter:** Yeah, yeah. Further questions? James, did she answer your question?

**Trustee Huang:** She did.

**Trustee Kulp:** I will make a motion?

**Chair Carter:** Thank you.

**Trustee MacLeod:** I will second the motion. I take it that we are going to do resolution 544 as written, correct?

**Chair Carter:** The motion has been granted and then seconded. All approval? Thank you.

I want to while we have a few breathing moments here, I want to give thanks to Director Hutchison and his troops for sending us such sound information. I have been on Boards before where all the information is not taught as well as you've sent us information about this Board. I wanted to do that officially to say thank you for your hard work and the good work that you do. Thank you so much.

Next item -- I am behind here because I'm turning pages.

**Stacy Jones:** That's okay. I can keep going. The next items are just information items. We are going easy on you guys this month.

Thanks for the kind words about the materials, Chair Carter. Just as a reminder, the Trustees, any of you can contact Sam, Kim, or I at any time about anything. Part of what we are here to do is to answer any questions the Board has. So, information items for you we have a summary of expenditures. The expenditure report we give you every year, there is nothing very dramatic in it this month. A couple months ago I thought we were on track to overspend the facility budget, because of continuing COVID infection waves, which we are sort of reexperiencing a little bit right now. Now I am fairly confident that we are going to end the year with the budget in all categories. We did adjust the budget in the spring BMP (budget monitoring project), but I think the disability budget - the disability spending has settled down. Police and fire have started billing us for their FPDR 3 contributions. I don't know if folks recall, but I mentioned they had gotten a bit behind this year. We are starting to see the expenses, but both bureaus are just a bit behind. You do not see a full three quarters of those expenses in this report like you would normally expect at this time of year. There is just two quarters of expenses in there. That is really all I have to say about the expenditure report. I did want to give the Board, it is not on the agenda, but I will sneak it in, a quick 22/23 budget update. Before I do that, let me ask if there are questions about the expenditure report.

**Trustee MacLowry:** Is that report different than a budget to actual report that has been provided for us?

**Stacy Jones:** Nope. It is the budget actual report that is in your material for use.

**Trustee MacLowry:** So, the two quarters of FPDR 3 pension contributions, the numbers from February and March, the \$7 and \$6 million dollars?

**Stacy Jones:** That's right, exactly. Normally, you would see those expenses hitting earlier in the year in a quarterly manner. They just got a bit behind. There's been some staff shortages and a little bit of kerfuffle related to consolidating some of those administrative functions at Police and Fire.

**Trustee MacLowry:** Okay.

**Chair Carter:** Questions on summary of expenditures? Next item.

**Stacy Jones:** Let me just talk about the budget briefly, I'm talking about the fiscal year 22/23 budget that the Board adopted in January. As we discussed back then, it is sometimes necessary to make technical adjustments to the budget before the start of the fiscal year on July 1st. I commit to the Board that I will always come back and talk to you about those if there are any material technical adjustments. There is something I think is programmatically material. I don't know if I would say it is financially material, but we did have to adjust our budget after the new Portland Police Association contract was ratified, which happened in February after the Board had adopted the budget. My team was closely involved in costing those contracts, so we're not usually very surprised by what ends up in the final on the contract, but you never know what's going to end up in there until it is over. There were two additional costs of the contract that we did not anticipate. The first was a new across-the-board 2% premium for all the PPA members. Of course, any sworn wage increase increases the cost of FPDR benefits since benefits are



primarily a percent of pay, so that was an increase in cost for us. The second item was a \$5,000 bonus that was paid to all PPA members, which will increase pension costs for those who retire with that bonus in their final pay lookback period. That's a pretty small subset of people, but that will increase our costs for that as well. The combination of those two items increases our cost next year by about \$700,000. We did increase our budget by about \$700,000. At the same time, we took the opportunity to go ahead and bump up our interest revenue expectations for next fiscal year. We were just talking about the changing interest rate environment. We increased our interest revenue budget by about \$450,000. Is that right? No. \$250,000. And the rest of the cost of the additional costs of PPA contract increases is funded by dropping fund contingency a little bit. So, there is no action the Board needs to take. I just want to keep the Board informed about any significant budget changes.

**Chair Carter:** Are there further questions? Thank you for such good notes, because you did an excellent job of explaining this on the March 15th meeting that this was going to happen. Thank you for that information. Are there further questions or clarification of any kind? Kathy, you are so quiet today. Everything must be good if Kathy is not saying anything. Okay. The next item - Board meetings.

**Director Hutchison:** The next two items - let's see. Julie, can you allow me to share my documents?

**Julie Hall:** Kathy, I'm not sure what to choose for that. Do I just make him a cohost? Thank you, Sam.

**Director Hutchison:** Okay. I am going to share a screen. This is the same document that you have in your book. I thought it would be easier to walk through, now I've got to find where that document is. Okay. What you should be seeing right now is the same supporting document that is in your Board book. This is information item two, we're going to talk about future Board meetings. The reason I brought this up -- did you just lose it, or do you have that document?

**Stacy Jones:** We can see it, Sam.

**Director Hutchison:** Okay. I brought this up for a couple reasons. One, there has been - we are coming out of the pandemic, so there have been some State statutes impacting how Board meetings can or should be run. I want to review a little bit of that with you. Also, I have so many new Board members, this may seem obvious how the meeting is run, but we will go through the rules and state statutes that explain how the meetings are to be run - when, where, and how. Also, with Kathy Kakesako retiring and we're bringing somebody in new, it's an overall time to look at this and just know that there are a few decisions you need to make at the end of the discussion. I'm reading from the document in your Board book. Our objectives for today are to review the Charter and FPDR Admin rules on when and how the Board is to conduct your meetings, review relevant Oregon revised statutes on public meetings. At the end of the discussion, we'll determine when and where to conduct future Board meetings and I would recommend a minor change to the administrative rules. We will walk through all of this here.

So, the first two things you'll see at the bottom of my screen or the bottom of the document of my screen is the FPDR plan, which is our charter. Section 5-201-A is very brief. The Board shall keep a record of all its proceedings and hold regular meetings at a time set by the Board. It does not give much guidance or say much of anything. So, we have administrative rule 5-201(a), which tells us about regular and special meetings. Not going to read the paragraph, because I have annotated this going forward. We are going to take you down, because each sentence is jam-packed with a lot of information. We are going to pull apart sentence by sentence.

Okay. Looking at Admin rule 5.2.01. The first sentence describes when the Board can have its meetings. Regular meetings of the Board are normally held on the fourth Tuesday of every month and commence at 1:00 p.m. The word normally on here gives you as the Board flexibility to change the day, start time, or even cancel meetings. So, this isn't rigid, there is some flexibility to it. That is important, because at times you cancel meetings or a few times we have to change the schedule to move it around. That word normally allows that to happen.

The rule says the Board meets every month. Our practices only meet six times per year. When I came on as Bureau Director, I looked at the history of the Board meetings. Initially, they were scheduled 12 times per year, and I found anywhere from meetings held from 6-8 times per year. There were a lot of canceled meetings. We talked about it and we figured it was good to go every other month, so we are meeting six times per year. So it's regular, everybody knows when the meetings are going to be. It should be easier to plan for the Board and other people wanting to attend. When we went by practice to go to this every other month meeting, there was some pushback from people that said, I want a meeting next month because there's topics we should be discussing. These are members and we said no. So, I just wanted to clean this line up. So, we will talk more about what we will do with the rules at the end, but this is the rule change recommendation I've got for this part is to change the wording and add of every other month starting in January. That takes us down to the six meetings per year, keeps us in line with what we're doing and makes it clear to our members when the meetings are going to be. When the meetings are there, the Oregon revised statutes and the public meeting law says we do have to notify the public of the meeting and a reasonable time. The statute does not specify what a reasonable time is. However, we tend to notice about two weeks - 10 days to two weeks before the meetings it is posted in various places. We also post an annual meeting schedule on our website. It is well published when the meetings are going to be. As I go through each one of the sections here or sentences, let me know if you have questions.

**Chair Carter:** Sam, what I would like to do is as you go through, ask if there are any objections and that we don't have to go back over all of that.

**Director Hutchison:** Okay.

**Chair Carter:** Are there any objections from the first sentence of the word normally? Approved.

**Director Hutchison:** And any issues on the - what am I trying to say? - the Charter change. That's identified in red in that paragraph. Any concerns with making that change? If you are okay with me making that change, I will formally present it to you. I have to post 30 days in advance to the public and then bring it to you for...

**Chair Carter:** Any objections?

**Trustee Huang:** I guess it's more of a question, I guess.

**Director Hutchison:** Okay.

**Trustee Huang:** From what I'm reading is that basically we're changing language to reflect we are meeting every other month. If the existing language already gives us that flexibility, then why are we sort of further boxing ourselves to that cadence, right? Especially if we decide to have for exceptions that we need more frequently?

**Director Hutchison:** Ok, a few things on this. For the second question you have come you want more meetings. That is two paragraphs downplay we talk about that very specifically. I think it will alleviate your concern when we get there. I did this for every other month, because he had some members, especially older members that were here, that wanted to meet every month. They felt that there were issues very important to be discussed, and they protested going every other month. Because they quote the rule. I just wanted to get the rule to match more of what we are doing. It does not prevent you from making the changes. We will go over that in just a minute. If you want to hold onto that, James, and we will get down and talk about the second part of your question.

**Trustee Huang:** Yeah, I'm sorry. I thought we were talking everything, about all the changes.

**Chair Carter:** James, let me resend what I further said that we would go by the sentences come and I will just wait for the completion.

**Trustee Huang:** Okay.

**Chair Carter:** Thank you.

**Director Hutchison:** That's fine.

**Trustee MacLowry:** My screen is not tracking. Can you scroll down on your screen?

**Director Hutchison:** Excuse me.

**Trustee MacLowry:** My screen is not tracking as you go on down the document.

**Director Hutchison:** Is it not moving?

**Stacy Jones:** It looks like it is not scrolling.

**Director Hutchison:** Okay. Let me re-share it. I have been using Zoom so often, I can't -- okay.

**Trustee MacLowry:** I do have a hard copy in case anyone wants to follow along.

**Director Hutchison:** Okay. I am trying to kill the document share, and it is not coming up. I have done Zoom so many times, and now it is getting hard to work. Can you kill the document share, Julie? I will re-share, because I've moved the document around, which was a mistake. Okay. Now let's try it again. Sorry. I did that myself. Document share. I keep learning more new

things. Okay. I'm just going to have to walk through because it's not letting me share again. Okay. Now we are back in here.

**Stacy Jones**: Sam, do you want me to share?

**Director Hutchison**: I've got it here. I'm sorry. Now you should have it, and it should be scrolling up and down? I apologize for that. I moved it when I was sharing it, and when you do that, it throws everything out of whack. We talked about the when. We are going to talk about where. It says, unless otherwise stated all meetings will be in the City Council chambers. Unless otherwise stated gives you the opportunity to change the location. We had done this during the pandemic, decided to have virtual meetings. Again, that offers you some flexibilities to where you're going to hold the meetings. We will talk a little bit more about this when we get down another sentence, because we will make some decisions on where to hold the meetings and the impact it has on public participation. The next sentence says special meetings. James, this will address your concern here. Special meetings may be called by the chairperson or three or more members of the Board. This is the rule that allows you to do additional meetings for the year. Let's say we have a hot topic and we want to come back in a one month. You would just say, hey, this is a special meeting and this allows us to have more than the six we have in our normal schedule. The only thing here, we must provide 24-hour notice of no surprise meetings to the public. This is the one that allows you to schedule additional meetings beyond the six regularly scheduled. Okay, James.

**Trustee Huang**: Yes, I understand.

**Director Hutchison**: Governance is straightforward. All the meetings are governed by the Oregon revised statutes for public meetings. It's my responsibility, the Chair's responsibility, and then our legal assistant's responsibility along with city attorneys of making sure all meetings comply with these, and they do, so this rarely comes up. If it does, we usually have the city attorney with us, and we can question whether what we are doing is proper. That is all taken care of with that, there is nothing exciting there, unless you want to read those statutes. There is quite a bit of stuff. Okay. Open to the public is where I want to spend a little bit of time here, because what the sentence says is except executive session pursuant to ORS 192.660. All meetings of the board open to the public. This is true -- this is where it says virtually all public meetings, the city, anybody at FPDR, are considered open to the public. Historically, this meant the public would have to attend in person and observe the meeting if we were having an in-person Board meeting like at the city Council. They had to come into the Board meeting to participate and we allowed during the pandemic for them to participate via Zoom.

Now, the next paragraph the state legislature changed part of the public meeting requirements. Basically, they are saying, as you come out of the pandemic most public Boards would have to go to in-person meetings. That does not apply to FPDR, because we have rules in the Charter written that we are not required -- the rules say we should, but the Charter does not. We do have some options and we'll go over those in a minute on how to run meetings. Should we go to public meetings again, where we hold them in the Council Chambers, we have to allow the public to participate electronically. This was not done before. This is a hybrid public

participation. That's what's new from the state statute. I want to go a little bit more into what the statute says we must do to meet this requirement.

So, this is ORS 192.670 (3), with the statute that went into effect the first of this year. It says all meetings held by a governing body of the public body, which you are the governing body of FPDR, must provide members of the general public to the extent reasonably possible the opportunity to:

A) Attend the meeting electronically, basically, using telephone, video, electronic, or virtual means. We live stream all our meetings and post video recordings on the website. This meets that criteria, so we don't have to do anything special to do that if we go back into the city Council chambers.

Part B) If a person – is in-person oral testimony is allowed, which we do allow that, we have to allow them to provide testimony by telephone, video, electronic, or virtual means. This will be the change that we have, so we'll have to do a hybrid meeting. The city Council has to follow this as well, and I think they are starting some meetings pretty quickly where they will be doing hybrid meetings. So, we want to figure out how they do it and be able to set ourselves up to follow the same program and technology platform they use to allow us to do that. So, you can have somebody testifying in person or you can have somebody doing it via Zoom or some other method. This will be an area we will have to work on. Fortunately, City Council's already ahead of us on this, so we will just figure out how to copy, plagiarize it, and otherwise do what they're doing.

With that, part C) If we have in person written testimony, which means they can send an e-mail or something to me for right now we accept written testimony via letters, e-mails, or facts. They come into FPDR. All testimonies except up to the time noted in the meeting announcement. Historically, we have accepted last-minute things that have come in after the announcement, as long as we can get published before the meeting. There is nothing to change here, because we offer electronic means today. The only thing we have to change should we go do in person meetings is to figure out how to run the hybrid public participation, which we will do. Any questions on that?

**Chair Carter:** James, have your questions been answered properly?

**Trustee MacLeod:** I have no questions.

**Director Hutchison:** There is one last sentence, which I am going to defer to the next topic that we have. That is meeting minutes, so we'll worry about that one in my next section. While we have here -- I don't know if you have any more questions on this. You do have some decisions to make today. Do you want to continue the practice of meeting once every two months starting in January? Is there any need or you want to change that at all? We do at the right to do special meetings, so we can meet more often than that.

**Chair Carter:** From the Board, your thoughts?

**Trustee MacLeod:** Go ahead.

**Trustee Huang:** Go ahead, Cathy.

**Trustee MacLeod:** My comment was going to be that I am perfectly happy with the current schedule of two months. I like having the option. I think once or twice we have in the last couple years had special training sessions or something else and we like having that flexibility there. I am always available if there is an urgent topic. So, I like the schedule of every two months. I, personally, would defer to maybe the police and fire representatives, because we are representing their members. If we would think that more frequent meetings should remain on the schedule, then I would defer to them.

**Trustee MacLowry:** I can say I feel that every other month seems fine, particularly with the option of adding as needed.

**Trustee Kulp:** I would agree.

**Trustee Huang:** I agree.

**Chair Carter:** I totally agree as well. Are there any objections to the represented changes that have been suggested by the director at this point? So, approved.

**Director Hutchison:** Just understand we'll continue the same practice that we have, meeting every month -- every other month starting in January. It is okay to go ahead and make this rule change. If that is okay, I will go ahead and formally make this rule change presentation to you in the next meeting. That's what I am hearing to do.

**Chair Carter:** Yes. That is exactly what you're hearing. We approve the changes that you have suggested. And the flexibility, obviously, it's something that, back to what Cathy has said, that gives us the opportunity if a meeting needs to be called. It sounds like if everybody is flexible enough to want to be able to do that. I do not hear any objections whatsoever, Sam.

**Director Hutchison:** Okay, the next big one is the where. Right now we're meeting 100% virtually. At some point, do we want to go back to meet in City Council Chambers, which was what we were doing pre-pandemic and historically have done since 2007. If so, we will set it up so that we can do it virtually and meet the requirements that just went over with the Oregon Revised Statute. I'm just looking at you all. If you do want to go back to city Council chambers, when would you like to start? We can start in July, September, or later this year? Any thoughts or guidance on this?

**Chair Carter:** I'll open the floor - please go.

**Trustee Kulp:** With the meetings themselves being hybrid, is there the potential for Board members to be able to meet hybrid as well? For example, if I'm on a call and I can only get back to my car, would there be an opportunity for me to be able to login through Zoom and attend?

**Director Hutchison:** The city Council, the way they are doing it, they will allow City Commissioners to attend remotely. If we were going to mimic their system, I would say that would be possible.

**Trustee Kulp:** That would be excellent.

**Trustee Huang:** I agree with Chris, Sam. I think to the extent possible, if we can have the hybrid environment, that is one I would strongly support.

**Trustee MacLeod:** I agree as well.

**Director Hutchison:** Okay. Keep the challenge here. I agree that having you all have the opportunity to come in hybrid or remotely would be great, but I want to make sure I'm not the only person showing up to the City Council chambers.

**Trustee MacLowry:** Exactly. Sam it does beg the question if everybody wants to be zooming in, just keep it that way. I'll be honest, we are somewhat out of the pandemic, but I'm still seeing in my calls regularly probably an uptick in people going to the hospital.

**Trustee Kulp:** Same.

**Trustee MacLowry:** I'm not quite ready to pull that trigger, so to speak, to go back to in person if we don't need to. I think we can, certainly, do it almost on a meeting by meeting basis. I don't think we can predict what it is going to be going on two months from now.

**Chair Carter:** I am wondering if, short of a dire emergency, if Fire and Police would be okay with the 24-hour notice. I know sometimes things happen the day before. Just short of a dire emergency, would 24 hours work?

**Trustee MacLowry:** In terms of what?

**Chair Carter:** In terms of you're not being to attend a meeting in person.

**Trustee MacLowry:** I am more concerned about where we are going to be to make a decision today about our next meeting; it seems premature. I don't feel like we have enough data for where the variance or the next COVID surge, when it is going to happen. I am happier today being at home than I would be being in chambers. I don't know how I am going to feel in two months.

**Trustee MacLeod:** I agree with that. I will feel better in September, but who knows if there is going to be another unexpected wave with vaccinations or other things, not responsive to that. I guess for the short-term, I would prefer to say that I would rather it not be July and leave it as a question mark for September and we can decide about that in our next meeting.

**Director Hutchison:** Can I make a recommendation a little bit easier? How about we do July and September virtual, and during the September meeting we discuss going forward?

**Trustee MacLowry:** Sounds good.

**Director Hutchison:** That will give us almost six months worth of data, or four months worth of data and information to make a decision. We can go with that. July/September is virtual, and then discuss in September where we want to go with November and forward.

**Chair Carter:** I'm sorry. Go on.

**Trustee Huang:** The one thing I would suggest though, is that I agree with what everyone has said so far from the medical standpoint, but I think in the interim, we should all think about what exactly is the value we are gaining by meeting in person going forward? Are we going to be able to accomplish more, or is there an objective we are looking to achieve through an in-person meeting? I think that should really be what's guiding us in making that decision as well.

**Director Hutchison:** That is good point, James. What happens with in person is designed to allow people to drop in. This would be more for members and observers; some people find it easier to drop in. Everybody can watch our meeting virtually if they want to participate, they get a hold of us, and we actually bring them into the Zoom meeting so they can participate. Some people may see that -- we have not heard any complaints with it, but that could be perceived as an extra step they have to do. Then again, I've heard complaints of Retirees trying to find parking downtown to come into the City Chambers. I think that is something we could talk about in September.

So, that's a very good point. Why go into in-person meetings? One, because the City Council is required by the City Charter to do in-person meetings on the City code. We are not, so there may be pressure. I think discussing this again in September would give us plenty of time to investigate all these issues, the advantage of having in-person meetings both from political, from participation of the public, and from there.

**Trustee Huang:** Makes sense. Thank you.

**Chair Carter:** Are we all in agreement that we will continue to meet by Zoom July and September and after that we will discuss meeting in person or some other option?

**Trustee Kulp:** Yes.

**Trustee MacLeod:** Yes.

**Chair Carter:** So, approved. Thanks.

**Director Hutchison:** That's great. Now, we will go to the next topic that I have here. It's future Board meeting minutes. We've had our Board meeting, now we want to figure out how we take meeting minutes for this. This is the one where Kathy is leaving, she has done the great job of doing the minutes. This gives us an opportunity, hey, things are changing. Let's throw this on the list to talk about. Again, we are going to look at the Administrative Rules, the State Statute on public meetings that apply. We'll decide what meeting minute options that FPDR will use for future Board meetings, and we will go over the different options, and that I have a little tweak to the administrative rule again just to make it clear. As you saw here, the Charter says the Board shall keep a record of all proceedings but provides us with no guidance on what that means. So, we've got to figure out what that guidance is and what we're going to do. I am going to roll down here to the last sentence that was in the 5.2.01 admin rule. All meetings shall be recorded electronically or by a court reporter. The FPDR plan does not specifically say the Board has to produce written minutes. There's nothing anywhere that says we had to do that in the FPDR documentation. However, the Board always has produced written minutes, even though the Board meetings are recorded, and we have videos. We retain the videos, the one that is being



taken care of now, for 18 months and they are not considered part of the meeting minutes, but we will talk more about this as we go through. I do want you to look at this, this is the Oregon revised statute of public meetings, specifically talking about meeting minutes. This gives us more guidance than our rules and Charter do.

**Trustee MacLowry**: Sam?

**Director Hutchison**: Yes.

**Trustee MacLowry**: I apologize for interrupting, the Board videos we keep posted for about the 18 months. Are they archived? What happens after 18 months?

**Director Hutchison**: They are deleted. We can talk about this when we talked through the options if you want to keep them longer or what we should do with them. Keep that question in mind but we will go over that.

**Trustee MacLowry**: Okay.

**Director Hutchison**: What the state requires is that you do have to either take a video recording or written minutes of meetings. Neither a full transcript or full recording is required, but the minutes should have a true reflection of the matters discussed and the views of the participants and all the meeting minutes should be available to the public. This gives you some of the details that should be in all of the meeting minutes and should be in the video recordings. You have to make sure you are going to capture this in the recording if you are going to do abbreviated recordings. You have to have a list of the Board members present. You have to list the resolutions, proposals, ordinances, or everything else the Board is considering, if there is a vote taken, you have to list the vote and who voted what. There needs to be substance of a discussion of any of the matters. We have to have the substance of any discussion. If you have any documents, you have to relate to them in the meeting. You cannot have an off conversation with a document. You have to have it referenced in the meeting minutes. So, we will come up here. The issue we have is the meetings that we take right now are extremely detailed and thorough. The length and detail of the minutes are far beyond what's required by the statute and beyond the typical best practice of meeting minutes. Production of the meeting minutes is time-consuming and takes several hours. This is historical from probably pre-2007 when we had an 11-person Board. There were some members that wanted a full transcription of every meeting and extremely detailed. This is a holdover from that.

Kathy has done a fantastic job in our meeting minutes of capturing all the information that has been given. But Kathy is not going to be here. She's going to be here another five more weeks and then we will have a new legal assistant take over. This will take a lot of time for the new legal assistant to develop the skill and expertise that Kathy has to create the minutes. I want to talk about some options we have for meeting minutes. I've done research of other public groups of what they do and how they do it. So, our meeting minutes are status quo, which we continue to write our very detailed and thorough meeting minutes. As the -- as I said before, it will take several meetings for the new legal assistant to master to the level that Kathy has done. I'm unable to find any other public body that produces such detailed minutes. I looked over about 15

or 20 of them, different cities and organizations throughout the state, including Oregon PERS, nobody takes these detailed meeting minutes. We have some that go to the statutory minimum, which is substance of any discussion. The minimalist one we had was Metro. They only take two or three pages on their meeting minutes. That is how minimal they get. They just have a few sentences on each topic covered. Then we have a little more of the heavier summary, a little bit more details. Still pretty short. 5-6 pages. One is the city of Beaverton. Interestingly, PERS has their meeting coming up this Friday. They have 180 page Board book that they are going through, yet they will summarize their entire meeting in 5-6 pages, that is how brief they make their meeting minutes.

These groups do have a recording in their meetings, but there is no reference or link between the recordings and the meeting minutes. I could not find anything to say that the recordings are an official part of the meeting minutes. The next one is transcribed, which is a recording of all the conversations transcribed. What we found is they usually used the closed captioning file. When we have the meeting, when it is on the online version, there is closed captioning at the bottom. What they do is take that and transcribe that and that becomes the meeting minutes. So, you don't have to have anybody try to go through it and find summaries. You just have an almost verbatim coverage of the meeting. Multnomah County does this and the city of Portland city Council does this. When you look at their meeting minutes, they have -- that's what they do. They go to the closed caption file and put it onto a format that they convert into their minutes. I have attached, and I'm not going to review it here on the screen, a version of last month's FPDR meeting using this method. You can see the first page of the meeting minutes gives you the summary of what was covered and summary of the votes that were taken, and then you have the transcription of all the discussion that happened during the meeting minutes. What we have on this, for example, you get a file, you have to change the format of the file; I think Kathy is the one that put it together. We had to go through and identify all the speakers, because they are not always well identified in the file, and also correct some misspellings, because they are on the fly and occasionally string a sentence together more correctly. It is tremendous amount less time. It captures virtually everything that was said in the meeting. We did have -- on the meeting minutes, we did have one person a couple times who complained that Kathy was not accurately transcribing his thoughts and ideas in the meeting minutes, and he protested them. This type of thing -- well, I disagreed with him. I went back and looked at the recording and Kathy's work did cover what he said. But this would take it away of anything saying, you did not put down my thoughts. Well, we have a near verbatim if we went that way.

And then the fourth option is video only. I found no one has gone video only. A lot of people record it. It is hard to find. Some of them may archive the recordings, but I do not know if they are officially attached to the meeting minutes and serve as meeting minutes. That would be something here that we could take a look at. Do you have any questions on those four options going forward? To make a decision on which one you want. With Kathy gone, we are going to need your decision on how we proceed with the July Board meeting and after.

**Chair Carter:** As I look at governments across our world community today and I think about the kind of disruptions that are going on, and especially with money, people get more upset about that than anything. I am for good transparency, but I would like to hear from other Trustees.

**Trustee Kulp:** Sam, just to confirm, you said our meeting right now is being closed-captioned at the bottom of the screen?

**Director Hutchison:** It should be. The one that is on the website should be closed-captioned.

**Trustee Kulp:** And we can already capture that transcription from the closed captioning?

**Director Hutchison:** Yes. We did last time. That is what that sample I have attached in the Board book is. That's from the closed captioning file.

**Trustee Kulp:** And that's not costing us anything extra? We already have that ability?

**Director Hutchison:** I don't know if they charge us for burning a disc. It is minimal.

**Trustee Huang:** Sam, my understanding from what you said earlier is that someone would still have to review the transcript and make changes, right?

**Director Hutchison:** Yes.

**Trustee Huang:** Typos, what have you.

**Director Hutchison:** Right, right. And we had to identify the speakers. We could tell who the speakers are, because as we bounce back and forth here, they don't -- they can't figure out that's James, that's Kyle, that's Sam. They just put things meaning speakers change pretty we clean it up. We try not to -- we will not change anything substantive with it, but we clean up some of the misspellings, and if a sentence looks garbled, we may go back through the recording and try to correct it. The amount of time it took to do this is significantly less than what Kathy spends doing her full minutes.

**Trustee Huang:** And do you happen to have the rationale behind why no one is using option four? It would appear to me that option four is probably the easiest.

**Director Hutchison:** A couple things I can say. One, it's old school. Meeting minutes, this is the way it has been done forever. Also, the thing I like about in writing is I can skim through and go, here's the part of the discussion I want to pay attention to. I can highlight it and go back and back and forth. You cannot do that with a recording. A recording is -- there are times -- I don't know if I've sent you some e-mails, look at this recording. Here is your time block. It takes me a long time to find the time block where we are talking over an issue, and you have to listen to it. Again, I'm old school. My age, I like it on paper so I can mark it and highlight it and point it out to different people.

**Trustee Huang:** Makes sense.

**Trustee MacLowry:** And I would say I did read the transcribed example you sent out, and I would consider it semi-accurate. It does a pretty good job, but it definitely doesn't have the same connection that Kathy had. It was just transcribing. Sometimes some of the words, some of the

sentences blurred together. It wasn't as good, but I think there is a detailed element that captures the whole meeting. Like you said, you can get to it very easily in a written form. I would add, I think that deleting the videos after 18 months may be something we can look at as changing. I've had the experience a few years back doing some research on PERS and went back to the City Council meetings, both work sessions and meetings from 2005 and 2006, and having them available was invaluable. It was great information. I'm not saying that these are going to be something that somebody needs to get to with any great -- you know, very often, but it is possible someone could be interested in something we were talking about.

**Director Hutchison:** I fully agree with you. I just want to go back to the meeting minutes about 15 years ago, because there are still issues that, surprisingly, pop up again. Also, somebody who is monitoring the call says, written minutes are a better test of time. A document is a document forever. The risk you have with the video is that over time will you be able to find a player to play it? How many have a super eight player in your garage? It's a good thing. I think multimedia is probably the way you want to go. You still have the printed and you still can have the video. I just made a note here, we will explore that and come back with you some options to look for retaining the videos.

**Trustee MacLowry:** I don't know how the city archive does it, but we've got it through the city archives, and they've just sent us YouTube links how we got to the old files.

**Trustee Huang:** Personally, I would think that we -- you know, if we were to go to the statutory minimum, and I think that's really where it's subjective in terms of what people transcribe or choose to memorialize them and then you lose a lot of the intent behind why decisions were made. I think if we were going with option two, you almost want to see if there's an opportunity to keep the transcript of the meeting so you can refer back to the intent of the decision or keep a recording of the video. I am trying to also balance the time needed and the value that we would get when we go with something that is extremely tedious in terms of the status quo. I really think that if we were to go with the statutory minimum, but in any sort we should try to preserve our meetings with transcript video.

**Director Hutchison:** Thanks, James. It is not my job to recommend, but I'm going to recommend anyway. I like option three with the transcribed. I like the fact that it does give you, virtually, everything that was discussed. It takes away, again, what the one person was saying. The bias when someone tries to summarize. Kathy has done a great job, and I found his complaints were not warranted, but that's the kind of issues that you have with either option one or two. Status quo or statutory minimum. I recommend we go with option 3, and we will explore the option of how to retain the video. The challenge you have with YouTube video, YouTube isn't going to be around here forever. You may think it is, but it's going to go. We need the video in a format that we can retain and listen to on a player. That I will work out. If we go this route, I will work that out with archives to see how best to archive the video to see how to retain it for many years.

**Trustee MacLeod:** Again, you are talking about a written transcription of all of -- like from the closed caption file that we would clean up as needed?

**Director Hutchison:** Yes.

**Trustee MacLeod:** I would be fine with that. To the extent that -- again, there was this one-page summary of the motions and the action taken by the Board. If we were to go that direction, if we felt like -- the one thing I noted in looking through the transcription is it might sharpen up my comments in the future. I noticed as I was reading, you know, you ramble when you are talking, and you are not thinking about that is going to be the formal minutes so it might sharpen up my comments going forward.

**Director Hutchison:** Remember, you are in video with your face making those same comments.

**Trustee MacLeod:** I also know that not too many people watch it. Secondly, very few people go back and watch it again. But if we were to find that there were too big of a gap between that kind of 1-page action summary and then the transcript, we could always then opt for something very minimal. Again, may be a 2-page summary or something of just a highlight of the discussion on the topic that we chose to do that to supplement without going into the very detailed rewriting of everything.

**Director Hutchison:** You are talking like an executive summary. If you can have the summary page, which will give you the summary of the votes and stuff, then maybe an executive session on some of them. The advantage that we have is we can do this way and every time we talk about meeting minutes, we can add or change how we want them presented. We are not locked in right now. We could go, like for this meeting minutes, we will do the transcribed. It will be the same format that is the sample we've given you, and then we can come back and say that this is what I would like a little bit different in the future, so we can perfect it over time.

**Trustee MacLeod:** My bottom line is I agree with James that just the statutory minimum feels too minimal. I know for myself, I go back even in the last four or five years, and I've gone back as far as seven or eight years on tricky things, equal to or better than discussions and arguments and those kinds of discussion about disability, retirement, those kind of things, where it's been very helpful to go back. If there wasn't a detailed transcription or very detailed minutes, I would have felt lost. I would agree that as a minimum, a transcription of the discussion is needed.

**Director Hutchison:** Okay.

**Chair Carter:** Are there other comments? I think you know very much how I feel about this, because I just got done complimenting you about the completeness of your written information that you sent to the Board. I, certainly, believe in transparency. It sounds to me as if the group is going toward the direction in which you recommended, Sam, and that is number 3, which is transcribed along with a recording of our meetings. I think we are in a safer place the more transparent that we are. Especially you guys at Police and Fire; things can become out of hand politically at the batting of an eye. I really think in terms of your protection, most of all politically, because you are serving a group of people that have already retired as well as a group of people that are future retirees. I think the most information that we can have available that people can go back to, it gives you and mechanism for being able to stand tall, stand strong on the things you voted on and they can see a record. I just think transparency is the best way to go.

If there are no objections to taking the recommendation that Sam were just the recommendations of number 3 where it is transcribed, then I would like to approve the movement of number 3. Are there objections? No objections? So, approved.

**Director Hutchison**: Just down here. Thank you for the great discussion. Keep in mind, we can continue to refine and perfect how we want to see the minutes looking going forward. This doesn't anchor us into a set process. Also, as you've been talking about, we will explore the options for how to retain the videos with that and share that with you. So, a possible rule change. The interesting thing is this wording says shall be recorded electronically or by a court reporter. I think this is how they were coming up with the transcript of the meeting. We haven't used a court reporter in decades. This is really outmoded. What I suggest is to strike that court reporter out and put in the wording that you see below in the changes in red. So, all meetings shall be recorded electronically or documented in meeting minutes consistent with State law. That covers what we are doing here.

**Chair Carter**: Are there any objections? That is a linguistic will change that is just very appropriate. Thank you.

**Director Hutchison**: Okay. We have already decided what minute options we are going to experiment with, and we've got the rule change. We are done with both two and three for future meeting minutes and future meeting minute -- meetings minutes. We will go from there. Now, if you are not done with me, because I've got FPDR updates. This I am not going to share the screen for you won't have any notes. This is just me sharing some actions that are going on in the Bureau. So, ETOB, and we will explain what this means in a minute. It is great news. FPDR passed the Oregon PERS ETOB test at step one, which is great news. I'm going to do this real high-level summary. Stacy can come in and give more background with what the ETOB test is. By Oregon statute, any employer with a separate retirement plan that covers Fire and Police employees must demonstrate that the plan is equal to or better, hence ETOB, than Oregon PERS. PERS conducts a test every 12 years, and it's done in compliance with Oregon statute and Oregon Administrative rules. PERS hires an actuarial firm to conduct this test. As we move ahead, FPDR has no say or input into the testing process. We are the group being tested. The involvement we have is to require the requested data. I know that is pretty thin on the explanation. You want to add more to that?

**Stacy Jones**: No. I think that is a good high-level summary. As Trustee MacLeod knows, we've discussed ETOB in some detail because some members have wanted to talk about in the past. In essence, that's what it is. It's intended to ensure that any local government providing their employees with an alternative to PERS is providing benefits that are overall at least as good as the benefits that PERS provides. I want to emphasize that it is not the case that every single individual benefit that we provide has to be better than every single individual benefit that PERS provides. It is an overall actuarial calculation comparison. Also, that they compare tier by tier. So, basically, they take our employees, our actual employees in terms of the methodology and run them through the PERS system and come up with what their benefits would be like in the PERS system. They look at people that are hired on certain dates so if someone was hired in 2007, they are going to be run through the OPSRP PERS, not tier two. Also, bear in mind, this is

only applied to active employees. The ETOB test is not designed to make sure that those who are retired are getting benefits better or as good as PERS retirees. The corrective action that you take is, generally, to put your folks in PERS. You can also go in and enrich your plan benefits, but you cannot put retirees in it. Those are the only things I would add to what Sam had to say.

**Trustee Kulp:** Are there any other funds besides ours in the state?

**Stacy Jones:** Yeah, there are. I am trying to remember how many. There's less than 15, but I cannot remember all of them. I think the City of Tigard has their own plan. There are pockets of them around the state.

**Director Hutchison:** What I will do when we're done here is – I'm going to share with you -- let me finish up and I will come back and wrap that up. So PERS hired a firm called Independent Actuaries Inc. to conduct the ETOB test this year. They will present their interim test results to the PERS Board on Friday on May 27th. In that result, they will show that FPDR passed on step one, which is great. If you fail step one, you go through a much more rigorous step two evaluation. We have always passed step one, I believe. At least past few times. So, these ETOB tests will not become official until the PERS Board formally accepts them, and I believe they will do that on July 22<sup>nd</sup> meeting. I think it is just a formality that they'll accept them. Here is where I get back to what other municipalities have their own fund. I'm going to send you a copy of the independent actuaries' PERS Board presentation that shows the results up-to-date, and it gives you a list of the 10 or 12 other public groups that have to go through this test. They'll actually tell you what their results are. I think they finished all the step one findings. They are still working on some step twos. So, you'll get to see what the PERS Board is going to see in two days and what all is involved.

**Chair Carter:** Sam, I'm wondering if everybody is in the dark about the acronyms, what ETOB is.

**Director Hutchison:** Equal to or better than.

**Chair Carter:** Okay, pardon my ignorance.

**Trustee MacLowry:** Are you saying the presentation that they are having on Friday for the PERS Board, you will forward that presentation to us and the slides and data associated with that?

**Director Hutchison:** I will give you their presentation. I will give you the presentation that is in the PERS Board meeting book. I will just cut that presentation out and send it to you. There is a way to go back into PERS after the meeting. I think it takes about a half day. They will put the recording of the entire meeting. It's not video. It's an audio recording of the entire PERS Board meeting. You can go through it if you would like. I'll listen to it just to see if there is anything odd.

**Trustee MacLowry:** How many are there total?

**Director Hutchison:** There's step one; if you pass step one, you are done. So we passed and we're done. Then there is step two. If you fail step one, then you go to step two, which is a much

more detailed analysis. I think it is very rare that anybody has failed. I think a couple of them had to go back and change, that's why some of them have moved into PERS. I will send you that. If you have any more questions, you can contact me or Stacy about the test and specifically what PERS is doing, and we will let you know when they formally accepted the results. Again, I don't think they will do that until July.

**Trustee MacLowry**: To circle back real quick. I apologize.

**Director Hutchison**: No problem.

**Trustee MacLowry**: Basically, this just affects the activity of the FPDR two members. In Fire, there's only a handful of tier one members that are active employees, and all the tier threes are already in PERS.

**Director Hutchison**: Correct.

**Trustee MacLowry**: This is the test between FPDR tier twos and PERS tier two, or something of that effect, is that correct?

**Stacy Jones**: That is exactly right. All our FPDR ones are either retired or on long-term disability. We have a mix of active FPDR threes who are in PERS, so there is no test there, and FPDR twos, which are less than half of both Police and Fire bureaus at the point. So yes, just a test for active FPDR twos. They are compared to a mix of tier one, tier two, and OPSRP depending on the hire date.

**Trustee MacLowry**: Thank you.

**Director Hutchison**: Okay. Next thing is staffing. We have gone through quite a bit of staffing change over the past couple months. Our legal assistant Kathy is retiring June 30. You saw Julie Hall. She was promoted to fill the position. She will be the new legal assistant. You are already getting some e-mails from Julie. There she is. Welcome to the new position. Then Julie was promoted from within the Bureau. She was what they call an Office Support Specialist II. What we did when she left the position, we reclassified it to Office Support Specialist III. It was posted and it is now still posting. It will close next week, and we will go through the interviewing process for that position. Mika Obara, who is the Financial Analyst three, is the next person just below Stacy as far as knowing everything you could possibly want to know about the FPDR finances, she is retiring in October. And Asha Bellduboset was promoted to fill the position. She was a financial analyst two in FPDR, so it was good to be a promotion. We've been able to fill two vacancies with promotions. We have made an internal offer to fill the old financial analyst position, and that offer is still under consideration at this time. That means we have had a turnover of four positions in the Bureau of 16 people in the last 2-3 months, so that's quite an extensive turnover but it doesn't sound like a whole lot of people, but it is an extensive turnover, and it's keeping everybody on their toes, even the people we have promoted are getting training in their new positions and the people that will backfill them will be getting some more training. Let's see. On April 18, everybody converted to a formal hybrid work schedule, which means that everybody per City Council, all city employees have to return to the office at least one day per week. Some of my staff has returned more than that, and I think Julie is one. Julie Hall is one



that is coming back nearly five days per week. Everybody started their hybrid work schedule at that point going forward. You just got a notice. I don't know if you had time to read it, I sent it out this morning. FPDR offices are opening to the public here on June 1st. I think most City bureaus are following suit on the same day. We are doing office hours from 9:00 to 4:00 Monday through Friday, we've sort of shortened it from the normal 8:00 to 5:00. We are not going to be highly staffed on some days. If we have a shorter window, we can assure that someone would be there to help them out. We are strongly encouraging visitors to make an appointment. In part to make sure that your person is in the office and not at home that particular day. We will have people coming in. We will be taking retirement interviews. People can sign their documents. They have the option of coming in or continuing the virtual way we've been doing it. We will have a little more normal interaction with the office. Speaking of our office, our move status is the build out in our new suite, which is two floors below where we are right now. It is ongoing. We are having a targeted move-in date of July 25th. We will drop down to floors on that day. Fortunately, when we do the move, the only thing changing is the mailing address and physical location. All the phone numbers, everything else all remain the same. Typically, sometimes when you move offices, you've got to change phone numbers and everything else. That makes it a lot easier for our members. They just have to go two floors down. The members like the building we are in, because there is parking in the basement. For some of those that like to do a quick drop off of documents, we have a turnout in front of the building that allows for 15-minute run in and drop off. It's a good location for everybody. Our members know where we are at, so we are not changing that. We are excited about getting ready for the move. Let's see. I feel like I am running on here. One more area to cover is future meeting agendas. Over the next -- excuse me.

**Chair Carter:** I'm sorry. Nothing.

**Director Hutchison:** I just figured I'm talking, so I will jump to the next agenda item.

**Chair Carter:** That was background. I'm sorry.

**Director Hutchison:** No problem. So, July 26th. A lot of times we've dropped the July Board meeting due to lack of topics. This time we do have a few things that we will need the Board's approval on, because we cannot wait until the September Board meeting. One is a contract approval. We're going to bring in a business consultant to help us do a few things. One is to do process and permit for digital claim processing. As you know, we are starting to roll out the digital claim processing, and we are planning to do it over 6-9 months, but then all of a sudden the pandemic hit, and we were given almost no notice to go fully remote, so we cranked this thing out in three have been four weeks I think it's a good opportunity but we had it going for about a year and have for almost two years now to come back and have someone walk us through the processes and streamline processes and become more efficient and better use of the digital system. Also, this consultant will help us create a formal strategic plan. It's the same group that helped the Fire Bureau with their strategic plan. We've never had a formal strategic plan in FPDR. I have had what we call informal strategic plans. This is one I think that we need to do, because you saw the turnover we've had the past few months. We have probably another 3-4, maybe five people that could retire in the next five years. I want to be ready and have a

strategic plan in place so that can be followed through as the Bureau staffing changes. I think that's really important to do. We might have a janitorial services contract. We are required to use a different janitorial service than is offered by the building, because the building does not have, it's a non-union service, and we are required to have a union service. We may be linking into an existing City contract for this company, but we may have to have our own. If we have to have our own contract, we will bring it up to you for approval. Then we will also -- in the July Board meeting, we will talk over proposed staffing change. We knew before the pandemic that we were to the max for the amount of disability claims our staff is handling. The pandemic has really shown that we need more staff to handle our disability claims. We're going to make a recommendation of adding a new Disability Analyst or increase the Bureau staffing level by 1 FTE. We'll do a full presentation behind why we are going to do that and the budget impact of that. If you are game for that, we will run it through the process, because we have to go through human resources. Even City Council has to approve this. So, it's numerous steps. The timeline to get someone in place probably would not be in place until January if all of the approvals go through. We will discuss that with you. Also, I will propose the Administrative rule changes that we talked about today. It should be very simple for you we have got quite a bit in the July meeting, which we have not had and probably three years. We've canceled the last three July meetings, but I would like to do this. We need at least three or four people there. I'd like to have everybody, but I know it's summer, so we may have to go down to three or four people.

**Stacy Jones:** Oh, sorry, I just wanted to say, I will be on a long-planned vacation during that Board meeting. I don't have a lot of agenda items, I don't know if I want to be as brave as others and come in from abroad, but actually it will be a great time for you to meet Asha Bellduboset, our new lead financial analyst who will be here in my stead at the July meeting. You'll be in good hands.

**Chair Carter:** Have fun, Stacy.

**Director Hutchison:** The last thing I have is the September Board meeting. We'll have our annual state of FPDR, we'll finally get back to doing it in September, that's when it should be done; everything up through the previous fiscal year that ends in June will be covered there, you'll see stats, figures, and things that have happened. That's everything that I have to cover today. Any questions over what we have discussed, I have discussed, or Stacy?

**Chair Carter:** No questions, Sam

**Director Hutchison:** Okay, then I'm done. So --

**Chair Carter:** Ok. So, it has occurred to us Sam is through, and is there any objections to the closing and we will see each other again in July.

**Trustee Kulp:** Thank you very much.

**Trustee MacLowry:** Thank you.

**Trustee MacLeod:** Thank you.

**Director Hutchison:** Thank you all.

**Chair Carter**: Bye-bye.

**Stacy Jones**: Bye, everyone.

## **RESOLUTION NO. 545**

WHEREAS, the strategic plan of the Fire and Police Disability and Retirement Fund (FPDR) has not been updated since 2019(?); and

WHEREAS, the FPDR recognizes a need for an updated strategic plan and desires to engage a strategic planning professional to develop a work plan with focused goals and objectives; and

WHEREAS, FPDR wants to improve the digital processing of disability claims to help manage the complexity of the process and the volume of work; and

WHEREAS, FPDR wants the services of a business consultant who can help FPDR with the development of a strategic plan and a process improvement effort. The consultant will have expertise in working with public sector organizations to improve the quality of the services they offer to their members; and

WHEREAS, FPDR has selected Pregame Inc. as the business consultant; and

WHEREAS, an appropriate form of contract with Pregame which will implement the desires of the FPDR is attached hereto as Exhibit "A."

WHEREAS, the not-to-exceed value of the contract is \$65,000 and funds are available in the FPDR budget; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Fire and Police Disability and Retirement Fund that the FPDR Director is authorized and directed to execute an agreement substantially in accordance with the terms and provisions of the agreement attached hereto as Exhibit "A" with Pregame on behalf of the Board of Trustees and the Fire and Police Disability and Retirement Fund.

ADOPTED by the Board of Trustees on this \_\_\_\_ day of \_\_\_\_\_. 2022.

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Sam Hutchison  
FPDR Director

**FPDR Board Resolution # 545**  
**Exhibit A**

**CITY OF PORTLAND**

**CONTRACT FOR SERVICES**

for

**FIRE AND POLICE DISABILITY AND RETIRMENT BUREAU (FPDR)**  
**PROCESS IMPROVEMENT AND STRATEGIC PLANNING**

**Contract Number:** [REDACTED]

As authorized by PCC 5.68, this Contract is made effective on [REDACTED] (“Effective Date”) by and between the City of Portland (“City”), a municipal corporation of the State of Oregon, and Pregame Inc. (“Contractor”), a corporation, by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.”

The initial Term of this Contract shall be from the Effective Date through June 30, 2022. The total not-to-exceed amount under this Contract for the initial Term shall be \$65, 000.

Party contacts and Contractor’s and City’s Project Manager for this Contract are:

For City of Portland:	For Contractor:
Name: Sam Hutchison	Name:
Title: Bureau Director	Title:
Address: 1800 SW First Ave, Suite 250	Address:
City, State: Portland OR 97201	City, State:
e-mail: sam.hutchison@portlandoregon.gov	e-mail:
Copy to: Kaci Spurlock	Copy to:
Procurement Services	
1120 SW 5 <sup>th</sup> Ave.	
Portland OR 97204	

**Scope and Consideration**

- (a) Contractor shall perform the Services and provide the Deliverables set forth in the Statement of Work by the due dates specified in the Contract.
- (b) City agrees to pay Contractor a sum not to exceed \$65, 000 for accomplishment of the Project.
- (c) Payments shall be made to Contractor according to the schedule identified in Exhibit A, the Contractor’s Price.

Recitals:

“WHEREAS, to further its government operations, the City of Portland desires FPDR Process Improvement and Strategic Planning (the “Project”); and

WHEREAS, Pursuant to ORS 279A.100, the City may limit competition for Contracts for Goods and Services, or on other Contracts with an estimated cost of \$150,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the City; and

WHEREAS, the Contractor is certified by the State of Oregon Certification Office for Business Inclusion and Diversity (COBID) and is current in their certification at the time of Contract Award; and

WHEREAS, Contractor, in its Offer dated May 10, 2022 represented that it has the knowledge, experience, and expertise in public section business consulting; and

WHEREAS, the City selected Contractor based on its Offer.

THE PARTIES HEREBY AGREE AS FOLLOWS:

## **SECTION 1 DEFINITIONS (10/19)**

General Definitions. (11/18) These definitions apply to the entire Contract, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

“Acceptance” (10/19) means the Deliverable demonstrates to the City’s satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance review, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the City’s Specifications.

“Acceptance Certificate” (11/18) means a written instrument by which the City notifies Contractor that a Deliverable has been Accepted or Accepted with exceptions, and Acceptance Criteria have been met or waived, in whole or in part.

“Acceptance Criteria” (11/18) means functionality and performance requirements determined by the City, based upon the Specifications, which must be satisfied prior to City’s Acceptance of a Deliverable. City and Contractor shall agree upon written Acceptance Criteria.

“Acceptance Date” (11/18) means the date on which the City issues an Acceptance Certificate for the Deliverable(s).

“Affiliates” (11/18) means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term “control” means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

“Amendment” (12/18) means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Contract, Contract amount, or substantially altering a Statement of Work.

“Business Day” (11/18) means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” (11/18) means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Change Order” (12/18) means a document, agreed and signed by both Parties, that changes an existing Statement of Work ~~or Task Order~~. Change Orders cannot change Contract amount or Master Terms and Conditions.

“Confidential Information” (08/19) means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Information Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.345(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPAA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting

disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing Party.

“Contract” (11/18) means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Contract Price” (10/19) means the not-to-exceed price agreed upon by the Parties for all Services.

“Deliverable(s)” (11/18) means the Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to the City by Contractor under this Contract.

“Documentation” ( 10/19) means user manuals and other written materials in any form that describe the features or functions of the Deliverables and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Defect” (10/19) means any error, problem, condition, bug, or other partial or complete inability of a Service, Deliverable or component thereof, to operate in accordance with the applicable Specifications.

“Final Acceptance” (11/18) means the City has determined that all Deliverables have successfully completed Acceptance Testing, which demonstrates to the City’s satisfaction that all Deliverables conform to and operate according to the Acceptance Criteria, applicable Documentation, and Contractor’s representations; and that for Deliverables not requiring Acceptance Testing, that the Deliverables conform to the Acceptance Criteria or the City’s specified requirements.

“Force Majeure Event” (04/2020) means an exceptional, unforeseeable and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Intellectual Property Rights (IPR)” (11/18) means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” (11/18) means the specific individuals identified in Section 3.11 to fill Key Positions.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.11 of this Contract.



“Master Terms and Conditions” (11/18) means the body of text from the preamble through the signature page of this Contract.

“Material Breach” (11/18) means any breach of this Contract that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

“Personally Identifiable Information (PII)” (11/18) means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Information Protection Act.

“Project” (10/19) means the overall delivery of the Services including, without limitation, design, development, integration, implementation, testing, support, and any Deliverables any of which Contractor may be providing in whole or in part.

~~“Proposal” (10/19) means Contractor’s response to the City’s RFP/RFQ referenced on page one of this Contract.~~

“Services” (10/19) means ordinary or professional services performed by Contractor under this Contract.

“Specifications” (10/19) means the most current cumulative statement of capabilities, functionality, and performance requirements for the System and its components as set out in the Acceptance Criteria, Change Orders, the Statement of Work, Documentation, ~~Contractor’s representations, and the Contractor’s Proposal and Proposal Clarifications, and the City’s Request for Proposals.~~

“Statement of Work” (SOW) (10/19) means the written detailed specifications of the Services(s) to be delivered to the City by Contractor, including any Change Orders ~~or Task Orders~~ subject to the terms and conditions of this Contract.

“Subcontractor” (11/18) means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Contract.

“Task Order” (10/19) means any written request or document issued by the City and signed by both Parties for additional Service(s) to be provided under this Contract. Task Orders shall document the description of Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” (11/18) means the period of time that this Contract is in effect as stated on page one.

## **SECTION 2 ORDER OF PRECEDENCE**

2.1 Order of Precedence. (09/17) In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Contract takes precedence over the other for purposes of interpretation. Contractor's hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties' obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Exhibit A, Statement of Work
4. Change Orders
5. B, Contractor's Proposal

### **SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS**

3.1 Term. (09/17) This Contract shall begin on the Effective Date and end upon the expiration date set forth on page one of this Contract unless terminated or extended under the applicable Contract provisions.

3.2 Point of Contact. (09/17) Contractor shall be the sole point of contact for the City with regard to this Contract and the System.

3.2.1 Written Notifications. (10/18) All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Contract, or to such other places as they may designate by like notice from time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.

3.3 Changes to Contract.

3.3.1 Amendment of the Contract. (06/19) Any changes to the provisions of this Contract shall be in the form of an Amendment. No provision of this Contract may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Contract as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. The City reserves the right to make administrative changes to the Contract unilaterally, such as extending option years and increasing compensation. An administrative change means a written Contract change that does not affect the substantive rights of the Parties.

- 3.3.2 Change Orders to a Statement of Work. (12/18) The City and Contractor can agree to make changes, at any time to a Statement of Work in the form of a Change Order. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.
- 3.4 Time is of the Essence. (06/19) The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Contract. By executing this Contract and accepting the Statement of Work, Contractor agrees that the time limits specified in the Statement of Work are reasonable. By accepting late or otherwise inadequate performance of Contractor's obligations, the City will not waive its rights to require timely performance of Contractor's obligations thereafter.
- 3.4.1 Late Delivery. (10/19) In the event that any specified delivery date is not met, Contractor shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Deliverables or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, the City may obtain substitute Services from another source and bill all additional costs directly to Contractor who shall remain financially liable for all additional acquisition costs.
- 3.4.2 Best Efforts. (10/19) Contractor shall use best efforts to minimize any delay in the provision of Deliverables or performance of Services. If Contractor anticipates any delay that may prevent timely performance of Contractor's obligations under this Contract, Contractor shall promptly notify the City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.
- 3.5 City Reporting Requirements. (12/18) The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, Emerging Small Business, Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) participation and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and D/M/W/ESB/SDVBE subcontracting commitments made by Contractor in its Proposal/Quote.
- 3.6 Payment. (09/17) Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: ~~Contract~~ Statement of Work
- 3.6.1 Payment shall be issued by the City net thirty (30) Calendar Days from receipt of a complete and acceptable invoice from Contractor. Contractor invoices must contain Contractor's name and address; invoice number; date of invoice; Contract number and date; description of Products and/or Services; quantity, unit price, (where appropriate), and total amount; City-

required reporting, if any, and the title and phone number of the person to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.

3.6.2 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment directly into specified Contractor accounts with specified financial institutions. All payments shall be made in United States currency.

3.7 Payment of Taxes/Contractor Shall Withhold. (09/17) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. The City shall have no duty to pay or withhold such obligations.

3.8 Records and Audits (06/19)

3.8.1 Records Retention. (06/19) Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract or until the resolution of all audit questions or claims, whichever is longer.

3.8.2 City Audits. (06/19) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Contract and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.

3.8.3 Access to Records. (06/19) The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Contract at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

- 3.9 Overpayment. (09/17) If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.
- 3.10 Independent Contractor. (09/17) Contractor is independent of the City and, accordingly, this Contract is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing Contractor. Employees of Contractor and any authorized Subcontractors shall perform their work under this Contract under Contractor's sole control.
- 3.11 Personnel.
- 3.11.1 Key Positions and Personnel. (09/17) For the period of performance until Final Acceptance has been completed, the Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City's Project:

Name	Title/Role	% of Time	Company

- 3.11.2 Substitution of Key Personnel. (09/17) Contractor shall make no substitutions of Key Personnel unless the substitution is necessitated by law, illness, death, resignation, or termination of employment. Contractor shall notify the City within ten (10) Calendar Days after the occurrence of any of these events.

Any substitutions or replacements of Key Personnel require the written approval of the City. Contractor shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required in Section 3.11.3.

For any proposed substitute or replacement Key Personnel, Contractor shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced.

No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

- 3.11.3 Security Requirements for Personnel. (09/17) If required by the City, Contractor shall conduct a criminal history/records check of all personnel that will have access to City information, systems, or payments and ensure ongoing security requirements for personnel are maintained. The Contractor or key Personnel are required to sign and comply with the FPDR Confidentiality and Records Security Agreement.
- 3.12 Termination. (06/19) The following conditions apply to termination of this Contract. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason in the City's sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all Deliverables Accepted or Services performed and Accepted through the effective date of the termination. In the event of termination all of Contractor's Work Product to date shall be delivered to the City, and it will become and remain property of the City.
- 3.13 Mutual Agreement. (09/17) The City and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 3.14 Material Breach. (09/17) Either Party may terminate this Contract in the event of a Material Breach of this Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.
- 3.15 Force Majeure. (09/17) Either Party may terminate this Contract due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.16 Bankruptcy. (09/17) The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- 3.17 Void Assignment. (09/17) In the event that Contractor assigns its obligations under this Contract to a third party in a manner other than as set forth in Section 5.7, Assignment, the City shall have the option to terminate this Contract without any notice or cure period or further obligation to

Contractor or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.

- 3.18 Waiver. (09/17) No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract. The failure of either Party to insist upon any of its rights under this Contract upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 3.19 Severability. (09/17) Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 3.20 Business Tax Registration. (09/17) Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to execution of this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this Contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.
- 3.21 EEO Certification. (09/17) Contractor shall be certified as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 5.33.076 of the Code of the City of Portland and maintain its certification throughout the term of this Contract.
- 3.22 Non-Discrimination in Benefits. (09/17) Throughout the term of this Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.
- 3.23 Sustainability. (12/18) Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore, in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of Products or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Products or Services into its work performance wherever possible. "Environmentally preferable" means Products or Services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production,

manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the Product or Service.

- 3.24 Packaging. (09/17) All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 3.25 News Releases and Public Announcements. (09/17) Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. Contractor shall not use the City seal without specific written permission from the City Auditor.
- 3.26 Rule of Construction/Contract Elements/Headings. (09/17) This Contract has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not, by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of this Contract.
- 3.27 Survival. (09/17) All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination or expiration shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City.

#### **SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY**

- 4.1 Governing Law and Jurisdiction. (09/17) This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.
- 4.2 Public Records Request. (09/17) Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the



City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. All information submitted by Contractor is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Contractor requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

4.3 Public Records. (09/17) The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.

4.4 Confidentiality.

4.4.1 Contractor's Confidential Information. (08/19) During the term of this Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Contract itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Contract, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

4.4.2 City's Confidential Information. (08/19) Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Contract, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Contractor

employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent.

- 4.4.3 Scope. (09/17) This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. Contractor's confidentiality obligations under this Contract shall survive termination or expiration of this Contract.
- 4.4.4 Equitable Relief. (12/18) Contractor acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Contract, in the event of a breach or a threatened breach of Contract terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. (06/19) In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

## **SECTION 5 CONTRACTOR PERFORMANCE AND WARRANTIES**

- 5.1 General Warranties. (09/17) Contractor makes the following warranties:
  - 5.1.1 Capacity. (09/17) Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.
  - 5.1.2 Authority to Conduct Business. (08/19) Contractor warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be required to do business under this Contract, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Contract.
  - 5.1.3 Disclosure of Litigation. (09/17) Contractor warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or

quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City in writing if, during the Term of this Contract, Contractor becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or proceedings in any judicial or quasi-judicial forum that involves Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract.

- 5.1.4 Conflict of Interest. (09/17) Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Contract.
- 5.1.5 Compliance with Applicable Law. (09/17) Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is currently in compliance with all tax laws.
- 5.1.6 Public Contracts. (09/17) Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A and 279B require every public contract to contain certain provisions. To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.
- 5.1.7 Compliance with Civil Rights Act. (09/17) Contractor warrants it is in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>
- 5.1.8 Respectful Workplace Behavior. (09/17) The City is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees of the City as well as contractors, vendors or consultants who provide services to the City of Portland. Contractor warrants its compliance with terms and conditions HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>
- 5.2 Grant Funding. (02/18). This Contract is currently not using grant funding. However, in the event that City acquires or uses grant funding to pay for any portion of this Contract, the City and Contractor agree to Amend the Contract to include the federally required terms and conditions. General grant terms may be found at <http://www.portlandoregon.gov/bibs/article/455735>
- 5.3 Compliance with Non-Discrimination Laws and Regulations.
  - 5.3.1 Nondiscrimination. (06/19) Pursuant to all City, State, and federal non-discrimination and civil rights laws, Contractor, with regard to the work performed by it during this Contract,

shall not discriminate on the grounds of race, color, national origin, including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of subcontractors, including procurements of materials and leases of equipment.

- 5.3.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. (06/19) In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.
- 5.3.3 Sanctions for Noncompliance. (09/17) In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to Contractor under this Contract until Contractor complies, and/or cancellation, termination, or suspension of this Contract, in whole or in part.
- 5.3.4 ADA Compliance. (07/18) Contractor shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or Contractor as a result of the Products, Services or activities requested to be provided for City under this Agreement.

At minimum, Contractor shall do the following:

Contractor shall [provide language translation services, sign language, accommodate service animals, audio, TTY, transcripts..... discuss with PM and see what this may involve]

Contractor shall document each ADA request for modification to the Products or Services and Contractor's fulfillment of the request. If Contractor determines that it is unable to promptly fulfill the request for modification under the ADA, Contractor will contact the City contract manager within the same business day, proving reasons why Contractor is unable to fulfill the request for modification and to identify alternate accessibility options that Contractor can perform.

Within twenty (20) Business Days after receipt, City and Contractor shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Agreement, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Agreement or the programs, Products, Services or activities that Contractor is undertaking for City under this Agreement.

5.3.5 Required Reporting. (05/19) If any person or class of persons files a complaint with Contractor alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), Contractor will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or [title6complaints@portlandoregon.gov](mailto:title6complaints@portlandoregon.gov).

5.4 Service(s) and Deliverables Warranties. (10/19) Contractor makes the following warranties:

5.4.1 No Third-Party Conflict or Infringement. (01/19) As of the Effective Date, Contractor warrants the execution and performance of this Contract, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision. Contractor agrees to promptly notify the City, in writing, if during the Term of the Contract, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.

5.4.2 No Encumbrances. (08/19) All Deliverables provided by Contractor under this Contract shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.

5.4.3 Conformance with Specifications. (01/19) Contractor warrants that the Deliverables and Services shall operate in conformance with the Specifications.

5.4.4 Compliance with Law. (10/19) Contractor warrants that the Deliverables conform to all requirements of applicable law, including all applicable health, safety, privacy, data security and environmental laws and regulations.

5.4.5 Industry Standards. (10/19) Contractor warrants that the Services performed under this Contract will meet the standards of skill and diligence normally employed by persons performing the same or similar services.

5.4.6 Substitution or Modification of Products at No Charge. (03/19) In the event that Contractor substitutes or modifies the Deliverables, Contractor shall ensure that the new or modified Deliverables shall conform in all aspects to the Specifications. Such substitutions or modifications shall in no way degrade the performance or functionality of the Deliverables and shall not result in additional cost to the City.

5.5 No Waiver of Warranties or Representation. (10/19) Performance of Services shall not be construed to represent Acceptance nor relieve Contractor from its responsibility under any

representation or warranty. If the City makes a payment prior to Final Acceptance, the payment does not grant a waiver of any representation or warranty by Contractor.

- 5.6 No Third Party to Benefit. (09/17) This Contract is entered into for the benefit of the City and Contractor. Except as set forth herein, nothing in this Contract shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Contract to maintain a suit for breach of contract, personal injuries, property damage, or any other relief in law or equity in connection with this Contract.
- 5.7 Assignment. (08/19) Neither Party shall assign, transfer, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld. For purposes of this Section, the acquisition, merger, consolidation or change in control of Contractor or any assignment by operation of law shall be considered an assignment of this Contract that requires the City's prior written consent. Notwithstanding the foregoing: (a) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, upon written notice to the other Party, and (b) Contractor may, without the City's consent, but upon prior written notice to the City, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract. Any attempted assignment or delegation in violation of this Section shall be void.
- 5.8 Notice of Change in Financial Condition. (09/17) Contractor must maintain a financial condition commensurate with the requirements of this Contract. If, during the term of this Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Contract, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Contract.
- 5.9 Notice of Change in Ownership. (09/17) If, during the term of this Contract, Contractor experiences a change in ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Contract.
- 5.10 Subcontractors. (10/19) Contractor shall not subcontract any work under this Contract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City

reserves the right to review any agreements between Contractor and its Subcontractors for Services authorized under this Contract.

All D/M/W/ESB/SDVBE (COBID Certified) subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any D/M/W/ESB/SDVBE subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior written consent.

- 5.11 Flow-down Clauses. (01/19) Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Contract:

Section 4.4, Confidentiality

Section 5.3, Compliance with Non-Discrimination Laws and Regulations

Section 6.1, Hold Harmless and Indemnification

Section 6.2, Insurance

- 5.12 Force Majeure. (01/19)

5.12.1 In the event that either Party is unable to perform any of its obligations under this Contract due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.

5.12.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Statement of Work.

5.12.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.

5.12.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.

- 5.13 Ownership of Property. (06/19) All work product produced by the Contractor under this Contract is the exclusive property of the City. "Work Product" includes, but is not limited to: research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form. The Contractor and the City intend that such Work Product shall be

deemed “work made for hire” of which the City shall be deemed the author. If for any reason a Work Product is deemed not to be a “work made for hire,” the Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. If the Contractor is an architect, the Work Product is the property of the Consultant-Architect, and by execution of this Contract, the Contractor-Architect grants the City an exclusive and irrevocable license to use that Work Product.

Notwithstanding the above, all pre-existing trademarks, services marks, patents, copyrights, trade secrets, and other proprietary rights of Contractor are and will remain the exclusive property of Contractor. Contractor hereby grants to the City a non-exclusive, perpetual, irrevocable license, with the right to sublicense, to disclose, copy, distribute, display, perform, prepare derivative works of and otherwise exploit any pre-existing Intellectual Property Rights incorporated into the Work Product(s).

## **SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES**

### **6.1 Hold Harmless and Indemnification. (08/19)**

- 6.1.1 Contractor shall indemnify, defend and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys’ fees and costs), resulting from or arising out of the actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents under this Contract.
- 6.1.2 Infringement Indemnity. (08/19) Contractor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions for any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any proprietary right or Intellectual Property Right of any person whosoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.
- 6.1.3 Contractor shall indemnify, defend, and hold harmless the City against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City may be required to pay arising from Deliverables and Services provided by Contractor under this Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-



exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

- 6.2 Insurance. (08/19) Contractor shall not commence work until Contractor has met the insurance requirements in this section and Contractor has provided insurance certificates approved by the City Attorney. Contractor shall acquire insurance issued by insurance companies or financial institutions with an AM Best rating of A- or better and duly licensed, admitted and authorized to do business in the State of Oregon.
- 6.2.1 Insurance Certificate. (08/19) As evidence of the required insurance coverage, Contractor shall provide compliant insurance certificates, including required endorsements, to the City prior to execution of the Contract. The certificates shall list the City as certificate holder. Contractor shall maintain continuous, uninterrupted coverage for the Term of this Contract and to provide insurance certificates demonstrating the required coverage for the Term of this Contract. Contractor's failure to maintain insurance as required by this Contract constitutes a Material Breach of this Contract. Contractor must notify the City in writing thirty (30) Calendar Days prior to a cancellation, non-renewal, or changes to the insurance policy.
- 6.2.2 Additional Insureds. (08/19) For commercial general liability coverage, Contractor shall provide City with a blanket additional insured endorsement form that names the City of Portland, Oregon, and its officers, agents and employees, as an additional insured. The additional insured endorsement must be attached to the general liability certificate of insurance.
- 6.2.3 Insurance Costs. (08/19) Contractor shall be financially responsible for all premiums, deductibles, self-insured retentions, and self-insurance.
- 6.2.4 Coverage Requirements. (08/19) Contractor shall comply with the following insurance requirements:
- 6.2.4.1 Commercial General Liability. (08/19) Contractor shall acquire commercial general liability ("CGL") and property damage insurance coverage in an amount not less than **\$2 million** per occurrence for damage to property or personal injury arising from Contractor's work under this Contract.
- ☐ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director
- 6.2.4.2 Automobile Liability. (08/19) Contractor shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than **\$2 million** for each accident. Contractor's insurance must cover damages or injuries arising out Contractor's use of any vehicle.
- ☐ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director

6.2.4.3 Workers' Compensation. (08/19) Contractor shall comply with Oregon workers' compensation law, ORS Chapter 656, as it may be amended. If Contractor is required by ORS Chapter 656 to carry workers' compensation insurance, Contractor shall acquire workers' compensation coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City for the entire period during which work is performed under this Contract. Contractor shall acquire workers compensation coverage in an amount not less than **\$1 million each accident, \$1 million disease each employee, and \$1 million disease policy limit.**

☐ Required and attached ☐ Proof of exemption (Complete Independent Contractor Certification Statement)

6.2.4.4 Professional Liability. (08/19) Contractor shall acquire insurance to cover damages caused by negligent acts, errors or omissions related to the professional Services, and performance of duties and responsibilities of the Contractor under this Contract in an amount not less than \$1 million per occurrence and aggregate of \$3 million for all claims per occurrence. In lieu of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, if the Contractor acquires an extended reporting period or tail coverage for not less than three (3) years following the termination or expiration of the Contract.

☐ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director

6.2.5 Insurance Requirements for Subcontractors. (08/19) Contractor shall contractually require its Subcontractors to acquire and maintain for the duration of this Contract insurance equal to the minimum coverage limits required above.

6.3 Rolling Estoppel. (09/17) Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under this Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives written notification of a failure to meet such obligations in the next status report, or within ten (10) Business Days following such failure, whichever is sooner, and Contractor identifies the specific failure in that notification. The City's failure to meet obligations must be described in terms of how it has affected the Project schedule or a specific performance requirement of Contractor.

6.3.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under this Contract, or the Contract price, if Contractor knew of that problem and failed to provide notification to the City as set forth above or to include it in the applicable status report to the City's project manager.

- 6.3.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's notification should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.
- 6.4 Dispute Resolution. (09/17) Contractor shall cooperate with the City to ensure that all claims and controversies which arise during this Contract will be resolved as expeditiously as possible in accordance with the following resolution procedure:
- 6.4.1 Any dispute between the City and Contractor shall be resolved, if possible by the Project Manager or their designee on behalf of the City and [REDACTED] on behalf of Contractor.
- 6.4.2 If the Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Sam Hutchison, FPDR Director, on behalf of the City and [REDACTED] on behalf of Contractor for resolution, if possible.
- 6.4.3 Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- 6.4.4 Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- 6.4.5 Unless ordered by the City to suspend performance of all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute while having the right to withhold payments that are in dispute.
- 6.5 Remedies. (09/17) The remedies provided in this Contract are cumulative and may be exercised concurrently or separately. In the event of any Material Breach by Contractor, which Material Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law or equity. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

- 6.6 Cost of Cover. (09/17) In the event of termination of this Contract by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. After termination, in the event the cost of completing the Project exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.

## **SECTION 7 COVID-19 REQUIREMENTS (11.18.20)**

- 9.1 The Parties acknowledge and agree that this Contract will be executed and performed during the COVID-19 pandemic. While Oregon is under a declaration of emergency associated with the COVID-19 pandemic, Contractor shall comply with all applicable requirements and guidance issued by federal, state and local authorities pertaining to COVID-19 (including but not limited to CDC, OHSA, Governor Brown, Oregon Health Authority, and Multnomah County Health Department). The applicable guidance and requirements include, but are not limited to, those pertaining to Oregon phased reopening and sector activities, reduction in gathering sizes appropriate to the type of location and activity, complying and implementing health protocols, maintaining social distancing, and wearing face coverings. Contractor shall have a satisfactory safety plan and protocols addressing COVID-19 precautions related to Contractor's activities under this Contract. Contractor shall monitor for updated guidance and requirements and update its plan and protocols accordingly. Contractor shall provide a copy of Contractor's safety plan and protocols to City upon City's request. Contractor is solely responsible for implementing its safety plan and protocols and addressing any COVID-19 related claims pertaining to its activities and provision of Services under this Contract.

Beginning January 3, 2022, the City of Portland will require proof of COVID-19 vaccination for anybody performing in-person work for at least 15 minutes at the City's indoor facilities. Contractor must attest that its personnel are fully vaccinated for COVID-19 or have a medical or religious exception verified by their employer. This requirement and details may change. Additional information is available on the Procurement Services website:  
[www.portland.gov/omf/brfs/procurement/vendor-vaccine-requirement](http://www.portland.gov/omf/brfs/procurement/vendor-vaccine-requirement).

- 9.2 Access to City Facilities (11.18.20). Contractor agrees that Contractor's physical or remote access to City facilities shall be subject to the security interests and health controls necessary to protect public property, City employees and the public. The City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or systems.

**SIGNATURE PAGE**

(08/19)

Contractor represents that Contractor has had the opportunity to consult with its own independently selected attorney in the review of this Contract. Neither Party has relied upon any representations or statements made by the other Party that are not specifically set forth in this Contract.

This Contract constitutes the entire agreement between the City and Contractor and supersedes all prior and contemporaneous proposals and oral and written agreements, between the Parties on this subject, and any different or additional terms on a City purchase order or Contractor quotation or invoice.

The Parties agree that they may execute this Contract and any Amendments to this Contract, by electronic means, including the use of electronic signatures.

This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereby cause this Contract to be executed.

CONTRACTOR

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Contract Number: XXXXXXXXX

Contract Title:

CITY OF PORTLAND SIGNATURES

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bureau Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Chief Procurement Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Elected Official

Approved:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Auditor

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Office of City Attorney

DRAFT

**Exhibit B A**  
**Statement of Work and**  
**Contractor's Price**

## **SECTION 1 SUMMARY**

The City of Portland's Bureau of Fire and Police Disability and Retirement (FPDR) wants the services of a business consultant who can help FPDR with a process improvement effort and the development of a strategic plan. The consultant will have expertise in working with public sector organizations to improve the quality of the services they offer to their members.

## **SECTION 2 SCOPE OF WORK**

Contractor shall provide the services outlined in the following tasks:

## **SECTION 3 TASKS AND DELIVERABLES**

The Scope of Work includes, but is not limited to the following tasks that the Contractor shall perform to accomplish the identified goals:

### **Task 1: Process improvement:**

Goal	Improve the digital processing of disability claims to help manage the complexity of the process and the volume of work
Actions	<ol style="list-style-type: none"> <li>1. Examine existing documentation and systems to map current process (steps and roles)</li> <li>2. Conduct staff interviews to understand improvement areas</li> <li>3. Train staff on process improvement/change principles</li> <li>4. Identify opportunities to accelerate processes and eliminate process waste</li> <li>5. Co-create process change implementation plan (future state)</li> </ol>
Deliverables	<ol style="list-style-type: none"> <li>1. Agreed upon (FPDR and Contractor) project plan, timeline, and resource needs</li> <li>2. Process (from-to) Analysis Report</li> <li>3. Team Agreement on Future State Process</li> <li>4. Future State Process Map (steps and roles)</li> </ol>
Acceptance Criteria	Deliverables completed to the satisfaction of FPDR
Timing	6-8 Weeks Starting in August 2022, ending no later than October 31, 2022
Payment upon Acceptance by the City	\$19,320



**Task 2: Employee Departure Interviews**

Goal	Capture retiring employees' knowledge, experience, and cultural understanding of their role and the Bureau.
Actions	<ol style="list-style-type: none"> <li>1. Interview the specified two retiring FPDR employees to:               <ol style="list-style-type: none"> <li>a. Capture information about FPDR from employee's unique perspective</li> <li>b. Identify areas for future improvement and efficiency</li> </ol> </li> <li>2. Review documentation by staff and make recommendations</li> <li>3. Create process and best practices for future exit interviews</li> </ol>
Deliverables	<ol style="list-style-type: none"> <li>1. Employee Knowledge Capture report</li> <li>2. Exit interview template</li> </ol>
Acceptance Criteria	Deliverables completed to the satisfaction of FPDR
Timing	4-6 Weeks Starting in August 2022, ending no later than October 31, 2022
Payment upon Acceptance by the City	\$6,129

**Task 3: Strategic Plan**

Goal	Create a comprehensive Strategic Plan with concrete goals, roles and accountability framework using input from, FPDR staff, Members, FPDR Board and stakeholders.
Actions	<ol style="list-style-type: none"> <li>1. Strategic Plan Design and Discovery               <ol style="list-style-type: none"> <li>a. Define how we measure success including project standards</li> <li>b. Gather information and brief on organization history, documents, context</li> <li>c. Identify current and potential FPDR ecosystem and needs around benefits and technology</li> <li>d. Perform SWOT analysis that drives the direction of the project</li> <li>e. Identify and assemble Strategic Planning Committee and/or other project advisors if desired</li> <li>f. Identify and prioritize specific people and/or groups from whom to solicit feedback</li> <li>g. Right-size the type of information being gathered and determine best methods for collection</li> <li>h. Design or customize engagement tools including surveys and focus group content</li> <li>i. Determine ways to incorporate existing studies and data</li> </ol> </li> <li>2. Team Engagement               <ol style="list-style-type: none"> <li>a. Manage and execute schedule of stakeholder engagement interviews, meetings, and surveys</li> <li>b. Develop engaging and purposeful session structure to maximize time and input</li> </ol> </li> </ol>

	<ul style="list-style-type: none"> <li>c. Run efficient and well-facilitated meetings to encourage participation and build goodwill with all stakeholders</li> <li>d. Motivate the Trustees to be involved in the successful implementation of the plan</li> <li>e. Send meeting communications to keep stakeholders engaged in the process and invested in the results</li> <li>f. Translate stakeholder feedback into cohesive report and distill information into top-level findings</li> </ul> <p>3. Strategic Plan and Messaging</p> <ul style="list-style-type: none"> <li>a. Incorporate relevant internal + external timelines and initiatives</li> <li>b. Build in trackable goals, timeline, and accountability structure</li> <li>c. Define team members responsible for plan implementation and management</li> <li>d. Advise on systems for capturing knowledge of departing/retiring staff</li> <li>e. Suggest accountability framework to ensure timeline and collaborative plan implementation</li> <li>f. Identify partner and services ecosystem –determine overlap vs opportunities</li> <li>g. Clarify unique position and value compared to other organizations and services</li> <li>h. Create initial messaging announcing FPDR improvements and core benefits</li> <li>i. Advise on messaging channels and timing</li> </ul>
Deliverables	<ul style="list-style-type: none"> <li>1. Agreed upon (FPDR and Contractor) project plan, timeline, and resource needs</li> <li>2. Strategic Plan Design and Discovery               <ul style="list-style-type: none"> <li>a. Strategic plan approach</li> <li>b. Stakeholder schedule</li> </ul> </li> <li>3. Team Engagement               <ul style="list-style-type: none"> <li>a. Stakeholder Feedback Facilitation report</li> </ul> </li> <li>4. Strategic Plan and Messaging               <ul style="list-style-type: none"> <li>a. Feedback Report</li> <li>b. Strategic Plan</li> </ul> </li> </ul>
Acceptance Criteria	Deliverables completed to the satisfaction of FPDR
Timing	<p>16-26 Weeks</p> <p>Starting in January 2023, ending no later than June 30, 2022</p>
Payment upon Acceptance by the City	<ul style="list-style-type: none"> <li>1. Strategic Plan Design and Discovery - \$9,330</li> <li>2. Team Engagement - \$17,240</li> <li>3. Strategic Plan and Messaging - \$10,565</li> </ul> <p>TOTAL: \$37,135</p>
IMPORTANT	When work begins on this task in January 2002, FPDR and the Contractor will review and confirm the Actions and Deliverables. Should they change, both parties may renegotiate the schedule and costs for this task.

## SECTION 4 PROJECT SCHEDULE

The project schedule for each task:

Process improvement	Starting in August 2022, ending no later than October 31, 2022
Employee Departure Interviews	Starting in August 2022, ending no later than October 31, 2022
Strategic Plan	Starting in January 2023, ending no later than June 30, 2022

## SECTION 5 PROJECT MANAGEMENT

### 5.1 Status Reports

Contractor shall summarize activities under this Contract in written weekly/monthly status reports submitted to the City Project Manager. The status reports are due on the first day of the week/month and shall include summaries of all activities and Deliverables completed in the prior week/month. The report shall include a list of any delayed items, a description of the cause of the delay, schedule impact, and a proposed method of resolution. Delayed items shall be carried over onto subsequent reports until resolved.

### 5.2 Place of Performance

Contractor shall provide City with services at City locations as directed by the City Project Manager. Some portions of the work will be performed at Contractor facilities as agreed with the City Project Manager.

### 5.3 Project Managers

The City's Project Manager will be Sam Hutchison, FPDR Director. The City may change City's Project Manager from time to time upon written notice to Contractor. Contact Information:

Sam Hutchison (He/Him), Director  
Bureau of Fire and Police Disability and Retirement  
1800 SW First Ave. Suite 250  
Portland OR 97201

The Contractor's Project Manager will be \_\_\_\_\_. Contact Information:


DRAFT

**Exhibit B, Contractor's Proposal/Quote**

DRAFT

**Exhibit E**  
**Sample Forms**

**Exhibit E-1: STATUS REPORT**

	<b>BUREAU NAME</b>	<b>Bureau Logo</b>
<b>Contractor</b>		<b>Project Title</b>
<b>Contract No.</b>		<b>Report Date</b>
<b>Contract Date</b>		<b>Submitted by:</b>

**1. Key Status Indicators:**

Description	No	Yes	Explanation
Has scope changed?			
Will target dates slip?			
Are there resource problems?			
Any other issues?			

**2. Major Activities Completed For Reporting Week (Key Accomplishments):**

Activity	Comment(s)

**3. Major Activities Planned For Reporting Week and Not Completed:**

Activity	Comment(s)

**4. Major Activities Planned For Next Week:**

Activity	Comment(s)


**5. Status of Key Team Deliverables:**

Deliverable	Comment(s)

**6. Major Issues Requiring Immediate Attention:**

Issue	Resolution

**7. Weekly Summary of Performance by Individual**

Individual's Name:

Scheduled Activities	complete	incomplete	Comment(s)

Individual's Name:

Scheduled Activities	complete	incomplete	Comment(s)

**Exhibit E-2: FINAL ACCEPTANCE CERTIFICATE**  
(08/19)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City certifies Final Acceptance of (name Deliverable(s)), in accordance with Contract No. \_\_\_\_\_. This Certificate of Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with Defects in the Deliverables (or combination of Products) described herein.

-- OR --

**FINAL ACCEPTANCE CERTIFICATE WITH EXCEPTIONS**

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City certifies Final Acceptance of (name of Deliverable(s)), in accordance with Contract No. \_\_\_\_\_. This Certificate of Final Acceptance is issued subject to the following exceptions:

- 1.
- 2.
- 3.

Exceptions must be completed by \_\_\_\_\_. If Exceptions are not completed by \_\_\_\_\_, the City may revoke Final Acceptance of the Deliverables.

This Certificate of Final Acceptance is issued subject to and in accordance with the Contract, all defined terms having the meanings as set forth in the Contract, and without prejudice to any claims which subsequently may arise in connection with Defects in the Deliverable(s) described herein.

**CITY OF PORTLAND**

\_\_\_\_\_  
Authorized Signature


\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



**Exhibit E-3: CHANGE ORDER**

	<b>BUREAU NAME</b>	<b>LOGO</b>

**CHANGE ORDER**

<b>Contractor</b>		<b>Project Title</b>	
<b>Contract No.</b>		<b>Change Order No.</b>	*SAMPLE*
<b>Contract Date</b>		<b>Change Order Date</b>	

Select	Type	Description and Reason for Change	Modification to:
<input type="checkbox"/>	Time		Project Schedule and/or Contract
<input type="checkbox"/>	Scope or Specifications		Statement of Work Acceptance Test Plan
<input type="checkbox"/>	Deliverables		Statement of Work Acceptance Test Plan
<input type="checkbox"/>	Price		Statement of Work and/or Contract
<input type="checkbox"/>	Terms and Conditions		Request Amendment to Contract
<input type="checkbox"/>	Other		

1. Additional time is necessary and the Project Schedule for the Statement of Work or a specific Deliverable is hereby extended through **(DATE)** or modified as shown on the attached Project Schedule.
2. Additional work or a change in work or Specifications is necessary. **For example, changes to the Statement of Work, Deliverables and/or the Acceptance.**
3. A price adjustment is necessary for the following Deliverables. These changes will NOT affect the total not-to-exceed value of the Contract. **For example, price changes that show the original price and the modified price.**

4. An Amendment to the Contract is requested for the following reasons. For example, any change to the total value of the Contract, the term or ending date of the Contract, or the Contract terms and conditions requires an Amendment.

The Change Order is subject to the terms and conditions of the above-referenced Contract.

The rest of the Statement of Work shall remain unchanged and in full force and effect.

**CITY OF PORTLAND**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City Project Manager

\_\_\_\_\_  
Title

**CONTRACTOR**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## **RESOLUTION NO. 546**

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, staff recommends amendments to Section 5.2.01 of the rules regarding board meetings; and

WHEREAS, the amendments were posted on the FPDR website and no objections and/or comments have been submitted; and

WHEREAS, the Board has considered and recommends the changes to Section 5.2.01 of the FPDR Administrative Rules as shown on Exhibit “A”, attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the Administrative Rules be changed in accordance with the recommendations of staff and the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Section 5.2.01 of the FPDR Administrative Rules be amended as shown on Exhibit “A”.

ADOPTED by the Board of Trustees on the 26<sup>th</sup> day of July, 2022.

---

Samuel Hutchison  
Director

## **RESOLUTION NO. 547**

WHEREAS, the expansion of FPDR disability benefits has resulted in a substantial increase in the number of new disability claims filed and administered by the Fire and Police Disability and Retirement Fund staff (FPDR); and

WHEREAS, more complex disability claims are being administered. Administration at the highest levels of expertise and experience cannot be achieved at the current pace without additional staff to handle less complex claims and support senior analyst and FPDR program objectives; and

WHEREAS, without additional staff, the FPDR disability program will experience an increase in claims costs because of an inability to effectively manage those claims and a decline in service; and

WHEREAS, FPDR needs to hire a disability analyst to handle more moderate injury claims to ensure that we meet Charter, administrative, and best practice claims handling guidelines; and

WHEREAS, the expected salary for disability analyst from January 1, 2022 through June 30, 2022 is \$57,000 - \$74,000; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the FPDR that the FPDR Director is authorized to work with the City of Portland's Bureau of Human Resources to add one new FTE Disability Analyst position in FPDR.

ADOPTED by the Board of Trustees on the 26<sup>th</sup> day of July, 2022.

---

Samuel Hutchison  
Director



# FIRE AND POLICE DISABILITY AND RETIREMENT City of Portland



1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166

Samuel Hutchison, Director

[fpdr@portlandoregon.gov](mailto:fpdr@portlandoregon.gov)

---

## City of Portland Bureau of Fire and Police Disability and Retirement Board of Trustees Tuesday, July 26, 2022

### Resolution No. 547 - Full-Time Claims Analyst Position

Presenter: Kim Mitchell, Disability Claims Manager

The Fire and Police Disability and Retirement Disability Program is seeking the Board of Trustees support and authorization to hire a full-time disability analyst to administer claims for disability benefits. This will increase the FPDR staff from 17 to 18 FTEs.

Disability program benefits have expanded over the past few years because of state-imposed legislation and rules adopted by the FPDR Board of Trustees as follows:

- September 2019, State of Oregon Legislators passed a bill creating a Workers' Compensation presumption for post-traumatic stress disorder (PTSD) and acute stress disorder (ASD) claims for first responders suffering mental health injuries caused by work.
- March 2020, the FPDR Board of Trustees adopted rules to ensure that firefighters and police officers would receive disability benefits (time loss and medical treatment) if they were exposed to or contracted the coronavirus while serving the citizens of the City of Portland, Oregon.
- June 2021, State of Oregon Legislators passed a bill extending the Workers' Compensation Heart and Lung Presumption to FPDR.
- June 2022, State of Oregon Legislators passed a bill expanding the Workers' Compensation firefighter's cancer presumption to FPDR.

These expanded benefits resulted in FPDR's receipt and administration of the largest number of new claims in FPDR's history. From FYE 2015 – 2019, FPDR processed an average of 338 new claims per year. In FYE 2021 we administered 536 new claims, a 58% increase in the number of new claims administered compared to prior FY averages. So far in FY 2022, we have administered 571 new claims, a 69% increase in new claims filed compared to prior averages.

The new claims received were-are processed *in addition to* 150 + existing claims for members who have permanent partial and permanent total disabilities and those who are entitled to post-retirement medical benefits. On average, FPDR was administering about 500 claims per year

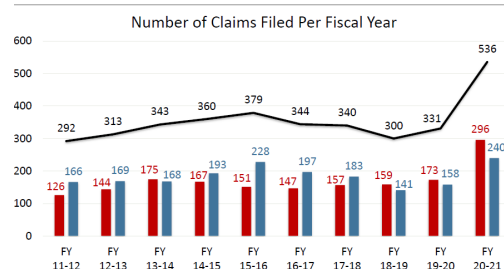
BEFORE the pandemic. For the past two plus years, the FPDR staff has administered more than 800 claims each fiscal year.

In their December 23, 2014, Disability Program Audit report, Milliman recommended that a senior claims analyst case load be kept to 85 claims due to the complexity of the claims administered at that level. For the past several years, FPDR management has worked diligently to distribute caseloads to meet audit recommendations. The increase in claims filed due to the expansion of benefits has resulted in an extreme challenge to meet member service demands, Charter and administrative timelines, and industry best practice recommendations for claim distribution.

- The expansion of benefits has resulted in a substantial increase in the number of new claims filed and administered by the FPDR staff.
- Claims being administered are more complex.
- Administration at the highest levels of expertise and experience cannot be achieved at the current pace without additional staff to administer less complex claims and support senior analyst and FPDR program objectives.
- Without additional staff, plan members will experience a decline in the service we pride ourselves in offering.
- The FPDR disability program will experience an increase in claims costs because of an inability to effectively manage the volume of claims.

Adding a full-time disability analyst to our staff will 1) promote a distribution of claims more aligned with audit recommendations to meet our Charter, Administrative and service objectives, 2) prevent a rise in claims costs, 3) prevent a decline in service delivery to our members, 4) ensure staffing to meet current and future claim and benefit delivery demands.

### Disability Program



Caseload Breakdown as of July 8, 2022		
Senior Analyst	(Fire and Police- PRMB)	199
Senior Analyst - Fire	Fire	165
Senior Analyst - Police	Police	154
Disability Analyst	Fire and Police	151
<b>Total:</b>		<b>669</b>

Caseload Breakdown with additional analyst:		
Senior Analyst	Fire and Police - PRMB	95
Senior Analyst	Fire	95
Senior Analyst	Police	95
Disability Analyst	Fire Active - PRMB	192
Disability Analyst	Police Active - PRMB	192
<b>Total:</b>		<b>669</b>

The City of Portland complies with all non-discrimination, Civil Rights laws including Civil Rights Title VI and ADA Title II. To request translation, interpretation, accommodation, modifications, or additional information, please contact FPDR at (503) 823-6823, or use City TTY (503) 823-6868, or Oregon Relay Service: 711

## FPDR Disability Analyst I

### Analyst I Full Year

July 2022 - June 2023

	<b>Base Salary</b>	<b>Benefits</b>	<b>Full Cost</b>
Midpoint Salary (\$40.53)	\$84,302.40	\$29,505.84	<b>\$113,808.24</b>
Top Step Salary (\$52.65)	\$109,512.00	\$38,329.20	<b>\$147,841.20</b>

\*No merit pay in first Year

\*\*Benefits assumed at 35%

\*\*\*FY 2022-23 COLA applied

### Analyst I Half Year

January 2023 - June 2023

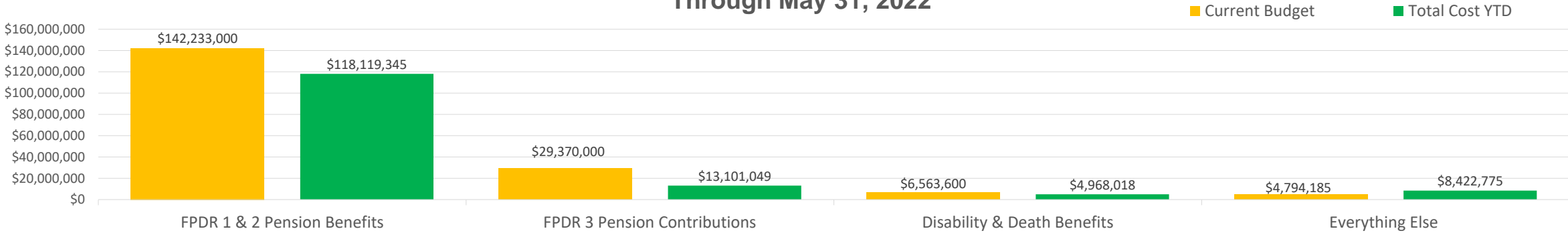
	<b>Base Salary</b>	<b>Benefits</b>	<b>Full Cost</b>
Midpoint Salary (\$40.53)	\$42,151.20	\$14,752.92	<b>\$56,904.12</b>
Top Step Salary (\$52.65)	\$54,756.00	\$19,164.60	<b>\$73,920.60</b>

\*No merit pay in first Year

\*\*Benefits assumed at 35%

\*\*\*FY 2022-23 COLA applied

FY 2021-22 Budget to Actual YTD  
Through May 31, 2022



FY 2021-22 Budget to Actual YTD by Month

Mid Level Classification	Detail Classification	Original Budget	July	August	September	October	November	December	January	February	March	April	May	YTD Total
Revenues	Beginning fund balance	\$8,043,625	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Taxes	\$190,947,841	-\$1,076,969	\$406,607	\$288,474	\$223,464	\$121,120,329	\$57,646,953	\$2,490,483	\$1,391,073	\$4,693,085	\$617,684	\$576,530	\$188,377,713
	Bond and note proceeds	\$60,470,000	\$38,542,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$38,542,500
	Miscellaneous Sources	\$409,000	-\$18,475	\$31,700	\$15,808	\$11,388	\$13,364	\$71,126	\$66,614	\$49,527	\$52,143	\$57,735	\$41,306	\$392,235
	Interfund Cash Transfer Revenues	\$750,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Interagency Revenues	\$228,200	\$1,250	\$0	\$631	\$631	\$631	\$631	\$631	\$144,362	\$631	\$1,262		\$150,660
Revenues Total		\$260,848,666	\$37,448,306	\$438,307	\$304,913	\$235,482	\$121,134,324	\$57,718,710	\$2,557,727	\$1,584,962	\$4,745,859	\$676,681	\$617,836	\$227,463,108
Personnel	Personnel	\$2,665,674	\$195,392	\$229,678	\$219,355	\$209,165	\$218,437	\$206,018	\$220,798	\$200,500	\$254,941	\$208,620	\$222,877	\$2,385,781
Personnel Total		\$2,665,674	\$195,392	\$229,678	\$219,355	\$209,165	\$218,437	\$206,018	\$220,798	\$200,500	\$254,941	\$208,620	\$222,877	\$2,385,781
Ext. Mat. & Svcs.	Other External Materials & Services	\$771,350	\$63,012	\$26,194	-\$14,039	\$61,707	\$95,592	\$29,943	\$68,234	\$171,991	\$59,326	\$36,929	\$105,939	\$704,828
	FPDR 1 & 2 Pension Benefits	\$142,233,000	\$11,750,513	\$25,122	\$11,810,765	\$11,823,847	\$11,817,500	\$11,812,658	\$11,777,017	\$11,838,843	\$11,860,248	\$23,569,322	\$33,511	\$118,119,345
	Disability & Death Benefits	\$6,563,600	-\$165,070	\$562,554	\$455,927	\$452,885	\$439,145	\$625,937	\$459,054	\$547,671	\$608,162	\$438,637	\$543,114	\$4,968,018
Ext. Mat. & Svcs. Total		\$149,567,950	\$11,648,455	\$613,870	\$12,252,653	\$12,338,439	\$12,352,238	\$12,468,538	\$12,304,306	\$12,558,505	\$12,527,736	\$24,044,888	\$682,564	\$123,792,190
Int. Mat. & Svcs.	Other Internal Materials & Services	\$736,901	\$43,154	\$22,121	\$164,583	\$66,644	\$24,773	\$86,627	\$76,183	-\$72,379	\$116,435	\$53,119	\$48,506	\$629,765
	FPDR 3 Pension Contributions	\$29,370,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,982,214	\$6,118,835	\$0	\$0	\$13,101,049
	Return to Work/Light Duty	\$545,260	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,677,571	\$4,677,571
Int. Mat. & Svcs. Total		\$30,652,161	\$43,154	\$22,121	\$164,583	\$66,644	\$24,773	\$86,627	\$76,183	\$6,909,835	\$6,235,270	\$53,119	\$4,726,077	\$18,408,385
Capital Outlay	Capital Outlay	\$75,000	\$0	\$0	\$0	\$0	\$2,990	\$0	\$2,210	\$2,080	\$4,680	\$7,670	\$5,200	\$24,830
Capital Outlay Total		\$75,000	\$0	\$0	\$0	\$0	\$2,990	\$0	\$2,210	\$2,080	\$4,680	\$7,670	\$5,200	\$24,830
Fund Expenses	Contingency	\$16,114,447	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Debt Retirement	\$60,886,741	\$15,000	\$19,764	\$0	\$0	\$2,383	\$0	\$38,588,366	\$0	\$0	\$0	\$64,258	\$38,689,771
	Interfund Cash Transfer Expenses	\$886,693	\$10,467	\$10,467	\$10,467	\$10,467	\$10,467	\$10,467	\$10,467	\$10,467	\$10,467	\$10,467	\$16,016	\$126,230
Fund Expenses Total		\$77,887,881	\$25,467	\$30,231	\$10,467	\$10,467	\$18,394	\$10,467	\$38,598,833	\$10,467	\$10,467	\$10,467	\$80,274	\$38,816,001