CITY OF PORTLAND
BUREAU OF FIRE & POLICE DISABILITY & RETIREMENT

BOARD MEETING

March 19, 2024

FPDR BOARD OF TRUSTEES MATERIALS

March 19, 2024

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Note: There are no handouts for Information Items 3, 4, 6, and 7 of the agenda

City of Portland Bureau of Fire and Police Disability and Retirement
Agenda for Regular Meeting – Board of Trustees
Room 2500 A – The 1900 Building
1900 SW 4th Ave, 2nd Floor, Portland, Oregon 97201
Tuesday, March 19, 2024 – 1:00 p.m.

In accordance with Portland City Code and state law, The Fire and Police Disability and Retirement Board of Trustees will hold hybrid public meetings, which provides for both virtual and limited in-person attendance. Members of the board will elect to attend remotely by video and teleconference, or in-person. FPDR has made several avenues available for the public to listen to the audio broadcast of this meeting, including the City's e-GovPDX YouTube Channel, Channel 30, and 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	Approval of Minutes – January 23, 2024 Meeting

INTRODUCTION OF VISITORS

Public comments will be heard by electronic communication (internet connection or telephone), or in-person. If you wish to sign up for public comment by electronic communication, please register at the following link:
https://us06web.zoom.us/webinar/register/WN_BfEe5mqWQ1apDFf0c0Xzng
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 March 19, 2024 hybrid board meeting is Monday, March 18, 2024 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 by March 15, 2024.

IN-PERSON PUBLIC COMMENT PERIOD

A sign-up sheet for members of the public wishing to make public comments will be available at the meeting. The public comment period will not exceed 30 minutes. Therefore, the Board may limit individual comments to three minutes per person. In addition, a sign-up sheet will be available prior to the meeting to allow public members the opportunity to sign up for an agenda item which they wish to provide comment on. When discussion on a specific agenda item is to begin, the public member will be allowed three minutes to provide comments, unless additional time is allowed by the Board.

ACTION ITEMS

	1	Annual Adjustment Review ○ Issue: What shall be the FPDR Two 2024 benefit adjustment? ○ Expected Outcome: Board determines FPDR 2024 benefit adjustment.
	2	Resolution No. 552 - Administrative Rule Amendments to Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 ○ Issue: Amendments to Sections clarifying "Definition of Spouse". ○ Expected Outcome: Board adopts amendments as proposed by staff.
	3	Resolution No. 553 - Administrative Rule Amendments to Section 5.2. ○ Issue: Amendments to Section 5.2 regarding Appointment of Citizen Board Members. ○ Expected Outcome: Board adopts amendments as proposed by staff.

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	Majoris Health Systems contract update
	2	ASOP discussion follow up
	3	Follow up questions regarding the January board meeting FPDR and PERS pension comparison and Overview/Discussion of FPDR Disability/Disability Retirement Benefit legal memo
	4	Legislative Update
	5	FPDR Summary of Expenditures
	6	FPDR Updates
	7	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 or at the FPDR offices located at: 1800 SW First Avenue, Suite 250, 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.*

FIRE AND POLICE DISABILITY AND RETIREMENT BOARD OF TRUSTEES MEETING	**MINUTES**

This meeting was held remotely via a Zoom webinar platform.

Date and Time: January 23, 2024, at 1:04 p.m.; Meeting adjourned at 4:11 p.m.

Board Members Present:
Catherine MacLeod (Board Chair); Christopher Kulp (Police Trustees); Kyle MacLowry (Fire Trustee); Tom Kramer (Citizen Trustee)

Also Present:
Sam Hutchison (FPDR Director); Stacy Jones (FPDR Deputy Director/Finance Manager); Kimberly Mitchell (FPDR Claims Manager); Julie Hall (FPDR Legal Assistant); Franco A. Lucchin (Sr. Deputy City Attorney); Lorne Dauenhauer (FPDR Outside Counsel); Nick Coffey (Policy Advisor, Office of Commissioner Gonzalez); Angie Cuthill (2VP, The Standard); OpenSignal PDX

Motions Made and Approved:

- Motion by Trustee Kramer that was seconded by Trustee MacLowry and unanimously passed (4-0) to approve the November 14, 2023 minutes.
- Motion by Trustee MacLowry that was seconded by Trustee Kramer and unanimously passed (4-0) to approve the December 19, 2023 minutes.
- Motion by Trustee Kulp that was seconded by Trustee MacLowry and unanimously passed (4-0) to adopt the FY 2024-25 budget.

A text file produced through the closed captioning process for the live broadcast of this board meeting is attached and should be considered a verbatim transcript.

Fire and Police Disability and Retirement

By____________________________________

Sam Hutchison
FPDR Director

CLOSED CAPTIONING FILE

[Captioner on standby]

Chair MacLeod: Good afternoon and welcome to the regular board meeting of the Fire and Police Disability and Retirement Plan. Let's start with approval of minutes from the November 14th meeting first, and then we'll move to the following minutes. Any comments about the November 14th minutes? Do I have a motion to approve those minutes as written?

Trustee Kramer: So moved.

Trustee MacLowry: Second.

Chair MacLeod: Those approving, say aye.

Trustee Kramer: Aye.

Trustee Kulp: Aye.

Trustee MacLowry: Aye.

Chair MacLeod: Aye. Opposed? Ok, same for the minutes of the December 19th meeting? Any questions or concerns about those minutes? Alright, let's repeat that. Do we have a motion to approve those minutes as written?

Trustee MacLowry: I'll make a motion.

Trustee Kramer: Second.

Chair MacLeod: Those in favor say aye.

Trustee Kramer: Aye.

Trustee Kulp: Aye.

Trustee MacLowry: Aye.

Chair MacLeod: Aye. Opposed? Okay, we've approved both of those sets of minutes from the prior two meetings. Do we have any visitors today? Julie, you're on mute. Do we have any visitors today in person or - okay, no visitors.

Julie Hall: No.

Director Hutchison: Actually, Nick are you there? Do you want to introduce yourself?

Nick Coffey: Yeah, can you all see and hear me?

Chair MacLeod: Yes.

Nick Coffey: Hello, everyone. I've met some of you and it's good to see some others. I'm Nick Coffey, I'm a Policy Adviser here in Commissioner Gonzalez' office and liaison to FPDR. Thank you for inviting me today. I'm excited to sit through my first meeting. Thank you all for inviting me.

Chair MacLeod: Thank you for coming to sit with us. Anyone on the phones? Okay, then. Let's proceed to our action items. We have one, which is adopting the 2024-2025 budget, and I suspect that that is a Stacy item.

ACTION ITEM NO. ONE – APPROVAL OF THE 2024-2025 FPDR BUDGET

Stacy Jones: You suspect correctly. I could give Sam the surprise of his life. Sam, will you walk everyone through the budget?

Director Hutchison: Uh-uh.

Stacy Jones: You could do it, I know you could. Hi, everybody, I'm Stacy Jones. Today I'm in my capacity as FPDR Finance Manager. It's time for the board to talk about next fiscal year's budget. Julie, I don't seem to have the option, oh, there it is. Oh, it says that you've disabled my participant screen sharing. You can share the presentation if you want. You're on mute, Julie, if you're trying to talk to me.

Julie Hall: I'll share my screen now, thank you.

Stacy Jones: Okay. If you want, you can go ahead and share the presentation and I'll just tell you when to advance the slides. That works for me.

Julie Hall: That's the wrong screen. One moment.

Stacy Jones: While Julie is pulling that up, I can just remind staff and let Trustee Kramer know for the first time since this is his first time going through this, this is the only bureau in the entire city that Council does not have direct budget authority over. You as the Board of Trustees have the exclusive power and authority to adopt the FPDR budget. Council is simply directed to levy a tax to meet the requirements of the fund according to the budget you all approve, so it's totally unique in that way within the City of Portland. We do of course participate in the City's budget process because our budget will be combined with all of the other funds in the city for the State-required City-wide budget. So we do go through the City-wide budget process but council doesn't have the authority to change the budget. That is all up to you folks. So at the same time that I walk you through the budget for next fiscal year, I will also talk you through the five-year forecast because we want to look ahead. The City requires us to do this since we have our own fund and of course it's good practice to look ahead for the next four fiscal years and make sure that we're aware of anything that might be coming our way. We don't want to just think year to year, so I'll also walk you through that. Our fiscal years run July 1st to June 30th like most local governments. So we're talking about our budget that will start on July 1st, 2024, and run through June 30th, 2025.

I do want to mention that the City-wide budget process is very different this year, I kind of mentioned that at the last meeting, and that's because of the City-wide restructuring that's going to happen part way through the next fiscal year on January 1, 2025, and that's in response to charter changes that the voters approved two falls ago. So all of that restructuring and all the things that need to happen as part of that first-year budget under the new form of government has delayed the budget process by just a couple of weeks. That does mean that a few of the numbers in this budget aren't as final as usual and we don't have official budget documents yet like we normally do this time of year when I'm sharing this with you. The budget publishing software isn't even opened yet, for example, but our budget is finalized and we have prepared it. There are some pieces that are still moving, but they're mostly small in nature and I'll talk about those as we go through the budget and they’re only in places where we intersect with other bureaus because they're a couple of weeks behind us at this point because of the City-wide process. And we have mocked up a document for you that looks kind of similar to what we've given you in the past. I think it's behind my presentation, although it might be in front of my presentation in your board books. You'll see something that looks quite a bit like a portion of what we will turn into the City budget office and to the elected officials for them to see our budget. So that has some narrative summary of our programs and the bureau, that part will be familiar to you, but also some tables with our budget and tables with our positions in it. Julie let's head to the next slide. Just stop me if you have questions, folks, of course as always.

So this first slide just gives you an overview of resources, money coming in, and requirements, money going out. In the budget that the staff is recommending to the board for fiscal year 2024-2025, and then we're comparing it to the current year projection, not the budget, but the projection as of now, and to actual revenues and expenses in the prior year, which was fiscal year 2022-2023. To the far right you'll see the percentage change for next year's budget as compared to the current year projection, so you can see how things are moving year over year. I'll just hit some highlights now before we get into details. Property taxes are going to need to grow by nearly 15% over the current year, and I'll talk more about that as we get deeper into revenues. For now, I'll just say it's got a lot to do with the fact that we held property tax growth down so much over the last two years while we were spending down fund balance. You'll see that miscellaneous revenue is growing a lot in percentage terms. That's not a big line item, but that's interest income with interest rates projected to nearly double next year. And then if you move down to requirements or expenditures, something that might jump out at you is that the fastest growing program is obviously the FPDR 3 PERS contributions, which is the second line in the table, and that's what you would expect to see since we’re phasing in the prefunded PERS plan for that population. That program budget should be growing very rapidly, and it is. We can go to the next slide, Julie.

This slide shows you just resources, or revenues if you want to think of them that way, but with the other four years of the five-year forecast also added in. So you can see what revenues are projected to do over the next four years, what we're projecting they'll do. And then if you go to the next slide Julie, you will see a slide that just has requirements or expenditures but again, with the other four years of the five-year forecast added. I’m just trying to avoid putting too many numbers on one page for you. So that is all the numbers, all at once, all put together, rolled up into their different components, obviously not at the line-item level, that I wanted to put in front of you. And then let's kind of dive into some of the big picture things and then we'll walk through first the expense side of the budget and then the revenue side of the budget, and I'll sum up with the main things I think you should take away from the budget this year. And then we can answer any questions that I haven't answered as we've gone along and talk about anything you might want to change. But like I said, just ask questions as we go, if you have any. Nick, I'm going to assume your hand is up from earlier, not because you have any questions.

Nick Coffey: Yes, it is, sorry.

Stacy Jones: No problem. Moving on to the next slide.

Julie Hall: I see Trustee MacLeod's hand is up.

Chair MacLeod: Are you planning to delve into the increased assumptions and where things are taken from? Like for example retirement benefits, the annual projections for those, are those taken from the actuarial reports or are those just a static trend that you're assuming those kinds of things. Are you going to delve into that and is this a good time for that question?

Stacy Jones: Actually, I think it's a great time for that question because some years I really go into that and some years I don't, and I didn't plan to dive deeply into that this year, but it is based on actuarial assumptions. It's the most complex part of our budget, takes a long time to put together because we do really detailed projections using all the actuarial assumptions we get from the experience study. We apply a probability of death in every single year to every single member, we apply the probability of retirement in every single year to every single member. Then we put it all together and we come up with median numbers for new retirees in all the different categories, median benefit amounts and median benefit amounts for those who are passing away. That's kind of in a nutshell. We then pull it all together so we have something that is based in actuarial experience from our experience study. All of that said, with the budget for next year, that's what we'll do over the whole five-year forecast, but for next year we will sometimes tweak it based on our own personal knowledge. Actuarial projections are meant to be over the long-term trends, and we often have knowledge of something that's happening in the next year that might shift things a bit. So we'll take a look at next year and say, what is happening this year and next year? This year we have two 27 pay date months, we know that's going to make retirements higher than actuarially projected this year. There's a bonus in the lookback for the police members this year, so we know more people will retire. During the pandemic, deaths were trending above average. So we'll look at those situational sort of things and tweak. We just call that cushioning, we don't usually take away. I can't think of any time when we did less than what would have been actuarially predicted but we've sometimes added to the budget. Does that answer your question in a short way?

Chair MacLeod: That's exactly what I was looking for, thank you.

Stacy Jones: Great, great question. Yes, this is not the kind of thing that, I mean I guess you could do just a line projection, but no we do something much more complicated than that. It's too large a budget for that in my opinion. So on this slide, I would just like to briefly follow up on some of the things we talked about last year because unlike all those TV pundits who drive me nuts because they get up there and say whatever they want and nobody ever makes them come back and say if they were right about all the things they've said in the past, I like to go back to the prior year, kind of remember what was top of mind last year when we were talking about last year's budget, and assess how some of those things turned out in comparison to our projections. And so I just look at what were some of the big takeaways I left you with last year and what happened.

So last year, the three biggest things impacting the budget were inflation, a high fund balance we had built up, and slow hiring, especially at police. So what happened with those things? Inflation, and you all are probably at least somewhat aware of what happened with inflation, but how did it do? Inflation has obviously been tempered and slowing. It's still historically high, but it has come way down from where it was. But how did it do compared to our forecast? It came in, as you can see, lower than forecast in 2022, and higher than forecast in 2023, which you would think would be a wash. Did I just say that backwards? I think I just said that backwards. No, no, that's right. Which you would think would be a wash, but that over projection in 2022 actually didn't have a big impact on us because of the way the city's wage contracts are set up. Inflation mostly hits our budget through sworn wages, and the sworn wage contracts award an annual cost of living adjustment based on inflation but only up to 5%. So, projecting inflation at 7.3%, 7.7%, whatever, it doesn't really matter, it's only going to be 5% anyway. So that didn't save us much. It does in some other areas, but not in our biggest impact area, which is wages. That 2023 under projection hit us a little harder. You have a question?

Director Hutchison: Are we on the right slide, Stacy?

Stacy Jones: Oh, I'm sorry, I didn't even notice. Yes, Julie, we need to be down. Sorry, thank you, Sam. Sorry, I didn't notice we were not on the right slide. So inflation, that 2023 under projection, I'm talking about kind of the first little flag here on the left, inflation. That hit us a little bit harder, that under projection, but it's still as close as you can reasonably expect when you're making an inflation estimate a year out. There's nothing really to complain about that. I would say all in all, inflation tracked pretty closely to what we thought it would do. 2022 was another historically very high year, and 2023 came back into what I will call the normal range, if still on the high end of that range and still certainly above average.

Looking at fund balance, which is the second flag. Again, Trustee Kramer wasn't here then, part of our reaction to the pandemic years and that year of nearly continuous civil unrest that coincided with the start of the pandemic and produced a lot of sworn retirements, was for us to budget very conservatively and we built up a bit of extra fund contingency, and we did blow past all of our previous highs. We retired more members than at any previous period, we had more disability claims and costs than in any previous period. I'm really glad we did that because we were completely financially stable throughout the pandemic, so we didn't have to add that to our list of concerns. But we didn't need quite all of that extra contingency and we wound up with about $30 million in fund balance at the end of it all. My normal target is to carry something in the $20 million range, something between $16 and $24 million. So last year I said that I wanted to spend that fund balance down to at least $24 million by

July 1st, 2023. We got it down to $26 million, so not quite as far down as I wanted to go. We had underspending on the pension budget and on the PERS contribution budget. But it did come down $4 million, so that's good and I want to continue with returning some of that money to the taxpayers, but we made some good progress on that. We don't need to sit on that much contingency at this point.

The last slide is to talk about is hiring. Last year we talked about how the struggle was at the police bureau, that they were having to hire folks and how that was keeping our PERS budget low. That was saving us money, at least in the short run, and then we would expect a big spike in costs when they were able to hire folks for the PERS contributions. Neither bureau has hired as much as they planned, but police has significantly picked up hiring. In 2022-23, that was their third highest hiring year ever, and almost doubled their average over the last 15 years. So they didn't do as well as they hoped to, they never do, but they really had a big uptick over what had been going on before. Trustee Kulp, I don't know if you have any insight into what led to that. Probably a lot of work. I don't know if Trustee Kulp is still with us. Trustee Kulp, do you have any thoughts on all that hiring at Police?

Trustee Kulp: There’s a lot of recruitment going on now. We have so many vacancies, and I think as the economy changes people are realizing it's a good job, it has a pension, and a lot of folks are looking for something more interesting than what they were doing, I believe, and the folks we're hiring right now are so multifaceted with degrees. I think I’ve seen more young people hired on now with advanced degrees than I ever have. As society is kind of changing, we're slowly becoming more popular than we were. So, I think people are actually filling out applications again.

Stacy Jones: That's great news for the City of Portland and it does mean more costs for us, but that's what we're here for. So it's good to see that turning around and it didn't turn around so dramatically that we couldn't handle it financially, that's good. Fire had hoped to hire more than they usually hire because they were hoping to staff up in advance of retirements, but I understand there were some budget constraints that were imposed on them that kept them from doing that, they had some budget issues going on. So fire never has any trouble hiring as many people as they want but they sometimes have logistics issues with getting people trained and through academies. I think they were hit with some budget issues. Trustee MacLowry, I don't know if you have any more insight than that. So anyways that’s how things wrapped up, some of the big topics from last year. Does anyone have any questions about that? If not we can go to the next slide.

So what’s different this year? For the first time I think maybe ever in my time at FPDR, at least it's been a very long time, none of the sworn labor contracts are currently open, or will become open during next year's budget. And since sworn wage increases are a major source of expenditure uncertainty for us, perhaps the single greatest source of cost growth and the single greatest source of uncertainty, it is an unusual luxury and very nice to know we have total certainty about wage levels for the next 18 months. Of course, we don't have certainty about overtime and things like that, but we have total certainty about wages. So that is a really good thing. The second thing that's different this year is less good, not good at all. This is kind of an amorphous thing in the background that's just been building. For many years now, CBO, the city budget office, keeps hitting the alarm about expense growth and it outstripping revenue growth across the whole city. The ringing of that alarm is getting louder and louder and louder. The city doesn't have an immediate need to cut budgets for next year, but the Mayor is trying to get in front of that trend a little bit more and so he has required a 5% automatic budget cut on all the general fund bureaus except for police, fire, and emergency Communications, which is 911 and dispatch, and also a 5% cut for all the internal service funds like printing and mail, technology, and items like that. So it definitely feels like we're entering a period of retraction, and that could ultimately impact FPDR, probably not directly, more likely indirectly through the bureaus that we partner with. For now Police and fire have been held harmless. We'll see what that looks like in the future years.

And then the final item on the slide is neither good nor bad, it's just something new. As we just mentioned, we're moving to a new form of government. We're moving from this Commissioner form of government that we've had since the City was created. I'm not sure about that, it's been a long time if not, to a City Manager form of government with an expanded city council. So each bureau is also going to be part of a service area reporting to a Deputy City Manager. Our service area will be Budget and Finance so that restructuring is going to impact next year's budget in two ways.

First, we're going to have some new costs. All city bureaus are going to share the cost of the expanded City Council, the new City Manager, any associated staff, infrastructure, etc. We'll also need to share in the cost for the deputy city manager of our service area and their administrative assistant. We may also, and this would be by choice probably, take advantage of some opportunities for some shared services across the whole service area. We saw that that would be advantageous. So there will be some new costs. I don't expect them to be anything earth-shattering and maybe in the long run they'll be offset by cost reductions elsewhere, but there will be some new costs coming into the budget. For now, we don't know exactly what they are, so we just have a placeholder in the budget for them and I'll talk about that a little bit more later.

And then the second way it's impacting this year's budget is what I mentioned before, just that all that restructuring has pushed the whole process back a couple of weeks. Which means that I'm now bringing you a recommended budget that's just a little fuzzier around the edges than it usually is because we don't have final costs from a few internal services, some of the technical steps that are taken to allocate costs and firm up personal forecasts haven't happened yet. And then some of the shared budget items, particularly with police, are still under final negotiation although we're at least under a million dollars on that stuff. So fortunately, none of those costs are going to be really large and impactful to our budget. Like I said, it's just a bit fuzzier around the edges and unusual for this time of year. Any more questions about things that are different this year? Ok, next slide.

So now let's talk about expenses because usually you talk about revenues and then expenses. We do it backwards because we're in the fortunate position of being able to talk about how much money we need and then we go out and levy taxes to cover our necessary expenses. This pie chart gives you an overview of our budgeted expenses for next year by program area. You can see that FPDR 1 and 2 pension benefits remain the largest expense, of course, but the FPDR 3 pension contributions are starting to catch up. We just continue that trend. The other programs remain in consistent proportion of our overall expenses. The pie is larger every year because our expenses increase every year. In terms of the division of those expenses, what we're really seeing as we see every year is that FPDR 3 PERS contributions take up a little bit more of the pie and FPDR 1 and 2 pension benefits take up just a little bit less of that pie. Did somebody have a question?

Chair MacLeod: I do have a quick question. Can you clarify for us what falls into the administrative expense bucket versus fund management expense bucket?

Stacy Jones: Yes, and I have a slide that talks a little bit more about this. So, fund management expenses are only general fund overhead, which is money that we pay into the sort of general fund pot that goes to support general city-wide services like City Council, emergency management, things like that. We have to pay that because we live outside the general fund. It also includes fund contingency which is kind of like our savings account. And it includes a few fund transfers for citywide debt services, our share of citywide debts and pension obligation bond debt just for our own personal staff at FPDR, and it also includes our tax anticipation note expenses. So in budget speak it includes some fund transfers, debt contingency and general fund overhead. They are the expenses of having our own fund, essentially. Administration is probably what you all would think of as the cost of running the plan itself, so that's where all the staff expenses are, that's where the office lease is, that's where office supplies are, that's where all the services we buy, whether internally or externally, are. So when we pay the actuaries, the auditors, the internal Bureau of Technology Services, when we pay for programming to our software, all of that is in administration. Does that help?

Chair MacLeod: That does significantly, thank you.

Stacy Jones: So administrative expenses are really the cost of running the plan. Fund management expenses are sort of the cost of living in our own fund and those costs are also offset by some revenues because we also get to keep our own interest revenue and things like that. Okay, so moving on to the next slide, Julie.

Trustee Kramer: Stacy, may I ask you a follow-up question to Catherine's?

Stacy Jones: Of course.

Julie Hall: It looks like he froze up, I think.

Stacy Jones: Trustee Kramer, I think you had a connectivity issue and we missed most of that. Can you repeat the question?

Trustee Kramer: You're right, I'm having connectivity issues. It's always worth blaming Xfinity for anything that happens, and I'm blaming them now, including bad weather or traffic. Are there some pieces of the fund management expenses that we have control over at FPDR and others that are a given?

Stacy Jones: You have control over the level of fund contingency for sure, and we'll talk about that at the end. So that's kind of the savings account part of it, like how much money do we want to have on hand for emergencies, unanticipated expenses, unanticipated revenue shortfall, we definitely have control over that, and that's pretty much it. I was thinking, I'm sort of pausing because I'm thinking about tax anticipation notes, but it's not entirely clear if it's optional for us to issue tax anticipation notes because of the way the charter is written. We choose to issue tax anticipation notes because it's always been financially advantageous for us to do that. There are costs associated with doing that, but there are also revenues because we earn money on the funds while we sit on those funds. We've always come out ahead. So do we have to issue tax anticipation notes to manage our cash flow? We could also build a fund balance to do that, which is what the general fund does. That's why I was kind of hesitating over that issue. You could debate whether or not we have discretion over that. But really, contingency is the only item that the Board really has discretion over in the fund management expenses. But contingency is the largest item, I think I have it set at $14 million for this year, or for the next budget year. Does that answer that question fully Trustee Kramer? Okay.

Chair MacLeod: I think he froze up again.

Stacy Jones: I know, that's what I was just thinking. I don't know if anybody watches the TV show, "Parks and Rec", but I always remember the scene where Chris Pratt, somebody’s sick and he types their symptoms into the computer and says, the computer says you have internet connectivity issues. Oh, dear. Okay, we’ll go on to the next slide and come back if Trustee Kramer has any follow-up.

We'll have a couple of slides to talk about our major expenses one by one going from biggest to smallest. So obviously our largest expense is direct FPDR 1 and 2 pension payments. Direct pension benefit costs are growing a bit more rapidly than usual next year. Two reasons for that above average growth. First reason, more retirements than deaths. It's probably somewhat intuitive, right? So far this year we've had 49 retirements, we're projecting 36 more, mostly in June, and so far this year we've had 21 deaths. We projected 60 on an actuarial basis, but we're running way under that interestingly enough. We could actually turn out to have fewer deaths and even more retirements this fiscal year than we're already projecting, which would make that even more lopsided. But we're really projecting to have a lot more retirements in the current fiscal year than deaths, which turns into faster growth in pension cost next year. So that's reason number 1.

Reason number 2 is that the high inflation we've had over the last couple of years has driven larger than usual wage increases for sworn employees, which in turn makes those new retirees more expensive because their final pay is larger when they actually do retire. But I do want to point out that even if deaths equaled retirements perfectly, costs would still go up because new retirees are more expensive than dying retirees and there are several reasons for that. Deaths are a mix of members and surviving spouses, and the retirees obviously are always members, and the surviving spouse benefit is virtually always smaller. It's never more, and it's almost always smaller. That's one reason. Another reason is that most of the deaths are in the FPDR 1 population, and all of the new retirees are FPDR 2s. FPDR 1 retirees have a less generous pension benefit than FPDR 2s and new retiree benefits are initially calculated on final pay which even in normal times, pay tends to increase faster than the 2% COLA that we can give retirees every year. So all those things, even if everything was equal, costs are going to increase given all those structural factors. But then also on top, that's where we normally see 5%, 6% growth every year, we're seeing more than that this year because of this imbalance between retirements and deaths and also higher than usual wage growth.

Moving on to the next slide, Julie, let's take a look at the second biggest part of our budget, which is the PERS contributions that we make on behalf of our FPDR 3 members who are sworn employees hired 2007 and later and who are enrolled in PERS for their pension benefits. So this is the second largest portion of our budget and the fastest growing portion of our budget. And we are really just the funding source for these PERS contributions, but you can see it increasing at a pretty good clip over the entire forecast period. And there is a little bit of bumpiness in this forecast, because one of the contributing factors to growth in this is the PERS contribution rate. The PERS contribution rate increases every other year, but it doesn't change annually, so it creates a little bit of bumpiness. What drives this budget is the number of FPDR 3 members, their pay levels, how much they're getting paid, and the PERS rates. Those are really the three things that we have to look at and we have a table down below there that shows you some of the assumptions that are going into these projections. You see the growth in the FPDR 3 population, it's getting larger and larger, because every retiree is replaced by a new hire who will be an FPDR 3 member. You can see that PERS contribution rates are doing nothing but going up, because PERS has an unfunded liability, and so they are going up and have been the whole time I've been with the city. And then of course we have wage growth. We have cost of living adjustments, which as I mentioned are capped in the sworn labor contracts at 5%. When we come back to promotional wage growth, but underneath that, we have what I call real wage growth, although how real is it when there's that 5% cap, but that is wage growth that's either built into the PPA or the PFFA, a blend of the two, growth above and beyond that wage COLA that we know about that is built into the current PFFA and PPA contracts. That is real wage growth, or at least growth above the wage COLAs, on the first line. Then that middle line, promotional wage growth, this is sort of unique to this population, because this population are folks who have been on for around 15 years, and they are now being promoted and receiving specialty premium assignments. So they're having more rapid salary growth than folks who are older and towards the end of their career because they're moving up through the ranks, at least some of them, and into those premium assignments. Economists usually call that drift, but that's not a very friendly term so we called it promotional wage growth here.

All of those things are happening and that's why you get this exponential growth in the PERS contributions, so it really doesn't look significantly different than it does in the past. This budget is getting bigger and more complicated to model and forecast because of the spread of this younger population through the workforce. So we're kind of doing this workforce spread modeling that we're not as experienced with, but we're learning as we go. The other thing I would mention about PERS contributions is the impact of overtime because that is a very unpredictable piece and we do pay PERS contributions on overtime spending and overtime is volatile in public safety bureaus, it can be very high and it's hard to control. It's been high for the last year and so one of the things we're still discussing with the Police Bureau, for example, is how much to budget for overtime next year. Are high levels of overtime continuing, are they coming down? That used to not matter so much when the budget was smaller but now it matters more. I'm trying to get a handle on overtime projections. [inaudible – video froze]. We'll move on to the next slide.

Julie Hall: You were breaking up at least on my end. Could everyone else hear Stacy just now? She froze for just a minute. Could everyone hear her on the call?

Chair MacLeod: I felt like I could. Maybe a little bit of a hiccup, but not much.

Julie Hall: Okay, good.

Stacy Jones: I just got a message that said my internet connection was unstable. I'm in the office so that's kind of surprising, my goodness. I see Sam coming and going, he's in the office too. Julie, ping me if that happens again and I'll pause. Does anyone need me to resay anything from that last slide?

Trustee MacLowry: No.

Trustee Kramer: Stacy, I would like to go back to a point, if I could. I had the same experience as Julie. I have Xfinity. It looked like in the last chart we saw that -

Stacy Jones: Can we go back to the previous slide, Julie?

Trustee Kramer: That would be great. It looked like we were budgeting roughly 20% increases in PERS increases, just in rough terms, from 2023 actuals to 2024 projection, we budgeted more than a 30% increase. Do we have a sense what have the 2024 actuals look like? Are they as high as we thought they would be?

Stacy Jones: They're actually worse than we thought they would be. We only have one quarter of expenses in for the current fiscal year. So that's part of what we're debating with police right now. So looking at the first quarter costs, they came in even higher than this and that is because of overtime spending. So it's even worse. The growth in this budget is really, the first time someone sees it, it's mind-blowing because everything is moving. PERS contribution rates are moving up. Wages are moving up. On top of that, this population is getting promoted and making even more money. And we're hiring and it's getting bigger. We're hiring more and more of them every year. The growth is off the charts. When we add overtime to that, and I don't know this, but we were attempting to do an analysis of, does this younger population work more overtime also? In our model we're assuming the overtime is kind of proportional. You know, the FPDR 2s are as likely to work overtime as FPDR 3s. I don't know if that's true, I don't know if with seniority maybe they work less overtime. Trustee Kulp and Trustee MacLowry, do you have any insight into that assumption?

Trustee MacLowry: I don't think there's any correlation between whether tier 3 or tier 2 work more overtime. The overtime is sort of proportional, people work as they work it, it's not related to that. But I am curious, you're saying the PERS contributions went up, yet the projection was for so many more

Police and Fire than were actually hired. So there was a projection for quite a bit more new hires, yet you're saying still, the overtime was enough to compensate for all those hires that didn't happen?

Stacy Jones: Yes. And I don't know if it was just an exceptionally bad year for overtime, or if it's a little bit of the impact of lateral hires, which we don't budget for in our model, folks coming in at higher than entry. That's another potential issue with the model because we're seeing more and more of that at both fire and police. I mean, I just don't think there's enough of those for that to really be, I mean, mostly it's overtime, it seems to be. That's what both the fire and police bureaus think as well. Trustee Kramer, does that answer your question?

Trustee Kramer: It does, but I'm glad for Trustee MacLowry' s follow up question. That was very helpful.

Stacy Jones: I do want to say about PERS contribution rates, obviously everything on here fiscal year 2024 and beyond is a projection because it hasn't happened yet. We do know the PERS contribution rates, we know they're 33.91% for the current year and for next year, so those are known. But beyond that, those are the city economist's projected PERS contribution rates where he just has them going up 5 percentage points a year, up to 43.91%. So once you're up into the out years, that much growth in the PERS contribution rates, I don't know if that's realistic or not. It may not be that bad. I hope it's not that bad, but it might be. All right, any other questions about PERS contributions? Okay, Julie, let's go down to the next slide.

So at this point we've talked about essentially 80% of our budget, so now we're talking about the rest. So disability costs, this is obviously really important programmatically, but it is only 3 - 4% of our total budget. But this is, like I said, important programmatically obviously, and this is also the disability program. That's the main way that we interact with our active membership, through the disability benefit; that and retirement workshops and pension estimates. You can see on this slide, we have it broken into the different components of disability benefits. You can see that we still spend more on short term disability than any other type of benefit, but just barely. It's just a little bit more than medical payments. You can see us coming down, if this slide went back further you would see even higher highs during the pandemic for short term disability, but you can still see us coming down from those 2023 actuals, so we're still coming down and projecting to spend less. We came up quite a bit in medical payments from the prior year. Again, we saw during the pandemic that medical costs actually stayed low because Covid claims are not expensive medically, and people put off and the hospitals kept delaying more expensive procedures and now we see medical costs coming back in force. And then I would just say long term disability return to work subsidies, which is where if the bureau can find work for someone to do on modified duty while they wait to recover from an injury, we'll pay 75% of their salary while they do that. And then that last component there is the funeral benefits for folks that are part of the pension population, people who are in their 80s and 90s hopefully most of the time. Those are essentially holding steady. So we really just are growing those things in the out years by wage growth if it's a wage replacement benefit, as is the case with short term disability or long-term disability. We're growing it by medical cost inflation factors, if it's medical costs, and then growing funeral benefits also by wage inflation because it's a percent of wages, the funeral benefit and also return to work subsidies since that's also a wage-driven benefit. Any questions about disability benefits? All right. Let's go on to the next slide.

Director Hutchison: Catherine has a question.

Stacy Jones: I'm sorry, thank you.

Chair MacLeod: I do, but it was really kind of a follow-up question relating to the earlier discussion about the PERS contributions increasing. I want to verify, I appreciated your explanation about the first couple of years being known rate levels that PERS has communicated, but subsequent to that, thinking that it's probably a 5% per year increase that you've extrapolated, just confirming that's not affecting the current budget in any way whatsoever.

Stacy Jones: No.

Chair MacLeod: That's strictly for forecasting. So even if you were off significantly one way or another, that's not going to project the current budget at all. Thank you.

Stacy Jones: No, not this year because next year we know what the rate would be, and I think we always know by this time what the next year's rate will be. We find that out in September, even in the biennial years. Those projections that the City economist comes up with, he comes up with that in consultation with Milliman, who are also the PERS actuaries. They don't ever impact the actual cost.

Chair MacLeod: As you mentioned, it's a very complex thing. PERS has their own unfunded liability and how they allocate that and assign those costs for paying that down and how that translates into future long term contribution rates is something that you're just relying, necessarily, on other people to come up with those best estimates for now.

Stacy Jones: Right. And you can see, when you know something is that complicated and you just see it going up 5%, you're like, hmm. But I personally prefer that. I'm always telling my staff, I don't want to be falsely precise, you know? I think, when you're like, well, that tells us right up front, this is a WAG, this 5%, so at least there's transparency about that. It's a total guess and because there are so many moving parts with that PERS - we get a good stock market return, all these things that nobody can predict, it's so hard to guess, other than we know it's still got to go up to pay down the unfunded liability. Then there's rate collaring and how that will impact it. Whew, it starts to get really complicated.

Chair MacLeod: Thank you.

Stacy Jones: But yes, not impacting, fortunately, that complex and consequential of an estimate is not impacting the budget. That's a very good point. Thank you, Chair MacLeod.

Moving on to the next couple of slides, let's talk about the administration of the plan. This first chart, to Chairman MacLeod's point earlier, this is not about fund management expenses, which I'll talk more about at the very end of the presentation. This is probably what most people would think of as the cost of running the plan. So the pie chart here shows you what are all the things that we spend, how it breaks down. We spend most of our administrative budget on personnel, about 60% and then the next largest chunk is actually on internal city services. Those are things like technology, all of our laptops and monitors and cellphones. Things that we're required to pay into, like our share of the city's enterprise management software, we have to pay our share of the city's risk management insurance, we have to pay for printing and mailing, all of those types of city internal services. That also includes the City Attorney's office, paying for services from them. And then beyond that, smaller pieces are on services that we pay to external vendors, folks that we pay, for example, to help the disability folks review claims, Milliman, our actuaries, our auditors, our space to work in, our office lease, some software for the bureau, and other kinds of miscellaneous things. This pie chart really looks pretty similar to how it looked in the past. Administrative expenses are less than 2% of our budget. They are growing, however. I do want to make the board aware. Right now we have growth of more than 11% for next year's budget in administrative spending, that's a big number. But a big chunk of that is because of this placeholder that we've plopped into the budget for new costs associated with this government restructuring, and those are in internal services, and we don't know if we need all that money. We just wanted to make sure we have it if we needed it. We have no idea if it will be that high. If I took that placeholder out, growth for next year's administrative spending would be 7.3%, which still seems like a lot, but I'll talk about that more on the next slide. And then, like I said the division of costs is pretty similar to how it's been in past years. So Julie, let's go to the next slide and talk a little bit about how costs are growing on the administrative side of the budget.

Julie Hall: Okay, but I do see Trustee Kramer's hand up.

Stacy Jones: Thanks, guys. I can't see hands; I can't see everybody on the screen. Trustee Kramer.

Trustee Kramer: Thank you, Stacy. You may be just about to get to this. Under internal materials and services on actually the next slide, it says largest item City Attorney's office, $352K. I was guessing that that probably didn't include Lorne, that he would be under the external vendors, and I don't mean to offend Franco or anyone else, but how do we get to that number? Lawyers are obviously worth anything we pay them, but that was an eye-catching number.

Stacy Jones: I know. So sadly for Franco, not all that money is Franco's salary. Franco's still here, I assume. Yes, there he is, he's just not on camera. No, we don't pay Franco that much, sadly. That is a large number, but that is salary and benefits for Franco, plus salary and benefits for at least part of a paralegal, plus some other services that we grab from the City Attorney's office on an ad hoc basis. We use quite a lot of legal services, on two fronts really. First, on the disability side, where whenever someone appeals their disability claim, we need representation for that for someone to go and present the Fund's point of view on the claim denial and carry that through, and folks often appeal those all the way up through the process, all the way up to, I forget how far up it can go. Kim and Sam and Franco could tell you. And then on the other side of that is that we haven't had this recently, but there can be sort of union grievance related stuff that we need to get legal opinions on even though we're not directly involved in those, and things like that. So when you just think of it as legal services, Lorne, we don't spend very much money on. He just bills us on an hourly basis. Our overall legal expenses are not very large, in my opinion, as part of the budget. But yes, it is more than Franco.

Franco Lucchin: And the contested disability cases, there are really five levels possible. Administrative, Appellate Panel, Writ of Review at the Circuit Court, appeal to the Oregon Court of Appeals, and less frequently, appeal to the Oregon Supreme Court. So one case could be argued five times, potentially.

Stacy Jones: So even though a very small percentage of claims are denied, I don't know what percentage of claim denials are appealed, and I don't know if Kim knows off the top of her head, but yeah, that takes up, I don't know, Franco, quite a bit of your time.

Kim Mitchell: I'd have to look at that Stacy for the percent. I know our percentage of claims denied in this past fiscal year was like 10%. I don't think it's half of those, maybe. I would have to look. I can get back.

Stacy Jones: Does that answer your question well enough, Trustee Kramer?

Trustee Kramer: Well enough, thank you.

Stacy Jones: Okay. And thank you, Trustee Kramer, for moving us on to the next slide. So let me talk about the two biggest things in the administrative budget which are obviously personnel and things we buy internally from other City bureaus or externally from others. So for personnel, I just want to remind the Board, and Trustee Kramer for the first time, that the Board can control the number of positions at FPDR and the job classifications, and Sam, myself, and Kim can control merit pay raises within these kind of prescribed ranges for the non-represented staff. But everything else is mandated by the City Compensation Plan or external forces like how much health insurance costs under the health insurance coverage the city has negotiated, what payroll taxes are, what PERS rates are, things like that. So that's sort of the division of what's within the Board's control and what is not. Yes, Trustee Kramer.

Trustee Kramer: A minor point on that one, Stacy. The health insurance variable in the second bullet is huge, between $6K and $27K per employee. Can you tell us a little about that?

Stacy Jones: Welcome to government employment. The city, like many government employers has really, really generous health insurance benefits, and the range is large because the range, the $6,000 range I believe is, I think that's the cost. We have a couple of employees, including me, who opt out entirely of medical insurance because it's provided by a spouse or something, but opt in for dental. So I think that $6,000 is me and maybe one other employee. At the high end, the $27,000 annual, that's full coverage, vision, dental, and medical for an entire family. And so that's the range for the health insurance plan, and yes, it's a very generous health insurance plan. And Trustee Kramer, I have the most interesting story to tell you, at the end, when we get to the board expenditure summary, when you were asking about the personnel budget last time, I dug around, and found out a funny, interesting thing about health insurance costs that's been happening this year. But I'll save that for the end because I don't want to get us offtrack. And it is a large number, and that's not something the board has any control over because the City Human Resources negotiates that and offers the same suite of benefit options to all city employees, so we have no control over that number.

So those first two bullets under personnel are telling you what's included in that $3.3 million that we're spending on personnel and where it says percent, that's a percent of wages, and then the remaining bullets tell you the cost increases that we've built into the personnel budget. I will say that we have learned what the wage COLA will be since I sent this out to you. It will be 3.3%, because we have the actual wage COLA. Again, this is built into the city's labor contracts, most of our staff are represented. Most of our staff though don't have a current labor contract because it's open right now. But assuming that they get what is the normal case at the city, which is not to get too wonky, it's a particular index that's second half to second half, and we now know that that will be 3.3%. So that is like an automatic wage increase that city employees are going to be able to expect on July 1, 2024. We have one employee who will get a bigger raise because she's not at top of range, and then some employees may get merit pay increases of as much as 2%. And that could also change because, anybody who is not represented is at the discretion of council's guidance and their manager and the CPPW employees are the folks that have an open contract right now. I'm not quite sure how that will all shake out. Moving on to internal materials and services. Oh, Franco, you had a question?

Franco Lucchin: I just wanted to note that CCPW bargaining starts literally tomorrow morning, it's the first bargaining session. The minimum time period for bargaining is 150 days, which probably doesn't have any impact on this presentation but gives an idea of when there could be a contract for that union.

Stacy Jones: Yeah, it could be that we're not looking at, if there is a wage increase, it might wind up being paid later in the fiscal year. Then it's usually made retroactive to July 1st, so it kind of comes out the same. I was so excited that we didn't have any open labor contracts for sworn employees, but we do have an open labor contract for our own employees, but that's much less impactful than the sworn labor contracts in terms of our budget. Thanks, Franco.

In Internal materials and services, these are really growing a surprising amount especially given that that growth is after the internal service funds have applied the mayor's 5% cut. So I had to really sit back when they started sending those costs over. But so remember, again, a big part of what you're seeing is that placeholder that we have for the city, any extra costs we have to pay related to the city government restructuring, but the other big driver is technology services. Over in technology services, the labor contract that governs IT staff awarded fairly large salary increases, so this is the last year of those salary increases. There are also several new IT projects approved by council that are city-wide impact and city-wide cost, things like a new website, new online help service, information security kind of measures that we have to pay for. And then on top of all that, they're building out new IT infrastructure for this new expanded city council and a bigger city council chambers. So, all the internal Bureau of Technology Services charges that are just being shared out across the whole city are growing quite a bit.

And then if we look down at kind of everything else which has the external materials and services, office lease, and other miscellaneous items, software, everything else is growing as well. By less than personnel and less than internal services but still a little more than inflation, although that little bit more growth in this category is really an artifact of the additional actuarial services that we buy on a biannual basis because we buy the fund analysis and the fund valuation only every other year, so you get a bigger increase in growth for those actuarial costs in the off years. And then we also budget very conservatively for capital because it's a small item and its own line item in the local law budget, we have to be careful we don't overspend it. Capital for us is just programming capital improvements to our software. Let me pause and ask if there are questions about administrative expenses or any expenses at all before I talk about revenues. Seeing none. All right, let's move on to revenues.

Revenues are so much more straightforward than expenses because there's really only one important revenue and that's property taxes. If you remember that beginning fund balance is just leftover property taxes from prior years for the most part, it's pretty much all property taxes. We do have a few little slices of revenues from other sources that I'll talk about in a minute, but pretty much it's all property taxes. Let's move on to the next slide and talk about property taxes.

So, property taxes. I told you they were growing quite a bit this year. So, we believe we'll need about $222 million in property taxes next year, which is almost 15% more than last year, as I mentioned in the beginning. So there are two reasons for that. The first is that our expenses are growing 10.3%, which you can see on the first slides. That is driven by 22% growth in PERS contribution costs and 7% growth in direct pension benefit costs. So just to keep up with our expenses we've got to go up by 10.3%. And all things being equal given the way we're funded, our tax revenue is going to need to grow by the same percentages as expenses every year, all things being equal. But all things are not equal this year, because we grew the levy less than expenditure growth last year and the year before while we were using up some of that excess fund balance. That means the increase from last year's levy as a percentage is just higher because we're catching up now. That goes back to the debate I'm always having in my mind about whether or not it's better to smooth the property tax levy or whether it's better to not sit on any unneeded taxpayer funds. You know, when we're being careful not to hold on to any taxpayer money we don't need, it gives you bumpier growth in the levy as we go along. And so, it's always a debate in my mind. Is it better to have smooth but steady growth or to make sure we're making sure to get money back in taxpayer hands whenever we have more than we need? It is bumpier when you have years with slower growth than years with faster growth. That's why taxes are growing as much as they are for next year. Questions about property taxes? I have a little bit more about property taxes on the next slide, maybe let's talk about that before I pause.

Trustee Kramer: Stacy, may I ask, where do you come down on that smoothing versus not smoothing?

Stacy Jones: You can tell I'm always having that debate in my mind. I think it's good to keep both things in mind, I do. But I wind up erring on the side of not holding on to taxpayer money I don't need because I just think if it was my money, I would rather have it in my pocket as long as I could have it in my pocket. And if that means that, okay, now my bill went up a little more as a percentage this year than it did last year, at least I held onto my money as long as I could. There's no getting around the fact that our bills are going to keep going up, that's the design of what we're doing here. But I think it's a valid point of view to say that sudden jumps are not desirable for folks when they're planning. When you get down and look at it on a household-by-household basis, you're not talking about a lot of money, so that's the other thing to remember. We're not suddenly hitting people with a bill that's a thousand dollars more than last year. It will be ten dollars more, something like that. So I tend to err on the side of making sure we're not holding onto taxpayer money we don't need, but I understand the other side of that equation or that consideration too.

And then on this slide, just wanting to show you some of the assumptions that go into thinking about property taxes, and then what kind of property tax rate we wind up with based on those assumptions and what we think we need to raise in terms of tax revenue. So if you look at the chart at the bottom, the AV rate. This is what the rate is per thousand dollars of assessed value, what people actually pay property taxes on, and the blue line is the RV rate, what people actually pay per thousand dollars. I shouldn't say actually pay, it's not an actual thing at all, but what the property tax rate would be per thousand dollars of real market value. That's the RMV rate down below. We care about the RMV rate for one reason only, because that's what the cap in the City Charter is based on. So that $2.80 cap we have is based on the real market value rate. So we pay close attention to it but actual property taxpayers pay their taxes based on that AV rate. It’s useful to always look to see what's going to happen with that rate.

I want to draw your attention to a couple of things. Real market value growth on the top line. Zero percent for fiscal year 2024, that was a projection. We needed to update that. We have the actual now. It's come in at 0.15%. Pretty close to zero. And then the City economist is projecting zero percent growth again next year. Not negative, we have had negative growth in some years, but basically no growth and that is related to concerns about commercial properties, mostly downtown commercial properties. So what that is doing is, it means that our RMV rate is going up a little faster than we thought it would. That's not the only reason, but when we're not growing RMV at all, we're not growing the denominator and so the rate is growing much faster. If you look down at the bottom table, which is in the middle of the slide, you'll see that we're now projecting a tax rate for next year, an RMV tax rate of $1.36. A few years ago, we were projecting that would only be $1.30 in fiscal year 2024-2025. Now we're projecting $1.36 mostly because of that very slow RMV growth. I'm trying to think if there's anything else I really want to point out to you on this slide. You do see a big, assessed value growth in the current fiscal year and that is urban renewal areas returning to the regular property tax rolls. So, it's not as exciting as it looks although maybe it only looks exciting to people like me. All right, any questions about property taxes before we move on? Trustee Kramer, I'm not sure if these things about compression and discounts and delinquencies make sense to you, you may not have ever seen them before. If not, you can ask me now or we can talk later.

Trustee Kramer: Either one. If they're not of interest to anyone else, I'll ask you later because you're right, they're new to me.

Stacy Jones: Those are basically, let me just say briefly, and then maybe we can talk later, those are losses we expect. Like we're going to tell everybody to pay us a certain amount of money, but some people won't. So that's delinquencies, right? They just will say, nope, we're not going to pay you, okay. So we're going to lose some money from people who just refuse to pay us. Discounts for people who pay, as most people do but if we didn't guess right about, how many people are going to pay up front and get that little discount, then there's some losses there. Compression is related to the intricacies of Oregon's property tax law which caps property taxes at $10 per $1,000 of real market value on each individual property. So some properties are in compression, some properties are not. We are one of the last levies to get compressed but if there's enough compression on an individual property we can be compressed, which means that the property already has so many taxes on it that we can't get our full taxes out of it. Does that make sense? And so all of those assumptions come from the City Economist, from Peter Hulseman, the City Economist. All right, moving on to the next slide. We're getting there, guys. Sorry, I know we have a full agenda.

So, managing the fund. So, Chair MacLeod was talking about fund expenses. Let me just say again that funds are a totally foreign concept to folks who don't live in government, because funds are not used extensively in the private sector, they do exist but in a governmental finance context everything lives in a fund. A lot of the services you think of as core city services live in the general fund, like the Police Bureau, Fire Bureau, Parks Department, things like that. But things with a dedicated revenue source that need to be segregated in some way for some reason live in their own funds. We live in our own fund because we have a fiduciary responsibility to the city, we have our own dedicated revenue source we can only spend money on certain things, so we live in our own fund. We can only spend money on certain things. That means we have to do a few things. One is that we need to have some fund balance. So why do we have fund balance? Why don't we just spend our fund down to zero dollars? The same reason you don't spend your checking account down to zero dollars. Some of it is because you need to manage daily cash flow so you can just think of that as the cushion you keep in your checking account to make sure you don't overdraw. Last year, for example, in 2022-2023, our average daily cash balance was about $75 million. But our lowest daily cash balance was $5.2 million and our highest was $160.3 million. There's a lot of variability in there, so there's a cash flow management aspect to this. And then the other reason is contingency, which you can just think of as your personal emergency fund. So that is money that we want to have on hand if we need to spend more than we planned or budgeted for or if our revenues fall short for some reason, then we need to have that money on hand. And then fund balance is just where sort of extra savings or extra revenue also goes to live, again, just like in your checking account. If we spend less than we planned or budgeted, it falls to fund balance or if revenues are higher than expected, it falls to fund balance. I mentioned earlier, I target a fund balance sort of in the 7% of annual expenditures range, which winds up being in that $15 to $20 million range. We built it up over the pandemic to make sure that we could have lots of financial certainty and stability, and then you can see us spending that down now. So I'm hoping to spend that down even further, and ideally hit our target by 2024. I'm a little concerned about that because it looks like we may be over collecting on property taxes, some of those assumptions from the City economist last year may have been a little too conservative. So we'll see where we wind up at the end of the year but that's still my goal, to spend that fund balance down.

Then I just have some notes at the bottom of the slide about some of the things that happen when you live in your own fund. Like I mentioned before, we have to pay our share of the citywide general services, we have to manage our own cash flow, part of which is managing fund balance, but another aspect of which is issuing TANs every year, but we also get to keep interest earnings on our fund balance. Those are the tradeoffs of having to manage your own fund. If you're a bureau that lives in the general fund, the City economist does all that stuff for you but we have to do it for ourselves because we don't. All right. Any questions about that before I wrap up?

All right let's just hit these last two slides, then. So on the last slide, I mentioned that one of the purposes of fund balance is to serve as fund contingency to deal with any risks to the budget. So what are the risks to the budget? Some risks are structural, by which I mean they're there every single year. There are always risks that we know, things that could go up or down every year. And some are specific to a certain set of external circumstances in any given year, so they're sporadic. And obviously some risks are bigger than others, and they could be bigger either because they're more in other words riskier because they're more volatile, or they could be riskier just because small changes will have big dollar impacts. So this slide shows what I and my staff think are the six major financial risks to next year's budget. The bigger the dot, the bigger the risk. We keep experimenting with different slides. So June 2024 is an example of something. So you can see the things I think are the biggest risks are June 2024 retirements and property tax losses. So June 2024 retirements is an example of something that I think is a big risk because it's extremely unpredictable and volatile. We might have ten retirements in June, we might have 100. Really, we've made a guess, we could be way off. Property tax related risk is an example of something that's risky because very small changes can have big dollar impacts. We're talking about hundreds of millions of dollars so if delinquencies are 4.7% instead of 4.5%, that turns into quite a lot of money. This year that risk is amplified by the continuing above average uncertainty about RMV growth and continuing above average uncertainty about property tax delinquencies, all of which is really focused on commercial properties, particularly downtown real estate, as leases continue to expire and several of those commercial downtown properties get into trouble. There's concern about defaults and property tax delinquencies and losses in market value on that side. So that risk is always there, it's amplified this year.

The only risks on the slides that are really specific to just this year are the June 2024 retirements and the City government restructuring. All the rest of these risks are really structural and they're always present to a greater or lesser degree. I just mentioned, the property tax risk is larger this year than normal, but it's always there. So every year my staff and I also attempt to monetize these risks as kind of an exercise of saying, okay what do we think is a reasonable estimate of what the costs, if things went sideways with some of these things, what would the costs associated with that be? And we come out to a little under $10 million when we monetize these costs but remember we're definitely guessing. There's a huge range, obviously. That's kind of where we landed. So how do we manage that risk? Well, we have fund contingency which we've set at $14 million. That's what we've recommended to you all this year. The second thing we do is we err slightly, just slightly, on the side of conservatism in budgeting for items that are particularly volatile or items that are high impact line items. So those are the two ways that we really try to manage those risks. Questions about the risk and the forecasts to the budget? Nope?

All right, last slide. You're almost there although it is not going to get better you know. The next thing we're going to talk about is ASOP 4, which Lorne can probably make it pretty exciting I'm guessing. So as always, I like to end with just a few key takeaways that I hope will stick in your minds as the things that really stick out to me and the rest of the finance staff about this year's budget and that I always want to make sure I talked about at some point during the presentation, if I didn't hit on them hard enough during the presentation. The first thing is that the current fiscal year, I talked about June retirements, it really has the potential to come in second to only fiscal year 2021 as the year with the most FPDR retirements ever. Just like in fiscal year 2021 there are two 27-pay date months this year. But unlike in fiscal 2021, one of those months is the last month of the fiscal year, June, which means we probably won't have time to adjust next year's budget if we've underestimated retirements this is year, so it is riskier than usual. Why so many retirements this is year? Two 27-day pay date months as I just mentioned. There were two fairly long gaps between the previous 27 pay date months. The last was July of 2022. And then we had one in December of 2023 and we'll have another in June of 2024. So July 2022, December 2023, that's a fairly long gap. There is a one-time bonus for PPA members that will be in their lookback if they retire in June. We had unusually large wage increases for both PFFA, PPA, and PPCOA on July 1, 2023 that will go into a June retirement. The June retirements always have an extra incentive because as long as they are retired by July 1st, they have historically received the pension COLA and then they would get that immediate pension COLA as well. So all of those things are making June look pretty good to a lot of people. So I think we're in for a doozy of a retirement year.

The second thing, and I've talked about this enough I think, is that this really low or nonexistent RMV growth means that our RMV tax rate is growing just a little bit faster than we had previously anticipated. Still nothing to be concerned about in terms of hitting the cap, but faster than we thought earlier. Third, it looks like inflation is cooling off but the last couple of years have pushed us into a permanently higher cost curve. Inflation isn't like stock prices, where when you have a few big years that will be offset by some negative years. There isn't, or hopefully there isn't, negative inflation or deflation. That is not something anybody wants. So we're not going to have deflation ideally to offset the high inflation we've had for the last few years. That cure would be worse than the disease. So the inflation we've experienced over the last few years which has driven up costs and particularly sworn wages beyond previous expectations, that's part of our new life now and permanently shifted our cost curve up a bit. And on top of that we don't know for sure that historically high inflation is done with us even now. We'll have to see how the next six months shake out.

And finally, the PERS contribution budget as I mentioned is both getting harder to predict, and it is having larger impacts on our overall budget. Which is not really news, we knew that day would come. In the very beginning PERS contributions were a tiny part of our budget, and they were very predictable. We used to do the budget literally person by person. We knew the names of all of them and literally did it by individual because the only factor you really had to account for was little step increases they would have as police officers or firefighters and hiring. But now there is hiring and attrition to account for. The budget is large enough that volatile pieces like overtime actually can really matter. But the hardest part as I mentioned is just trying to model the spread of those FPDR members through the workforce as they promote and move into those premium assignments. So in 15 years it will be more manageable than right now because then the entire workforce will be covered by PERS. So we won't have to model that spread, we'll just need to account for hiring attrition and the variable piece likes overtime. Of course then the budget will be larger though so the impact of making a wrong guess will be larger, but it will be easier to model. So those are the four things I think are really worth taking away from the budget presentation about this year. And before I ask about final questions and any changes, the board might want to see if there is anything you want to revisit. Let me see if there are any more questions. Trustee Kramer?

Trustee Kramer: Thank you. So I want to go all the way back to slide 4 if we may.

Stacy Jones: Okay.

Trustee Kramer: And just go over the growth in the administration expenses if we could. What I'm seeing if I'm reading it correctly, is that the projection for the current fiscal year is $4.9 million, and the recommended budget for the next fiscal year is $5.46 million if I'm reading it correctly. So does that work out to about a five-year, $60,000 increase annually?

Stacy Jones: Let me pull up our A line and I can tell you exactly.

Trustee Kramer: That's fine. Thanks Julie.

Stacy Jones: Let me give you the exact dollar amount. Yeah, so our projection for this year is $4,903,877, which sounds very precise, and our next year's budget as recommended to you is $5,460,527. So the difference between those two is $556,650, so about half a million dollars.

Trustee Kramer: I'm afraid you told us this but I'm sorry I don't remember. How much of that is attributable to the uncertainty relating to the charter change?

Stacy Jones: You are very clever and have noticed I deliberately did not say that amount. I was trying to avoid saying it publicly because there is a negotiating aspect to this with other city bureaus and I don't want them to know how much money we've set aside. But that is a legitimate question so let me answer it. We've set aside $200,000 for that. I think that is very high. I think it is unlikely that we will need all of that $200,000. We've only committed $15,000 so far. So I think that is really high. But of the growth, so with that $200,000 in there, that is 11.35% growth and if I take that $200,000 out and pretend it is not there, then the growth is 7.3% without that $200,000.

Trustee Kramer: Thank you, that is very helpful.

Stacy Jones: Okay, glad it was helpful. And good catch. I was trying to be silent on that $200,000. Other questions or parts of the budget that the board would like to revisit?

Chair MacLeod: None for me.

Trustee MacLowry: No, thank you.

Trustee Kramer: Nice graphics, very readable.

Stacy Jones: I'm glad. We always try to make our fonts big. I myself can't stand tiny, tiny fonts. Julie, if we could go down to that very second to last slide where it just sort of says questions which we've just kind of clarified that doesn't sound like we have anymore. It doesn't sound like there is anything that the board wishes to change. So if we can flip to the last slide, I'm sure you will interrupt me if I'm wrong and there is anything you want to change. We will need a motion to adopt the budget. But before we talk about that, I want to say, as I say every year, but this year is a little more serious than usual. I want to make sure that the board understands that we always have to make some minor technical adjustments to the budget after you adopt it to accommodate changes that the Mayor or council make to budgets elsewhere in the city where they intersect with our budgets. So that happens usually on the police or fire budgets but could also happen in internal service budgets and then we just need to make little adjustments where we intersect with them. So when that happens, I always come back to you if there is anything significant financially or programmatically and talk to you about it whenever the next meeting is; March, May, could be even late as July. So I just want you to be aware of that possibility. This year that is going to happen, and there is going to be more of it because of those structural reforms to city government that I was just talking about which are still being ironed out and costed and also the delays in the city-wide process which means there are just more pieces that are up in the air at this time. I don't think any of those things are going to turn into million-dollar costs. I still think we're talking about small potatoes within the context of our overall budget, but I want to be transparent that there is going to be a little more of that this year and there is just unfortunately nothing I can do about that. But I will definitely come back to you at the next meeting or the next meeting or the next meeting and talk to you about any change that is financially or programmatically significant that is coming our way because of changes elsewhere that we need to intersect with.

Chair MacLeod: Thank you very much. That was a very fine presentation. I felt like we got some good discussion, and it was very easy to follow so thank you. And yes, good discussion and questions along the way. Are there any other questions from any of the other trustees before we make a motion. All right then I'll entertain a motion to adopt the budget for 2024-2025 as is presented to us.

Trustee Kulp: I'll make the motion.

Trustee MacLowry: I'll second.

Chair MacLeod: Thank you. And any subsequent discussion? I'm assuming none. All those in favor of passing this say aye.

Trustee Kulp: Aye.

Trustee MacLowry: Aye.

Trustee Kramer: Aye.

Chair MacLeod: Aye. And opposed? All right. Thank you very much Stacy. Thank you again.

Stacy Jones: Thank you very much, board.

Chair MacLeod: Okay. That concludes our action items, but we have a very long list of some interesting information items for today and the first one is a memo presented by FPDR counsel Lorne Dauenhauer on Actuarial Standard of Practice No. 4. So Lorne, can I turn this over to you?

INFORMATION ITEM NO. ONE – ACTUARIAL STANDARD OF PRACTICE (ASOP) NO. 4 DISCUSSION

Lorne Dauenhauer: You can. It is good Stacy probably wore all of you out so I expect I'm going to put you all to sleep.

Stacy Jones: Thanks Lorne.

Lorne Dauenhauer: That was a lengthy and well-done presentation. Thanks.

Stacy Jones: That is the kind of opening act you want for sure.

Lorne Dauenhauer: It is, it is. I will try to live up to the job you just did. So you all have received a copy of a memo that my office prepared concerning some issues pertaining to public comments received on the application of Actuarial Standards of Practice No. 4 on the services that Milliman is contracted to perform for you. The concern was either that A, the actual agreement with Milliman was defective because it didn't require anyone to perform the work that would be required if in your specific case the levy adequacy study was treated as a funding evaluation for purposes of ASOP 4. Or there was a transmittal memo that Stacy and FPDR staff prepared for the board to consider when it was reviewing the new Milliman service agreement. That memo had stated somewhere in the memo that because the FPDR is not a funded plan, certain services or reports that would generally be prepared by an actuary doing that work would not be required and that included the determination of actuarially determined contributions, as well as other reports and studies, or not studies, other valuations that would be typically prepared by an actuary when performing a valuation for a fund that actually had assets.

So again, public comments were made by Mr. Kevin Machiz, saying that he believed that either A, that the Milliman contract was deficient because it didn't require Milliman to perform the things they would be required to do under ASOP 4, or that there was something defective with the memo in that it indicated that Milliman was instructed not to perform those particular deliverables when it had to. Again I'm not entirely clear what the complaint was but regardless of what that exact complaint was, the issue is for Milliman, as well as the fund or FPDR, does ASOP No. 4 apply to the work that Milliman is being contracted to perform? We've looked at ASOP for the language of ASOP 4, the language of the services agreement with Milliman, knowing the nature of the work that we're asking them to perform, reviewing the commentary underneath ASOP 4 and I think from a legal perspective the way I read the ASOP 4, I don't think this is a funding valuation because we're not actually asking Milliman to tell us how much money we need to save for the future. We're asking them to tell us, when we look at our costs in the future, do you think those costs will exceed our ability to tap into the levy? And if so, what does that mean? From FPDR's standpoint it probably doesn't mean any of that. It just means that instead of relying on the levy, we're going to rely on the city to come up with an alternate source of revenue to pay the benefits because although the charter anticipates that the levy will be the main revenue source to pay the benefits, if for some reason we hit the levy cap, that doesn't mean that the city doesn't have to pay the benefits, right? It's really just a risk analysis to see, do we need to worry about levy adequacy? It is not what we would typically view as a true funding valuation where we're looking at how much money you need to set aside.

In talking to Milliman, they said those professional standards apply to us and we're required as a matter of the standards to do our work consistent with those standards. If we conclude that ASOP 4 does apply, then we're going to have to do that work even if you didn't ask us to. I think more likely they would come back and say it turns out we need to do this extra work so we're going to need to revise the service agreement because we're not going to work for free. But again, the sole source or the sole determiner of whether or not ASOP 4 would apply to a unique fund like this one would be the Actuarial Board for Counseling and Discipline, which is a unit of the Actuarial Standards Board. Mr. Machiz had indicated that he had reached out to a number of actuaries who had either reached out to them or had read the ASOP and concluded that ASOP 4 did apply. He couldn't get us names or examples of who did you talk to so we could talk to them, but Milliman has said that they are planning to, and may already have, reached out to the ABCD (Actuarial Board for Counseling and Discipline) to ask them for an opinion as to whether or not they believe ASOP 4 would apply to the funding evaluation analysis or levy adequacy analysis that they are generally provided to the fund. And again, if they conclude that ASOP 4 does apply, that is, that the levy adequacy analysis is a funding evaluation for purposes of ASOP 4", then Milliman is going to come back to us and explain the decision that has been conveyed by the ABCD and basically at that point we'll have to cross that bridge when we come to it. And see what that means, what additional work will Milliman have to perform in the event the ABCD concludes that this work is subject to ASOP 4. Hopefully they come back with it's not, because you actually are a pay-as-you-go plan and there is no funding that you are asking Milliman to calculate. Again, our point is that the funding for the levy adequacy analysis is really just helping us come up with the source of the money. We're not too concerned with the amount of it. Obviously, the amount of the money is part of the analysis but it's not the end goal of the analysis. The end goal is just hey, we've got this levy, will we ever exceed the levy coming up with the money to pay the benefits and the other costs of the fund? Trustee Kramer, do you have a question?

Trustee Kramer: Yes, if I'm not interrupting your train of thought though, Lorne.

Lorne Dauenhauer: Not at all.

Trustee Kramer: If the question may put you more on the spot than you want, I'll leave you free to answer as much or as little as you want.

Lorne Dauenhauer: Okay.

Trustee Kramer: We have a 5-year contract with Milliman, that runs through Spring of 2028. They're required by that contract to perform their duties in a certain manner.

Lorne Dauenhauer: That is correct.

Trustee Kramer: What proper actions on their part is as you said determined in part by the ABCD. So, I would have thought in a simple-minded way that if ABCD comes back and says yes you have to do this Milliman, then Milliman is arguing uphill with us.

Lorne Dauenhauer: They may be, yeah. And I really can't say what.

Trustee Kramer: Yeah.

Lorne Dauenhauer: If they had a mistake of fact, or not sure what it would be. If the contracting parties didn't have a meeting of the minds and everybody thought they wouldn't have to do this work. FPDR said we don't want for you do this work, and then section 6.7 of the service agreement which says they have to perform the work in accordance with their own professional standards comes into play, does that mean that notwithstanding, the professional standards requires them to prepare this extra work that nobody thought they would have to do, would it mean that they're still bound by the terms of that contract? I'm not going to get into that. Let's cross that bridge when we get to it. You know, again, it's been too many years since I took contract law in law school to remember, which brings back a little PTSD, to be frank. The answer is we'll have to cross that bridge when we get there and see what Milliman says because we can't force them to redo the work. If we take the position that they have to do this work as part of their professional responsibilities and they want to break the contract, then obviously we'll leave that for the city attorney's office to handle.

Stacy Jones: Can I just jump in Lorne and just say that based on my long relationship with these actuaries, I mean, if their board came back and told them to do this, I am highly confident that they would do it and we would pay for it through the other projects provision of the contract, or perhaps we'd revise the contract. But it would be a non-issue in every way. Milliman isn't opposed to doing this, I'm not opposed to doing it, I just don't know why we would pay for something that we don't need and serves no purpose.

Lorne Dauenhauer: Right. That cuts to the question, is this a funding valuation and I suppose it's up to the ABCD to make that call. I believe when I spoke with Matt Larrabee and Scott Preppernau, in talking to them it didn't sound like they really wouldn't be that much more work if they did have to do this. But there are lot of inputs that they would require in order to do the work which would involve I think a fair amount of discussion with the trustees as to certain assumptions that would have to go into their work. So, what I understood from Matt and Scott, and I'll certainly talk to them later after they've seen this video, is that a lot of the work was just coming up with the assumptions and once the assumptions were in play, they've got the data to be able to do the other work, the actuarial determination of contributions and the other stuff that ASOP 4 would require.

So again, I didn't get the impression from Milliman that this was a large lift for them, but again I guess we'll cross that bridge when and if we need to get there. Hopefully they'll hear back from ABCD that of course this is not a funding valuation. When you talk about, you have no assets, and you're not making contributions to the fund, it would be sort of useless for Milliman to have to prepare the reports, given the nature of FPDR. But we'll see. Disciplinary boards have their own view of the world. Trustee MacLowry, question?

Trustee MacLowry: Couple questions. Do you have a sense of the time frame for the ruling from the ABCD? And second question, either Sam or Stacy because I'm not sure, is FPDR required by the charter to have the levy analysis done annually or semiannually?

Lorne Dauenhauer: I'll let you tackle that one Stacy or Sam. The second one.

Stacy Jones: Yeah, the second one. No, the charter does not require us to do a levy adequacy analysis, we've just done that as a matter what seemed reasonable financial stewardship. So, a plausible, yes. We're not required by charter. And I'll let you answer the first one Lorne.

Lorne Dauenhauer: And in terms of the timing, I don't know. I will ask Milliman to see if they have any sense of timing. I know when I've asked opinions of the Oregon State Bar, they'll get to it when we get to it, but perhaps the actuaries are more responsive. But I'll see what I can find out for you. And I concur, there's no regulatory or charter required reason to do the levy adequacy study it's simply good financial stewardship to know does the city need to worry or reasonably worry at any time in the future, will the FPDR costs hit that levy cap. And Sam you may know this. Did the fund even do the levy adequacy study before the charter was reformed back in the mid '90s?

Director Hutchison: Yes, that is part of. They were looking at the chart and numbers were climbing high, and it was worried that it was going to hit the cap sometime in the future. So that was one of the drivers for the 2007 charter change and creating FPDR 3. The trend was upward, and nothing was going bring it down. So that is why they did. I have a question for your Lorne.

Lorne Dauenhauer: Okay.

Director Hutchison: So, if we get this analysis completed, the funding. What do we do with it? We're not, it seems like it is going to be report that is going to be clumped in front of us, and there is nothing for us to do or use this report for. Am I correct?

Lorne Dauenhauer: I can't imagine there is anything that the FPDR board could do with that. The city may, I suppose, look at that and say, gosh, since we have to have this funding analysis and now we have to have a funding policy and basically the actuaries are saying we've kind of made one for you and you are not following it. The answer is well, it's because we don't have to. I think that is why it would seem sort of, it's a useless report, and it's a shame to have to perform the analysis because of ASOPs. But if Milliman had to do it because of the ASOPs, we're certainly not going to tell Milliman don't do it and disregard your own professional standards. Milliman has to abide by its professional standards so they may end up having to prepare reports and come up with certain assumptions that are at day's end meaningless.

Chair MacLeod: I would suggest that in theory, with results of such a report and establishment of a funding policy, that council could entertain the idea of setting up a trust and prefunding the plan, like PERS is being prefunded. That would require coming up with funds that it doesn't have right now to prefund it or that it hasn't set aside, and that is certainly out of the purview of this board. I think the only thing that we could do there is if we wholeheartedly endorse that concept that we could encourage city council to consider that, but that's a lot of ifs and that is a lot of money that I don't see lying around. But I think that is ultimately a potential use for it. But you know, unless there is somebody prepared to lobby for that with the city, again, it feels like a report that would just be, thanks for the report.

Director Hutchison: And just keep in mind the funding. We are considered $3 billion underfunded. To prefund it, we have to come up with $3 billion, or we continue the tax levy the way it is right now. So that's the dollars that we're talking about and when that's been proposed at city council, they back up totally away from this. They don't want to try and figure out where they are going to get $3 billion today to prefund the plan. They're satisfied with the way it's funded and the way to go forward. So, just to keep the context in place.

Chair MacLeod: Yeah.

Lorne Dauenhauer: And my recollection from dealing with other public defined benefit plans that aren't PERS is that they come up with a funding policy, if we have assets, here is your liabilities, we back out the assets, that leaves an unfunded liability of X. We're going to try to fund that over a period of years and come up with what is called actuarially recommended contribution or an ARC. There is no obligation for the public employer to follow the actuarially recommended contribution. But again, the actuaries would come up with a number and say here is the recommendation if you want to reduce that over X number years. Useful if you are intending to fund the plan over X number of years, but utterly pointless if you are not.

Trustee MacLowry: I can say from where I sit as my position on the board, what is of critical importance to me is that modelling that shows the probability that we would ever hit that $2.80 cap on the levy, that's what is important. And clearly, we're in good shape in that regard right now. I would just push back one tiny thing, Sam alluded to this. You have on page 6 of your report, even if Milliman concluded that future benefit payments would require contributions in excess of the levy limits, there is nothing the city or FPDR can do about that. We went through it in 2005 and 2006. Should that be the case there is something we could do about it, and it would be another reform. And that is what Sam is talking about in 2006. They saw the projection going above the line.

Lorne Dauenhauer: Sure. Right.

Trustee MacLowry: And those are the steps that were taken.

Lorne Dauenhauer: Yeah. Obviously, there are steps that people could do. If that came into play, of course there are things that can be done. They don't have to, right? It could be just well the city has got to pay it. The city has to come up with the funding. The alternatives would be the charter could be amended to come up with a different source of funding. I suppose the state could even get involved, or Oregon legislature could step in and compel some change. Of course something could happen. But if nothing did happen, the city would still be obligated to make those payments. They would just come from some other source, probably the general fund, but maybe something else. Maybe an income tax, I don't know. We can't really predict.

Trustee Kulp: Do we by chance know if any of the other funds in the State of Oregon, I believe there are six other total funds. Do they do this review at all? Or are they so small there’s no -

Lorne Dauenhauer: I believe they are all funded to some greater or lesser extent. They are certainly better funded than us. We've got zero.

Stacy Jones: Are you talking about the other plans, trustee Kulp, that have the ETOB test?

Trustee Kulp: Right, they’re outside of PERS.

Stacy Jones: None of them are funded like this from a property tax levy. So yeah, it is funny. Lorne is using actuarial or accounting speak that they’re funded. But in the normal parlance of a normal person on the street, I always say this, and it makes the accountants nuts but, our plan is funded. Look at Lorne. See he's rolling his eyes at me right now. I'm distinguishing.

Lorne Dauenhauer: It has a source of money. There’s a future revenue stream.

Stacy Jones: It is not a funded plan.

Lorne Dauenhauer: It’s a revenue source that is anticipated to pay all our costs, right? Now other systems have said we don't want to do it that way. We're going to do it more the traditional way which is, we're going to save money into a funded trust, a separate legal entity, that we're going to put money in and that money is going to be invested, and it’s going to grow. So that between the investment return and contributions that the employer is going to put into the fund, those two sources of money will be enough to pay the benefits for the future. That’s what PERS does, and what every private employer is required to do by the federal tax code is to prefund the liabilities. You are more in the social security model, which is we get this money from taxes every year and we're going to take the tax revenue and pay the benefits out and if there is anything leftover, we're going to put it in the proverbial lockbox is what Al Gore used to call it. We all know there isn't a lockbox. We lend that money out. But it’s similar to social security where it is a pay as you go system, and it’s unique.

Stacy Jones: Yeah. It is as far as we know Trustee Kulp the only plan in the country, I’ve never been able to find another one like this. So I just wanted to point out that when we all talk about a funded plan, what we mean is what Lorne is talking about which is a PERS type of plan.

Lorne Dauenhauer: Right.

Stacy Jones: But that doesn't mean there is no money for the plan, like in the parlance of a normal person talking.

Lorne Dauenhauer: The funding is really the revenue source and other plans have a big pot of money as the revenue source. We don't have that. We have the ability to tap into property tax revenue. All right, well bottom line is we're waiting for Milliman. I will find out how long they think it might be before they get an answer and certainly if they get an answer we'll update the board. Whatever the answer is, if it means that Milliman needs to perform these extra functions due to their professional responsibilities or ASOP No. 4, then, you know, Milliman's got to do what Milliman's got to do and we'll respond accordingly.

Chair MacLeod: Thank you. Any other follow up questions from anyone about what Lorne's presented here? Okay, well thank you very much. That was very helpful to do and I appreciate that we've got a clear direction right now. The contract is in place. Regardless of whether we see value in this or not, there is an obligation to pursue whether or not it is subject to this ASOP 4, and we'll hear back and we'll get an ETA from you when you find out.

Lorne Dauenhauer: Yes.

Chair MacLeod: Thank you very much.

Lorne Dauenhauer: You bet.

Chair MacLeod: And it looks like the next information item is disability pension benefits review, and then there is a 2.5. So is someone else doing the original part of this and then back to you Lorne, or are you doing the whole thing?

Director Hutchison: I'm doing the pension comparison.

Chair MacLeod: Okay perfect. We'll turn it back to you, Sam.

Director Hutchison: If I can find the right screen to share.

Trustee Kramer: Chair MacLeod while Sam is setting up may I raise a presentation point?

Chair MacLeod: Absolutely.

Trustee Kramer: That is in both the disability retirement and in this ASOP 4 discussion, there were a number of attachments to the memos. That was extremely helpful. So I appreciated having those, especially as a new trustee, to have the source documents attached as exhibits rather than having to go find them. So, thank you.

Chair MacLeod: Agreed. Thank you for pointing that out.

<u>INFORMATION ITEM NO. 2 – DISABILITY PENSION BENEFITS REVIEW</u>

Director Hutchison: We're going to dive into a PERS and FPDR disability retirement comparison. So a few months ago you asked for more information on how FPDR retirement benefits compare to PERS disability retirement benefits. So I'm going to compare a situation where we have a police officer who is part of FPDR to a police officer who is part of PERS and see what they would get if they became totally disabled. Now, PERS tier 1, 2 and 3 all have different start and end dates, and we have some active-duty members who could be part of tier 1 or tier 2 or tier 3. So I selected tier 2 because 63% of our active members would have been under PERS tier 2 if they had been hired elsewhere. For tier 1, only 4% would, that was retired long ago, and 31% are a part of OPSRP. So I chose the one where the most members are here, and I think this is the one where when you’ve heard retirees talk about it, they are comparing FPDR 2 to PERS tier 2.

So we have like I said before a police officer who is covered by the city of Portland, the FPDR 2 plan, and a police officer who works for another city that is PERS covered and they are eligible for PERS tier 2. So I'm going to use this information I have up front. So the job position is police officer. Both were hired July 4, 1975, that was date of birth July 4, 1975. Excuse me, hire date was January 15, 2000. Disability date was December 20, 2023, just a few weeks ago and salary at the time of disability is $120,000. So what we're doing here is comparing. I thought it would be, with FPDR 2 you have two components. You have the disability benefit component on top and then it’s followed by a service retirement. For PERS tier 2, if you are disabled, you get a disability retirement from day 1, you don't have that disability plan in front of it. For the definition of disability at FPDR, a person shall be eligible for a service-connected disability when they are unable to perform the member's required duties due to an injury or illness arising out of work. Pretty straightforward. If you can't be a police officer or firefighter, you would qualify for these benefits. If you go over here to PERS, they have to be totally disabled, not partially, and unable to perform any work. So they don't hold the work that you are doing as a police officer as their guide for disability. They look at what your education, training and experience is and what other jobs you could possibly be performing other than a police officer in this case. So there is a possibility they can say hey look, we've done analysis and you could be working someplace else and deny you getting a disability benefit or disability retirement. So there is a higher, what do you want to call it, bar to cross to get your claim approved for that. But I'm going make it simple for this one. We're going to assume that everybody is permanently disabled and unable to perform any work. So we're going to take out that partial disability or the ability to work any other work. So you are totally disabled for the sake of this.

One thing, I go through this and try to make it a straightforward, simple approach. You could ask what happens in this scenario? What happens in this scenario? What happens if this goes on here? The more complexities we throw in, the harder the analysis gets. So I just want to keep it as simple as possible for you. So like I said, for FPDR, you have the first plan. So FPDR disability plan, they don't receive this part until retirement age, and we'll go over that in just a minute. The date of disability is December 20, 2023, which we indicated above is the date of disability. Their benefit there would be $90,000. So what we take into account is their $120,000 salary times 75% of their base pay when they are disabled right there, and it does include some premiums but does not include overtime. So that is where you come up with the $90,000.

So COLA. There is really no COLA for this plan, it is more of a benefit adjustment that occurs regularly. So we treat anybody who is on disability as if they are still on active duty and for the purposes of salary increases, we look at what union agreement they belong to so they get the COLAs, they get the step increases, they get the longevity increases and everything else, the premiums that are all laid out in the contract. So we did, because this is an actuarial assumption, that every year that's going to amount to about 3.25% of annual salary. I think this is low but again I'm using what the actuaries do because recently we've had higher inflation, we've had more liberal contracts out there that have given more benefit, but we're just going use this number here because the actuaries gave it to us. And we will look at the end so see if you change this to 5-7%, what it would do to the benefit. The benefits are not taxable. And service credit, again, if you were fully disabled, you're not SGA. Which you are not able to work or sustain any gainful employment, you will receive full-service credit for every year that you're on disability. And the benefits in this case will end after 30 years which is when they hit their retirement age on that. Fairly straightforward. So do you have any questions on this? How we calculate this first part? This is for the first 7 years of this person's disability that they will be able to get this benefit. And I know I'm moving pretty fast, but you know, interrupt me please if you have any questions.

So we're going down here to the second part. We're going to compare the FPDR service retirement to the PERS disability retirement. The PERS disability retirement starts on December 20, 2023, the date the person became disabled, the police officer and FPDR service retirement begins January 15, that is when the regular disability benefits ended. So we're going stick to the green side and then I'll jump over to the PERS side. So the final average salary at the time is, we take 7 years and adjust those 7 years for 3.25% annual salary increase. So this is what you would get after 7 years of those salary increases. So that is what it would be at the time we'd be estimating how much disability benefits you would have been getting at the time you retired and reached disability retirement age after 30 years. And we're going to assume that there was no partial disability or anything, so they received the full benefit. We have a 2.8% multiplier. That's the one that gives you the highest benefit, the lowest survivor benefit. And this line here is just a recap back to December 2023, the date of disability the member is getting $90,000, but on the date they retire, they are going to get a benefit of $126,000. That's that $150,000 of final average salary up here, times the 30 years of service, times the 2.8% multiplier. Basically that comes up to about 84% of their salary is what their benefit is.

Now we'll swing on over here to the blue. Again, for the blue, at this point we're only talking on December 20, 2023. I haven't brought it up to the date that we are with FPDR yet. So their final average salary at this point would be the $120,000, but what they do is PERS averages over three years. So they'll look back three years and that is your average. So you probably won't be getting $120,000 as your base, you'll be getting a little less. FPDR has a three year look back but we choose the one year that gets you the highest benefit. So we're assuming for this model $120,000. So here they would get little less than $120,000 but they do have overtime included. Overtime is an average overtime, and I said Portland police, that really should say for this employer, this person's employer. They look at all the overtime that all the police officers for that city worked and average it. That's how much overtime you get. So if you have a police officer who is out there earning 75 or 80% higher than their salary because of a tremendous amount of overtime, they won't see that. They won't get that full benefit. They will get, and if we use the Portland police bureau's most recent study on Portland police is 15% load. We talked earlier about overtime, where the city is going to try to lower it. You could see that number lower in the future, but we just use 15%.

So you take the final average salary, the average of the $120,000, add the 15% load. So as on the date of disability, their benefit is $133,000. Actually their final average salary is $133,000, excuse me. Their years of service is 30 because what they do for PERS is they say, how many years of service would you accrue if you weren't disabled and worked until age 55? In this example it's 30 years, plus or minus a few months. Their highest multiplier is only 2% versus our 2.8%. So you come out here to the benefit of what we calculate for on December 20, 2023. So that's at the date of disability, you get the final years of service of $133,000 calculated up here times the 30 times the 2% and it gives you the benefit of $80,000. The key here is the 2 times 30 gives you a 60% versus FPDR members getting 75% at this time and their final salaries they're getting 84%.

Let's take it down here. We're going to true this up here so we're going to look at both plans on January 15, 2023, the same date as the FPDR service retirement begins. So that is the benefit they're going to get there. Here it is $89,000 because your salary is fixed on the date of disability. You do not get any salary adjustments forward, and you get the 1.55% COLA increase and we'll go over a little more on the calculation of that later. So that's why that benefit is there. We still included the 15% load. So any questions on that at this point? I'm throwing a lot of stuff out at you.

Trustee Kulp: Sam, you said this is assuming 7 years of disability? Is that right?

Director Hutchison: Yeah, I'm going to go back here at the top. The date of disability was 2023, the hire date was in 2000 so I took it out 30 years beyond that to 2030, because that is when the FPDR benefit would be coming in, and I'll show you on the next slide that I've got a little more on how that works. So hold that question a little bit and I think I can help answer that in the next slide.

Trustee Kulp: Okay.

Trustee MacLeod: Sam just one more. For the PERS illustration, you're illustrating the COLA adjusted benefit in January 2030, but is it true that that is adjusted every year?

Director Hutchison: Yes, that is adjusted. And Stacy, when she gave me the numbers, she gave me the spreadsheet that has it adjusted and recalculated every year.

Let's look down here at the next line for the COLA so we'll go a little more on that. So, COLA for FPDR this is only after the service pension starts. Before, remember we're using 3.5%, which may be low. So we're going to assume the board gives the 2%. That's the max they can get. We're going to assume they get that. PERS has this complicated formula. It says 2% of service credit earned up to October 1, 2013, they get 2% because that is when they changed the COLA calculation. Then they're saying the service time after October 1 of 2013, you only get a 1.25% COLA. However if your benefit is above

$60,000, the component that is above $60,000 only gets 0.15%. So Stacy went through it. So what we're looking at is it goes from about 1.54%, 1.56%, maybe a little higher or lower over time. It changes every year but on average we're looking at 1.55%.

The benefits are taxable, the FPDR service component is taxable. The disability component of the first seven years is not. The benefits are not taxable under PERS.

PERS has an IAP which is a defined contribution benefit which people have been contributing to during their employment. Trying to predict what that is all depends on the investment options. People selected how they want to cash it out there so I didn't make any attempt to determine what a person would have.

Now what I want to show you here. I went year by year, from 2023, the date of disability, up through 2031. This is when the FPDR pension kicks in and just for some runout to 2040. So you can take a look at the first component up here. This is the salary. It is increasing by 3.5% a year due to union contracts. And again, you may argue that that number is too low, and that is I think a good argument but I'm sticking with it. It is my story, I'm sticking with it right now, the 3.25%. And PERS, PERS starts here and only gets 1.55% approximately. Stacy created for me the whole spreadsheet that calculated these exactly, but just for rule of thumb about 1.55%. So when you first started out, the FPDR benefit equals about 75% of salary. PERS only equals 60% of salary. You do have the overtime load in PERS which you do not have in FPDR. The annual benefit increase for the first seven years is 3.25% and PERS is approximately 1.55%. You can already see that you are starting out higher and running higher for FPDR in the first seven years. Now when the FPDR service retirement begins, service retirement is 84% of final salary; PERS is 60%. This was done intentionally to make that big difference because FPDR members do not have social security. So this is one way they are trying to amp up the benefits over PERS because you don't have social security. And then FPDR's annual increase is 2% versus 1.55%. So you run it out here to 2040, this is the difference in the benefits. I will make an editorial comment here. You're talking about a tax-free benefit, and even at $150,000, if you have a 25% tax bracket, you are getting more money take home than you were out of PERS.

Stacy Jones: Sam, you have multiple hands up out there.

Director Hutchison: Okay. Christopher let's start with you.

Trustee Kulp: So using this example with the 7 years, if you are disabled longer than 7 years is your benefit going to be reduced from 75% to a lower percentage.

Director Hutchison: No, I'm assuming here in this that the person is fully completely disabled. We don't have SGA, so we don't see a reduction in the disability benefit. It stays 75% until they hit retirement age. That is why I wanted to keep this simple because if a person was SGA, if we determined that they could work, PERS would stop the benefit.

Trustee Kulp: Right.

Director Hutchison: Because they aren't disabled from all occupations, there is some work they can perform. So that's one of the reasons I want to say somebody is permanently disabled. So they give your 75% calculation through here plus the 3.25% or whatever annual increase the labor agreements say you should be getting.

Trustee Kulp: Who makes that evaluation on the permanent disability? Is that just internal?

Director Hutchison: That's the PERS board has a committee that does that.

Trustee Kulp: Who does it for FPDR?

Director Hutchison: We do it here, we make the disability decision as part of our claim process. Because PERS isn't worker's comp they have their own disability team, let's put it that way. They make that evaluation. I don't know the full criteria of how they define "any work" but I imagine it's some education, training and experience there. It is a higher bar and sometimes you might be surprised what they say you can do when you don't think you can. But that is up to PERS, it's a higher bar.

Trustee Kulp: Ok, thank you.

Director Hutchison: So this is what we went through and it was interesting here, because I may take a little steam from Lorne on this next presentation. Maybe I'll just put a teaser out there and Lorne can fill it out. Benefits are taxable, and that is changing. The Feds are changing that requirement. They are only partially taxable in the future. I'll let Lorne in his next talk do this. So just come back up to this, I ran this through pretty fast. I think you've got all the numbers here. I don't know if you have any questions. It just shows here that FPDR was always intended to pay more for disability than PERS was because you don't have Social Security. And that is why even when you come down here to this 2.8% and 2% that implies whether you are disabled or not and that's partly there to help compensate for the lack of Social Security.

Stacy Jones: Sam, you have more hands.

Director Hutchison: Catherine?

Chair MacLeod: Yes, thank you. This is great, this is really helpful because for those of us that aren't overly familiar with PERS this is really nice to have this side by side. So thank you. I'm wondering if it might be helpful just for the future to have samples at a couple of other different service/disability just to see how the results might distort more or less favorably for kind of a couple of different combinations of age and service disability.

Director Hutchison: We could do that and take when PERS tier 2 started, start with that. You know, I can try to do some stuff. The challenge is that you have to be disabled or have to be employed within the window of PERS tier 2, and that's a fairly narrow window.

Chair MacLeod: That makes sense. So in fact then maybe my question is a little moot because the incidence of something being radically different from this is maybe not very likely because at this point most of the tier 2, FPDR tier 2 people who are also PERS 2 is a pretty small group then.

Director Hutchison: Yeah. It is a narrow window and unfortunately, I don't have the dates for you right now for when they are effective. Interesting thing is I did a comparison with OPSRP. OPSRP just really quickly does not have a disability retirement benefit. It has a disability benefit just like FPDR does. We pay 75% and they pay 55%. You come down here, its calculations. We blow OPSRP so far out of the water it's ridiculous just because of how they've done it. So FPDR tier 2 close. FPDR 1 is just a small group of people, plus FPDR 1 is a pain in the rear end because it's got so many different options and so many different bells and whistles that I think PERS has a hard time figuring it out at times too. So I didn't think that was worth it. We can take a look and I can play with different scenarios but I think you are going to run into somewhat the same conclusion simply because when we come to this third page here, you're going to see this same effect. Maybe more years or different years in here, so you may be more amplified or less amplified. But you are always going to have, FPDR is going to have more salary than PERS in both plans. It's going to have a higher annual adjustment than PERS does in both plans. That's always going to put FPDR on top somehow.

Chair MacLeod: There were other questions, correct?

Director Hutchison: Stacy you have your own question?

Stacy Jones: Not really a question. I just want to say the dates for PERS tier 2 are January 1, 1996 through August 28, 2003 Chair MacLeod. And also, just to say that if it helps in general, the further away from someone, the earlier in their career someone is disabled, the worse this looks. You can see that because of the way the benefit builds. The worse the comparison looks in terms of the PERS benefit being worse than the FPDR benefit.

Chair MacLeod: But if they happen to be younger or shorter service, the discrepancy between PERS and FPDR?

Stacy Jones: Grows.

Chair MacLeod: It grows. Okay.

Stacy Jones: It grows because the FPDR benefit is growing so much more every year because it grows based on real wage increases whereas the PERS benefit is only growing based on that PERS COLA which declines every single year, and for this example person is 1.55%. For someone who was hired later it would be even less, and so on.

Chair MacLeod: Thank you.

Director Hutchison: Franco you had your hand up at one point?

Franco Lucchin: Yes, I was just puzzling over where the workers' comp benefit under the state statute would fall in all this.

Director Hutchison: The reason I didn't compare worker's comp because worker's comp, Kim and I talked about it, is so different on how to they do things and their permanent partial, permanent total, when they pay, how they pay it. Do they pay out in lump sum, do they continue in lifetime benefit? It's very hard to do, it's so fact driven by worker's compensation law and the decision of who the worker's compensation administrator is. Most of these benefits are offset so you don't double dip for workers' comp and PERS. There is an offset, you may get a little more money. I don't know what it would be because again, if you are significantly disabled, workers comp can do a total settlement and pay you off three or four years into disability and give you a lump sum and say here you go and then close the claim out. It all depends on how workers' comp wants to administer and it what the facts are for workers' comp.

Franco Lucchin: I only brought it up because the disability benefit, the 75% untaxable FPDR benefit that replaces the workers' comp benefit doesn't have a cap on it for salary, whereas my recollection is the workers' comp benefit has like an average weekly wage cap and then it is calculated at 66 and 2/3% of that. But if that is not part of your analysis here, then.

Director Hutchison: Workers' comp is so hard to include because Kim and I spent some time talking about it. It is so claim specific that's it's hard to do, plus there is a formula for the offset. You don't get full worker's comp or full PERS at the same time. It is a good point you could be getting some workers' comp but how much and for how long is really hard to tell.

Franco Lucchin: Okay, thanks.

Chair MacLeod: Sam, just a couple more questions about this.

Director Hutchison: Okay.

Chair MacLeod: Although one of them just fell out of my head. Wait a sec while I remember. Oh, you stated that the PERS 2 disability benefit is only paid in the event of total permanent disability. Right?

Director Hutchison: Correct.

Chair MacLeod: And if that is not the case, what do they get?

Director Hutchison: Nothing.

Chair MacLeod: Nothing.

Director Hutchison: If they can identify here, I'm going through the term "any work." If they can define or document that you can do any work elsewhere, they won't pay this benefit and you're going to have to wait until you hit normal service retirement to get a PERS service retirement.

Chair MacLeod: So there's no salary continuation or do they have a disability income plan or anything?

Director Hutchison: No.

Chair MacLeod: Okay. All right.

Trustee Kulp: FPDR doesn't have that?

Director Hutchison: FPDR doesn't have what Christopher?

Trustee Kulp: So once you are determined to be fully disabled for FPDR, there's no rule that triggers you to have to find some other sort of work or your benefit is lowered?

Director Hutchison: Well what we have is, that is what the SGA analysis is down here, when we look at service credit. For this example, I assume they are totally disabled so we didn't get into that. But if you are, and Kim chime in and correct me, if you are on claim for a certain period of time, one year, two years or you are considered medically stationary we then do our own evaluation. Are you able to work someplace else for some money? If so, you will still get the FPDR benefit but it could be reduced down from 75% to 50%. And as long as you can't work as a police officer or firefighter, you will get this benefit until you hit retirement age, it's just the amount of benefit you will get. And then if you were also down to 50% and actually working, we will offset some of your salary down to the point the minimum benefit you will ever get from FPDR is 25%.

Trustee Kulp: Correct me if I'm wrong but when those benefits are reduced you do not accrue years of service at a full rate correct.

Director Hutchison: Correct, that’s why I put that little caveat in here when we did it. Yes, you accrue it at a slower rate.

Trustee Kulp: Thank you.

Director Hutchison: Kim, did I get that all right.

Kim Mitchell: You did. Thank you, Sam.

Director Hutchison: Thank you.

Chair MacLeod: Thanks again. That was extremely helpful.

Director Hutchison: Yeah, and again this is a very simple thing. Like Christopher is talking about somebody could partially work, there are a lot of different variables. I wanted to keep it simple so you could just run down and see how the numbers are calculated and a general comparison.

Chair MacLeod: Okay, if there are no further questions with this should we move on to something that promises to provide some intriguing new stuff including tax changes from Lorne? Information item 2.5.

INFORMATION ITEM NO. 2.5 – OVERVIEW AND DISCUSSION OF FPDR DISABILITY/DISABILITY RETIREMENT BENEFITS PRESENTATION

Lorne Dauenhauer: If you haven't been put to sleep yet, hold your horses. This is a recurring question that’s come up from two retired members. Is it Jim Gymkowski, no it’s Joe Gymkowski and Del Stevens. They sort of became fixtures, well Del until his recent death, and between the two of them they both have been fixtures around the halls of FPDR championing the cause of trying to get the FPDR 2 disability benefits to have the same tax attributes as what PERS gets if you were getting a service-connected disability. As Sam just discussed if you retire under PERS with a service-connected disability, you get that service-connected disability for the rest of your life and because it’s a service-connected disability benefit, it’s tax exempt. FPDR 2 does it slightly differently in that it’s service-connected up to a certain point but once you hit a certain age, that service-connected disability benefit converts to your normal retirement benefit, and retirement benefits unlike service-connected disability benefits are taxable.

So over the years there's been significant discussion over what the FPDR disability rules are and why they are how they are, so Franco and I wanted to address only three things. One, why does FPDR tax service-connected disability benefits the way it does? Two, is the fact that FPDR treats it as taxable once the disabled retiree hits retirement age, does that run afoul of the state's ETME rules? And number three, did the board of FPDR eliminate the disability retirement benefit when it modified some administrative rules back in 2015?

So just to take first one first, the tax treatment of FPDR 2 benefits is completely driven by the tax code. When the fund is paying a service-connected benefit that is based as a percentage of compensation to a disabled firefighter or police officer, that payment is exempt from tax under section four. Now, so long as it is paid under that formula, it continues to be tax exempt. However under FPDR 2 at a certain point once the employee hits disability retirement age, the way in which the benefit is calculated changes. We stop paying the service-connected disability benefit which is based on as a percentage of pay and instead pay the regular pension benefit which is a function of service, pay, and age. So what happens is, and I think Sam's chart did a good job of explaining it, that when you hit the disability retirement age the benefit may well go up, but now instead of the benefit being completely exempt from tax, the benefit is completely subject to tax. So now that there are taxes the benefit may actually be less valuable as a retirement benefit than the nontaxable benefit the member was receiving while disabled, and that has been sort of a thorn in the side or under the blanket of some of the retired members of FPDR 2. But again the problem has been that's the way Congress wrote the tax code and that the FPDR 2 benefit has been designed that way since day one and we don't have any control over how IRS taxes things, the only way to get a different tax result would be to change the charter. Now, ironically enough given Mr. Steven's recent passing, Congress did slip in a little noticed provision into the Secure 2.0 Act which was passed at the end of 2022 adding new code section 139 cap C. Code section 139 cap C addresses this perceived tax hit to retired police and firefighters under service-connected disabilities that basically says look, if you were getting a service-connected disability benefit and that benefit was tax-free and it converts to a retirement benefit, we're going to continue to allow you to take the portion that you were receiving tax free and continue to receive it tax free but any increased benefit would be subject to tax.

So if the service-connected disability benefit was $1,000 a month and it was being received tax free and it converts to retirement of $1,500 a month the first thousand dollars of that benefit would still be tax free and only the excess of $500 a month that you are now receiving in excess of your disability benefit at retirement would be subject to tax. So, perhaps Congress was listening to Del Stevens and his similarly situated colleagues who thought it wasn't fair and eventually got something through Congress to fix this thing, albeit not until 2027. So in terms of the taxation of this benefit, we're stuck with what the tax code says is the required result given how the service-connected disability benefit is calculated but starting in 2027 there is going to be some relief for disabled firefighters and police officers who hit, in our case, disability retirement age. Trustee Kulp?

Trustee Kulp: Do we have historically or currently anybody in this category that’s permanently disabled that is collecting benefits?

Lorne Dauenhauer: I'm sure we do. Joe Gymkowski is.

Trustee Kulp: That is on fire side I'm guessing.

Lorne Dauenhauer: Yeah, on the fire side.

Trustee Kulp: I can't think of anybody on the police side. I don't want any names but in general, how many people does this affect in the fund?

Kim Mitchell: I would defer to Stacy but I know that we've had members transition from disability to retirement on the police side as well. I don't have numbers.

Trustee Kulp: Okay. Fully disabled?

Stacy Jones: Fully. I know we have one on long term disability police, who is not SGA right now. Kim? I’m pretty sure.

Kim Mitchell: I'm thinking historically Stacy.

Stacy Jones: Oh, historically. So Trustee Kulp, they do exist and certainly this is not something widely applicable to a big swath of the membership. But then, as those folks retire, given that there are say 30 people on long term disability at any one moment and then they retire and then they are impacted by the taxability of this benefit. So you have however many decades worth of folks who are on that. But yeah, so it is not like a big pervasive thing but there are definitely people.

Trustee Kulp: Okay. Thank you.

Lorne Dauenhauer: It’s a significant tax hit for a small number of people is how I understand it.

Chair MacLeod: Well this is a very fortuitous development in the tax code it seems.

Lorne Dauenhauer: Right.

Chair MacLeod: And this is something that would apply automatically to members in this plan?
Okay.

Lorne Dauenhauer: Yeah, basically. Right. Once the law takes effect and the payments are made FPDR will treat the first, whatever the amount in service-connected disability they had been receiving, that amount will be basically exempt from tax and won't have any tax withheld on it when they get the 1099-R at the end of the year. The complete distribution will be shown but the taxable amount will be considered less than it what would be in 2026 before the new law takes effect.

Chair MacLeod: That is really good news but I know it is a few years away.

Lorne Dauenhauer: Yeah. It's good news for those officers on service-connected disability. I do wish that Del Stevens had lived to learn about this because it sort of began, it kind of gives him a somewhat Pyrrhic victory at this point, but something that he'd been pushing for is something that Congress took to heart and has given relief, albeit it not until 2027.

Chair MacLeod: Thank you. So Stacy, Sam, Kim, I'm assuming that staff will take up the appropriate measures to begin looking into who this might affect and appropriate communication measures about this.

Stacy Jones: Yep, and we'll have to either program our tax software, which we already have for other special tax situations like surviving spouses and folks killed in line of duty and other various little intricacies of the tax code and then communicate that to membership. So it will be very good news to a handful of people, and thank you, Lorne, for bringing it to our attention.

Lorne Dauenhauer: I'll confess that in my review of the Secure 2.0 Act this did not hit my radar until I started researching this issue. I'm sure it would have come to my attention eventually but it's good for me to learn something while I'm researching something.

Stacy Jones: Yeah, no I'm sure it would have bubbled up to mind as well and I've taken several classes on the Secure Act and not until you pointed this out did I say, oh bingo. So luckily, they give us several years to implement this.

Lorne Dauenhauer: Right.

Chair MacLeod: Should we let you carry on.

Lorne Dauenhauer: Yeah. So moving into Number 2 is the equal to or better than issue, and Franco can probably talk about this more than I can because there actually was litigation. But basically PERS does not factor in the tax character of the benefit when determining whether the benefit is equal to or better than, it's baked right into their administrative rules. Franco do you want to chime in on that?

Franco Lucchin: Only to point out, Mr. Gymkowski did have a hearing. So in addition to all the disability hearings we were talking about earlier I'm reminded now the administrative rules also contain appeal rights for retirement benefits decisions and death benefits decisions and those kinds of cases do come up from time to time. We did have a death benefits case within the last year or so. The retirement benefits cases are rare but this was one of them. So an Administrative Law Judge at the Office of Administrative Hearings heard a bunch of arguments about why in essence the benefit received when a member reaches 30 years of service and is on disability becomes a retirement benefit and becomes taxable. I mean, there was not a lot of merit to the claim. So I mean there isn't a whole lot to be gleaned from that case other than the conclusion was that that the aim I guess Congress has sort of, in some sense. I mean they didn't ratify it specific to Portland but if there was some natural right to this tax-free service retirement benefit, then Congress obviously wouldn't have had to do what it did. But in terms of the FPDR plan that administrative law judge found no requirement that there be a tax-free service retirement benefit and to the extent that there were allegations in that case, one of my colleagues tried that case. I don't recall whether the allegation that the board changed something about the benefit structure or the plan was litigated and I don't want to steal your thunder Lorne.

Lorne Dauenhauer: No, not at all.

Franco Lucchin: But in the memo, it explains that apparently there was a misperception about the board's revision of an administrative rule concerning disability service benefits. There was lingo or shoptalk that was used describing the scenario. It is a little cumbersome to describe as you have just experienced where you move from the disability benefit to the retirement benefit and shorthand for that was disability retirement benefit. And that was codified in the administrative rules and when the bureau saw fit to remove that reference in the rules, that seems to be what the basis was for the allegation that the board took a benefit away which obviously the board can't do.

Lorne Dauenhauer: Right. Yeah, it was kind of intertwined with the ETOB. They were sort of making a bunch of arguments that didn't stick.

Franco Lucchin: Yeah. And I guess the only other thing I'd say is then the case was brought separately at the circuit court suing city council members, the FPDR board, the PERS board by the same plaintiff, unrepresented by this point, and the court basically found well, if you wanted to argue this issue again you had an appeal right from the Office of Administrative Hearings final order which would have gone straight to that writ of review procedure I was describing earlier at the circuit court if the plaintiff had wanted to appeal. That didn't happen so the court essentially found that the administrative remedies available had not been exhausted and therefore it wasn't appropriate to just bring a separate lawsuit over the same issue.

Lorne Dauenhauer: Right. So basically it all kind of conflated into ETOB and the administrative rules, and disability retirement which really didn't exist, it was just a shorthand reference to the conversion of the benefit from the disabled to where it would be calculated under the plan's retirement rules. So again in the cleanup of that particular administrative rule for the FPDR, there was I think a misunderstanding that the board had somehow eliminated a benefit that would have provided this tax-exempt payment but that really wasn't true. But it had been raised a number of times in public comments in particular from Mr. Stevens, so we thought this was a good opportunity since we were addressing this in a holistic manner to try to put that misunderstanding to bed. And again, as the board composition has changed over the years, Mr. Stevens would make his appearances and make public comments asserting certain things, like the fact that the board had removed, had eliminated the disability benefit in disability retirement back in 2015. And as new people cycled onto the board, they had no reason to disbelieve him in saying this stuff, but then we had to always sort of inform new board members of what he's actually talking about. So again the intent of this memo was to hopefully provide a comprehensive review of the whole disability retirement issue, and again, ultimately in 2027 it becomes a moot point. Any other questions about the rise and fall of the disability retirement issue?

Chair MacLeod: No, that was very helpful. This has been stewing about for some time.

Lorne Dauenhauer: It has.

Chair MacLeod: And I know I share your disappointment that Mr. Stevens wasn't, even if he didn't benefit personally, he wasn't aware to see this so he could feel vindicated to some extent.

Lorne Dauenhauer: He's right. It was in many ways unfair. Disabled firefighters and police officers who were disabled in line of duty, and you know, why the fact that the tax nature of the benefit was taken away simply because they hit a certain age.

Chair MacLeod: Right.

Lorne Dauenhauer: You know there was a certain fairness issue there that really was for a higher pay grade than FPDR. So in this case Congress took the baton and dealt with it.

Chair MacLeod: That’s terrific. Thank you very much. Anything further on this topic? Okay. Next up is the overview of FPDR Administrative Rules. I guess Sam I should maybe check in with you to see, should we continue on with our agenda? We're coming up on 3 hours. I think Trustee MacLowry had to sign off about 30 minutes ago. It’s been a long meeting and I don't know that he got to hear this good news from Lorne. I can continue on or not, but I just want to check to see what we should do.

INFORMATION ITEM NO. 3 – OVERVIEW OF THE FPDR ADMINISTRATIVE RULE AMENDMENT PROCESS

Director Hutchison: Let me go through the administrative rules. You have in your packet the process of the administrative rules and what we go through. I'll leave this up just for you to read and if you have any questions, email me or call me and I'll walk you through some more of what we do, because we at our next meeting are going to talk about and present to you some administrative rules for your approval. Let’s see what we're going to do. Let me give you a timeline real quick. So we're going to publicly post the rules on February 15th. We have to post them at least 30 days ahead of the time that you all will review or vote or deliberate on them. We will have a public Q&A session just real quickly. It is a Q&A session. That is all it is. it’s not a work session, it’s not a bargaining session with the unions, it is not decision making. People can tell us what they think, like, or don't like about the proposed rule changes. We do listen to what people say and have had made changes in the past. We've even pulled some rules based on their comment. The key thing is this public Q&A session is not a substitute for a person submitting written or presenting oral testimony to the board, I always tell people that attend that. And then you all will evaluate the administrative rules on March 19th, our March meeting.

So we have three types of rules that we're going to be presenting to you and you’ll see them when we post them. One is to update the definition of attending physician to include nurse practitioners, naturopath physicians and assistants to match what workers’ compensation is doing. To make it real simple there’s a lot of confusion between medical providers, is this workers’ comp or FPDR, and so this is a benefit to our members. You’ll see more detail on that when the rules are presented. The next is the cleanup for the definition of "spouse." We talked about that a couple of meetings ago. This time what we're going to do is, all the rules have multiple old definitions, we’ve got four or five definitions of spouse and surviving spouse under the administrative rules. We need to get them cleaned up so they’re the one correct definition across the rules. And lastly is a real minor one is that when new citizen trustees come in and the rules say they have to be sworn in by the auditor's office, well the city council removed that requirement. So board members no longer have to be sworn in by the auditor’s office and we just need to delete that one sentence. So that is what we're doing with that. So real quick, if you have any questions after the administrative rules we can talk about before we do them or any time between now and then so you understand what they’re doing.

INFORMATION ITEM NO. 4 – LEGISLATIVE UPDATE

Legislative update. You have a criteria of what I look at all the time. The first one I look at is, one we look at the funding of FPDR. I always look at property taxes. The State constitution has a provision put in by a former firefighter and former trustee actually, into the Oregon constitution that protects FPDR's fund, that we can have as our own tax levy. I'm very concerned if people go into property tax they are going the delete that sentence because they hate it. We are the only city municipality that gets this special treatment. So you talk about worst case scenarios in funding, this is the ultimate worst-case scenario. There is no indication that for now or the next several years they’re going to look at property tax, but I always look at it, and then there’s the other issues that we have. The bills have not been released for the upcoming session which starts February 5th and lasts through March 10th. Most of it’s going to be housing, homelessness, Measure 110, public safety, those type of things. I've heard nothing about any workers’ competition or PERS bills going through but I will look because somebody is bound to try to sneak something into the whole list. So you’ll hear more about that when we come through. And then I'm going jump past everything and let you close out if you want to, Stacy on the expenditures.

INFORMATION ITEM NO. 6 – FPDR UPDATES

FPDR updates. We talked earlier about the CPPW union starting the negotiations tomorrow. The reason why that's a concern to us is half our staff is under that union and they have not been unionized before. So this will change how we manage those employees and how we do it. So we're waiting for that to get done and then we'll have in the future board meeting, we will talk about what impact that has.

INFORMATION ITEM NO. 7 – FUTURE MEETING AGENDA ITEMS

And last, future meeting agendas. You have got the list there. If you want anything included, let me know. The March meeting will be held in room 2500 of the 1900 building. Julie will give you the instructions how to go there. We'll be meeting there through September and possibly into November of this year. So that is everything I've got on my list. So Stacy, if you want to, you opened up, so you can close out with the summary of expenditures.

Stacy Jones: The only thing I really want to say because I teased it earlier is Trustee Kramer you asked a question about personnel spending at the last meeting and in the process of following up with that I want to thank our newest trustee for eagle eyes because yes, we were running ahead of where we should have been and hadn't really noticed because we're not paying that much attention at this point in the year and also the personnel budget is very predictable. And it's because of the way health benefits were being charged so we have questions into the benefits office right now about that. And I won't bore you with the details but it is about moving to a blended rate model for charges and how that happened and we can't tell if we misunderstood or if they messed up at this point. But anyway, we're looking into it. So thank you Trustee Kramer. Pretty impressive showing for a new trustee so thank you for that. And that is all I would have to say unless folks have other questions.

Chair MacLeod: I don't and I'm not hearing anymore from anyone else. So thank you both and thank you, Sam, for giving a quick run through of what we can expect on the administrative rules in the next meeting. Thank you, I appreciate that. Alright, with that, it's been a long meeting but I felt like we got some very good things covered. The budget was very thorough and those particular items on the ASOP 4 and the disability benefits comparison and the analysis about those changes, those are things that have been kind of clicking around in the back of my mind that just wouldn't rest for a while. So I'm really glad that we got a chance to hear about those things. If there is nothing else, last chance for anyone to speak up on any miscellaneous items.

Director Hutchison: Tom just threw a chat line checking back with the Majoris contract. Sure we'll do that. We're still working through the details with them but we'll definitely come back to you when it is done.

Chair MacLeod: Ok, thank you very much. So that’s potentially on the March agenda if that's been wrapped up by then.

Director Hutchison: Yeah.

Chair MacLeod: Thank you. Good question. With that then I'm going to adjourn the meeting. Thank you very much everyone.

Trustee Kulp: Thank you.

Kim Mitchell: Thank you.

Stacy Jones: Thank you.

Director Hutchison: Appreciate your patience everyone, thank you.

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

<u>Action Item No. 1</u>

Annual Adjustment Review

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166
Samuel Hutchison, Director **fpdr@portlandoregon.gov**

DATE: March 6, 2024

TO: FPDR Board of Trustees

FROM: Stacy Jones, FPDR Deputy Director/Finance and Pension Manager

RE: FPDR Two Pension COLA for July 1, 2024

Action Item Before the Board

The FPDR Board of Trustees has generally awarded an annual cost-of-living adjustment (COLA) to FPDR Two beneficiaries on July 1. This memo provides information to support the Board in making an FPDR Two COLA decision for 2024. The Board may:

1) Vote to approve an FPDR Two COLA percent or methodology for July 1, 2024, or any other date OR
2) Decline to award an FPDR Two COLA for 2024 OR
3) Request additional information or analysis from staff, and delay a vote to the May meeting

Board Authority

The Portland City Charter grants the FPDR Board of Trustees sole discretion over the timing and amount of any FPDR Two pension COLAs, subject to the limitation that “the percentage rate of change shall not exceed the percentage rate applied to retirement benefits payable to police and fire employees by the Public Employees Retirement System of the State of Oregon” (Section 5-313). While Oregon Public Employees Retirement System (PERS) police and fire retirees receive a variety of annual COLA percentages based on the timing of their service and the amount of their PERS benefit, the City Attorney’s Office has interpreted the Charter language to mean the FPDR Board may award *up to* the highest rate provided to any PERS retiree. The maximum COLA provided by PERS is currently 2%.

Inflation

The consumer price index for urban consumers in the West region (CPI-U West) was 3.60% for calendar year 2023. The U.S. Bureau of Labor Statistics (BLS) also compiles a research index that tracks inflation specifically for those aged 62 and older (the R-CPI-E), although this index is calculated for the nation as a whole and is less statistically robust than many other BLS indices. The R-CPI-E index increased 3.69% for calendar year 2023.

Comparison to Prior Years

The CPI-U increased 6.25% for calendar year 2022 and 7.65% for calendar year 2021. The R-CPI-E increased 6.74% for calendar year 2022 and 6.42% for calendar year 2021. In light of this historically high inflation, the Board awarded the maximum COLA (2%) to all FPDR Two beneficiaries for July 1, 2022 and July 1, 2023. Inflation has tempered significantly in 2023 but remains above the 30-year average of 2.82% for the CPI-U West.

Considerations

Historically, the Trustees have considered many factors in making the annual FPDR Two COLA decision:

- Inflation and the erosion of purchasing power for members and their survivors
- Taxpayer cost
- Risk of the FPDR tax levy hitting the $2.80 cap in City Charter
- Desirability, or not, of maintaining a connection to the PERS COLA methodology
- Economic pressures/context for both taxpayers and beneficiaries

Costs and Impacts of a 2% FPDR Two COLA for July 1, 2024

If the Board wishes to grant the maximum 2% COLA for FPDR Two beneficiaries on July 1, 2024, the table below illustrates the approximate cost to the FPDR Fund and impacts for FPDR Two members, survivors and alternate payees:

FPDR Two	
COLA Percent	2%
Estimated Beneficiaries on June 30, 2024[1]	1,920
Median Monthly Benefit as of March 1, 2024	$6,569
Median Monthly Increase	$132
Range of Monthly Benefits as of March 1, 2024	$234 - $16,524
Range of Individual Monthly Increases	$5 - $330
FPDR Cost, FY 2024-25[2]	$2,897,199

The Board may of course select another option; various COLA methodologies authorized by the Board in the past are briefly described below. If the Board would like additional information or analysis to compare alternatives, staff will prepare any requested materials for the May Board meeting.

Background

Through 2013, the FPDR COLA method was identical to the Oregon PERS COLA method. That earlier method (known as "Old PERS") resulted in a 2% COLA whenever inflation exceeded 2%, and also allowed beneficiaries to carry over "excess balance" in years when inflation exceeded

2%. That carry over could then be "spent down" to bring beneficiary COLAs up to 2% in the relatively infrequent years when inflation was less than 2%.

In 2014, following a legislative change to the PERS COLA method and a legal challenge resolved by the Oregon Supreme Court, the PERS COLA method became to a blended rate based both on service timing and individual pension amounts. Those who completed PERS service before October 8, 2013 continued to have their COLAs calculated in accordance with the "Old PERS" methodology, which is now always 2% each year (as everyone retired before 2013 has now built up sufficient excess to always increase their COLA to 2% in a low inflation year). Those with PERS service after October 8, 2013 receive an individually specific COLA rate that is a blend of 0.15%, 1.25%, and the "Old PERS" method, depending on their unique service timing and benefit amount.

Specifically, a PERS retiree receives 2% on the percent of their service earned before October 2013; 1.25% on the percent of their service earned after October 2013, on their annual benefit below $60,000; and 0.15% on the percent of their service earned after October 2013, on their annual benefit above $60,000. For example, and assuming that inflation had exceeded 2%, a PERS retiree with a $75,000 annual benefit who earned 80% of their PERS service credit before October 2013 and 20% after that date would receive the following pension COLA: (80% x 2%) + (20% x 1.25% x 60,000/75,000) + (20% x 0.15% x 15,000/75,000) = 1.8060%. The $60,000 threshold is not indexed to inflation. Therefore, each year's COLA will be lower than the year before for any PERS beneficiary with service after October 2013 and an annual benefit above $60,000.

Since 2014, the FPDR COLA methodology has always been more generous than the new PERS COLA methodology. The FPDR Board has sometimes used a version of the new PERS COLA method, altered to be more generous, and sometimes chosen to award the maximum 2% COLA. In 2014, 2015, 2019, 2021, 2022 and 2023, the Board granted a 2% COLA. In 2016, 2017, 2018 and 2020 the Board granted a COLA based on a modified version of the new PERS COLA calculation. Even when a modified version of the new PERS COLA method has been employed, the FPDR Board has never applied a lower COLA rate to higher pension amounts (as PERS does), and the FPDR Board has sometimes selected a higher rate to apply to periods of service after October 2013 (for example, 1.75% instead of the PERS rate of 1.25%).

July 1, 2024 Pension COLA for FPDR One Beneficiaries

The Board does not have discretion over annual pension COLAs for FPDR One retirees and survivors. FPDR One pensions are a percent of active fire fighter and police officer pay on July 1 each year. Both the Portland Police Association and Portland Fire Fighters Association (PFFA) contracts require a cost-of-living adjustment on July 1, 2024 equal to the 2023 increase in the consumer price index for wage earners in Class A western cities (CPI-W West A), which was 3.3%. The PFFA contract also awards an additional wage increase of 0.8% on July 1, 2024. Therefore, FPDR One Police pension benefits will increase by 3.3% and FPDR One Fire pension benefits will increase by 4.13% on July 1, 2024. Ignoring mortality in the FPDR One population over the next 16 months for simplicity and to produce a conservative estimate, the maximum FY 2024-25 cost to the FPDR Fund for the July 1, 2024 FPDR One pension COLAs is $448,828.

FPDR One		
	Police	Fire
COLA Percent	3.30%	4.13%
Estimated Beneficiaries on June 30, 2024[2]	136	117
Median Monthly Benefit as of March 1, 2024	$3,405	$3,284
Median Monthly Increase	$112	$136
Range of Monthly Benefits as of March 1, 2024	$1,302 - $6,803	$886 - $6,316
Range of Individual Monthly Increases	$43 - $224	$37 - $261
Maximum FPDR Cost, FY 2023-24[2]	$218,434	$230,394

[1] 1,885 beneficiaries as of March 1, 2024, plus 35 additional assumed retirements before July 1, 2024. For simplicity of modeling, assumes no deaths between now and June 30, 2025.

[2] For simplicity of modeling and to produce a conservative cost estimate, assumes no deaths between now and June 30, 2025.

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

Action Item No. 2

Resolution 552 clarifying "Definition of Spouse"

RESOLUTION NO. 552

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 determined that the definitions of Spouse and Surviving Spouse in several Administrative Rules were not consistent with the definitions in the FPDR Plan; and

WHEREAS, staff recommends housekeeping amendments to Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules to ensure the definitions of Spouse and Surviving Spouse align with the definitions in the FPDR Plan.; and

WHEREAS, a public Question and Answer session on the proposed amendments to the FPDR Administrative Rules was held on February 20, 2024; and

WHEREAS, the amendments were also posted on the FPDR website on February 12, 2024. and

WHEREAS, the Board has considered and recommends the amendments to Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 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 FPDR Administrative Rules be changed in accordance with the recommendations of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Sections 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9 of the FPDR Administrative Rules be amended as shown on Exhibit “A”.

ADOPTED by the Board of Trustees on the 19th day of March, 2024.

Samuel Hutchison
FPDR Director

fund\resolution\552

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166
Samuel Hutchison, Director fpdr@portlandoregon.gov

EXHIBIT "A"
Proposed Rule Amendments
March 19, 2024

5.3.01 – DEFINITIONS

For purposes of the various sections of the Administrative Rules, capitalized terms shall have the meanings described in the Definitions of each section. Capitalized terms not otherwise defined shall have the meanings prescribed under Chapter 5 of the City Charter.

"Active Member." The term "Active Member" means a Member who is actively employed as a Member in the Bureau of Police or Bureau of Fire and Rescue and does not include a Member receiving disability or retirement benefits under Chapter 5.

"Alternate Payee." The term "Alternate Payee" means a spouse, former spouse or dependent minor child of a Member.

"Board." The term "Board" or "Board of Trustees" shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund.

"Dependent Minor Child." The term "Dependent Minor Child" means a child, natural or adopted, of a FPDR Two or FPDR Three Member who is substantially supported by the FPDR Two or FPDR Three Member, the FPDR Two or FPDR Three Member's Surviving Spouse or the FPDR Two or FPDR Three Member's estate and is under 18 years of age and unmarried.

"Director." The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

"FPDR One." The term "FPDR One" shall refer to Members who are sworn employees of the Bureau of Fire and Rescue, and Bureau of Police and who receive benefits under Article 5 of Chapter 5 of the Charter of the City of Portland, Oregon.

"FPDR Two." The term "FPDR Two" shall refer to Members who are sworn employees of the Bureau of Fire and Rescue, and Bureau of Police who are not FPDR One Members and were sworn before January 1, 2007 and who receive benefits under Article 3 of Chapter 5 of the Charter of the City of Portland, Oregon.

“FPDR Three.” The term “FPDR Three” shall refer to Members who are sworn employees of the Bureau of Fire and Rescue, and Bureau of Police first sworn on or after January 1, 2007 and who receive retirement benefits under the Public Employees Retirement System of the State of Oregon and disability benefits under Article 3 of Chapter 5 of the Charter of the City of Portland, Oregon.

"Fund." The term "Fund" shall mean the Fire and Police Disability and Retirement Fund established under Section 5-101 of the Plan.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

"Member." The term "Member" means

(A) Those sworn permanent employees of the Bureau of Fire and Rescue having the job classifications of Fire Fighter, Fire Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator;

(B) Those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.

(C) Persons first sworn on or after January 1, 2013 shall be a Member of this plan, and eligible for benefits under these Administrative Rules, upon completion of six (6) consecutive months of employment as a permanently appointed sworn employee in the Bureau of Fire or Police.

Membership shall continue until the Member's employment with the Bureau of Fire and Rescue or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

Exceptions

(A) Persons other than FPDR Three Members who are currently employed by the Bureau of Fire and Rescue or the Bureau of Police who participate in the Public Employees Retirement System of the State of Oregon, or will so participate after a waiting period, shall not be Members.

(B) The chief of the Bureau of Police or the Bureau of Fire and Rescue shall be a Member unless the terms of employment of such chief provide otherwise.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half Year of Service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, Prior Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A member who returns to duty, in a regularly budgeted sworn job classification, in the bureau of which they are a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire and Rescue or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.

"Plan." The term "Plan" shall mean the Fire and Police Disability, Retirement and Death Benefit Plan which appears as Chapter 5 of the Charter of the City of Portland, Oregon.

“Significant Factor.” The term a “Significant Factor” means an important, proximate cause.

"Substantial Gainful Activity." A Member will be considered to be capable of "Substantial Gainful Activity" if they are qualified, physically, and by education and experience, to pursue activities or employment which will produce earnings, profits or remuneration equal to or exceeding one-third of the Member's rate of Base Pay while on disability. In determining whether a Member has sufficient education and experience to pursue other activities or employment, the following factors shall be considered:

(A) Previous employment experience;

(B) Formal and informal education;

(C) Formal and informal training;

(D) Knowledge and general abilities;

(E) Transferable skills;

(F) Residual functional mental and physical abilities.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,”

"husband," and "wife" include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

~~"Surviving Spouse." The term "Surviving Spouse" shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members' surviving spouses are extended on equal terms to gay and lesbian Members same-sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to "surviving spouse" shall be understood to apply on equal terms to the same sex domestic partner of the Member.~~

"Surviving Spouse." The term "Surviving Spouse" means the individual who, at the time of the Member's death, was the Spouse of the Member, had been the Member's Spouse throughout the 12-month period immediately preceding the Member's death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member's Plan benefit. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166
Samuel Hutchison, Director fpdr@portlandoregon.gov

Proposed Rule Amendments

March 19, 2024

5.4.01 – <u>DEFINITIONS</u>

"Accrued Benefit." The term "Accrued Benefit" shall mean the amount of FPDR pension benefits a Member has earned under the Plan, generally based on the Member's Years of Service and Final Pay and the 2.8 percent accrual rate. An Accrued Benefit is only calculated for a Member who has completed the service requirement for vesting under Chapter 5 of the City Charter.

"Actuarial Equivalent." The term "Actuarial Equivalent" shall mean the adjustment necessary to convert a Member's FPDR pension benefit into different payment forms or payment periods so that the total value of the Member's benefit (and the cost to FPDR to provide the benefit) remains equal regardless of the form of benefit or commencement date the Member may elect.

"Alternate Payee." The term "Alternate Payee" shall mean any spouse, former spouse, legally recognized domestic partner, former legally recognized domestic partner, child or other dependent of a Member who is recognized by a Domestic Relations Order as having a right to receive all or a portion of a Member's retirement benefits.

"Annuity." The term "Annuity" shall mean a contract or promise that provides an income for a specified period of time such as a certain number of years or a lifetime.

- A Joint and Survivor Annuity is the form of a Member's FPDR retirement benefit in which benefit payments continue after the Member's death to the Member's Surviving Spouse or, if none, the Member's Dependent Minor Children. The amount of benefit that continues to the beneficiary of an FPDR Two Member is 25%, 50%, 75% or 100% of the benefit the Member was receiving before death, depending on the Member's irrevocable election at retirement, and of an FPDR One Member as shown in the Survivor Annuity Table in Charter Section 5-118. Death benefits payable to a Surviving Spouse are paid for the Surviving Spouse's life. Death benefits payable to a Dependent Minor Child are payable until the date the child reaches 18 or marries, whichever occurs first.

- A Single Life Annuity is the form of benefit payment that provides a monthly income which is paid for the life of one person, the Alternate Payee.

“Beneficiary.” The term “Beneficiary” shall mean a person, other than a Member, who receives benefits under this program.

“Base Pay.” The term “Base Pay” shall mean the pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Claim.” The term “Claim” means, for the purposes of this section of the Administrative Rules, a dispute by a Member or Beneficiary of a decision by the FPDR staff with regard to a retirement or death benefit under Chapter 5 of the City Charter. A Claim may also be filed by an authorized representative of the Member or Beneficiary who is the claimant.

“Claimant.” The term “Claimant” means, for the purposes of this section of the Administrative Rules, a Member or Beneficiary with a Claim or an authorized representative of the Member or Beneficiary with a Claim.

“Discovery.” The term “Discovery” means Claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member’s Claim(s) to and from the Office of Administrative Hearings. Discovery does not include Claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member’s attorney or Member’s representative or the Fund, Fund’s attorney or Fund’s representative.

“Domestic Relations Order.” A "Domestic Relations Order," or “DRO,” is any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a state domestic relations law (including a community property law) and which relates to the payment of marital property rights to an Alternate Payee and which has been entered by a court of competent jurisdiction and has been accepted by the Director. A DRO may divide a Member’s FPDR retirement benefits using one of two different approaches:

- A “separate interest” DRO takes a portion of the financial value of the Member’s retirement benefit as of a particular division date and assigns it to the Alternate Payee as a separate legal interest, with the Alternate Payee’s portion of the benefit being paid to the Alternate Payee based on the Alternate Payee’s life expectancy. In all cases, the financial value of benefits divided under a separate interest DRO is determined using the Plan’s definition of Actuarial Equivalent. This is the most common type of DRO and generally applies where the DRO is entered prior to the date the Member’s benefits are in pay status.

- A “shared interest” DRO is a division of the Member’s annuity payment in a specific amount or percentage between the Member and the Alternate Payee. The Member’s benefit is “shared” with the Alternate Payee; no legal separate interest is created for the Alternate Payee. The sum of total monthly benefits paid to both the Member and the Alternate Payee under a shared interest DRO is equal to the sum of monthly benefits that would have been paid to the Member in the absence of the DRO. If the Alternate Payee predeceases the Member, then the Alternate Payee’s share of the monthly benefit reverts prospectively to the Member. If the Member dies before the Alternate Payee, the Alternate Payee could be treated as a Surviving Spouse in the event the Member has a Surviving Spouse for purposes of death benefits and the DRO treats the Alternate Payee as the Surviving Spouse. Typically, this type of DRO is only used when a Member’s pension payments have commenced prior to issuance of the DRO.

“Final Pay.” The term “Final Pay” is defined in Ordinance No. 190092 as passed by the Portland City Council on August 12, 2020. Ordinance No. 190092 can be found on the City of Portland website at: https://efiles.portlandoregon.gov/Record/13932014/ https://efiles.portlandoregon.gov/Record/13932015/

“Office of Administrative Hearings.” The term “Office of Administrative Hearings” or “OAH” shall mean an independent body that has been authorized by the Board of Trustees to review the decision of the Director that is concerning retirement or death benefits. The review may take into account all comments, documents, records, and other information the Member or Beneficiary submits, without regard to whether that information was submitted or considered in the initial benefit determination.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

~~“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member, had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,”~~

~~“husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.~~

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member, had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

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Proposed Rule Amendments

March 19, 2024

5.5.01 – DEFINITIONS

“Alternate Payee.” The term “Alternate Payee” shall mean any spouse, former spouse, legally recognized domestic partner, former legally recognized domestic partner, child or other dependent of a Member who is recognized by a Domestic Relations Order as having a right to receive all or a portion of the death benefits due a Member’s Surviving Spouse.

“Base Pay.” The term “Base Pay” means the base pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Conservatorship.” The term “Conservatorship” means the court appointment of a person or entity to manage the interests of an estate, a minor child or incompetent person pursuant to ORS 125.400.

“Dependent Minor Child.” The term “Dependent Minor Child” of a Member shall mean a child, natural (including posthumous) or adopted, of a Member, who is in fact substantially supported by said Member, or such member’s Surviving Spouse or estate, while said child remains under eighteen (18) years of age and unmarried.

“Domestic Relations Order.” A "Domestic Relations Order," or “DRO,” is any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a state domestic relations law (including a community property law) and which relates to the payment of marital property rights to an Alternate Payee and which has been entered by a court of competent jurisdiction and has been accepted by the Director. A DRO accepted after June 19, 2015, may require that an Alternate Payee be treated as the Surviving Spouse for FPDR preretirement death benefits if the Alternate Payee is not already in pay status, except that any Dependent Minor Children of the Member who are not supported by the Alternate Payee shall share in the benefit.

“Final Pay.” The term “Final Pay” shall mean the highest Base Pay received by the FPDR Two or FPDR Three Member for any of the three consecutive 365-day or, in a leap year, 366-day periods where the most recent day is the last day for which pay was received in the calendar month preceding the calendar month in which the Member retires, dies, or otherwise terminates employment with the Bureau of Fire or Police. Final Pay for any such period does not include any retroactive payments received by the Member for days preceding such 365-day or 366-day period but does include adjustments to the Base Pay of the Member’s position in the Bureau of Fire or Police that would have been received had the Member’s applicable collective bargaining agreement been in effect during such 365-day or 366-day period.

Final Pay for any FPDR Two or FPDR Three Member who retires, dies or otherwise terminates employment with the Bureau of Fire or Police and has either received FPDR disability benefits or who was employed in a part-time status by the Bureau of Fire or Police during any such 365-day or 366-day period shall be based on the Base Pay for a full-time employee in the Member’s position in the Bureau of Fire or Police at the time of retirement, death or termination from employment.

“PERS.” The Public Employees Retirement System of the State of Oregon.

“Power of Attorney.” The term “Power of Attorney” means an instrument in writing by which the Member or beneficiary appoints another person as their agent with the authority to perform certain specified acts on their behalf.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

~~“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term~~

~~“marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.~~

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

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March 19, 2024

5.6.01 – DEFINITIONS

“Board of Trustees.” As used in these rules relating to hearings procedures, the term “the Board of Trustees” or “the Board” shall mean the Board of Trustees of the Fire and Police Disability and Retirement Fund or a hearings officer appointed by the Board of Trustees pursuant to Charter Section 5-202(b).

“Discovery.” The term “Discovery” means claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member’s claim(s) to and from the Office of Administrative Hearings. Discovery does not include claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member’s attorney or Member’s representative or the Fund, Fund’s attorney or Fund’s representative.

“Good Cause.” The term “Good Cause” means any reason why a hearing officer’s impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

"Member." The term "Member" means

(A) Those sworn permanent employees of the Bureau of Fire and Rescue having the job classifications of Fire Fighter, Fire Fighter Specialist, Fire Fighter Communications, Fire Lieutenant, Fire Training Officer, Staff Fire Lieutenant, Fire Captain, Fire Training Captain, Fire Battalion Chief, Deputy Fire Chief, Division Fire Chief, City Fire Chief, Fire Inspector I, Fire Inspector II, Fire Inspector I Specialist, Staff Fire Captain, Fire Lieutenant Communications, Harbor Pilot, Assistant Fire Marshal, Assistant Public Education Officer and EMS Coordinator;

(B) Those permanent sworn employees of the Bureau of Police having the job classifications of Police Officer, Police Sergeant, Police Detective, Criminalist, Police Lieutenant, Police Captain, Police Commander, Deputy Police Chief, Assistant Police Chief, and Police Chief.

(C) Persons first sworn on or after January 1, 2013 shall be a Member of this plan, and eligible for benefits under these Administrative Rules, upon completion of six (6) consecutive months of employment as a permanently appointed sworn employee in the Bureau of Fire or Police.

Membership shall commence at the time a sworn employee effectively receives their initial appointment to either the Bureau of Fire and Rescue or the Bureau of Police and shall continue until the Member's employment with the Bureau of Fire and Rescue or Bureau of Police terminates for any reason, other than retirement pursuant to Section 5-304 of the Plan or disability under Section 5-306 or 5-307 of the Plan.

Exceptions

(A) Persons other than FPDR Three Members who are currently employed by the Bureau of Fire and Rescue or the Bureau of Police who participate in the Public Employee Retirement System of the State of Oregon, or will so participate after a waiting period, shall not be Members.

(B) The chief of the Bureau of Police or the Bureau of Fire and Rescue shall be a Member unless the terms of employment of such chief provide otherwise.

An Active Member (except those Members covered under Article 5 of the Plan) whose employment is terminated after completing five Years of Service shall be ineligible for any Plan benefits after such termination except the vested termination benefits described in Section 5-305 of the Plan. A Member (except those members covered under Article 5 of the Plan) whose employment is terminated after completing one-half Year of Service and before completing five Years of Service shall be ineligible for any Plan benefits after such termination except the unvested termination benefits described in Section 5-305 of the Plan.

A Member who is receiving benefits under Article 5, FPDR One Benefits, of the Plan or who has voluntarily elected to be covered under Article 5 of the Plan shall be ineligible to receive benefits under Article 3 of the Plan. Notwithstanding the preceding sentence, a Member who was receiving disability benefits on January 1, 1990 but subsequently returns to full duty, without limitation, and earns two more Years of Service may irrevocably elect to be covered under Article 3 rather than Article 5. A Member who returns to duty, in a regularly budgeted sworn job classification, in the bureau of which they are a member on a full time basis (either 40 hours per week, 42 hours per week or 53 hours per week in the Bureau of Fire and Rescue or 40 hours per week in the Bureau of Police) will be deemed to have returned to full duty without limitation.

“Office of Administrative Hearings.” The term “Office of Administrative Hearings” or “OAH” shall mean an independent body that has been authorized by the Board of Trustees to conduct an evidentiary hearing under these rules on disputed issues concerning a Member’s benefits under the Plan.

~~“Surviving Spouse.” The term “Surviving Spouse” shall mean the person to whom the Member was legally married throughout the twelve-month period preceding death, and from whom the Member was not judicially separated or divorced by interlocutory or final court decree at the time of death. In accordance with Ordinance No. 176258, benefits provided to Fund Members’ surviving spouses are extended on equal terms to gay and lesbian Members same-sex domestic partners. All references in Chapter 5 of the Charter of the City of Portland, and/or in the Administrative Rules to “Surviving Spouse” shall be understood to apply on equal terms to the same sex domestic partner of the Member.~~

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March 19, 2024

5.7.01 – Definitions

"Aggravation." The term "Aggravation" means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member's condition has been deemed Medically Stationary.

"Attending Physician." The term "Attending Physician" means:

(A) a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) for a period of thirty (30) days from the first visit on the initial Claim or for twelve (12) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory, or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

"Base Pay." The term "Base Pay" means the Base Pay of the FPDR Two or FPDR Three Member's position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

"Base Pay in Effect at Disability." The term "Base Pay in Effect at Disability" means the Member's Base Pay amount at the time the disability payment is due.

"Bi-weekly Disability Benefits." The term "Bi-weekly Disability Benefits" means disability benefits payable on the same schedule as the Member's regular payroll on approved service-connected and occupational disability Claims during a member's first year of receiving disability benefits.

"Claim." The term "Claim" means a written request to FPDR for a retirement, disability or death benefit and may be filed by an Active Member, their representative or legal beneficiary, or Surviving Spouse or other legal representative of a deceased Member. This term may be used synonymously with the term "application."

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member's employment in the Bureau of Police or Fire.

"Director." The term "Director" where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

"Documented Absence." The term "Documented Absence" means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

"Full-Time Work." For the purpose of Other Employment, the term "Full-Time Work" means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

"Independent Medical Examination (IME)." The term "Independent Medical Examination" means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an "IME" under these rules.

"Interim Disability Benefits." The term "Interim Disability Benefits" means an amount that may be payable to a Member for lost time from work prior to the compensability determination or withdrawal of their application for service-connected injury/illness or occupational disability benefits.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

"Monthly Disability Benefits." The term "Monthly Disability Benefits" means benefits payable once per month on approved service-connected and occupational disability claims after a Member's first year of receiving disability benefits.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the member first reaches a medically stationary status.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member’s employment with the Bureau of Fire or Police.

“Preponderance of the Evidence.” The term “Preponderance of the Evidence” means the greater weight of the evidence.

“Primary Physician.” See “Attending Physician.”

“Proximate Cause.” The term “Proximate Cause” means a cause that directly produces an event and without which the event would not have occurred.

“Recurrence.” An Aggravation of a service-connected injury/illness or occupational disability that requires Claim re-opening for additional disability benefits and/or medical benefits.

“Self-Employment.” The term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for themself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Significant Factor.” The term “Significant Factor” means an important Proximate Cause.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s Attending Physician on an approved Claim.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

“Substantial Gainful Activity.” The term “Substantial Gainful Activity” means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay in Effect at Disability.

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Suspension of Benefits.” The term “Suspension of Benefits” means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter or Administrative Rules.

“Wages Earned in Other Employment.” The term “Wages Earned in Other Employment” includes:

(A) the gross salary, overtime pay, fees, commissions, and other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police;

(B) any salary, fees, commissions, profits and other remuneration that the Member receives from their Self-Employment in a profession, trade or business; and

(C) any rental income that the IRS requires to be reported as Self-Employment income.

The term “Wages Earned in Other Employment” does not include income from investments such as interest, dividends and capital gains.

“Worsening.” The term “Worsening” means objective findings indicating a deterioration of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a worsening of the approved service-connected injury/illness or occupational disability.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

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March 19, 2024

5.8.01 – <u>DEFINITIONS</u>

"Attending Physician." The term "Attending Physician" means:

(A) a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States, or

(B) for a period of thirty (30) days from the first visit on the initial Claim or for twelve (12) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

"Base Pay." The term "Base Pay" means the Base Pay of the FPDR Two or FPDR Three Member's position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member's regular work schedule shall be included in Base Pay.

"Base Pay in Effect at Disability." The term "Base Pay in Effect at Disability" means the Member's Base Pay amount at the time the disability payment is due.

"Claim." The term "Claim" means a written request to FPDR for a retirement, disability or death benefit and may be filed by an Active Member, their representative or legal beneficiary, or ~~s~~**S**urviving ~~s~~**S**pouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term "application."

"Date of Disability." The term "Date of Disability" means the date that the Member's Attending Physician establishes that the Member is first unable to perform the Member's required duties as a result of a nonservice-connected injury/illness.

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

“Documented Absence.” The term “Documented Absence” means documentation of the time missed from a scheduled work shift submitted to the Director demonstrating that the Member was not paid by the Bureau of Fire or Police for that time.

“Full-Time Work.” For the purpose of Other Employment, the term “Full-Time Work” means working an average of at least thirty-six (36) hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Independent Medical Examination (IME).” The term “Independent Medical Examination” means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Monthly Disability Benefits.” The term “Monthly Disability Benefits” means benefits payable once per month on approved nonservice-connected disability Claims.

“Other Employment.” The term “Other Employment” means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

“Pended.” The term “Pended” means the 60-90 day period following FPDR’s receipt of a complete application for benefits on an original Claim or for a Recurrence Claim during which FPDR is evaluating the Claim to determine if the injury or illness arose out of and in the course of the Member’s employment with the Bureau of Fire or Police.

“Self-Employment.” The term “Self-Employment” means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for themself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least thirty-six (36) hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

“Specialty Physician.” The term “Specialty Physician” means a licensed physician who qualifies as an Attending Physician who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member’s “Attending Physician” on an approved Claim.

“Spouse.” The term “Spouse” shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

“Substantial Gainful Activity.” The term “Substantial Gainful Activity” means the Member is qualified, physically and by education and experience, to pursue employment with earnings equal to or exceeding one-third of the Member’s rate of Base Pay in Effect at Disability.

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

“Suspension of Benefits.” The term “Suspension of Benefits” means the payment of disability benefits are stopped by the Director for the period of suspension when the Member has failed to comply with the provisions of Chapter 5 of the City Charter or Administrative Rules.

“Wages Earned in Other Employment.” The term “Wages Earned in Other Employment” includes:

(A) the gross salary, overtime pay, fees, commissions and other remuneration received by a Member for services rendered as an employee to an employer in Other Employment other than the Bureau of Fire or Bureau of Police;

(B) any salary, fees, commissions, profits and other remuneration that the Member receives from their Self-Employment in a profession, trade or business; and

(C) any rental income that the IRS requires to be reported as Self-Employment income.

The term “Wages Earned in Other Employment” does not include income from investments such as interest, dividends and capital gains.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

1800 SW First Ave., Suite 250, Portland, OR 97201 · (503) 823-6823 · Fax: (503) 823-5166
Samuel Hutchison, Director fpdr@portlandoregon.gov

Proposed Rule Amendments

March 19, 2024

5.9.01 – <u>DEFINITIONS</u>

"Aggravation." The term "Aggravation" means a Worsening of an approved service-connected injury/illness or occupational disability that occurs after the Member's condition has been deemed Medically Stationary.

"Ancillary Services." The term "Ancillary Services" means services that supplement the care provided by the Member's physician or other authorized healthcare provider (e.g., physical therapy, occupational therapy, etc.).

"Attending Physician." The term "Attending Physician" means:

(A) a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician or surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States; or

(B) for a period of thirty (30) days from the first visit on the initial Claim or for twelve (12) visits, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States. All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified physician or a physician appointed by the Director, unless otherwise determined by the Director.

"Chart Note." The term "Chart Note" means a chronological documentation in a Member's medical record and includes subjective and objective findings, diagnosis, treatment rendered and proposed, status, and recovery and return-to-work objectives.

"Claim." The term "Claim" means a written request to FPDR for a retirement, disability or death benefit and may be filed by an Active Member, their representative or legal beneficiary, or ~~s~~**S**urviving ~~s~~**S**pouse or other legal beneficiary of a deceased Member. This term may be used synonymously with the term "application."

“CPT.” The term “CPT” means Current Procedural Terminology published by the American Medical Association.

“Curative Care.” The term “Curative Care” means Medical Services required to diagnose, heal or permanently relieve or eliminate a medical condition.

“Customary Fee.” The term “Customary Fee” means a fee that falls within the range of fees normally charged in Oregon for a given service.

“Date of Disability.” The term “Date of Disability” means the date that the Member’s Attending Physician establishes that the Member is first unable to perform the Member’s required duties as a result of a service-connected injury/illness or occupational disability that has been determined to arise out of and in the course of the Member’s employment in the Bureau of Fire or Police.

“Director.” The term “Director” where used in these Administrative Rules shall mean the Fund Director and/or Fund Administrator or their designee.

“Elective Surgery.” The term “Elective Surgery” is surgery which may be necessary in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

“Independent Medical Examination” (IME). The term “Independent Medical Examination” means an examination by one or more licensed medical providers in order to provide an opinion of findings in connection with a service-connected injury/illness or an occupational disability Claim. A Physical Capacity Evaluation (PCE) or a Work Capacities Evaluation (WCE) is considered an “IME” under these rules.

“Medical Service.” The term “Medical Service” means any medical treatment, including:

(A) surgery

(B) diagnostic procedures

(C) chiropractic

(D) dental

(E) in-patient and out-patient hospitalization

(F) professional nursing

(G) ambulance transport

(H) prescription drugs

(I) medicine

(J) durable medical equipment

(K) crutches

(L) braces and supports

(M) prosthetic appliances

(N) physical Restorative Services

“Medical Treatment.” The term “Medical Treatment” means the management and care of a Member by a licensed medical provider for the purpose of combating disease, injury or disorder.

"Medically Stationary." The term "Medically Stationary" means that no further material improvement can reasonably be expected from medical treatment or the passage of time.

“Nurse Case Manager.” A licensed nurse assigned by the Director to follow and monitor the progress of recovery of an injury/illness or occupational Claim.

“Original Injury.” The term “Original Injury” means the period from the first occasion of medical treatment or disability resulting from a service-connected injury/illness or occupational disability through the date the Member reaches a Medically Stationary status.

“Palliative Care.” The term “Palliative Care” means post-Medically Stationary Medical Services required to reduce or temporarily moderate the intensity of an otherwise stable condition. It does not include those Medical Services needed to diagnose, heal or permanently alleviate a medical condition.

“Physical Capacity Evaluation.” The term “Physical Capacity Evaluation” means an objective, directly observed measurement of a Member’s ability to perform a variety of physical tasks combined with subjective analyses of abilities by Member and evaluator. Physical tolerance screening, Blankenship’s Functional Evaluation and Functional Capacity Assessment will be considered to have the same meaning as Physical Capacity Evaluation.

“Physical Restorative Services.” The term “Physical Restorative Services” means services prescribed by the Member’s physician that are designed to restore and maintain the Member to the highest functional ability consistent with the Member’s condition.

"Preponderance of the Evidence." The term "Preponderance of the Evidence" means the greater weight of the evidence.

"Proximate Cause." The term "Proximate Cause" means a cause that directly produces an event and without which the event would not have occurred.

"Recurrence." The term "Recurrence" means an Aggravation of a service-connected injury/illness or occupational disability that requires Claim reopening for additional disability benefits and/or medical benefits after the Member has reached Medically Stationary status with respect to the approved service-connected injury/illness or occupational disability.

"Significant Factor." The term a "Significant Factor" means an important Proximate Cause.

"Specialty Physician." The term "Specialty Physician" means a licensed physician who qualifies as an "Attending Physician" who provides evaluation, diagnosis or temporary specialized treatment at the request of the Member's Attending Physician on an approved Claim.

"Spouse." The term "Spouse" shall, on and after June 26, 2013, mean an individual to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms "Spouse," "husband and wife," "husband," and "wife" include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

"Surviving Spouse." The term "Surviving Spouse" means the individual who, at the time of the Member's death, was the Spouse of the Member and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member's Plan benefit. In addition, the Surviving Spouse of a Member means the individual who had been the Member's Spouse throughout the 12-month period immediately preceding the Member's death, except as provided in Charter Section 5-117 and 5-126. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form or a registered domestic partnership certificate with FPDR in accordance with Ordinance No. 176258 prior to June 26, 2013, is also considered a Surviving Spouse.

"Usual and Customary Fee." The term "Usual and Customary Fee" means a treatment service fee that falls within the range of fees normally charged for treatment of occupational injuries and illnesses in Oregon.

"Work Capacity Evaluation." The term "Work Capacity Evaluation" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluations.

“Worsening.” The term “Worsening” means objective findings indicating a deterioration of the approved service-connected injury/illness or occupational disability based on expert medical opinion or an expert medical opinion explaining why the Member’s symptoms indicate a deterioration of the approved service-connected injury/illness or occupational disability.

Action Item No. 3

Resolution 553 regarding appointment of Board Members

RESOLUTION NO. 553

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, the Portland City Council removed the requirement from City Code, Section 3.74.010, that members of boards and commissions take an oath of office; and

WHEREAS, the City of Portland Auditor's Office will no longer swear in new board members; and

WHEREAS, staff recommends an amendment to Section 5.2 of the FPDR Administrative Rules to acknowledge the change in City Code; and

WHEREAS, a public Question and Answer Session on the proposed amendments to the FPDR Administrative Rules was held on February 19, 2024; and

WHEREAS, the amendments were posted on the FPDR website on February 12, 2024.; and

WHEREAS, the Board has considered and recommends the amendments to Sections 5.2 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 FPDR Administrative Rules be changed in accordance with the recommendation of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Sections 5.2 of the FPDR Administrative Rules be amended as shown on Exhibit "A".

ADOPTED by the Board of Trustees on the 19th day of March 2024.

Samuel Hutchison
FPDR Director

fund\resolution\553

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

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

Samuel Hutchison, Director fpdr@portlandoregon.gov

EXHIBIT "A"
Proposed Rule Amendments
March 19, 2024

5.2.04 – <u>BOARD MEMBERS</u>

(A) Elected Board Members

(1) One Active Member of the Bureau of Fire, Rescue and Emergency Services and

and one Active Member of the Bureau of Police shall be elected to the Board by the Active Members of their respective bureau. Elections will be held in the year of the respective board member's expiring term.

(2) Elected members of the Board shall have a three-year term of office.

(3) Regular elections, to fill expired terms on the Board of Trustees, shall be conducted as follows:

(a) Elections shall be held during the month of December using a vote-by-mail process.

(b) Notice of elections shall be given in writing and posted in fire and police work places on or before the second Monday in October.

(c) Any Active Member may nominate themselves by filing such nomination in writing with the Director on or before the third Monday in October.

(d) Notice of nominations shall be given in writing and by posting in fire and police work places on or before the fourth Monday in October. If only one Active Member is nominated in any election, the election shall not be held. The Director shall determine and certify to the Board that the nominee was unopposed. The nominee so certified shall be declared elected in accordance with the procedures set out in this section of the Administrative Rules.

(e) If there are multiple nominees, the Director shall prepare printed ballots, listing the nominees in the order in which they file.

(f) The Director shall mail individual ballots for a Fire trustee election to Active Members of the Bureau of Fire and individual ballots for a Police trustee election to Active Members of the Bureau of Police, along with a postage paid return envelope marked “Ballot Enclosed”. These ballots will be mailed to Active Members on the first Friday of November.

(g) Completed ballots must be returned, sealed in the return envelope provided by the FPDR marked “Ballot Enclosed” and received in the FPDR office no later than 5:00 p.m. December 1st or the following Monday if December 1st falls on a Saturday or Sunday. Ballots may be dropped off at the FPDR office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays.

(h) Upon receipt of the ballot, FPDR staff will immediately date stamp the return envelope and place it in a secure location. FPDR staff will not open the return envelope.

(i) Within two (2) business days after close of balloting, the City Auditor or the City Auditor’s designee will count and tally the ballots. An abstract of votes cast by the Active Members of each bureau signed by the Director and the City Auditor or the City Auditor’s designee, together with the tally sheets signed by the City Auditor or the City Auditor’s designee, shall be forwarded to the Board of Trustees for its next regular meeting.

(j) In the event no candidate receives a majority of the votes cast (equivalent to 50 percent plus 1 vote), a runoff election shall be held between the two candidates receiving the most votes. The Director shall, within three (3) business days of the initial vote count, announce to the Members of the respective bureau that a runoff election is needed.

(k) In the event of a runoff election, ballots will be distributed within five (5) business days of the determination of the need for a runoff election. The completed ballots must be returned, sealed in the return envelope provided by the FPDR marked “Ballot Enclosed” and received in the FPDR office no later than 5:00 p.m. the business day prior to the day ballots are to be counted. Ballots may be dropped off at the FPDR office during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except for holidays. The counting of the ballots will be conducted in the same manner as regular elections and will be scheduled on or before the last business day of December. If the last business day of December falls on a Saturday or Sunday, ballots will be counted on the preceding Friday.

(l) The new board members shall be elected for terms to begin January 1.

(4) At the regularly scheduled meeting of the Board in January, the names of the nominees and votes received shall be entered in the minutes. The nominee from each bureau, receiving the highest number of votes cast, shall be declared elected. Tie votes shall be decided by the drawing of lots, under the Director and City Auditor’s supervision. No contest of any election shall be had after said declaration.

(5) Special elections for a vacant elected trustee position shall be held within thirty (30) days after a vacancy occurs and such elections shall be conducted in the same manner as regular elections. The names of the nominees and votes received shall be announced at the first regularly scheduled meeting of the Board following the special election. The board member elected during a special election will serve the balance of the unexpired term.

(6) Any elected Board member who ceases to be an Active Member may complete the remainder of their term. Notwithstanding the previous sentence, a Board member who is discharged for cause shall cease to be a member of the Board on the effective date of their discharge.

(B) Appointed Board Members

(1) Two citizens of the City of Portland who have relevant experience in pension or disability matters, are not active or past Members nor beneficiaries of the Fire and Police Disability and Retirement Fund and who have not been employed by the Fire or Police Bureaus shall be appointed to the Board. The citizen shall be nominated by the Mayor and approved by the City Council. ~~Following the City Council approval, the new board member shall be given an oath of office by the City Auditor or the City Auditor's designee.~~ The new board member(s) shall be appointed for terms to begin January 1.

(2) Appointed members of the Board shall have a three-year term of office.

(3) Appointments for a vacated appointed board member position shall be made within thirty (30) days after they occur. A new trustee shall be nominated by the Mayor and approved by the City Council. The new appointed board member will serve the balance of the unexpired term.

(4) Any appointed board member who misses four or more meetings in the fiscal year may be removed by the Board unless the Board determines there was a good cause for the absences.

(5) A Board member who is discharged for cause shall cease to be a member of the Board on the effective date of their discharge.

(C) Mayor

(1) The Mayor or the Mayor's designee approved by the City Council shall serve as a board member and the Board's Chairperson.

(2) Notwithstanding the above, the Mayor or the Mayor's designee shall not be an active or past Member nor beneficiary of the Fire and Police Disability and Retirement Fund and have not been employed by the Fire or Police Bureaus.

(3) Should the Mayor not meet the above criteria, the Mayor must appoint a designee who does meet the criteria.

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

Information Item No. 1

Majoris Health Systems contract update

CITY OF PORTLAND

PRICE AGREEMENT FOR MANAGED OCCUPATIONAL HEALTH CARE SERVICES

Contract Number: 31002678

As authorized by 5.68.020, this Price Agreement ("Contract") is made effective on March 1, 2024 ("Effective Date") by and between the City of Portland ("City" or "FPDR"), a municipal corporation of the State of Oregon, and Majoris Health Systems Oregon, Inc. ("Contractor"), an Oregon 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 February 28, 2029, with the City's option to extend for an additional five (5) years, for a total not to exceed ten (10) years. The total not-to-exceed amount under this Contract for the initial Term shall be $90,000.00 per year for a total of $450,000.00. (11/20)

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

For City of Portland:	For Contractor:
Name: Kimberly Mitchell	Name: Ann Klein
Title: Disability Claims Manager	Title: President
Address: 1800 SW First Ave, Suite 450	Address: PO Box 1728
City, State: Portland, OR 97201	City, State: Lake Oswego, OR 97035
e-mail: Kimberly.Mitchell@portlandoregon.gov	e-mail: aklein@majorishealthsystem.com
Copy to: Sara Puma	Copy to:
Procurement Services	Lisa Johnson
1120 SW 5th Ave.	e-mail: ljohnson@majorishealthsystem.com
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) Payments shall be made to Contractor according to the schedule identified in Exhibit A, the Contractor's Price.

(c) Contract Not Exclusive. The City may, but is not required to, purchase any Deliverables or Services within the scope of this Contract. Deliverables or Services will be requested on an as-needed basis, and there is no guarantee of a minimum or maximum quantity. This Contract does not create an exclusive relationship between the City and Contractor, and the City retains the right to purchase the same or similar goods or services from other providers.

Recitals:

WHEREAS, to further its government operations, the City of Portland desires to obtain managed health care services for the Fire and Police Disability and Retirement Fund (FPDR); and

WHEREAS, the Contractor is one of three managed care organizations certified by the State of Oregon to provide managed health care services; and

WHEREAS, The FPDR desires to access the services of the Contractor to ensure a broad panel of providers available to treat plan members; and

WHEREAS, Contractor, in its Statement of Work dated February 8, 2024, represented that it has the knowledge, experience and expertise in providing managed health care services; and

WHEREAS, the City selected Contractor based on its knowledge, experience and expertise in providing managed healthcare services, and

WHEREAS, by Resolution, the FPDR Board of Trustees has, on December 19, 2023, authorized the FPDR Director to negotiate and enter into an agreement with Majoris Health Systems who will provide occupational healthcare services to FPDR members;

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS (11/18)

General Definitions. (11/18) These definitions apply to the entire Contract, subsequent Amendments, and any Change 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" (11/18) 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 testing, and for Deliverables not requiring acceptance testing that the Deliverable conforms to the Acceptance Criteria or the City's Specifications.

"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.

"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. Change Orders cannot change Contract amount or Master Terms and Conditions.

"COBID Certified" means an entity certified by the State of Oregon Certification Office for Business Inclusion and Diversity.

"Confidential Information" (06/20) 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.

"Deliverable(s)" (11/18) means the items, 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" (11/18) 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" (11/18) 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" (8/20) means, with respect to a Party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that Party and that prevents a Party from complying with any of its obligations under this Contract, except that a Force Majeure Event will not include a strike or other labor unrest that affects only one Party, an increase in prices, or a change in law.

"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.

"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)" (06/20) 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" (12/20) means the overall delivery of the Deliverables and all related Services including any Deliverables any of which Contractor may be providing in whole or in part.

"Proposal" (11/18) means Contractor's response to the City's request referenced in the recitals above.

"Purchase Order" (12/20) means a purchasing document provided by the City to Contractor containing the specific details of an individual order, including order quantities, unit prices, delivery locations, and an address for invoicing.

"Services" (11/18) means both ordinary and professional services performed by Contractor under this Contract.

"Specifications" (12/20) means the most current cumulative statement of capabilities, functionality, and performance requirements for the Deliverables and their components as set out in the Acceptance Criteria, Change Orders, the Statement of Work, Documentation, Contractor's representations, and Contractor's Proposal.

"Statement of Work" (SOW) (8/20) means the written detailed specifications of the Deliverable(s) and Services(s) to be delivered to the City by Contractor, 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.

"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, Contractor's Price
4. Change Orders
5. Exhibit B, Statement of Work
6. Exhibit C, Services Requiring Precertification
7. Exhibit D, Sample Document: Change Order

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. (06/20) Contractor shall be the sole point of contact for the City with regard to this Contract and the Deliverables.

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.

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 Deliverables 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. (06/19) 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 a Force Majeure Event. In the event of delay due to any such cause, the City may obtain substitute Deliverables or 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. (06/19) Contractor shall use best efforts to minimize any delay in the provision of Deliverables, 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. (017/20) 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, participation of COBID Certified firms, and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and COBID Certified subcontracting commitments made by Contractor.

3.6 Payment. (09/17) Payment(s) shall be in accordance with the payment schedule set forth in Exhibit A: Contractor's Price.

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 Deliverables 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 Deliverables 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 Termination. (06/19) The following conditions apply to termination of this Contract.

3.11.1 Termination by City. 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.

3.11.2 Mutual Agreement. (09/17) The City and Contractor, by mutual written agreement, may terminate this Contract at any time.

3.11.3 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.

3.11.4 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.

3.11.5 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.

3.11.6 Ownership Upon Termination. In the event of termination all of Contractor's Work Product to date, to the extent reasonably practicable shall be delivered to the City, and it will become and remain property of the City.

3.12 Void Assignment. (09/20) 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 Deliverables delivered and/or Services performed by the third party.

3.13 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.

3.14 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.

3.15 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.

3.16 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.

3.17 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.

3.18 Sustainability. (09 /20) 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 Deliverables or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Deliverables or Services into its work performance wherever possible. "Environmentally preferable" means Deliverables 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 Deliverable or Service.

3.19 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.

3.20 Contract Not Exclusive (09/20) The City may, but is not required to, purchase any Deliverables or Services within the scope of this Contract. Deliverables or Services will be requested on an as-needed basis, and there is no guarantee of a minimum or maximum quantity. This Contract does not create an exclusive relationship between the City and Contractor, and the City retains the right to purchase the same or similar Deliverables or Services from other providers. Payment shall be made only for Deliverables or Services actually ordered, delivered, and accepted, whether greater or less than the original estimated quantities.

3.21 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.

3.22 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.

3.23 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. (01/20) This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. To the extent not modified by the terms of this Contract, the Uniform Commercial Code as codified in ORS Chapters 71 and 72 governs Deliverables under this Contract. 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. (12/20) 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 Deliverables, Services or activities requested to be provided for City under this Agreement.

Contractor shall document each ADA request for modification to the Deliverables 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 7 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, Deliverables, 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.

5.4 Service(s) and Deliverable(s) Warranties. (08/19) 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 Compliance with Law. (08/19) 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.

5.4.4 Industry Standards. (01/19) Contractor warrants that the Deliverables and Services are compliant with generally accepted industry standards. 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.

5.4.5 Substitution or Modification of Products at No Charge. (07/20) Substitutions or modifications of Deliverables may only be provided upon prior written approval by the City. 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. (01/19) Delivery of Deliverables or 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 notify the City in writing immediately. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Contract.

5.10 Subcontractors. (09/20) 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 Deliverables and Services authorized under this Contract.

All 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 COBID Certified 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. (08/20)

5.12.1 If a Force Majeure Event occurs, the Party that is prevented by that Force Majeure Event from performing any one or more obligations under this Agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that (1) the Nonperforming Party used reasonable efforts to perform those obligations, (2) the Nonperforming Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the Force Majeure Event, and (3) the Nonperforming Party complies with its obligations under section 5.12.2.

5.12.2 Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long that Party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the other Party and to resume its performance under this Contract.

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, AND BONDING

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 two million dollars 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 two million dollars 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 one million dollars each accident, one million dollars disease each employee, and one million dollars disease policy limit.

☒ Required and attached or

☐ 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 one million dollars per occurrence and aggregate of three million dollars for all claims per occurrence. In lieu of an occurrence-based policy, Contractor may have claims-made policy in an amount not less than one million dollars per claim and three million dollars 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 Excluding any disputes governed by the Managed Care Organization certified plan held by the Contract and governing the services performed under this Contract, 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 Lisa Johnson 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 FPDR Director on behalf of the City and Ann Klein 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 or delivery of Deliverables, Contractor shall proceed with the performance of such Services or delivery of Deliverables 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. (07/20) 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.

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: 31002678

Contract Title: PROVIDED MANAGED HEALTHCARE SERVICES

CITY OF PORTLAND SIGNATURES

By: ______________________________ Date: ____________
Chief Procurement Officer

Approved:

By: ______________________________ Date: ____________
Office of City Auditor

Approved as to Form:

By: ______________________________ Date: ____________
Office of City Attorney

EXHIBIT A
Contractor's Price

All pricing presented is predicated upon:

- The file fee per claim is the only charge per file and is good for the life of the claim. This means if a claim is closed and re-opens ten years later, there is no additional charge. The only exception to this is if additional benefits, such as the Opioid Precertification Program, are added to the contract.
- All claims enrolled at time of acceptance, with the greater majority enrolled within 60 days from date of injury.
- A deferred enrollment fee is applied to any claim enrolled more than 90 days after date of injury.
    - Claims enrolled due to a reopening are not subject to the sliding scale applied to new claims.
    - This is waived for any claims enrolled and invoiced as a "Takeover" claim at implementation of the contract.
    - This is waived for claims enrolled as a Post Retirement Case. Waiver for Post-Retirement will be reassessed 2 years from inception.
- All necessary components for enrollment are sent via a daily data feed.
- The accurate application of MCO discounts negotiated with providers; payment of applied discounts remitted to Majoris monthly.
- Annual application of CPI-U increase for file fees.

Two-Tiered Enrollment

	Non-Active	Active	*Details*
Standard Enrollment	$65	$295	*Conversion from non-active to active is invoiced the difference*
Deferred Enrollment (New Claims)	$65 to $390	$295 to $1770	*Doubles for every additional 90 days of deferred enrollment, capping at no more than 6 multiples and is in addition to the standard enrollment fee.*
Recurrence Enrollment	$130	$590	*Recurrence claims where injury is older than 90 days at time of enrollment. Recurrence claims enrolled within 90 days of original injury shall be enrolled as a standard enrollment.*
Post-Retirement Enrollment	$65	$295	*Post-retirement enrollments are exempt from the deferred enrollment fee.*
Takeover	$84.50	$383.50	*Applied to "takeover" claims with dates of injury >6 months prior to enrollment at implementation*

Under the two-tiered model:

- **Enrollment**: claims are enrolled as non-active or active at adjuster discretion depending on anticipated need for MCO intervention and resources.
- **Services**: Non-active claims would be directed into network and treating providers notified that the claim is subject to MCO rules. Active claims receive ongoing, proactive case management to include regular file reviews, precertification of medical services, and MCO intervention based on file review findings or adjuster request.

- **Conversion**: claims are upgraded to active case management by adjuster request or if certain triggers are hit. Triggers include the AP prescribing services requiring MCO precertification (See Exhibit C, Services Requiring Precertification), or a request from the adjuster for intervention such as medical case management or return to work. Claims later activated would be invoiced the full file fee and receive all case management services. The non-active fee already paid for non-active enrollments would be credited towards the file fee.

The examples presented in the table below are meant to illustrate how the fee table is used to calculate fees by presenting a sampling of possible scenarios and is not an exhaustive list of all possible scenarios.

Possible Scenario	Corresponding Pricing
New claim is enrolled within 90 days from date of injury for non-active MCO management.	$65
New claim is enrolled within 90 days from date of injury for active MCO case management	$295
Existing claim originally enrolled for non-active management is converted to active case management	Additional $230
New claim is enrolled 91 days from date of injury for non-active MCO management	$65 enrollment + $65 deferred enrollment fee = $130 total
New claim is enrolled 91 days from date of injury for active MCO case management	$295 enrollment + $295 deferred enrollment fee = $590 total
New claim is enrolled 540+ days from date of injury for non-active MCO management	$65 enrollment +$390 deferred enrollment fee = $455 total *(maximum possible)*
New claim is enrolled 540+ days from date of injury for active MCO case management	$295 enrollment + $1,770 deferred enrollment fee = $2,065 total *(maximum possible)*
Post-Retirement claim is enrolled for non-active MCO management	$65 (*maximum possible unless activated)*
Post-Retirement claim is enrolled for active MCO case management	$295 (*maximum possible)*
Recurrence claim is enrolled for non-active MCO management 90 or fewer days from date of injury	$65
Recurrence claim is enrolled for active MCO case management 90 or fewer days from date of injury	$295
Recurrence claim is enrolled for non-active MCO management 91+ days from date of injury	$130 (*maximum possible)*
Recurrence claim is enrolled for active MCO case management 91+ days from date of injury	$590 (*maximum possible)*

Definitions

“New Claim” means a newly filed claim for service-connected benefits.

“Recurrence Claim” means an aggravation of an approved service-connected claim for benefits that requires reopening for additional disability benefits and/or medical benefits/treatment.

“Post-Retirement Claim” means a service-connected claim approved before retirement that requires reopening for additional medical benefits/treatment.

“Deferred Enrollment” means a claim enrolled more than 90-days after the date of injury.

Amount of Contractor Service Fees FPDR will pay. For New Claims Contractor shall receive $65 per file fee for each Non-Active Enrolled Claim, $295 for each Active Claim Enrolled and $230 for any claim transitioned from Non-Active to Active status. New Claims enrolled more than 90 days from the date of injury will be charged an additional 100% of the original enrollment fee for every 90 days that has passed since the date of injury, but never greater than six (6) times the original enrollment amount.

For Recurrence Claims enrolled 90 or fewer days from the date of injury, Contractor shall receive $65 per file fee for each Non-Active Enrolled Claim, $295 for each Active Claim Enrolled and $230 for any claim transitioned from Non-Active to Active status.

For Recurrence Claims enrolled more than 90 days from the date of injury, Contractor shall receive $130 per file fee for each Non-Active Enrolled Claim and $590 for each Active Claim Enrolled, and $460 for any claim transitioned from Non-Active to Active status.

For Post-Retirement Claims, Contractor shall receive $65 per file fee for each Non-Active Enrolled Claim, $295 for each Active Claim Enrolled and $230 for any claim transitioned from Non-Active to Active status.

Said fees include services through claim closure and any subsequent reopenings of the claim if any. The fee shall be paid on aggravation claims identified by FPDR in writing, within Contractor service areas, unless a fee on such claim was previously paid to Contractor.

Annual Pricing Adjustment. Thirty days prior to the annual anniversary of the Contract Agreement’s Effective Date this Statement of Work is subject to, Contractor will calculate an “Adjustment Factor” to be applied to the base rate per file which is currently in effect under this Agreement. The Adjustment Factor shall be calculated by multiplying the base rate per file which is in effect under this Agreement by the most recent Consumer Price Index – Urban (CPI-U) for the preceding twelve (12) month period published by the United States Bureau of Labor Statistics which is available at the time of the calculation of the Adjustment Factor. The

Adjustment Factor shall be added to the current base rate per file which will be in effect for the following (12) month period beginning on the Anniversary Date (i.e. current base rate x CPI-U for the prior twelve (12) months + current base rate = base rate for the following twelve (12) month period beginning on the Anniversary Date).

Payment of Contractor Service Fees. Contactor Service Fees will be reimbursed by FPDR or its Delegate monthly, and per Section 3.6, Payment, above.

Medical Service Fees and Payment of Medical Service Fees Provider Withhold. FPDR, or its Delegate, will apply the Contractor contracted provider withhold when reimbursing for medical services provided to enrolled injured workers. FPDR, or its Delegate, will reimburse to Contractor 100% of the total medical service fees provider withhold, per the rates to which the provider has agreed with Contractor per Section 3.6, Payment, above.

Late Fees. All sums not paid by the due date shall be “past due”. All past due sums shall accrue interest at the rate of 15% per annum until paid. All payments received, regardless of allocation, shall be first applied to interest due, with the balance, if any, to the principal fee.

EXHIBIT B
Majoris Health Systems Statement of Work for
Managed Care Services

SUMMARY

The City of Portland, Bureau of Fire and Police Disability and Retirement (FPDR) and Contractor have a contractual relationship to provide a network of physicians and health care providers experienced in the treatment of work-related injuries and illnesses, and medical management services for the delivery of appropriate and timely medical services with an emphasis on return to work.

RECITALS

Contractor is a duly certified Managed Care Organization ("MCO") in the State of Oregon and a provider of a wide variety of managed health care services in an occupational setting.

FPDR is a disability and retirement system subject to Chapter 5 of the City of Portland Oregon Charter and responsible for paying benefits and other sums to or on behalf of eligible injured or diseased Members and meets the requirements under ORS 656.027 (6) exempting FPDR from Oregon Workers Compensation Laws except where mandated under ORS 656.802.

Contractor maintains agreements with physicians, hospitals and other providers of health care services pursuant to which such providers agree to provide services to injured workers covered by Contractor and agree to comply with the administrative requirements of Contractor. Contractor shall ensure that the panel is appropriate in number and diversity of providers to assure timely and effective medical care.

By this Agreement, FPDR and Contractor wish to set forth the terms and conditions under which FPDR shall obtain from Contractor and Contractor shall provide to FPDR the certain services herein set forth.

Contractor maintains a process to monitor the ongoing medical care of FPDR Plan members covered by this Agreement for quality, appropriateness of care, and consistent delivery of return to work information, and shall report information to FPDR and/or its Delegate in a mutually agreeable manner.

AGREEMENT

SECTION 1 DEFINITIONS.

1.1 **“Active Enrolled Claim”** means a claim for which Contractor is to provide all management services under Section 4 of Exhibit B, Statement of Work upon enrollment.

1.2 **“Attending Physician”** means a medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or board certified oral surgeon licensed by the Oregon Board of Dentistry. Additionally, as defined in Oregon Administrative Rules Chapter 436, Division 010, panel Doctors of chiropractic and naturopathy who adhere to the Contractor administrative requirements, will enjoy modification of the definition of attending physician. Provider noncompliance determined through either the service utilization review or peer review process may reduce full-attending physician status to the definitions described in OAR 436-010-0005 and OAR 436-015-0005. Repeated failure to conform to service utilization review requirements and peer review recommendations may result in the provider being sanctioned and/or loss of provider contract status.

1.3 **“Authorized Nurse Practitioner”** means a nurse practitioner licensed under ORS 678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers’ compensation system provided by the director and has been assigned an authorized nurse practitioner number by the director. Such Authorized Nurse Practitioners shall be allowed pursuant to ORS 656.245 to provide compensable medical services and authorize temporary disability benefits for a period of 180 days from the date of the first nurse practitioner visit on the initial claim.

1.4 **“Authorized Physician Assistant”** means a physician assistant under ORS 677.505 to 677.525 who has certified to the director that the physician assistant has reviewed informational materials about the workers’ compensation system provided by the director and has been assigned an authorized physician assistant number by the director. Such Authorized Physician Assistants shall be allowed pursuant to ORS 656.245 to provide compensable medical services and authorize temporary disability benefits for a period of 180 days from the date of the first physician assistant visit on the initial claim.

1.5 “**Credentialing”** means the process whereby providers’ qualifications for participation or out of network authorization are investigated and reviewed in accordance with the Contractor MCO certification.

1.6 **“Deferred Enrollment”** means a claim enrolled more than 90 days after the date of injury.

1.7 **“Eligible Plan Member”** means an FPDR Plan Member with an approved service-connected claim for disability benefits and who is enrolled in Majoris and who resides within or within 100 miles of a Contractor covered geographic service area and asserts a claim against, or has an accepted claim for, any occupational injury or disease under the FPDR Charter.

1.8 **"Enrolled Member"** means an Eligible Plan Member who has been notified by FPDR, FPDR's delegate, or Contractor of their subjectivity to the Contractor MCO.

1.9 **"Managed Care Organization"** means any health care provider or group of medical service providers who provide the services and meet the required certification by the Director as specified under ORS 656.260.

1.10 **"Medical Service Provider"** means a person duly licensed by any state to practice one or more of the healing arts.

1.11 **"New Claim"** means a newly filed claim for service connected benefits.

1.12 **"Non-Active Enrolled claims"** means those claims for which Contractor will provide management services under Section 4 of Exhibit B, Statement of Work. Non-Active Enrolled Claims can be upgraded to Active Enrolled claims only upon request of FPDR, or receipt of services requiring utilization review or medical management, such as a precertification request.

1.13 **"Participating Providers"** means those physicians, hospitals, clinics, and other medical service providers that have entered into agreements with Contractor to provide medical services to Contractor Eligible and Enrolled Plan Members.

1.14 **"Physician or Doctor"** means a person duly licensed by any state to practice one or more of the healing arts in that state.

1.15 **"Post-Retirement Claim"** means a service-connected claim approved before retirement that requires reopening for additional medical benefits or treatment.

1.16 **"Primary Care Physician (PCP)"** means an MD or DO, in general or family practice or internal medicine, or a Chiropractor, with a history of prior treatment of the Eligible Plan Member prior to the injury, or maintains the Eligible Plan Member's medical records, or has been selected by the Eligible Plan Member through their private health plan as their PCP, and who agrees to the terms and conditions of the MCO.

1.17 **"Provider Manual"** defines the expectations between Contractor and its participating providers vis-à-vis reporting requirements, utilization and peer review requirements, dispute resolution procedures, etc.

1.18 **"Service Utilization Review"** means the process Contractor utilizes to review medical care to Eligible Plan Members.

SECTION 2 ENGAGEMENT

2.1 FPDR hereby agrees to engage the services of Contractor, and Contractor hereby agrees to provide services to FPDR subject to the terms and conditions set forth herein and as required under Chapter 5 of the Charter of the City of Portland and the FPDR Administrative Rules.

SECTION 3 RELATIONSHIP OF THE PARTIES

3.1 Contractor shall at all times be an independent contractor in the provision of services under this contract, and employees of Contractor shall in no event be considered employees of FPDR.

SECTION 4 DUTIES AND RESPONSIBILITIES OF CONTRACTOR

4.1 Contractor will provide to FPDR, at a minimum, those services required to be provided by an MCO under Portland City Code Chapter ~~3.127~~ 5 and the Portland Fire and Police Disability and Retirement Benefits Charter to include:

4.1.1 Except as otherwise provided by FPDR or its Delegate, management of the Eligible Plan Member enrollment process into the MCO upon receipt of a referral (notice of a claim) from FPDR or Delegate, which includes:

a) Credentialing of a physician or nurse practitioner or physician assistant who qualifies under the Plan as a Primary Care Physician or Authorized Nurse Practitioner or Authorized Physician Assistant, or;
b) Ongoing monitoring to assure the Eligible Plan Member has selected a Contractor panel physician or appropriate Primary Care Physician or Authorized Nurse Practitioner or Authorized Physician Assistant.

4.1.2 FPDR will provide:

a) All notifications to the Eligible Plan Member as required by its Charter of their enrollment into Contractor's service, including a notice that if they are required to change physicians upon enrollment, they may continue to treat with their current physician for fourteen (14) days after the mailing date of the notice of enrollment;

b) Notification to an Eligible Plan Member of the requirement to change to a Contractor provider, or;

c) Notification to an Eligible Plan Member that they have selected a Contractor panel provider, and there is no need to change physicians;

4.1.3 Management of the medical services provider panel, which includes:

a) Recruitment of appropriate providers for the panel, in adequate numbers for the geographic service area and of the appropriate specialties;

b) Credentialing of panel providers;

c) Providing ongoing service utilization review, which includes precertification, concurrent review and retrospective review, and peer review, when indicated, of panel providers;

d) Ongoing review of medical documentation to identify problem areas, create action plans for problem resolution, and determine compliance with Provider Manual requirements;

e) Treatment planning, in concert with the attending physician;

f) Individual case management services, when indicated;

g) Scheduling consultations and second opinions for medical treatment issues, when appropriate;

h) Providing ongoing education and coaching of panel providers, moving to corrective action when indicated;

i) Resolution of disputes and issues with panel providers.

4.1.4 Communication of MCO, medical, utilization review, and return to work information, which includes:

a) Contractor will work with FPDR and/or their Delegate to provide communication of ongoing medical, service utilization review decisions, and return to work information in a mutually agreeable format, frequency, and medium;

b) Contractor will work with FPDR and/or their Delegate to provide information regarding the MCO program in a mutually agreeable format.

4.2 **Medical Services.** Contractor will manage health services by overseeing medical care provided by Contractor member providers to enrolled Eligible Members of the FPDR Plan. Contractor medical services will be provided to enrolled Eligible Members for claimed occupational injuries or diseases so long as the particular health treatment or the underlying benefit claim has not been denied.

4.2.1 Contractor retains all rights to investigate, resolve and determine issues and procedures consistent with its provider Agreements. Neither the existence of this Agreement, nor any provision in it, including any implied duties of good faith, shall be construed to interfere with Contractor' obligations and duties pursuant to the Oregon Administrative Rules, or in a matter that places at risk Contractor's certification status with the Department of Consumer and Business Services. FPDR may not provide any form of medical management on enrolled claims.

SECTION 5 DUTIES AND RESPONSIBILITIES OF THE CITY

5.1 *Reserved*.

5.2 **Identification of Eligible Plan Member.** FPDR or its Delegate shall identify and notify Contractor of each work-related injury or illness claim for an Eligible Plan Member designated for enrollment into the Contractor within 7 working days of issuance of the notice of claim approval letter to the FPDR plan Member.

5.3 **Amount of Contractor Service Fees City will pay.** See Exhibit A, Contractor's Pricing.

5.3.1 **Annual Pricing Adjustment.** See Exhibit A, Contractor's Pricing.

5.4 **Payment of Contractor Services Fees.** See Exhibit A, Contractor's Pricing.

5.5 **Medical Service Fees and Payment of Medical Service Fees Provider Withhold.** See Exhibit A, Contractor's Pricing.

5.6 **Reporting.** FPDR, or its Delegate, will provide to Contractor monthly electronic data detailing claims by and payment approval for each participating provider in a mutually agreeable format. Contractor reserves the right to audit the payment data to verify the Contractor contracted withhold rate is consistently and accurately applied by FPDR, or its Delegate.

5.7 **Late Fees.** See Exhibit A, Contractor's Pricing

5.8 **Enrollment Requirements.** All claims shall be enrolled at the time notice is made to Contractor as required under 5.2 of Exhibit B, Statement of Work.

SECTION 6 CONTRACTOR PERSONNEL

The Contractor shall assign the following personnel to do the work in the capacities designated:

ROLE ON PROJECT	NAME
Project Manager	Ann Klein
	Lisa Johnson

SECTION 7 PROJECT MANAGEMENT

7.1 Place of Performance

Contractor shall provide FPDR with services at Contractor facilities.

7.2 Project Managers

FPDR's Project Manager will be Susan Quinones. The City may change City's Project Manager from time to time upon written notice to Contractor.

Contact Information:
Kimberly Mitchell
Address: 1800 SW First Avenue, Suite 450, Portland OR 97201
Email: kimberly.mitchell@portlandoregon.gov

The Contractor's Project Manager will be Ann Klein.

Contact Information:
Ann Klein
Address: PO Box 1728, Lake Oswego, OR 97035
Email: aklein@majorishealthsystem.com

EXHIBIT C

SERVICES REQUIRING PRECERTIFICATION

1. Referral to any non-panel provider, or to second specialist (in-panel)
2. Hospital admissions
3. Prosthetics, orthotics, TENS units and DME > $1000
4. Epidural steroid injections
5. Differential nerve blocks
6. Discograms or discography
7. Work hardening/conditioning, exercise programs, health club memberships
8. Pain center treatment.
9. Psychological counseling
10. The following diagnostic procedures:
    - Physical or work capacity evaluations
    - Arthroscopy
    - Radionucleotide scans (bone scans)
    - Angiogram/angiograph
    - Psychological/neuropsychological testing
    - Pulmonary function testing
    - Allergy testing
    - Vestibular testing
    - Electroretinography, visual evoked testing, vision therapy beyond the first 12 visits/30 days.
11. Trigger point injections
12. Repeat diagnostic studies unless ordered by a Neurologist, Neurosurgeon, Ortho, PMR or Occ Med
    - CT
    - MRI
    - Arthrogram
    - EMG/Nerve Conduction Studies
13. Weight loss programs
14. Closing exam referral by the Attending Physician to another provider
15. Manual Manipulative Therapy (IN AGGREGATE)
    - Chiropractic tx beyond 12 visits/30 days
    - PT/OT beyond the initial 12 visits/30 days
    - Osteopathic tx beyond once a week, for a maximum of four weeks.
    - Beyond 30 days, and every 30 days thereafter for MDs or naturopaths.
16. Exercise Programs and health club memberships
17. Acupuncture
18. Massage Therapy
19. Opioid Treatment: All short acting after 90 days, all long acting after 10 days. Post- surgical short acting after 60 days, long acting after 10 days.
20. Compound Medications
21. Intraoperative Neurophysiological Monitoring
22. DVT/Cold Compression Therapy Devices for Home use
23. Continuous Flow Cryotherapy except for knee & shoulder

EXHIBIT D
Sample Form

CHANGE ORDER

	BUREAU NAME	**LOGO**

CHANGE ORDER

Contractor		**Project Title**	
Contract No.		**Change Order No.**	*SAMPLE*
Contract Date		**Change Order Date**	

Select	Type	Description and Reason for Change	Modification to:
☐	Time		Project Schedule and/or Contract
☐	Scope or Specifications		Statement of Work Acceptance Test Plan
☐	Deliverables		Statement of Work Acceptance Test Plan
☐	Price		Statement of Work and/or Contract
☐	Terms and Conditions		Request Amendment to Contract
☐	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 Test Plan.

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	**CONTRACTOR**
______________________________	______________________________
Authorized Signature Date	Authorized Signature Date
______________________________	______________________________
Printed Name	Printed Name
City Project Manager	______________________________
Title	Title

Information Item No. 2

ASOP Discussion follow up

1455 SW Broadway
Suite 1600
Portland, OR 97201
USA

Tel +1 503 227 0634

milliman.com

March 12, 2024

Sam Hutchinson
FPDR Fund Director
City of Portland Fire & Police Disability & Retirement

Re: Inquiry Regarding ASOP 4 to Actuarial Board for Counseling & Discipline

Dear Sam:

We understand in recent months FPDR staff and the Board of Trustees have engaged in several discussions regarding recent changes to Actuarial Standard of Practice No. 4 (ASOP 4) and the potential implications of this revised standard on the work Milliman prepares for FPDR. Lorne Dauenhauer, FPDR's outside counsel, presented a detailed summary of this issue at the January Board of Trustees meeting.

When discussing this issue with Mr. Dauenhauer in January, we informed him that we intended to consult with the Actuarial Board for Counseling and Discipline (ABCD) – the dedicated body established for providing guidance related to actuarial professionalism standards in the U.S. – regarding how certain aspects of the revised standard should be applied in the context of FPDR's structure and the specific services we provide to the Fund. We have since completed that outreach. The remainder of letter summarizes the guidance we received.

As a reminder, the revised ASOP 4 first applies to work Milliman will begin later this year, based on FPDR data as of June 30, 2024, and which is scheduled for presentation in January 2025. The relevant questions regarding this standard for FPDR primarily hinge on whether either or both of the two main work products Milliman will prepare for FPDR should be considered a "funding valuation" as that term is defined in the revised ASOP, given the pay-as-you-go nature of the Fund and the purposes for which those two work products are used. If a work product is considered a funding valuation, several specific calculation and disclosure requirements apply under the revised standard. Those calculation and disclosure requirements are primarily focused in two areas. One is a requirement to provide a liability measure that is consistent with investing trust assets solely in low-default-risk assets, in addition to any liability measure that may be presented which reflects the actual trust asset allocation. The other is quantifying the level of a reasonable pre-funding contribution if the actuary judges the actual pre-funding contribution to be below that reasonable level. Please see Mr. Dauenhauer's letter from January for a more detailed explanation and analysis of the considerations.

The key points from our ABCD inquiry are:

- Scott Preppernau was able to arrange a call with an ABCD member on February 23 who was well-suited to discuss and provide input on our questions. He has extensive experience working with public pension plans and was one of the members of the Pension Committee of the Actuarial Standards Board responsible for this most recent revision of ASOP 4. He engaged in an hour-long call to learn the specifics of the questions for FPDR and provide his considered input.

- The ABCD member reiterated that the input provided through this channel is considered informal guidance and should be viewed as his opinion, not an official pronouncement of the ABCD. He stated that the ABCD does not provide formal written guidance other than in very rare situations, such as when the same question or issue is encountered frequently throughout the country and leading to repeated requests for guidance on the same topic.

- We discussed the details of two significant work products we prepare for FPDR every two years: 1.) the actuarial valuation report, and 2.) a Board presentation that both summarizes the actuarial valuation and presents results of a levy modeling analysis, which provides a stochastic projection of levy requirements from several sources (including pay-as-you-go contributions to FPDR, and for FPDR Three members both pre-funding contributions to the OPSRP tier of the PERS defined benefit program and the IAP contribution of the PERS defined contribution program) compared to the City's projected total real market value.

- After a detailed discussion, the ABCD member stated that if he were the signing actuary, he would be comfortable with the conclusion that neither of these work products would constitute a "funding valuation" for purposes of ASOP No. 4. His rationale touched upon many similar points to those raised in Mr. Dauenhauer's letter from January.

- The ABCD member stated that ultimately the decision on interpreting how an actuarial work product fits with an actuarial standard is the responsibility of the actuaries completing the engagement, and those actuaries should disclose their interpretations and clearly identify the intended use of their work within their actuarial communications.

- We also discussed that many requirements and disclosures continue to apply to a work product that is not considered a "funding valuation" and that a specific disclosure is required identifying when a plan uses pay-as-you-go funding (discussed in Section 4.1u of ASOP 4). Further, while a given work product may not be required to include certain items that would be compulsory if it were a funding valuation, an actuary could still choose to include such information if requested or they believe it would be useful for their client.

- The ABCD member noted that as part of the informal guidance process he would share a summary of our call with the other members of the ABCD. We understand he would communicate with us if, after sharing that summary, another ABCD member disagreed with the guidance he has provided. We have <u>not</u> received any such follow-up communication.

We found the guidance process and the input from the ABCD helpful in clarifying the appropriate application of the revised standard to the unique FPDR structure. After this process, we feel is it appropriate and prudent to continue to view the actuarial valuation and levy modeling we perform as distinct from a "funding valuation" as defined by the standard. As noted above, this interpretation does not preclude us from providing within our reports any additional information or disclosures that FPDR or the Board would find useful, and we could discuss any such requests prior to performing our upcoming work.

Please let us know if you have any questions or would like to discuss this issue further.

Sincerely,

Matt Larrabee, FSA, EA, MAAA
Principal and Consulting Actuary

Scott Preppernau, FSA, EA, MAAA
Principal and Consulting Actuary

cc: Lorne Dauenhauer

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

Information Item No. 3

Follow up questions regarding FPDR and PERS pension comparison from January 23rd meeting

There is no handout for this information item

Information Item No. 4

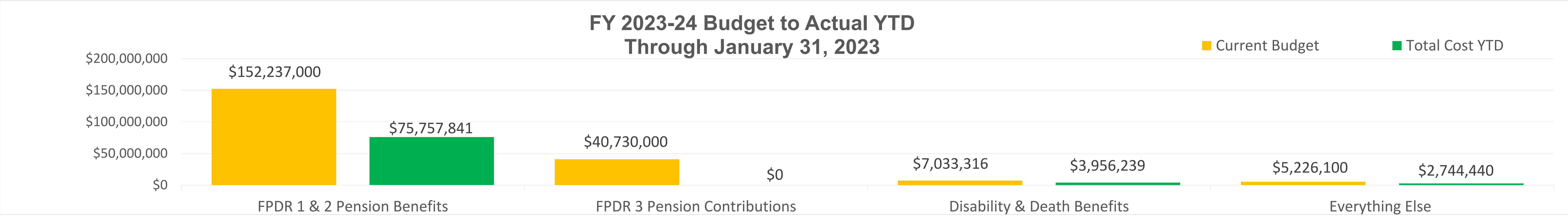
Legislative Update

There is no handout for this information item

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

Information Item No. 5

Summary of Expenditures



FY 2023-24 Budget to Actual YTD by Month

Mid Level Classification	Detail Classification	Original Budget	July	August	September	October	November	December	January	YTD Total
Revenues	Taxes	$193,701,162	-$1,134,467	$378,844	$453,883	$265,589	$114,523,301	$62,456,790	$2,185,915	$179,129,855
	Beginning fund balance	$24,209,481	$26,311,813	$0	$0	$0	$0	$0	$0	$26,311,813
	Bond and note proceeds	$38,000,000	$0	$32,565,839	$0	$0	$0	$0	$0	$32,565,839
	Miscellaneous Sources	$1,980,800	-$157,627	$64,254	$77,255	$47,297	$72,160	$409,017	$423,145	$935,500
	Interfund Cash Transfer Revenues	$750,000	$0	$0	$0	$0	$0	$0	$0	$0
	Interagency Revenues	$445,500	$0	$656	$1,313	$0	$656	$656	$656	$3,939
Revenues Total		**$259,086,943**	**$25,019,719**	**$33,009,593**	**$532,451**	**$312,886**	**$114,596,117**	**$62,866,464**	**$2,609,716**	**$238,946,946**
Personnel	Personnel	$2,979,029	$250,158	$272,106	$243,873	$257,865	$238,198	$254,167	$278,941	$1,795,306
Personnel Total		**$2,979,029**	**$250,158**	**$272,106**	**$243,873**	**$257,865**	**$238,198**	**$254,167**	**$278,941**	**$1,795,306**
Ext. Mat. & Svcs.	Other External Materials & Services	$790,639	-$6,007	$106,077	$80,736	$69,287	$93,703	$97,135	$82,366	$523,296
	FPDR 1 & 2 Pension Benefits	$152,237,000	-$1,212	$12,610,392	$25,211,936	$17,568	$12,619,783	$12,611,343	$12,688,030	$75,757,841
	Disability & Death Benefits	$7,033,316	$236,140	$676,245	$539,524	$544,733	$833,249	$547,129	$579,219	$3,956,239
Ext. Mat. & Svcs. Total		**$160,060,955**	**$228,921**	**$13,392,714**	**$25,832,196**	**$631,589**	**$13,546,734**	**$13,255,607**	**$13,349,615**	**$80,237,375**
Int. Mat. & Svcs.	Other Internal Materials & Services	$906,539	$56,115	$59,056	$58,841	$67,554	$49,505	$58,698	$66,058	$415,828
	FPDR 3 Pension Contributions	$40,730,000	$0	$0	$0	$0	$0	$0	$0	$0
	Return to Work/Light Duty	$494,800	$0	$0	$0	$0	$0	$0	$0	$0
Int. Mat. & Svcs. Total		**$42,131,339**	**$56,115**	**$59,056**	**$58,841**	**$67,554**	**$49,505**	**$58,698**	**$66,058**	**$415,828**
Capital Outlay	Capital Outlay	$55,093	-$4,160	$0	$14,170	$0	$0	$0	$0	$10,010
Capital Outlay Total		**$55,093**	**-$4,160**	**$0**	**$14,170**	**$0**	**$0**	**$0**	**$0**	**$10,010**
Fund Expenses	Contingency	$13,980,376	$0	$0	$0	$0	$0	$0	$0	$0
	Debt Retirement	$38,978,478	$0	$5,374	$24,243	$18,398	$0	$0	$32,990,425	$33,038,441
	Interfund Cash Transfer Expenses	$901,673	$11,640	$11,640	$11,640	$11,640	$17,634	$11,640	$11,640	$87,474
Fund Expenses Total		**$53,860,527**	**$11,640**	**$17,014**	**$35,883**	**$30,038**	**$17,634**	**$11,640**	**$33,002,065**	**$33,125,915**

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

Information Item No. 6

FPDR Updates

There is no handout for this information item

FIRE AND POLICE DISABILITY AND RETIREMENT
City of Portland, Oregon

<u>Information Item No. 7</u>

Future Meeting Agenda Items

There is no handout for this information item