City of Portland Bureau of Fire and Police Disability and Retirement
Agenda for Regular Meeting – Board of Trustees
City Council Chambers – City Hall
1221 SW Fourth Avenue, 2nd Floor, Portland, Oregon 97204
Tuesday, May 28, 2013 – 1:00 p.m.

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 – March 26, 2013, Meeting

INTRODUCTION OF VISITORS
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
   o Issue: What shall be the FPDR Two 2013 benefit adjustment?
   o Expected Outcome: Board determines FPDR Two 2013 benefit adjustment.

2 Resolution No. 476 - Tax Anticipation Notes
   o Issue: Each year, FPDR issues tax anticipation notes (TANs) to maintain a positive cash balance until the receipt of November property tax revenues.
   o Expected Outcome: Board authorizes TANs sale.

3 Resolution No. 477 – State of Oregon, Office of Administrative Hearings/Employment Department Intergovernmental Agreement
   o Issue: The State of Oregon, Office of Administrative Hearings/Employment Department (OAH) has the expertise to conduct hearings on disputed disability and pension claims and appellate reviews pursuant to the Charter.
   o Expected Outcome: Board adopts resolution authorizing FPDR Director to enter into a four-year agreement with OAH.
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  HEART Act Plan Change
2  Legislative Updates
3  FPDR Updates
4  Future Meeting Agenda Items:
   o  State of FPDR Presentation
   o  Administrative Rule Updates
   o  Legislative Updates

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.portlandonline.com or at the FPDR offices located at: 1800 SW First Avenue, Suite 450, Portland, Oregon 97201

NOTE: If you have a disability that requires any special materials services or assistance call (503) 823-6623 at least 48 hours before the meeting.

*denotes items will be in Executive Session pursuant to ORS 192.660(2)(f) and not open to the public
#denotes items will be in Executive Session pursuant to ORS 192.660(2)(h) and not open to the public
Regular Meeting on March 26, 2013 of the Board of Trustees
Fire & Police Disability & Retirement Fund
Page 1 of 4
Minutes - Summary

[THE FOLLOWING SUMMARIZED MINUTES WERE CONDUCTED IN PUBLIC SESSION. THE EXECUTIVE SESSION PORTIONS OF THE MINUTES ARE CONFIDENTIAL AND NOT INCLUDED]

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order the 26th day of March, 2013 at 1:04 p.m.

Board Members Present Included:

Mayor Charlie Hales, Chair
Mr. Justin Delaney, Citizen Trustee
Mr. Jason Lehman, Fire Trustee
Mr. Robert Foesch, Police Trustee
Mr. David Dougherty, Citizen Trustee

Also Present Were:

Ms. Linda Jefferson, FPDR Director
Ms. Kimberly Mitchell, FPDR Claims Manager
Ms. Nancy Hartline, FPDR Finance Manager
Mr. Kenneth A. McGair, Deputy City Attorney
Ms. Derily Bechthold, Deputy City Attorney
Mr. Lorne Dauenhauer, Outside Legal Counsel
Mr. Gabe Sansone, Fire Liaison
Mr. Brett Williamson, Police Liaison
Mr. Matt Larrabee, Actuary, Milliman
Mr. Scott Preppernau, Actuary, Milliman
Mr. Alan Ferschweiler, President, PFPA
Mr. Daryl Turner, President, PPA
Mr. Brian Parman, President, PPCOA
Mr. Hank Kaplan, Attorney
Mr. Nelson Hall, Attorney
Mr. Doug Paul, Retiree
Mr. Dave Short, Retiree
Mr. Del Stevens, Retiree
Other Audience Members

Mayor Hales called the meeting to order. Roll call was of the Board members present was taken. Mr. Delaney made a motion which was seconded by Mr. Lehman and unanimously passed by a roll call vote of 5-0 to approve the January 22, 2013 minutes.

<table>
<thead>
<tr>
<th>Aye</th>
<th>Mr. Dougherty, Mayor Hales, Mr. Delaney, Mr. Foesch, Mr. Lehman</th>
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<td>Nay</td>
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There were no general public comments.
Action Item No. 1 – Annual Adjustment Review

Ms. Hartline explained that she would be discussing the FPDR Two benefit adjustment. She stated that the issues before the Board are 1) to determine the FPDR Two benefit adjustment methodology for 2013 and 2) to decide whether to maintain the annual review of benefit adjustments or determine a methodology for staff to calculate future adjustments. She provided a PowerPoint presentation and went over several considerations for the Board. One of the considerations discussed was PERS changes. She stated that the Board is not constrained by PERS changes to benefit adjustments unless the change affects the maximum rate PERS uses. She also explained that there have been several bills introduced in Salem on PERS adjustments. One particular proposal, SB 882, sets a 2013 adjustment percentage of 1.5 percent for all retirees, and if it does become law, the FPDR Board could not award a benefit increase in 2013 of more than 1.5 percent.

Actuary Matt Larrabee recapped his January board meeting presentation. He then presented information that he hoped would help inform the Board as it considers policy regarding cost-of-living adjustments, or COLA, for FPDR Two retirees. He went over the projected pension benefit payments and went over the effect policies would have on levy adequacy modeling results. He also discussed purchasing power, maintenance and income replacement. Mr. Larrabee stated that his modeling assumes no changes to PERS.

Public comment was then taken.

Mr. Doug Paul addressed the Board and stated that COLA was very important to retirees. He stated that an FPDR retiree’s pension is based on their last 12 months of salary and sick leave, vacation and overtime are not included. He explained that they do not pay into Social Security and, as a result, Medicare is affected. He also stated that they pay their own health insurance, which is over $1,000 per month. He concluded by saying that the two percent COLA had been applied since 1990 and FPDR retirees have been happy with that and have not asked for any additional COLA.

Mr. Dave Short addressed the Board and stated that he was there to speak about awarding retirees COLA for the coming year. He stated that before the composition of the Board was changed, the COLA increases were two percent without question. He then went over his retired pay and increases and the changes over the years.

Mr. Del Stevens addressed the Board and stated that it seems as though the COLA discussion that has been going on for the last two years is all about taking away from retirees. He stated that a contract was approved by the members, City government, the City Attorney, both unions and the people of the City of Portland and for the City to go back now and try to take away something that was granted and approved is dishonorable.
Mr. Stevens then provided the Board with a copy of a letter he had written and provided to the Board in the past. He explained that he wanted to address a couple of things that he did not think were correct. He said that Mr. Delaney had stated that the Board has taken the position that there is no longer a bank for adjusting COLA benefits. He stated that he has attended the past meetings and has not heard the Board take a position not have a bank anymore. Mr. Stevens explained that when he was a trustee of the Board, they were a strong advocate for the members. He added that the Board has become a group that is looking for a way to diminish benefits. He also stated that there was an administrative change that was done by Deputy City Attorney Bill Selby and one that Mr. Stevens says he has quoted in a past meeting about how that came about. He stated that Mr. Selby felt that to just automatically give retirees the same benefits as the PERS people was sublimating the authority of the Pension Board and he wanted to give the Pension Board the say to do that and so it was done through administrative rule. He felt they were still tied to PERS.

Attorney Hank Kaplan addressed the Board and stated that he was representing the PPA, PFFA and PPCOA. He stated that the actuarial analysis presented assumes the Board has full discretion, but it does not address the policy of why they would want to do this. He added that nobody knows where the state legislature is going to end up so the Board needs to make a decision in the absence of any legislation. He stated that there was no reason for the Board to take any pending discussions in the legislature into account in their deliberations. He further added that no matter what the legislature does, there will be serious legal challenges. He went on to state that, as a matter of policy, he thought the Board should follow its long-standing policy. Mr. Kaplan also made some legal comments on pension obligations.

Mr. Daryl Turner, PPA President, addressed the Board and reiterated Mr. Kaplan’s comments. He added that they want to be able to collaborate and work together. He stated that in 2006, the unions and the City worked together on Charter changes and got it done. He stated that they need to work collaboratively again because they have to have sustainability. He added that they must sustain the pension rights of their members. He also stated that the unions want to sit down with Mayor Hales and a committee to talk over ways that will help sustain the Fund, but yet keep the promises the City has made to the retirees.

Mr. Alan Fershweiler, PFFA President, addressed the Board and stated that he wanted to bring forth another issue. He stated that the City has made changes to the retiree health care premium and COLA would help the retirees pay for their health care coverage.

Mr. Foesch stated that he felt one of their main roles as trustees were to ensure benefits for members are reasonable and while it was important to look at the actuarial information, it was important to maintain benefit levels for members.
[THE FOLLOWING SUMMARIZED MINUTES WERE CONDUCTED IN PUBLIC SESSION. THE EXECUTIVE SESSION PORTIONS OF THE MINUTES ARE CONFIDENTIAL AND NOT INCLUDED]

After further discussion, Mayor Hales, Mr. Delaney and Mr. Dougherty felt the benefit adjustment issue should be deferred until the next Board meeting to see if the legislature has made any determinations with regard to any benefit adjustment proposals.

**Action Item No. 2 – Resolution No. 475 – Milliman Contract Authorization**

Ms. Hartline went over the resolution which would authorize the FPDR Director to enter into an agreement for actuarial services with Milliman.

*Mr. Delaney made a motion which was seconded by Mr. Lehman and unanimously passed by a roll call vote of 5-0 to adopt the Resolution No. 475.*

<table>
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<tr>
<th>Aye</th>
<th>Mayor Hales, Mr. Delaney, Mr. Foesch, Mr. Lehman, Mr. Dougherty</th>
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**Information Item No. 1 – Fire Bureau Fitness Updates**

Janet Woodside, Ken Burns and Mark Kaiel from Fire and Rescue provided an update on the Fire Bureau fitness program which the FPDR funded. Ms. Woodside stated that each dollar spent to increase exercise can get about $3.00 in savings. They went over the program, the flexibility measurements that were taken before and after starting the program and the decrease in injury rates.

AT 3:13 P.M. THE BOARD WENT INTO EXECUTIVE SESSION PURSUANT TO ORS 192.660(1)(h). AT 3:26 P.M. THE BOARD OF TRUSTEES CAME OUT OF EXECUTIVE SESSION AND RESUMED THEIR REGULAR ORDER OF BUSINESS.

There being no further business, the meeting was adjourned at 3:26 p.m.

[Signature]

Linda L. Jefferson
Date: May 22, 2013

To: FPDR Board of Trustees

From: Nancy Hartline, FPDR Financial Manager

Re: FPDR Two Benefit Adjustment for 2013 – PERS Legislation Update

Governor Kitzhaber signed Senate Bill 822 on May 6. With its emergency clause, SB 822 is now in effect. It limits the PERS – and by extension the FPDR – 2013 benefit adjustment to 1.5 percent. Subsequent year adjustments in PERS would be a tier of rates and base benefit amounts, with the average adjustment being about 1.5 percent. The rate on the lowest level of base benefits would be 2.0 percent, so the FPDR Board would not be limited to 1.5 percent after 2013.

The Board may authorize a specific benefit adjustment for 2013 up to 1.5 percent. Alternatively, the Board may choose to authorize staff to pay the highest percentage rate payable to sworn PERS retirees in 2013. These actions would have the same effect, given SB 822. The change in the annual Consumer Price Index-All Urban Consumers for Portland-Salem in 2012 was 2.31%.

If the Board agrees, staff proposes to bring Administrative Rule 5.4 for amendment following a 30-day comment period. Since SB 822 deletes the “CPI bank” language in ORS 238.360, the Board may choose to delete the part of 5.4.05 that addresses the bank.

The other change in SB 822 that will effect FPDR members is the elimination of the tax offset benefit for participants who are not subject to Oregon personal income tax. This will effect new retirees upon their retirement and retirees already in pay status effective January 1 for the February 1 payment. Staff will work with the Department of Revenue to determine who is eligible for the benefit in 2014.

The benefit adjustment and tax offset benefit changes together will reduce FPDR’s pension expense for FY 2013-14 by approximately $1 million. While FPDR’s tax revenue in the Proposed Budget is $1.5 million below the Requested Budget because of lower wage increases and PERS rates, staff did not further reduce it for the Approved Budget due to the risk of litigation on SB 822. If the Board directs, staff will move $1 million to contingency for the Adopted Budget so the funds cannot be spent without Council action.
RESOLUTION NO. 476

WHEREAS, there will not be sufficient cash funds in the Bureau of Fire and Police Disability and Retirement (FPDR) and FPDR Reserve Fund to meet pensions and benefits for the months of September through November, 2013; and

WHEREAS, it is in the interest of the FPDR and the general public welfare to join with the City of Portland, Office of Management and Finance, in the borrowing of sufficient monies to meet its obligations until tax monies become available; and

WHEREAS, pursuant to Section 5-202(b) of Chapter 5 of the Charter of the City of Portland, the Board of Trustees is empowered to borrow from the General Fund and the General Fund will join with the FPDR in the sale of tax anticipation notes in an amount not to exceed $28,000,000, said sum or any portion thereof which the FPDR has borrowed to be repaid on or before June 30, 2014; and

NOW, THEREFORE, BE IT RESOLVED that the FPDR be authorized to borrow, as needed, from the General Fund, up to $28,000,000 to meet the obligations of the Board of Trustees.

ADOPTED by the Board of Trustees at its regular meeting on May 28, 2013.

Linda L. Jefferson
Director

fundresol476
RESOLUTION NO. 477

WHEREAS, the Charter requires that the Fire and Police Disability and Retirement Fund (FPDR) retain independent hearings officers to conduct hearings and appellate reviews on its contested claims; and

WHEREAS, the Portland City Council passed Ordinance No. 180693 authorizing an Intergovernmental Agreement with the State of Oregon, Office of Administrative Hearings/Employment Department (OAH) to conduct the FPDR’s contested hearings; and

WHEREAS, the FPDR entered into an Intergovernmental Agreement with OAH which will terminate on June 30, 2013; and

WHEREAS, there are no other entities with the expertise of the OAH to conduct the FPDR’s hearings; and

WHEREAS, the OAH has agreed to conduct the FPDR’s contested hearings and appellate reviews; and

WHEREAS, a draft copy of an Intergovernmental Agreement between FPDR and OAH is attached hereto as Exhibit “A” and by this reference made a part hereof.

WHEREAS, funds for the Intergovernmental Agreement are available within the FPDR budget; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the FPDR, that the FPDR Director be and hereby is authorized to execute and administer an Intergovernmental Agreement substantially in conformance with the agreement which is attached hereto as Exhibit “A” on behalf of FPDR for OAH to conduct hearings and appellate reviews on contested pension and disability claims in an amount not to exceed $400,000 for a four-year period beginning July 1, 2013.

BE IT IS FURTHER RESOLVED by the Board of Trustees of the FPDR that the FPDR Director is hereby authorized to pay for the Intergovernmental Agreement from the FPDR budget.

ADOPTED by the Board of Trustees on the 28th day of May, 2013.

______________________________
Linda L. Jefferson
Director

fund/resolut477(OAH)
INTERGOVERNMENTAL AGREEMENT

This Agreement is between the State of Oregon, acting by and through its OFFICE OF ADMINISTRATIVE HEARINGS/EMPLOYMENT DEPARTMENT, hereafter called Contractor, and THE CITY OF PORTLAND BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT, hereinafter called FPDR.

Administrators of this Agreement are:

<table>
<thead>
<tr>
<th>Employment Department</th>
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<tbody>
<tr>
<td>Administrator:</td>
<td>Karla Forsythe</td>
<td>Director:</td>
</tr>
<tr>
<td>Title:</td>
<td>Chief Administrative Law Judge</td>
<td>Linda L. Jefferson</td>
</tr>
<tr>
<td>Contractor:</td>
<td>Office of Administrative Hearings/Employment Department</td>
<td>FPDR:</td>
</tr>
<tr>
<td>Address:</td>
<td>PO Box 14020</td>
<td>City of Portland Bureau of Fire and Police Disability and Retirement</td>
</tr>
<tr>
<td></td>
<td>Salem, OR 97309-4020</td>
<td>Address:</td>
</tr>
<tr>
<td>Phone:</td>
<td>503-947-1919</td>
<td>Harrison Square Building</td>
</tr>
<tr>
<td>Fax:</td>
<td>503-947-1920</td>
<td>1800 SW First Avenue, Suite 450</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:karla.l.forsythe@state.or.us">karla.l.forsythe@state.or.us</a></td>
<td>Portland, OR 97201</td>
</tr>
<tr>
<td>Phone:</td>
<td>503-823-6823</td>
<td>Fax:</td>
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<tr>
<td></td>
<td>503-823-5166</td>
<td>Email:</td>
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<tr>
<td></td>
<td><a href="mailto:linda.jefferson@portlandoregon.gov">linda.jefferson@portlandoregon.gov</a></td>
<td></td>
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</tbody>
</table>

1. **Effective Date and Duration**
   This Agreement shall become effective on July 1, 2013. Unless earlier terminated or extended, this Agreement shall expire on June 30, 2017.

2. **Statement of Work**
   The Statement of Work, including the delivery schedule for the work, is contained in Exhibit A, attached hereto and by this reference made a part hereof.

3. **Consideration**
   (a) FPDR agrees to pay Contractor, the hourly rates as provided in Exhibit A, Statement of Work, paragraph 1, from available and authorized funds for accomplishing the work required by this Agreement. The maximum, not-to-exceed compensation payable to Contractor under this Agreement, which includes any allowable expenses, is $400,000.

   (b) Any interim payments to Contractor shall be made only in accordance with the schedule and requirements in Exhibit A.

4. **Subcontracts**
   Contractor shall not enter into any subcontracts for any of the Work required by this Agreement, without FPDR's prior written consent. FPDR's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement.

Intergovernmental Agreement
Page 1 of 4

EXHIBIT "A"
The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

5. **Amendments**  
This Agreement may be amended. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by both parties.

6. **Termination**  
(a) This Agreement may be terminated by mutual consent of both parties, or by either party upon sixty (60) days notice, in writing or delivered by certified mail or in person.

(b) The FPDR may terminate this Agreement effective upon delivery of written notice to the Contractor, or at such other date as may be established by the FPDR under any of the following conditions:

1. If FPDR funding is not obtained and continued at levels sufficient to allow for purchase of the specified services. When possible, and when agreed upon, the Agreement may be modified to accommodate a reduction in funds.

2. If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement, or are no longer eligible for the funding proposed for payments authorized by this Agreement.

3. If the Contractor fails to perform the work specified herein, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the FPDR, fails to correct such failures within ten (10) days or such longer period as the FPDR may authorize.

7. **Funds Available and Authorized**  
The FPDR certifies at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs for the first year of this Agreement within the FPDR’s current appropriation and limitation.

8. **Captions**  
The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions of this Agreement.

9. **Access to Records**  
The FPDR and its duly authorized representatives shall have access to the books, documents, papers and records otherwise privileged under the law of the Contractor which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts and transcript.
10. **Compliance with Applicable Law**
Contractor will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V or the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

FPDR’s performance under this Agreement is conditioned upon Contractor’s compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.555, which are incorporated by reference herein. Contractor will ensure that the language “equal opportunity employer/program” and “auxiliary aids and services are available upon request to individuals with disabilities” in English and Spanish appear on each work product.

11. **Sensitive Information**
Except for information that is already a matter of public record, Contractor shall not publish or otherwise disclose, except to FPDR or as otherwise required by law, any information or data obtained hereunder from private individuals, organizations or public agencies in a publication wherein the information or data furnished by or about any particular person or establishment can be identified, except with the written consent of such person or establishment. Information concerning the business of the FPDR, its financial affairs and its relations with its clients and employees, as well as any other information that may be specifically classified as confidential by the FPDR, shall be kept confidential. Contractor shall instruct its employees and subcontractors to keep such information confidential by using the same care and discretion that they use with similar information that the Contractor designates as confidential.

12. **Merger Clause**
This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.
Each party, by the signature below of its authorized representatives, hereby acknowledges that s/he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**SIGNATURES**

**EMPLOYMENT DEPARTMENT**
OFFICE OF ADMINISTRATIVE HEARINGS

By: __________________________
Karla Forsythe
Chief Administrative Law Judge

Date: ________________________

**CITY OF PORTLAND**
BUREAU OF FIRE AND POLICE
DISABILITY AND RETIREMENT

By: __________________________
Linda L. Jefferson
Director

Date: ________________________

APPROVED AS TO FORM:

______________________________
James H. Van Dyke, City Attorney

Date: ________________________
EXHIBIT “A”

INTERGOVERNMENTAL AGREEMENT

BETWEEN

FPDR: CITY OF PORTLAND, BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT

AND

CONTRACTOR: STATE OF OREGON, OFFICE OF ADMINISTRATIVE HEARINGS/EMPLOYMENT DEPARTMENT

STATEMENT OF WORK:

CONTRACTOR AGREES TO:

1. Conduct all contested disability and pension claim hearings and appellate reviews arising from requests for hearing or appeals of Final Orders concerning disability determinations or pension benefit claims filed under Chapter 5 of the Charter of the City of Portland, Oregon and referred to the Contractor by FPDR in accordance with Charter provisions and FPDR’s administrative rules. Those services include, but are not limited to, the following:

   a. Promptly scheduling prehearing conferences and hearings, and issuing notices to FPDR’s attorney and the Member or the Member’s attorney or representative;

   b. Conducting the hearing or pre-hearing conference by telephone or in-person;

   c. Supplying one or more hearing officers who are members of the Oregon State Bar with relevant disability and/or pension training and experience;

   d. Continuing to appoint members of the appellate panel who are members of the Oregon State Bar and who have relevant disability training and experience, to terms consistent with Chapter 5 of Portland’s Charter;

   e. Maintaining records identifying each hearings officer (administrative law judge) and appellate panel member, and the terms of each appellate panel member’s assignment;

   f. Promptly delivering to the parties and the FPDR Director a copy of all Final Orders;
g. Returning to FPDR all records of the case either once the hearings officer's order becomes final by operation of law or 70 days after issuance of a final order on appeal, if FPDR has not notified Contractor that a petition has been filed with the Circuit Court for Writ of Review;

h. Appointing a certified or qualified interpreter whenever it is necessary to interpret the proceeding.

2. Hearing dates will be set as soon as reasonably practicable after referral. If FPDR or the Member has an emergency, every effort will be made to set hearings as soon as possible.

3. The hearings officers and appellate panel shall issue orders consistent with applicable law, including but not limited to FPDR administrative rules.

THE FPDR AGREES TO:

1. Reimburse the Contractor for these services under the schedule of fees and funding mechanisms established by ORS 183.655 and ORS 183.665.

2. Reimburse the Contractor for all appropriate and actual costs incurred to provide said services. Such costs include, but are not limited to:
   • interpreter fees;
   • postage;
   • long-distance telephone calls; and
   • reasonable copying costs

3. At the time of referral, forward to the Contractor the file and any other documents relevant to the contested case hearing, together with an information sheet containing names, addresses, telephone numbers of parties (including updating Contractor on new names, addresses and telephone numbers of parties).

CONSIDERATION:

1. Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of $400,000 for the term of this Agreement, which includes any allowable expenses and any travel and other expenses for reimbursement when noted below.

2. Interim payments shall be made to Contractor following FPDR’s review and approval of invoices submitted by Contractor.

3. Contractor shall not submit invoices for, and FPDR will not pay, any amount in excess of the maximum compensation amount set forth above. The
maximum compensation may be increased by amendment of this Agreement. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement, as it may be amended from time to time in accordance with its terms.

4. Contractor shall submit monthly invoices for work performed. The invoices shall describe all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed. Contractor shall send invoices to FPDR’s contract administrator and with contract number noted.

5. If, while this Agreement is in effect, Contractor increases the hourly rates being charged to FPDR, that increase may only be applied with FPDR’s written consent. If FPDR chooses not to consent to the increased rates, FPDR may terminate Contractor’s services under this Agreement.
By Ordinance No. _____
(_____, 2013)

SPECIAL COMPLIANCE AMENDMENT

TO

FIRE AND POLICE DISABILITY, RETIREMENT, AND DEATH BENEFIT PLAN

In order to comply with changes in the requirements for tax-qualified status under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") made by the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act"), the City of Portland's Fire and Police Disability, Retirement, and Death Benefit Plan, set out in Chapter 5 of the City Charter (the "Plan"), is retroactively amended by ordinance by the City Council of Portland pursuant to authority granted to it under Section 5-403(c) of the Plan.

Article I

Death Benefits

Effective on and after January 1, 2007, if a Member dies while performing qualified military service under USERRA, the Member's beneficiary(ies) will be entitled to any additional benefits provided under the Plan as if the Member had resumed service as an Active Member and then terminated employment on account of death. Moreover, the Plan will credit the Member's qualified military service as service for vesting purposes, as though the Member had resumed service as an Active Member under USERRA immediately prior to the Member's death. The Member will not, however, receive accruals for the period of military leave.

Article II

Differential Wage Payments

Effective on and after January 1, 2009, in the event the City pays a Member differential wage payments, as defined in Section 3401(h)(2) of the Code, (1) the Member will be treated as Active Member with respect to such differential wage payments; (2) the differential wage payments will be included in a Member's compensation for purposes of limitations under Section 415 of the Code; and (3) the Plan will not be treated as failing to meet the requirements of any provision described in Section 414(u) of the Code by reason of any contribution or benefit which is based on the differential wage payment.

* * * * *