

Agenda

Firefighters' Pension Board Special Meeting
Tuesday, July 16, 2019 - 9:00 AM
Richland City Hall | The Hanford Conference Room 227
625 Swift Boulevard, Richland WA 99352

Firefighters' Pension Board Special Meeting No. 790

Call to Order:

Attendance:

Board Members: Councilmember Ryan Lukson, Administrative Services Director Cathleen Koch, Finance Director Brandon Allen, Fire Representatives: Dan Downs and Terry Thrall

Financial Reports and Investments: (Approve to Accept and File by Motion)

1. Financial Statements for January-June 2019
 - Financial Statements for January-May 2019 (Final)
 - Financial Statements for June 2019 (Preliminary)

Closed Session: (Motion to Recess)

Medical/Dental/Vision/Medicare/Other Claims (Approve by Motion):

1. Claims
 - Medicare Claims
 - Remaining claims to be presented when secretary has processed such claims

Unfinished Business Items: (Approve by Motion)

1. Firefighters' Pension Secretarial Contract Options
 - Discuss Firefighters Pension Secretary Contract Options
 - Discuss and Approve Contract for Secretarial Services
2. 2019 Firefighter Representative Election

Boardmember Comments:

Adjournment: (Motion to Adjourn)

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FIREFIGHTERS' PENSION BOARD

AGENDA ITEM COVERSHEET

Meeting Date: 7/16/2019

Agenda Category: Financial Reports and Investments

Subject:

Financial Statements for January-June 2019

- Financial Statements for January-May 2019 (Final)
- Financial Statements for June 2019 (Preliminary)

Department:
Firefighters' Pension Board

Document Type:
Expenditures

Recommended Motion:

Summary:

1. Financial Statements for January-May 2019 (Final)
2. Financial Statements for June 2019 (Preliminary)

Attachments:

1. 2019 Fire Investment Summary
2. Lord Abbett History AND Dividends
3. 2019 Fire Income & Expense Statement

CITY OF RICHLAND
FIRE PENSION PLAN INVESTMENT SUMMARY
June 30, 2019

Interest Paid	Estimated Monthly Interest	Current Yield	(Par) Amount of Shares	Original CD/Loan Amount	Description	Original Cost - Less Loan Payments	Market Value	Estimated Gain/(Loss)	Maturity Date
Monthly	1,598.26	*	58,594.76		Lord Abbett Mutual Fund	629,329.98	474,035.35	(155,294.63)	
Monthly	354.83	2.129%		200,000.00	CD Gesa Credit Union	200,000.00	200,000.00		1/5/2021
Annual	37.81	5.25%		204,150.00	Interfund Loan Richland LID #186-193	8,642.00	8,642.00		12/31/2025
Semiannual	183.33	2.20%		100,000.00	Bond Proceeds (Federal Home Loan Bank)	<u>100,000.00</u>	<u>100,000.00</u>	<u>(1,988.20)</u>	10/24/2022
Total Investments						<u>937,971.98</u>	<u>782,677.35</u>	<u>(157,282.83)</u>	

*Lord Abbett current yield (4.046%) based on Market Value

*Lord Abbett current yield (3.048%) based on Original Cost

**LORD ABBETT HISTORY OF INVESTMENT VALUES AND DIVIDENDS
FIRE PENSION**

MONTH	YEAR	ORIGINAL COST	CURRENT VALUE	SHARE PRICE	GAIN OR (LOSS)	CURRENT BALANCE AS A % OF COST	AMOUNT OF DIVIDEND	DIVIDEND BASED ON ORIGINAL COST	DIVIDEND BASED ON CURRENT VALUE
JULY	2015	\$ 629,330	\$ 464,656	\$ 7.93	(\$164,674)	73.83%	\$ 1,672.64	3.189%	4.320%
AUGUST	2015	\$ 629,330	\$ 452,352	\$ 7.72	(\$176,978)	71.88%	\$ 1,705.96	3.253%	4.526%
SEPTEMBER	2015	\$ 629,330	\$ 442,976	\$ 7.56	(\$186,354)	70.39%	\$ 1,673.37	3.191%	4.533%
OCTOBER	2015	\$ 629,330	\$ 451,180	\$ 7.70	(\$178,150)	71.69%	\$ 1,662.64	3.170%	4.422%
NOVEMBER	2015	\$ 629,330	\$ 444,148	\$ 7.58	(\$185,182)	70.57%	\$ 1,641.92	3.131%	4.436%
DECEMBER	2015	\$ 629,330	\$ 433,601	\$ 7.40	(\$195,729)	68.90%	\$ 1,726.23	3.292%	4.777%
JANUARY	2016	\$ 629,330	\$ 423,054	\$ 7.22	(\$206,276)	67.22%	\$ 1,729.49	3.298%	4.906%
FEBRUARY	2016	\$ 629,330	\$ 420,710	\$ 7.18	(\$208,620)	66.85%	\$ 1,720.54	3.281%	4.908%
MARCH	2016	\$ 629,330	\$ 435,359	\$ 7.43	(\$193,971)	69.18%	\$ 1,737.07	3.312%	4.788%
APRIL	2016	\$ 629,330	\$ 444,734	\$ 7.59	(\$184,596)	70.67%	\$ 1,750.43	3.338%	4.723%
MAY	2016	\$ 629,330	\$ 445,906	\$ 7.61	(\$183,424)	70.85%	\$ 1,704.69	3.250%	4.588%
JUNE	2016	\$ 629,330	\$ 448,836	\$ 7.66	(\$180,494)	71.32%	\$ 1,758.97	3.354%	4.703%
JULY	2016	\$ 629,330	\$ 459,383	\$ 7.84	(\$169,947)	73.00%	\$ 1,778.25	3.391%	4.645%
AUGUST	2016	\$ 629,330	\$ 464,071	\$ 7.92	(\$165,259)	73.74%	\$ 1,758.21	3.353%	4.546%
SEPTEMBER	2016	\$ 629,330	\$ 464,656	\$ 7.93	(\$164,673)	73.83%	\$ 1,926.99	3.674%	4.977%
OCTOBER	2016	\$ 629,330	\$ 461,140	\$ 7.87	(\$168,190)	73.27%	\$ 1,790.15	3.413%	4.658%
NOVEMBER	2016	\$ 629,330	\$ 460,555	\$ 7.86	(\$168,775)	73.18%	\$ 1,710.90	3.262%	4.458%
DECEMBER	2016	\$ 629,330	\$ 464,656	\$ 7.93	(\$164,674)	73.83%	\$ 1,795.96	3.425%	4.638%
JANUARY	2017	\$ 629,330	\$ 469,930	\$ 8.02	(\$159,400)	74.67%	\$ 1,850.37	3.528%	4.725%
FEBRUARY	2017	\$ 629,330	\$ 474,032	\$ 8.09	(\$155,298)	75.32%	\$ 1,755.36	3.347%	4.444%
MARCH	2017	\$ 629,330	\$ 471,688	\$ 8.05	(\$157,642)	74.95%	\$ 1,775.29	3.385%	4.516%
APRIL	2017	\$ 629,330	\$ 475,203	\$ 8.11	(\$154,127)	75.51%	\$ 1,790.02	3.413%	4.520%
MAY	2017	\$ 629,330	\$ 476,961	\$ 8.14	(\$152,369)	75.79%	\$ 1,726.50	3.292%	4.344%
JUNE	2017	\$ 629,330	\$ 476,375	\$ 8.13	(\$152,955)	75.70%	\$ 1,751.31	3.339%	4.412%
JULY	2017	\$ 629,330	\$ 481,063	\$ 8.21	(\$148,267)	76.44%	\$ 1,694.46	3.231%	4.227%
AUGUST	2017	\$ 629,330	\$ 480,477	\$ 8.20	(\$148,853)	76.35%	\$ 1,668.41	3.181%	4.167%
SEPTEMBER	2017	\$ 629,330	\$ 483,407	\$ 8.25	(\$145,923)	76.81%	\$ 1,696.34	3.235%	4.211%
OCTOBER	2017	\$ 629,330	\$ 486,337	\$ 8.30	(\$142,993)	77.28%	\$ 1,650.96	3.148%	4.074%
NOVEMBER	2017	\$ 629,330	\$ 485,165	\$ 8.28	(\$144,165)	77.09%	\$ 1,610.16	3.070%	3.983%
DECEMBER	2017	\$ 629,330	\$ 483,407	\$ 8.25	(\$145,923)	76.81%	\$ 1,601.15	3.053%	3.975%
JANUARY	2018	\$ 629,330	\$ 486,337	\$ 8.30	(\$142,993)	77.28%	\$ 1,699.45	3.240%	4.193%
FEBRUARY	2018	\$ 629,330	\$ 478,134	\$ 8.16	(\$151,196)	75.98%	\$ 1,629.94	3.108%	4.091%
MARCH	2018	\$ 629,330	\$ 473,446	\$ 8.08	(\$155,884)	75.23%	\$ 1,698.66	3.239%	4.305%
APRIL	2018	\$ 629,330	\$ 471,102	\$ 8.04	(\$158,228)	74.86%	\$ 1,770.02	3.375%	4.509%
MAY	2018	\$ 629,330	\$ 471,103	\$ 8.04	(\$158,227)	74.86%	\$ 1,680.07	3.204%	4.280%
JUNE	2018	\$ 629,330	\$ 467,587	\$ 7.98	(\$161,743)	74.30%	\$ 1,747.49	3.332%	4.485%
JULY	2018	\$ 629,330	\$ 467,587	\$ 7.98	(\$161,743)	74.30%	\$ 1,722.29	3.284%	4.420%
AUGUST	2018	\$ 629,330	\$ 471,103	\$ 8.04	(\$158,227)	74.86%	\$ 4,043.42	7.710%	10.299%
SEPTEMBER	2018	\$ 629,330	\$ 471,103	\$ 8.04	(\$158,227)	74.86%	\$ 1,713.00	3.266%	4.363%
OCTOBER	2018	\$ 629,330	\$ 456,455	\$ 7.79	(\$172,875)	72.53%	\$ 1,740.01	3.318%	4.574%
NOVEMBER	2018	\$ 629,330	\$ 452,353	\$ 7.72	(\$176,977)	71.88%	\$ 1,871.60	3.569%	4.965%
DECEMBER	2018	\$ 629,330	\$ 437,703	\$ 7.47	(\$191,627)	69.55%	\$ 1,791.45	3.416%	4.911%
JANUARY	2019	\$ 629,330	\$ 452,355	\$ 7.72	(\$176,975)	71.88%	\$ 1,807.37	3.446%	4.795%
FEBRUARY	2019	\$ 629,330	\$ 457,043	\$ 7.80	(\$172,287)	72.62%	\$ 1,747.69	3.332%	4.589%
MARCH	2019	\$ 629,330	\$ 462,316	\$ 7.89	(\$167,014)	73.46%	\$ 1,720.12	3.280%	4.465%
APRIL	2019	\$ 629,330	\$ 465,246	\$ 7.94	(\$164,084)	73.93%	\$ 1,681.82	3.207%	4.338%
MAY	2019	\$ 629,330	\$ 462,902	\$ 7.90	(\$166,428)	73.55%	\$ 1,635.69	3.119%	4.240%
JUNE	2019	\$ 629,330	\$ 474,035	\$ 8.09	(\$155,295)	75.32%	\$ 1,598.26	3.048%	4.046%

**CITY OF RICHLAND
FIRE PENSION FUND
2019 REVENUE AND EXPENSE**

Year of 2019	Final January	Final February	Final March	Final April	Final May	Preliminary June	July	August	September	October	November	December	Year to Date	Budget	YTD %
Beginning Balance	\$ 973,164.84	\$ 973,354.69	\$ 973,492.69	\$ 968,668.65	\$ 967,878.67	\$ 1,015,219.83						\$ -			
REVENUE															
Investment Interest	2,925.60	1,704.89	2,254.06	3,934.78	2,401.33	1,959.91							15,180.57	30,500.00	49.8%
Other Interest Earnings													-	725.00	0.0%
Property Tax	27,000.00	26,000.00	15,000.00	29,000.00	-	-							97,000.00	285,800.00	33.9%
Net Change in Fair Market Value													-	-	0.0%
Fire Ins Premium Tax					63,236.98								63,236.98	63,975.00	98.8%
TOTAL REVENUE:	29,925.60	27,704.89	17,254.06	32,934.78	65,638.31	1,959.91	-	-	-	-	-	-	175,417.55	381,000.00	46.0%
EXPENSE															
Medical Insurance - <65	666.72	666.72	666.72	666.72	666.72	666.72							4,000.32	8,025.00	49.8%
Medical Insurance - >65	3,910.08	3,910.08	3,910.08	3,910.08	3,910.08	3,910.08							23,460.48	48,900.00	48.0%
Dental Insurance - Retired	716.04	716.04	716.04	716.04	716.04	716.04							4,296.24	8,925.00	48.1%
Dental Expense Pension	188.00	651.05		1,536.05									2,375.10	7,075.00	33.6%
Medical Expense Pension	6,640.77	6,344.02		13,349.56		6,879.62							33,213.97	108,300.00	30.7%
Medicare Premiums	2,823.20	2,920.20	3,007.20	3,328.60	2,786.60	2,711.00							17,576.80	33,800.00	52.0%
Retirement Allowance	7,084.80	7,084.80	7,084.80	5,629.08	5,629.08	5,629.08							38,141.64	63,475.00	60.1%
Widow's Benefits	7,206.14	5,244.32	5,269.26	4,588.63	4,588.63	4,588.63							31,485.61	90,575.00	34.8%
Administrative Fee			1,424.00			3,000.00							4,424.00	8,500.00	52.0%
Operating Supplies		29.66				162.14							191.80	175.00	109.6%
Postage													-	125.00	0.0%
Travel						1,313.62							1,313.62	1,875.00	70.1%
Training & Conference													-	750.00	0.0%
Other Expenses	500.00												500.00	500.00	100.0%
Computer Equipment													-	-	0.0%
TOTAL EXPENSE	29,735.75	27,566.89	22,078.10	33,724.76	18,297.15	29,576.93	-	-	-	-	-	-	160,979.58	381,000.00	42.3%
Revenues Over (Under)															
Expense:	189.85	138.00	(4,824.04)	(789.98)	47,341.16	(27,617.02)	-	-	-	-	-	-	14,437.97	-	
Ending Balance	\$ 973,354.69	\$ 973,492.69	\$ 968,668.65	\$ 967,878.67	\$ 1,015,219.83	\$ 987,602.81	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	14,437.97	-	
ENDING BALANCE CONSISTING OF:															
Cash	224,068.59	224,236.25	219,382.55	218,592.57	265,933.73	238,316.71									
Investments	937,971.98	937,971.98	937,971.98	937,971.98	937,971.98	937,971.98									
Gain/(Loss) on Investments ⁽¹⁾	(188,685.88)	(188,685.88)	(188,685.88)	(188,685.88)	(188,685.88)	(188,685.88)									
Net Current Assets & Liabilities													(29.66)		
Ending Fund Balance	\$ 973,354.69	\$ 973,492.69	\$ 968,668.65	\$ 967,878.67	\$ 1,015,219.83	\$ 987,602.81	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			
Minimum Balance	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00	\$ 967,362.00				

Please note: Any months marked as "Preliminary" are in draft form and are not for decision-making purposes. Preliminary months are subject to change per the completion of the City's monthly and annual closing processes.

(1) - In compliance with GAAP, gains and losses on investments are updated annually to reflect market value. See attached investment reports for monthly activity.



FIREFIGHTERS' PENSION BOARD

AGENDA ITEM COVERSHEET

Meeting Date: 7/16/2019

Agenda Category: Unfinished Business Items

Subject:

I. Firefighters' Pension Secretarial Contract Options

- Discuss Firefighters Pension Secretary Contract Options
- Discuss and Approve Contract for Secretarial Services

2. 2019 Firefighter Representative Election

Department:

Firefighters' Pension Board

Document Type:

Contract/Agreement/Lease

Recommended Motion:

Summary:

The Firefighter Pension Subcommittee met to review claims with the potential contractor so she understood the nature of the work and to discuss the proposed terms of the contract. The contractor was amenable to all terms and reduced the monthly fee request to \$1,100 monthly. Most other changes to the contract were requested by Board Member Terry Thrall. Notes regarding the requested changes are incorporated in the attached document for consideration and discussion by the full board.

- Discuss Firefighters' Pension Secretary Contract Options
- Discuss and Approve Contract for Secretarial Services

Discuss 2019 Firefighter Representative Election

Attachments:

I. 2019 Independent Contractor Agreement - Fire Pension Board

Contract No. _____



Independent Contractor Agreement

Fire Pension Board Secretary Services

This Agreement is entered and effective as of this _____ day of March, 2019 ("Effective Date") by and between the **City of Richland on behalf of the Richland Firefighters' Pension Board ("City")**, a Washington municipal corporation located at 625 Swift Boulevard, Richland, WA 99352, and _____ ("**Contractor**"), a Washington limited liability company with service at _____, Richland, WA 99352. **City** and **Contractor** are referred to individually herein as a "Party" and collectively herein as the "Parties."

Comment [KC1]: Terry Thrall briefly mentioned his concerns still exist on this matter.

WITNESSETH: Whereas, it is the intent of the Firefighters' Pension Board, through this Agreement, to establish the terms and conditions under which Contractor will provide administrative support services to the City of Richland Firefighters' Pension Board.

1. SCOPE OF WORK

Contractor shall furnish all services, labor, space and related materials and/or equipment necessary to conduct and complete the functions identified in Chapters 41.16, 41.18 and 41.26 RCW attributed to the Secretary of the Firefighters' Pension Board. A detailed list of tasks is identified in **Exhibit A**, attached hereto and incorporated by reference. Contractor shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. All services performed under this Agreement will be conducted solely for the benefit of the City of Richland Firefighters' Pension Board ("Board") and will not be used for any other purpose without written consent of the City.

2. AUTHORITY AND OVERSIGHT

Contractor is being retained as an independent contractor pursuant to RCW 41.16.040(5), which authorizes the Board to employ such agents, employees and other personnel as the Board may deem necessary for proper administration of Chapters 41.16, 41.18 and 41.26 RCW.

- a. Contractor is not a voting member of the Board and has no standing to participate in discussion or voting. Further, no authority is granted to Contractor to make any decisions concerning management of the Board's policies or finances.
- b. The Chairperson of the Board shall oversee compliance and administration of this Agreement, including oversight of the Board's agenda.
- c. The Administrative Services Director shall serve as the City's liaison with Contractor for purposes of this Agreement. All requests for information and/or reports needed by Contractor are to be made to the Administrative Services Director.

Contract No. _____

- d. Contractor shall not subcontract or assign any of the contracted duties except as may be approved by the Pension **Board**.

Comment [KC2]: Terry Thrall would prefer to add this sentence and eliminate the last sentence in 9 and 10e? City Attorney has weighed in and indicated that 2d cannot be added and 9 and 10e must remain.

3. **TERM**

The term of this Agreement shall commence on the Effective Date identified above and shall be auto-renewing annually until terminated by either Party as identified in Section 11, herein.

4. **PAYMENT**

- a. Services rendered by Contractor under this Agreement will be paid at the rate of **One Thousand and no/100 Dollars** per month. This compensation is all inclusive and become due and owing after each monthly pension board meeting upon proper invoicing as identified in Section 3.(e). No hourly rate or expenses will be paid or reimbursable. In the event a pension board meeting is cancelled, Contractor may supply an invoice after the usual meeting date for payment with a certification that claims processing continued throughout the month on behalf of the Firefighters' Pension Board.
- b. City will provide an additional stipend of \$1,400 annually in the month of May for the annual WSLEA conference; provided, however, that Contractor must register in advance and provide documentation of attendance. In years where Contractor does not attend the WSLEA conference, no annual stipend will be given.
- c. Contractor's monthly payment and annual stipend shall automatically increase in January of each year by 100% of the Western Region CPI-W (Urban Wage Earners and Clerical Workers) for the period of June to June.
- d. Contractor must provide his/her own office space, equipment, copies, paper, postage and any other tools or resources to accomplish the work to be performed under this Agreement.
- e. City shall pay Contractor for services rendered after receipt of a detailed invoice. Invoices not in dispute by the City will be paid net thirty (30) days and shall reference the contract number and/or purchase order applicable to the work.
- f. Contractor agrees to supply a W-9 prior to issuance of payment under this Agreement. City will issue a MISC1099 if required by IRS rules.

Comment [KC3]: Contractor has brought rate down to \$1,100 monthly (from original \$1,200 request) but wants to be able to renegotiate if the work takes more time than expected

Comment [KC4]: Terry Thrall asked for a provision for the board to adjust the stipend based on cost increases in future years and asked to increase the stipend for 2020 to \$1,400?

Did not notice during subcommittee meeting but the next paragraph has a CIP inflator already included.

Terry Thrall asked for information about CPI-W and asked why we are not using the Seattle CPI. CPI-W is the basis the City uses for other matters. Terry asked that we bring more information about CPI-W to the meeting on July 11th.

Comment [KC5]: City Attorney is fine with this addition requested by Terry Thrall.

5. **OPEN PUBLIC MEETINGS ACT (OPMA) COMPLIANCE**

Contractor shall ensure that all Board meetings comply with the Open Public Meetings Act, Chapter 42.30 RCW. Board meetings are open to the public unless a lawful basis exists to discuss information in a closed session, which will only occur when necessary for the Board to discuss the merits of an individual pensioner's reimbursement claim **and medical information**. Executive sessions shall not be called unless first authorized by the City Attorney. Notice of all regular and special meetings and workshops shall be properly given, and agendas, meeting packets and minutes shall be prepared and properly posted in coordination with the Richland City Clerk's Office. Failure to comply with any element of the OPMA will result in immediate termination of this Agreement.

6. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE**

The specific uses and disclosures of personal health information (PHI) that may be made by Contractor under this Agreement include: 1) review and handling of supporting medical

documentation necessary for the preparation of a monthly de-identified claims roster appropriate for review in a public meeting; and 2) detailed review of supporting medical documentation on a case-by-case basis for pensioners seeking reimbursement for expenses that require individual consideration by the Board. In exercising the handling of PHI, Contractor agrees that it will:

- a. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- b. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information ("e-PHI") and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- c. Report to the City of Richland any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to the City of Richland without unreasonable delay but in no case later than 60 days after discovery of the breach.
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors who create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions, conditions, and requirements that apply to Contractor with respect to such information.
- e. Within 30 days of a request, make PHI in a designated record set available to the City and to an individual who has a right of access in a manner that satisfies the City's obligations to provide access to PHI in accordance with 45 CFR §164.524.
- f. Make any amendment(s) to PHI in a designated record set as directed by the City, or take other measures necessary to satisfy the City's obligations under 45 CFR §164.526.
- g. Maintain and make available information required to provide an accounting of disclosures to the City or an individual who has a right to an accounting within 60 days and as necessary to satisfy the City's obligations under 45 CFR §164.528.
- h. To the extent that Consultant is to carry out any of the City of Richland's obligations under the HIPAA Privacy Rule, Consultant shall comply with the requirements of the Privacy Rule that apply to the City of Richland when it carries out that obligation.
- i. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of the City, available to the Secretary of the Department of Health and Human Services for purposes of determining Contractor and the City's compliance with HIPAA and the HITECH Act.
- j. Restrict the use or disclosure of PHI if the City notifies Contractor of any restriction on the use or disclosure of PHI that the City has agreed to or is required to abide by under 45 CFR §164.522.
- k. If the City is subject to the Red Flags Rule (found at 16 CFR §681.1 et seq.), Contractor agrees to assist the City in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 CFR §681.2); (b)

taking all steps necessary to comply with the policies and procedures of the City's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the City agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the City of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the City of any threat of identity theft as a result of the incident.

7. RIGHT TO AUDIT

Contractor will allow access to the City, State of Washington, Federal Grantor Agency, Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Unless otherwise provided, said records must be retained for three (3) years from the date of receipt of final payment. If any litigation, claim, or audit arising out of, in connection with, or relating to this Agreement is initiated before the expiration of the three-year period, the records shall be retained until such litigation, claim, or audit involving the records is completed.

8. INDEPENDENT CONTRACTOR

Contractor, and any and all employees of Contractor or other persons engaged in the performance of any work or services required of Contractor under this Agreement, are independent contractors and shall not be considered employees of the City. Any and all claims that arise at any time under any Workers' Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Contractor's employees or other persons engaged in any of the work or services required to be provided herein, shall be the sole obligation and responsibility of Contractor.

9. OWNERSHIP OF DOCUMENTS

Any and all data, analyses, documents, photographs, plans, designs, drawings, specifications, surveys, films, documents, reports and other work products created, prepared, produced, constructed, assembled, made, performed, or otherwise produced by Contractor or Contractor's subcontractors for delivery to the City pursuant to this Agreement shall become the sole and absolute property of the City upon completion of the services and payment in full of all payment due to Contractor of the fees set forth in this Agreement. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the City at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the City is owned by Contractor and is not "work made for hire" within the terms of this Agreement. Contractor will ensure that all independent contractors have written agreements in place that transfers ownership of all Intellectual Property created by them or provided by them to the City.

10. AVAILABILITY OF RECORDS FOR PUBLIC INSPECTION

- a. As a public contract, all records prepared, generated or used by Contractor or its agents, employees and subcontractors relating to this Agreement and associated work (hereinafter "public records") may be subject to disclosure under the Washington State Public Record Act, Chapter 42.56 RCW.

- b. Beginning thirty (30) days after execution of this Agreement, and occurring every thirty (30) days thereafter, Contractor shall transfer to the City all public records in Contractor's possession that are no longer necessary for the performance of Contractor's duties, including but not limited to all meeting minutes, agendas, agenda packets, and claims material. City is responsible for proper retention of these public records in accordance with state and federal law. In no event shall Contractor destroy any public records generated under this Agreement. All records are to be transferred to the Richland City Clerk's Office. Personal health information (PHI) must be sealed and marked "confidential" to ensure proper handling.
- c. City shall have the right to timely review all public records held by Contractor upon request. Contractor shall provide copies of any public records not yet transferred to City within fifteen (15) calendar days of receiving City's request for copies. Said copies shall be provided directly to the Richland City Clerk's Office. If City requests that copies of public records be provided to City in an electronic format, said records shall be provided at no cost to City. If paper copies are requested by City, City shall pay \$.10 per page. Payment for paper copies shall be rendered to Contractor within twenty (20) calendar days of receipt.
- d. All records subject to a public disclosure request will be provided to a requester unless exempted from disclosure by law. The City's decision to exempt or redact any public record shall be based only upon valid exemptions that apply to the City. City will not refrain from disclosing any record under an exemption that may be personal to Contractor. In the event Contractor objects to release of any public record under this Agreement, Contractor may seek judicial approval to prevent such disclosure at Contractor's sole expense. City shall neither aid nor interfere with Contractor's request for an injunction to prevent disclosure of any public record under this Agreement.
- e. Contractor shall insert this provision in all contracts with subcontractors or agents providing services relating to this Agreement.

11. TERMINATION

This Agreement may be terminated by either Party upon ninety (90) days' written notice. Upon termination, all public records in the possession of Contractor shall be promptly transferred to the City of Richland City Clerk's Office for retention pursuant to state and federal law. All personal health information (PHI) shall be sealed and marked "confidential" to ensure proper handling.

12. DISPUTE RESOLUTION

- a. The Parties agree that the Board Chair and the City Manager, together, will negotiate with Contractor in good faith for a period of thirty (30) days from the date of notice of all disputes between them prior to exercising their rights under this Agreement, or under law.
- b. All disputes not resolved by negotiation between the Parties as provided herein may be arbitrated only by mutual agreement of the City and Contractor. If not mutually agreed to resolve the claim by arbitration, the claim will resolve by legal action.

13. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either Party deems it necessary to initiate a legal action to enforce any right or obligation under this Agreement, the Parties agree that any such action shall be initiated in the

Superior Court of the State of Washington situated in Benton County. The Parties agree that all questions shall be resolved by application of Washington law, and that the Parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. Contractor hereby consents to the personal jurisdiction of the Superior Court of the State of Washington situated in Benton County.

14. INSURANCE

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, or employees.

- a. No Limitation. Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
- b. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:
 1. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. Policy must also cover cybersecurity/data breach. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
 2. Network Security (Cyber) and Privacy Insurance shall include, but not be limited to, coverage, including defense, for the following losses or services:
 - i. Liability arising from theft, dissemination, and/or use of City confidential and personally identifiable information, including but not limited to, any information about an individual maintained by the City, including (i) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information regardless of how or where the information is stored or transmitted.
 - ii. Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks; or (ii) the inability of an authorized third party to gain access to supplier systems and/or City data, including denial of service, unless caused by a mechanical or electrical failure; (iii) introduction of any unauthorized software computer code or virus causing damage to the City or any other third party data.
 - iii. Lawfully insurable fines and penalties resulting or alleging from a data breach.
 - iv. Event management services and first-party loss expenses for a data breach response including crisis management services, credit monitoring for

individuals, public relations, legal service advice, notification of affected parties, independent information security forensics firm, and costs to re-secure, re-create and restore data or systems.

- c. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:
1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
 2. Network Security (Cyber) and Privacy Insurance shall be written with limits no less than \$1,000,000 per claim \$1,000,000 policy aggregate for network security and privacy coverage, \$100,000 per claim for regulatory action (fines and penalties), and \$100,000 per claim for event management services.
- d. Other Insurance Provisions. Contractor's Commercial General Liability insurance policy is to contain, or be endorsed to contain that it shall be primary insurance with respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Consultant's insurance and shall not contribute with it.
- e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- f. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of Contractor before commencement of the work.
- g. Notice of Cancellation. Contractor shall provide the City with written notice of any policy cancellation within two (2) business days of Contractor's receipt of such notice.
- h. Failure to Maintain Insurance. Failure on the part of Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Contractor from the City.
- i. Public Entity Full Availability of Consultant Limits. If Contractor maintains higher insurance limits than the minimum shown above, the City shall be insured for the full available limits of the Commercial General and Excess or Umbrella liability maintained by Contractor, irrespective of whether such limits maintained by Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Contractor.

16. INDEMNIFICATION / HOLD HARMLESS

- a. Contractor shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the willful or negligent acts, or alleged willful or alleged negligent acts, errors or omissions of the Contractor or the Contractor's

Contract No. _____

employees or agents in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

17. STANDARD OF CARE; CONFLICTS

The professional services will be furnished in accordance with the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and in the same locality. If Contractor develop any conflicts of interest over the course of this Agreement, said conflicts must be promptly disclosed to City.

18. SUCCESSORS OR ASSIGNS

All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the Parties hereto, and their respective successors and assigns; provided, however, that no assignment of the Agreement shall be made without written consent of the non-assigning Party, which may be given in the non-assigning Party's sole discretion.]

Comment [KC6]: Conflicts with sentence added. This provision allows for assigning as need be by the contracting entity (City).

19. NOTICES

Any notices required under this Agreement will be in writing, addressed to the appropriate Party at the address which appears below (as modified in writing from time to time by such party), and given by electronic submission, by facsimile personally, by registered or certified mail, return receipt requested, or by nationally recognized overnight courier service. All notices shall be effective upon the date sent.

Administrative Services Director
City of Richland
625 Swift Boulevard
Richland, WA 99352
Email: ckoch@ci.richland.wa.us

Contact Name: _____
Address: _____
Address: _____
Email: _____

20. EQUAL OPPORTUNITY AGREEMENT

Contractor agrees that Contractor will not discriminate against any employee or job applicants for work under this Agreement for reasons of race, sex, nationality, religious creed, or sexual orientation.

21. SEVERABILITY

If any provision of this Agreement conflicts with applicable law, or its application is found to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected, and to this end, the terms of this Agreement are declared to be severable.

22. AMENDMENTS

All amendments must be in writing and be approved and signed by both Parties.

23. CHANGE IN LAW

The Parties hereto agree that in the event legislation is enacted or regulations are promulgated, or a decision of court is rendered, or any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation is published that affects or may affect the legality of this Agreement or any part thereof or that materially and adversely affects the ability of either Party to perform its obligations or receive the benefits intended hereunder ("Adverse Change in Law"), then within fourteen (14) calendar days following written notice by either Party to the other Party of such adverse change in law, the

Parties shall meet to negotiate in good faith an amendment which will carry out the original intention of the Parties to the extent possible. If, despite good faith attempts, the Parties cannot reach agreement upon an amendment within sixty (60) calendar days after commencing negotiation, then this Agreement may be terminated by either Party as of the earlier of: (i) the effective date of the adverse change in law, or (ii) the expiration of a period of sixty (60) days following written notice of termination provided by one Party to the other.

24. CONFIDENTIALITY

In the course of performing under this Agreement, Contractor, including its employees, agents or representatives, may receive, be exposed to, or acquire confidential information. Confidential information may include, but is not limited to, patient information, contract terms, sensitive employee information, or proprietary data in any form, whether written, oral, or contained in any computer database or computer readable form. Contractor shall: i) not disclose or sell confidential information except as permitted by this Agreement; (ii) only permit use of such confidential information by employees, agents and representatives having a need to know in connection with performance under this Agreement; and (iii) advise each of its employees, agents, and representatives of their obligations to keep such information confidential. If a conflict arises between this Section and Section 6 with regard to PHI or e-PHI, Section 6 shall prevail.

25. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties hereto and supersedes all previous understandings and agreements, written and oral, with respect to this transaction. Neither Party shall be liable to the other for any representations made by any person regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement.

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

FIREFIGHTERS’ PENSION BOARD

CONTRACTOR

Robert J. Thompson, Board Chair

Signature

CITY OF RICHLAND, WASHINGTON

Printed Name

Cynthia D. Reents, City Manager

Approved as to Form:

Heather Kintzley, City Attorney