

INTERGOVERNMENTAL AGREEMENT  
Agreement No. 22001

**PERS/2022 ETOB (Equal To Or Better) Employers**

This Agreement is between Oregon Public Employees Retirement System, (PERS), and the nine Employer's listed below, hereinafter referred to as (Employers), and called both individually without distinction as "Party" and collectively as the "Parties".

**Employers:**

- City of Forest Grove
- City of Portland (FPDR)
- City of Seaside
- City of Springfield
- City of The Dalles
- Morrow County
- Tillamook County
- Union County
- Wheeler County

**1. AUTHORITY**

This Agreement is entered into pursuant to the authority granted by ORS 190.100 allowing state agencies to enter into agreements with local governments to cooperate in performing duties, exercising powers or administering policies or programs.

**2. PURPOSE**

This Agreement authorizes PERS to contract with Independent Actuaries, Inc. to conduct services for the participating Employers' behalf for the ETOB requirements described in Section 3.1.

**3. OBLIGATIONS AND ACTIONS OF THE PARTIES**

**3.1 Employer's will work directly with Independent Actuaries, Inc. to fulfill the ETOB Testing Requirement defined by the following OAR and ORS references:**

ORS 237.620(5)

The ETOB review must be conducted at the expense of the employer.

If an employer fails ETOB and does not immediately amend their plan to meet standards, any employee within the class may bring an action in circuit court to compel compliance with the requirements of this section.

OAR 459-030-0009

Employers must provide:

- A list of current affected police officers and/or firefighters
  - Names
  - Ages
  - Sex

- Dates of employment
- Plan participation
- Annual employee contributions for each year of participation starting in 1973 with total current account balances of employee contributions
- Total gross salaries paid in each of the three most recent years
- A copy of the plan including each written trust agreement/contract/insurance policy providing retirement benefits to the public employer's eligible employees
- Any additional information that is required to assist the actuary
- Information must be current as of 12/31/2020

OAR 459-030-0015

Failure to provide information to the actuary in a timely basis may result in the Board dismissing the employer's ETOB petition with prejudice.

OAR 459-030-0030

After receipt of the ETOB report and staff recommendations, the Board will issue an order granting or denying the continued ETOB exemption. Employers have 90 days to amend their plans to comply retroactive to the valuation date 12/31/2020 or file a request for a 60 day extension. Employers can submit an amended plan before the Board adopts the exemption and the actuary will submit a supplemental report on whether this new plan meets requirements. Within 60 days of the effective date of any order issued, the public employer, the affected public employees, or their labor representative may file a petition for rehearing or reconsideration.

3.1.2 Employers to reimburse PERS for these services upon invoice and receipt of finalized report prepared by Independent Actuaries, Inc.

### **3.2 PERS:**

PERS will contract with Independent Actuaries, Inc. to complete services per OAR and ORS requirements for Employer's listed by Statute/OAR: ORS 237.620(5), 459-030-0009, 459-030-0015, 459-030-0030

## **4. EFFECTIVE DATE AND DURATION**

This Agreement shall begin on date of last signature ("Effective Date"), and shall terminate on September 30, 2022, unless terminated earlier in accordance with Section 8.)

## **5. AUTHORIZED REPRESENTATIVES APPROVING THIS AGREEMENT**

### **5.1 PERS Authorized Representative is:**

Yvette Elledge-Rhodes  
 Deputy Director  
 11410 SW 68th Parkway  
 Tigard, OR 97223  
 503-603-7685 Office  
[Yvette.elledge-rhodes@pers.oregon.gov](mailto:Yvette.elledge-rhodes@pers.oregon.gov)

### **5.2 Employer's Authorized Representative's will be listed below in signature lines:**

Varies by Employer

**5.3** A Party may designate a new Authorized Representative by written notice to the other Party.

## **6. COMPENSATION AND PAYMENT TERMS**

### **6.1**

#### **Fees:**

Employers shall reimburse PERS upon receipt of invoice and copies of Independent Actuaries, Inc. invoice. Each Employer will be invoiced \$8,000.00 for ETOB services.

## **7. TERMINATION**

**7.1** This Agreement may be terminated at any time by mutual written agreement of the Parties.

**7.2** A Party may terminate this Agreement upon 30 days written notice to the other Party.

**7.3** A Party may terminate this Agreement immediately upon written notice to the other Party, or at such later date as the terminating Party may specify in such notice, upon the occurrence of any of the following events:

**7.3.1** The terminating Party fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient in the terminating Party's reasonable administrative discretion, to perform its duties under this Agreement;

**7.3.2** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;

**7.3.3** The other Party materially breaches a covenant, warranty or obligation under this Agreement, or fails to perform its duties within the time specified in this Agreement or any extension of that time, or so fails to pursue its duties as to endanger that Party's performance under this Agreement in accordance with its terms, and such breach or failure is not cured within 20 days after delivery of the terminating Party's notice to the other Party of such breach or failure, or within such longer period of cure as the terminating Party may specify in such notice.

## **8. AMENDMENTS**

The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.

## **9. NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

## **10. SURVIVAL**

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## **11. SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **12. COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

## **13. LIABILITY AND INSURANCE**

**13.1** The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Each Party agrees to accept that coverage as adequate insurance of the other Party with respect to personal injury and property damage.

**13.2** The Parties agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of, or activities under, this Agreement shall be allocated, as between the Parties, in accordance with law by Risk Management of the Department of Administrative Services for purposes of the Parties' respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to this Agreement agrees to notify Risk Management and the other Party in the event it receives notice or knowledge of any claims arising out of the Parties' performance of, or activities under, this Agreement.

## **14. DAS REPORTING REQUIREMENT**

The Parties agree that PERS shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. PERS shall submit a summary of this Agreement to the Oregon Department of Administrative Services through the OregonBuys, within the 30-day period immediately following the Effective Date of the Agreement.

## **15. RECORDS**

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after termination of this Agreement.

## **16. COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

**17. NO THIRD-PARTY BENEFICIARIES**

PERS and Treasury are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**18. FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

**19. MERGER, WAIVER AND MODIFICATION**

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. 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.

**20. SUBCONTRACTS AND ASSIGNMENT**

**20.1** Neither Party may enter into any subcontracts for the performance of any of its obligations under this Agreement, without the prior written consent of the other Party.

**20.2** Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its  
Oregon Public Employees Retirement Office.**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**City of Forest Grove**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**City of Portland (FPDR)**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**City of Seaside**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date



**City of Springville**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**City of The Dalles**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**Morrow County**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**Wheeler County**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**Union County**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

**Tillamook County**

By: \_\_\_\_\_  
Authorized Representative

Printed Name:

Title:

Email Address:

\_\_\_\_\_  
Date

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