

**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, July 25, 2013 – 1:00 p.m. to 2:00 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 – June 25, 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 Resolution No. 478 – Anderson et al. Settlement and Mutual Release Agreement
 - o Issue: Proposed Settlement and Mutual Release Agreement on the Anderson, et al. pension overpayment recovery case has been prepared for the Board's review.
 - o Expected Outcome: Board adopts Resolution No. 478.

INFORMATION ITEMS

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

- 1 FPDR Updates
- 2 Future Meeting Agenda Items:
 - o Administrative Rule Updates
 - o Legal Update
 - o Trustee Code of Ethics

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) 823-6823 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 June 25, 2013 of the Board of Trustees **PUBLIC SESSION**
Fire & Police Disability & Retirement Fund
Page 1 of 6
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 on the 25th day of June, 2013 at 1:05 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
Ms. Sheri Miller, FPDR Sr. Business Systems Analyst
Mr. Sam Hutchison
Ms. Derily Bechthold, Deputy City Attorney
Mr. Lorne Dauenhauer, Outside Legal Counsel
Ms. Gail Shibley, Chief of Staff, Mayor Hales
Mr. Gabe Sansone, Fire Liaison
Mr. Brett Williamson, Police Liaison
Fire Chief Erin Janssens, Portland Fire & Rescue
Mr. Alan Ferschweiler, President, PFFA
Mr. Daryl Turner, President, PPA
Mr. Nelson Hall, Attorney
Mr. Dave Short, Retiree
Mr. Del Stevens, Retiree
Ms. Maxine Bernstein, Oregonian
Other Audience Members

Mayor Hales called the meeting to order. Roll call of the Board members present was taken. ***Mr. Delaney made a motion which was seconded by Mr. Dougherty and passed by a unanimous roll call vote of 5-0 to approve the March 26, 2013 minutes.***

<i>Aye</i>	<i>Mr. Dougherty, Mayor Hales, Mr. Delaney, Mr. Foesch, Mr. Lehman</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>None</i>

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General Public Comment:

Attorney Nelson Hall addressed the Board. He commented on the rulemaking process and brought up the collaborative need when it comes to rulemaking. He gave examples of the rulemaking process in PERS and workers' compensation and asked that the Board not entertain amendments or rule changes at its July 23, 2013 Board meeting, but rather allow for additional time for public comment and to hear the matter at their September meeting. He asked that people be invited to participate and have a collaborative effort to address the proposed rules.

Mr. Del Stevens then addressed the Board and asked whether the Board had considered his suggestion at the last meeting regarding format change to allow public comments after the Board has taken their actions and voiced their opinions. Mayor Hales stated that the Board has considered Mr. Stevens' suggestion and will continue looking at how to make the meeting as open as possible.

Mr. Stevens then stated that his next issue was regarding the taxability issue of members that are on disability. He questioned why, when an FPDR member reaches 30 years of service and if they are on disability, their pension is converted from a disability to a retired pension. He stated that at that point, the member starts paying taxes on their retirement. He added that he has done some research and is aware that in other states disabled members are not paying taxes on their benefit and asked why Portland members are treated differently. He then read part of a letter he sent to Finance Manager Nancy Hartline into the record. Mr. Stevens made a formal request that this issue be looked at.

Mr. Dauenhauer stated that from the FPDR's perspective, whether it is a disability retirement or a "retirement" retirement, there is no tax difference to the City. He added that there is a difference to the disability retiree. He also stated that there is a distinction made at the IRS level whether something is truly disability versus retirement because one is taxable and one is not. He added that from the IRS' standpoint, when the benefit converts, whether that crosses the rubicon to become taxable. Mayor Hales stated that this issue is worth getting a legal review. Mr. Dougherty stated that he would like to see an example of what happens at the point of conversion and how the benefit changes and whether there are any changes in death benefits at that time. Mr. Dauenhauer also asked Mr. Stevens to provide them with any research he has as to what other funds are doing.

Action Item No. 1 – Fund Administrator (FPDR Director) Position:

Mayor Hales stated that the City conducted a search and process for a new FPDR Director and came up with a strong pool of finalists. He then introduced Sam Hutchison as his appointee. He stated that the Board would need to approve the appointment and then it would go to City Council for approval. Mayor Hales stated that Mr. Hutchison

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brings an extensive background in pension and disability issues and pointed out that he had 25 years of employee benefits experience, including disability, workers compensation, as well as many other technical areas of pension and disability work. Mr. Hutchison then addressed the Board and stated that he has an extensive background in disability, he loves to learn and do new things and he is glad to be a part of the FPDR.

Public Comment was then taken:

Mr. Stevens stated that he just wanted to make sure that the Board acknowledges the interest of the retirees, the people currently working, the union's representatives, widows and family members who rely on the FPDR for their benefits. He added that he was going to suggest an open process where candidates could be available in some kind of forum where they could meet and talk with him to share their concerns.

Mayor Hales stated that he liked the idea of having a get acquainted opportunity with both the retirees and members of both bureaus. Mr. Hutchison stated that he would love to do so and added that he will speak with Ms. Jefferson to see what they can set up as soon as he is officially into the position and working. Mr. Foesch added that both he and the Fire trustee were both involved in the hiring process.

Mr. Delaney made a motion which was seconded by Mr. Lehman and unanimously passed by a roll call vote to approve the Mayor's appointment to the new FPDR Fund Director.

<i>Aye</i>	<i>Mayor Hales, Mr. Delaney, Mr. Foesch, Mr. Lehman, Mr. Dougherty</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>None</i>

Information Item No. 1 – State of FPDR Presentation:

Ms. Hartline went over the FPDR mission and vision statements and provided a program overview and as well as changes that have been implemented. An overview of the disability claim administration was then provided by Ms. Mitchell. She went over a typical claim scenario, the compensability criteria, and what happens when a claim is denied and appealed. She also provided information on the number of claims filed and that for FY 2013-13, 96 percent of claims were approved and 4 percent were denied. Ms. Hartline went over the pension program, went over pension expenditures and goals for the future. Ms. Miller provided an update of the database replatform and technology goals.

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Police Liaison Brett Williamson and Fire Liaison Gabe Sansone provided their comments on their work and their relationship with FPDR. Mr. Williamson stated that over the past year to two years he felt like there was distance between the liaisons and FPDR. However, he stated that lately that has changed and he looks forward to working with FPDR staff again and fulfilling the liaison function again. He also wanted to thank the staff for the treatment of a friend and co-worker who was seriously injured. He added that staff's treatment of that officer has exceeded any expectations he had. He was asked by Mr. Foesch about the return to work program and Mr. Williamson stated that he would like to see it expanded in the future. Mr. Sansone wanted to welcome Mr. Hutchison and stated that he looks forward to the opportunity to serve the members together with him at the helm. He also wanted to say he was sorry to see Ms. Jefferson go. He stated that she was easy to work with, well respected and loved by her staff. He added that while he is new to the position, from what he has observed of the process, it is working well. Mr. Sansone also commented on the light duty positions and stated that they currently have four members on light duty at the Fire Bureau. He felt the Bureaus and the members are well served and things are running smoothly the vast majority of the time.

Fire Chief Erin Janssens wanted to take a minute to thank the staff for their outstanding report and for the injury benefits, medical benefits, to public safety workers and the work force. She stated that they have a very good partnership with the liaison and staff. She also raised the importance of the return to work program which has been instrumental in bringing employees back on board. She also thanked Ms. Jefferson for her years of service, her leadership and partnership in the City.

Alan Ferschweiler, President, PFFA pointed out the graph on the State of FPDR presentation and stated that there was a big change from the pre-2006 numbers to the new changes that were implemented on January 1, 2007. He commented on why that number was so different in his view. He added that the health and wellness program that the City has implemented since then and the health and wellness of your firefighters speak specifically to that as well. He also stated that the safety program that was implemented by the Fire Bureau has made a difference. He added that while he appreciates the graph and presentation, there are some anomalies going around and we should be aware of those. Mr. Ferschweiler then stated that with rulemaking scheduled for the July Board meeting, he would like to see some collaborative effort and both he and Mr. Turner (for PPA) would be happy to sit down to have some conversations regarding proposed rules.

Mr. Stevens then addressed the Board regarding the issue of the solvency of the Fund. He raised questions regarding the graphs from Milliman that were presented at the last meeting. He added that the Milliman report brings up issues of eventually reaching and even surpassing the 2.8 millage rate. He stated that he is concerned about the fact that five years ago the Pension Board put on the ballot a measure that allowed new hires to go into PERS and to be funded by the FPDR. He also stated that there is a bill being debated in the legislature, HB 33709 that would prohibit one pension system from paying another

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pension's obligation. Mr. Stevens stated that he believes the issue of having new members in PERS and being paid out of the FPDR millage rate needs to be looked at. He asked that someone research the issue and provide a legal basis for it.

Mayor Hales stated that he thought the legal basis that that has already been established. He added that City Council, at that time, was probably the right entity to ask that question. However, that the issue was already referred to the voters and it was not particularly helpful for the Board to raise that legal question themselves now.

Mr. Delaney stated that he agreed with Mayor Hales and did not think there was any point in looking into the legality of the issue. However, he does have concern about the FPDR bumping up against the cap but City Council referred the measure and the voters of Portland approved and measure that did call for the funding of the new PERS police officers and firefighters.

Mr. Stevens stated that another issue he wanted to bring up was about former trustee Yvonne Deckard. He stated that he would like to know if she was in a paid status and, if so, what that paid status was. Mayor Hales stated that the City of Portland is not paying her anything.

Information Items No. 2 – FPDR Updates:

Mayor Hales then asked Ms. Jefferson whether there was a need for speed on the proposed changes to the administrative rules. Ms. Jefferson stated that the rules have been in a state of set aside for about a year and a half and that some changes are new changes and some are changes that have been discussed for a while.

After further discussion, the Board decided to hold any action on the proposed administrative rules until their September Board meeting. Mayor Hales stated that holding the rules until September would give the new director, staff and labor a chance to sit down and air any remaining issues, if there are any. Mr. Delaney confirmed with staff that they will figure out how to involve Mr. Hall and get some advance review to the rules.

The next Board meeting was rescheduled from July 23 to July 25, 2013 at 1:00 p.m. The August meeting will be cancelled.

Ms. Bechthold addressed the Board and stated that at the last Board meeting, Attorney Kevin Keaney submitted a letter about Resolution 477 and Mr. Lehman raised some questions concerning compliance with the Charter regarding the Intergovernmental Agreement (IGA) with the Office of Administrative Hearings (OAH). Ms. Bechthold stated that Section 5-202 of the Charter requires the Board to establish an independent hearing panel as well as to retain hearings officers. She stated that she wanted to point out

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that Resolution 477 by reference incorporates the IGA, as well as Exhibit A, which is the statement of work. She added that Section 1 (c) and (d) of the statement of work does require OAH to provide hearings officers and appellate panel members that have relevant disability training experience, as well as members that are licensed by the Oregon state bar and as such the requirement of the Charter is being met. Ms. Bechthold then stated that there has been an issue about the appointment of the appellate panel members and Section 5-202(c) of the Charter requires the Board to establish an independent panel and that requirement is met by FPDR contracting with OAH so they are establishing an independent panel. She went on to state that the appointment procedures in 5-202(c) are term limits for each of the panel members and that requirement is also met. Ms. Bechthold explained that the statement of work does require OAH to appoint the members for the stated terms that are required under Chapter 5 of the Charter and she wanted to assure the Board that those requirements are being met and they are in compliance.

Mr. Foesch asked whether there was any "push back" from OAH regarding the good cause clause. Ms. Bechthold explained that she recommended that the good cause clause be dealt with in the administrative rules instead of the IGA. She added that the agreement requires OAH to comply with the Charter and rules so to the extent the rule is adopted, it will automatically become a part of the process.

There being no further business, the meeting was adjourned at 3:30 p.m.


Linda L. Jefferson

RESOLUTION NO. 478

WHEREAS, on or about July 2008, the staff of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that the FPDR had been incorrectly calculating a tax offset benefit to retirees causing an overpayment of benefits; and

WHEREAS, the FPDR Board of Trustees at their September 2008 meeting discussed the potential impact of the overpayment on the Plan's tax qualified status and passed a motion to seek a determination from the Internal Revenue Service on correcting the calculation; and

WHEREAS the FPDR Board of Trustees sought to correct the prior overpayments and subsequently took a number of steps to preserve the tax qualified status of the plan, minimize the impact on the affected Members, and recover the overpaid benefits by holding back cost-of-living adjustment ("COLA") increases. Because the overpayments violated the terms of the tax qualified plan, the overpayments jeopardized the tax qualified status of the Plan.

WHEREAS, the FPDR then began recovery of previously overpaid benefits in August of 2011 after extensive discussions with the Internal Revenue Service by holding back COLA increases or making actuarially-based adjustments. The Board of Trustees retained outside tax counsel to help in its dealings with the IRS. The outside tax counsel submitted a Voluntary Compliance Application with the IRS. The IRS approved the holdback actions to maintain the tax qualified status of the Plan.

WHEREAS a group of Members representing a class of FPDR Two and FPDR One retirees objected to the holdbacks which resulted in the filing of a Complaint in Multnomah County Circuit Court (Case No. 1108-11052) against the City of Portland by and through the FPDR. Plaintiffs filed their Complaint alleging that the method of recovering the overpaid benefits through the holdbacks violated ORS 652.610. The City asserted counterclaims asking that the overpaid benefits be reduced to judgment. The parties filed cross motions for summary judgment; and

WHEREAS, on July 26, 2012, Judge Henry C. Breithaupt heard argument on the cross motions for summary judgment and issued an Order in favor of the Members but not resolving the City's counterclaims; and

WHEREAS, a new VCP Application was submitted to the IRS, the IRS approved the terms of the settlement, and the City and the Members would like to resolve this dispute and have reached a proposed settlement which is set forth in the Settlement and Mutual Release Agreement, attached to this resolution as Exhibit "A". The City Attorney's Office and the Internal Revenue Service agree that this settlement is reasonable and will preserve the FPDR Plan's tax qualified status; and

NOW, THEREFORE, BE IT RESOLVED that the Settlement and Mutual Release Agreement (the "Agreement") attached hereto as Exhibit "A" is hereby accepted and the FPDR Director is authorized to execute said agreement on behalf of the FPDR Board of Trustees and FPDR staff and the City Attorney's Office are authorized to implement the agreement by taking all necessary actions contemplated in the Agreement.

ADOPTED by the Board of Trustees on the ____ day of July, 2013.

Sam Hutchison
FPDR Director

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

WHEREAS, Multnomah County Circuit Court, Case No. 1108-11052 potentially impacts 919 City of Portland Fire and Police Disability, Retirement and Death Benefit Plan ("FPDR") retirees.

WHEREAS, the Court has approved a motion for class certification and a motion to add an additional party, Patrick D. McMahon, an FPDR One retiree.

WHEREAS, any settlement may be subject to the approval of the Fire and Police Disability, Retirement and Death Fund Board ("Board") and acceptance by the Internal Revenue Service ("IRS") through a Voluntary Compliance Application ("VCP") or other mechanism.

WHEREAS the current plaintiffs are retired police officers and firefighters who were overpaid pension benefits because of a miscalculation by the prior staff of the City of Portland Fire and Police Disability, Retirement and Death Benefit Plan.

WHEREAS the FPDR Board of Trustees sought to correct the prior overpayments and subsequently took a number of steps to preserve the tax qualified status of the plan, minimize the impact on the affected Members, and recover the overpaid benefits by holding back cost-of-living adjustment ("COLA") increases. Because the overpayments violated the terms of the tax qualified plan, the overpayments jeopardized the tax qualified status of the plan.

WHEREAS, with respect to the FPDR Two retirees, in August of 2008, the FPDR Board stopped the overpayment of plaintiffs' benefits by correctly calculating the tax benefit offset provided in ORS Chapter 238 rather than the incorrect formula they had been using. The FPDR then began recovery of previously overpaid benefits in August of 2011 after extensive discussions with the Internal Revenue Service by holding back COLA increases or making actuarially-based adjustments. The Board of Trustees retained outside tax counsel to help in its dealings with the IRS. The outside tax counsel submitted a Voluntary Compliance Application with the IRS. The IRS approved the holdback actions to maintain the tax qualified status of the Plan. Because the COLA holdback has presently been rejected by the Courts, a new VCP Application will need to be submitted to the IRS approving any terms of a settlement.

WHEREAS, from 1995 until 2008, the five plaintiffs were overpaid benefits in excess of \$19,500. However, that amount is only a fraction of the total overpayments made to all Members and beneficiaries of the FPDR, which is approximately \$2.9 million.

WHEREAS plaintiffs' objection to the holdbacks resulted in the filing of a Complaint in Multnomah County Circuit Court. Plaintiffs filed their Complaint alleging that the method of recovering the overpaid benefits through the holdbacks violated ORS 652.610. Defendant asserted counterclaims asking that the overpaid benefits be reduced to judgment. The parties filed cross motions for summary judgment.

WHEREAS, on July 26, 2012, Judge Henry C. Breithaupt heard argument on the cross motions for summary judgment and an Order was entered as follows:

1. Plaintiffs' motion for partial summary judgment regarding ORS 652.610 is GRANTED. The City's recoupment of FPDR retiree overpayments through the withholding of retiree pension benefits equal to the cost-of-living adjustments violates ORS 652.610.
2. Plaintiffs' motion for summary judgment regarding defendant's counterclaims is DEFERRED.
3. Defendant's motion for summary judgment regarding ORS 652.610 is DENIED.
4. Defendant's motion for summary judgment regarding defendant's counterclaims is DEFERRED.
5. Defendant is granted leave to re-plead its counterclaims, which will then be subject to further proceedings. Defendant shall file an amended answer on or before August 22, 2012.

WHEREAS, with respect to FPDR One retirees, recovery of overpayments is being achieved through a method of actuarial recoupment. Under this approach, the overpayment is recovered actuarially by amortizing the recoupment over an overpaid retiree's remaining life expectancy; plaintiffs assert that the actuarial recoupment also violates the requirements of ORS 652.610.

WHEREAS at the time of this Agreement, there are 55 living FPDR One retirees.

WHEREAS as the case presently stands, plaintiffs' counsel is entitled to an award of attorney fees. The applicable section of the wage claim statute that provides for such an award is ORS 652.615.

WHEREAS, if this matter is resolved, there is significant legal work that would need to be completed in the future to complete the settlement. That work would include class notifications and preparation of related settlement documents.

WHEREAS, if the matter is not resolved, the expense of pursuing counterclaims against class members will be costly and time consuming.

IT IS, THEREFORE, AGREED:

I

FOR THE SOLE CONSIDERATION enumerated below, the parties, which include all plaintiffs, defendants and class members, hereby mutually release and forever discharge one another, as well as their agents, officers, employees, officials, heirs, assigns, and all other persons, firms, corporations or other entities liable or who might be claimed to be liable from any and all claims for damages and/or injuries from or relating to the overpayment and subsequent recoupment of overpaid retirement benefits from the Fire and Police Disability, Retirement and Death Benefit Plan that is the subject of a lawsuit filed in Multnomah County Circuit Court, Case No. 1108-11052. This mutual release shall also apply to all class members approved by the court in this matter.

II

IT IS UNDERSTOOD AND AGREED that the parties have read this Settlement and Mutual Release Agreement and that it is fully understood and voluntarily accepted for the purpose of making a full and complete settlement and compromise of any and all claims arising out of the above-described matter in paragraph I, in whatever legal form or theory plaintiffs might assert, whether disputed or otherwise, and in particular including, but not limited to, those matters set forth in the complaint of Case No. 1108-11052 in the Circuit Court of the State of Oregon for the County of Multnomah.

III

IT IS UNDERSTOOD AND AGREED that plaintiffs are retired police officers and firefighters who were overpaid pension benefits because of a miscalculation by the prior staff of FPDR. In 2008, when the error was discovered, the FPDR Board stopped the overpayment of plaintiffs' benefits and recalculated the tax benefit offset. In August 2011, FPDR began recovery of previously overpaid benefits after extensive discussions with the IRS.

IV

IT IS UNDERSTOOD AND AGREED that FPDR Members and/or beneficiaries who received an overpayment of benefits and voluntarily repaid FPDR the overpaid amount either in a lump sum or by signing an authorization form agreeing to a repayment plan prior to August 29, 2012 (the date the Motion for Class Certification was filed by plaintiffs' counsel), are not included in the class and will not be given that option nor will they be sent a class notice.

V

IT IS UNDERSTOOD AND AGREED that all plaintiffs and approved class members waive all claims for penalties and pre-judgment interest.

VI

IT IS UNDERSTOOD AND AGREED that plaintiffs were overpaid benefits in the following amounts:

Tim Anderson	\$4,004.96
Michael Cullivan	\$5,493.83
James Leinweber	\$2,531.64
Clara Renfro	\$3,025.16
Terry Wagner	\$4,452.74

VII

IT IS UNDERSTOOD AND AGREED that FPDR will recover sixty percent (60%) of the overpaid pension benefits from plaintiffs and all approved class members.

VIII

IT IS UNDERSTOOD AND AGREED that the recovery of the overpaid monies will continue with FPDR's methodology for recouping overpayments by holding back the Members' cost of living adjustments and/or actuarial reduction until the sixty percent (60%) recovery is achieved.

IX

IT IS UNDERSTOOD AND AGREED that if FPDR has already recovered more than sixty percent (60%) of the overpaid benefits from any plaintiff or class member, the excess over sixty percent (60%) will be refunded to the plaintiff or class member within ___ days after the Court gives final approval of this class settlement.

X

IT IS UNDERSTOOD AND AGREED that notices have been sent to all class members regarding this proposed settlement. The notice includes an option for any class member that signed an authorization agreeing to a repayment plan after August 29, 2012, to sign a reaffirmation authorization regarding the lump sum or completed payments.

XI

IT IS UNDERSTOOD AND AGREED that the notice sent to class members includes the amount they were overpaid, and the amount the defendant will retain.

XII

IT IS UNDERSTOOD AND AGREED that the Court has ultimate authority to determine the language of the notice and any other communications with members of the certified class.

XIII

IT IS UNDERSTOOD AND AGREED that FPDR will pay plaintiffs' attorneys' fees in the sum of One Hundred Ninety-Nine Thousand Six Hundred Forty-Two and 50/100 Dollars (\$199,642.50), plus costs in the amount of Five Thousand One Hundred Seventy-Seven and 43/100 Dollars (\$5,177.43), through February 28, 2013. The City of Portland further agrees that all challenges to the attorneys' fees will be waived. Plaintiffs and their counsel agree to give up the right to add a multiplier to the attorneys' fees.

XIV

IT IS UNDERSTOOD AND AGREED that beginning March 1, 2013, plaintiffs' attorneys' fees will be billed at fifty percent (50%) of the rates used to determine the pre-March 1, 2013 fees, with a cap of Fifty Thousand and no/100 Dollars (\$50,000.00). It is further agreed that the amount of attorney fees from March 1, 2013, forward can be challenged at the conclusion of the case. If the IRS does not approve the new VCP Application, then no fees shall be paid as part of this Agreement and all plaintiffs' fees are subject to objection and review by the Court.

XV

IT IS UNDERSTOOD AND AGREED that the City's pension counsel has filed, and the IRS has approved, a new VCP Application to the IRS setting forth the terms of the settlement contained in this Agreement.

XVI

IT IS UNDERSTOOD AND AGREED that all terms of this Agreement are contingent upon approval of the IRS. If the IRS approves the terms of this Agreement, then the Agreement is binding in all respects. If the IRS does not approve the terms of this Agreement, then the Agreement is void and no aspect of the Agreement is binding in any way on any person and/or party to the case and Multnomah County Circuit Court Case No. 1108-11052 shall go forward and all parties shall be permitted to assert any and all claims and defenses of any kind whatsoever allowed by law without limitations.

XVII

IT IS UNDERSTOOD AND AGREED that the terms of this Agreement are subject to Court approval. If the Court does not approve the terms of this Agreement, then the Agreement is void and no aspect of the Agreement is binding in any way on any person and/or party to the case.

XVIII

IT IS UNDERSTOOD AND AGREED that this Settlement Agreement pertains only to the issue of overpayment of pension benefits and no other issues related to FPDR pension benefits.

XIX

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Settlement and Mutual Release Agreement is intended to, and does, cover not only all known losses and damages, but any further losses and damages arising out of the facts alleged in the complaint not now known or anticipated which may later develop or be discovered including all effects and consequences thereof.

XX

IT IS UNDERSTOOD AND AGREED that the payments made to the plaintiffs and class members under this Agreement are not to be construed as an admission of liability. The City of Portland expressly denies liability to the undersigneds, or any other person for injuries or damages arising out of the aforementioned recoupment of overpaid retirement benefits. Plaintiffs expressly deny liability on the counterclaims asserted by the City.

XXI

IT IS UNDERSTOOD AND AGREED that except as specified herein, all expenses incurred to date or which will be incurred in the future, which are related in any way to claims being released herein, have either been paid or will be paid from the proceeds of this settlement

and that the plaintiffs will agree that the City of Portland, its agents, employees and assigns have satisfied any claim for any such expense whenever incurred.

XXII

IT IS UNDERSTOOD AND AGREED that plaintiffs agree to dismiss their lawsuit entitled Tim Anderson, et al. v. City of Portland, Multnomah County Circuit Court Case No. 1108-11052, with prejudice and release their claims as provided in paragraph I.

XXIII

IT IS UNDERSTOOD AND AGREED that the City of Portland agrees to release its counterclaims filed in the case entitled Tim Anderson, et al. v. City of Portland, Multnomah County Circuit Court Case No. Case No. 1108-11052, with respect to all named plaintiffs and class members.

XXIV

THE TERMS SET FORTH HEREIN are contractual and not a mere recital.

XXV

IT IS UNDERSTOOD AND AGREED THAT the parties reserve the right to add mutually agreeable provisions to this written Settlement Agreement.

CITY OF PORTLAND

By:
Dated: _____, 2013

Tim Anderson
Dated: _____, 2013

State of OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this _____ day of _____,
2013, by Tim Anderson.

Notary Public – State of Oregon
Commission No.:
Commission Expiration:

Michael Cullivan
Dated: _____, 2013

State of OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this _____ day of _____,
2013, by Michael Cullivan.

Notary Public – State of Oregon
Commission No.:
Commission Expiration:

James Leinweber
Dated: _____, 2013

State of OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this _____ day of _____,
2013, by James Leinweber.

Notary Public – State of Oregon
Commission No.:
Commission Expiration:

Clara Renfro
Dated: _____, 2013

State of OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this _____ day of _____,
2013, by Clara Renfro.

Notary Public – State of Oregon
Commission No.:
Commission Expiration:

Terry Wagner
Dated: _____, 2013

State of OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me this _____ day of _____,
2013, by Terry Wagner.

Notary Public – State of Oregon
Commission No.:
Commission Expiration:

APPROVED:

Henry J. Kaplan, OSB #83055
Of Attorneys for Plaintiffs