NEWPORT
OREGON

AGENDA and Notice of
Retirement Board of Trustees

The Retirement Board of Trustees of the City Newport will hold a meeting on Friday, January 28, 2016 at 10:00 A.M., in Conference Room A, at the City Hall, 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder 541.574.0613.

The Retirement Board of Trustees reserve the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session and/or meeting.

Retirement Board of Trustees
January 28, 2016 - 10:00 A.M.
Conference Room A

I. Call to Order

II. Public Comment

III. Approval Minutes - October 30, 2015 & December 4, 2015

IV. Discussion - New Members

V. Investment Market Review

Vi. Review of Quarterly Reports and Format Changes

VII. Liquidity Report and HR Report Upcoming Retirement

VIII. Other Business

IX. Develop Next Agenda

X. Confirm Next Meeting Date: In April 2016

VI. Adjournment

City Of Newport

Retirement Board of Trustees

October 30, 2015

CALL TO ORDER

The meeting was called to order at 10:04 A.M. Those in attendance were:

Retirement Trustees: Tim Johnson, Mike Schulz, Rick Wright, John Baker, and Rebecca Cohen.

West Coast Trust representatives: Kali Jensen.

City Staff: City Manager Spencer Nebel, Finance Director Mike Murzynsky, Council Liaison Mark Saelens, and Financial Specialist Kay Keady

APPROVAL OF MINUTES – July 30, 2015

MOTION was made by Cohen, seconded by Baker, to approve the minutes of May 7, 2015 meeting, as amended by Schulz. The motion carried unanimously in a voice vote.

INVESTMENT MARKET REVIEW

Jensen reviewed with the Trustees the last quarter performance through September 30, 2015.

She identified multiple global market concerns that drove the markets down:

- China's Market volatility
- Price of oil is not rebounding;
- Federal Reserve may raise rates in 2016
- U.S. dollar is strong

PERFORMANCE REVIEW OF QUARTERLY REPORTS

- **Defined Contribution Trust**
  -6.36% down for the Quarter
  -6.36% down for the Fiscal Year
  6.07% up for the Five Years
  3.10% up since inception

- **Defined Benefit Consolidated**
  -6.44% down for the Quarter
  -6.44% down for the Fiscal Year
  6.07% up for the Five Years
  3.10% up since inception

- **Defined Benefit Trust**
  -6.34% down for the quarter

- **Defined Benefit Capital Growth**
  -8.26% down for the quarter

- **Defined Benefit Benchmark**
  0.23% up for the quarter

REVIEWED FINAL INVESTMENT POLICY

Jensen distributed the last quarter Investment Policy Statement. She restated that the cash account balance is after all monthly expenses are paid.

The Investment Report changes were made to the report format for better monitoring.

Johnson was e-mailed the new format and wanted feedback from Committee before signing.

Saelens liked the extra detail. Johnson signed off on new format.

ACTUARIALREPORT

Murzynsky reported that he had received only one part of the report. Employees' Defined Contribution report received. Defined Benefit portion has not been completed.

There will be an RFP going out to replace the two actuarial companies with one actuarial company. Murzynsky asked for a Trustee to review the proposals received for final choice.

Schulz requested a general report on the percentage that the City needs in order to fund the Defined Benefits. Nebel reported it will be a regular report.

Motion was made by Schulz, seconded by Wright to have Cohen as Retirement Trustee Committee representative to review proposals received. The motion carried unanimously by voice vote.

DISCUSSION ON ANNUAL REPORT TO CITY EMPLOYEES OCTOBER 30, 2015

Nebel reported that a handbook would be compiled for both retirement plans, Defined Benefits, and Defined Contribution plans. The handbook was distributed at the October 30, 2015 meeting for Committee review.

A schedule of the Annual Report to City Employees meeting was confirmed.

DRAFT

COMMITTEE COMMENTS

Discussion ensued regarding the retirement plan past and present. Murzynsky reported, that he was communicating with the actuarial companies to obtain the reports, and is considering a proposal for a new actuarial company.

James reported on a possible retirement. Committee suggested a two to five year estimate of retirements to project funding.

Recessed at 10:45 a.m.

Annual Employee Meeting

Employees were given individual Retirement Plan packets.

- Tim Johnson opened the annual employee retirement employee meeting introducing all members on the Retirement Board of Trustees.
- Nebel gave an overview of the annual meeting agenda.
- Cohen spoke on the history of the Board's role from inception.
- Jensen presented the investment report.
- Murzynsky reviewed each plan page-by-page. New change in timeline to notify HR regarding retirement.
- Employees question and answer.

Reconvene Retirement Trustee Committee Meeting

Nebel commented on needing a special meeting prior to the last Council meeting of the year to review the restatement of the Employee Benefit Plan with the committee prior to the Council review.

The Restatement needs to be submitted by the end of January 2016 for review by the IRS.

Saelens announced a need to change the Council representative. Allen had asked him to take his place. Nebel commented that this is a Council decision.

Schulz announced a request for the Committee to replace him as a Trustee.

ESTABLISH NEXT MEETING DATE

The next meeting was established set for January 28, 2016 at 10:00 A.M.

ADJOURNMENT

Having no further business, the meeting adjourned at 12:30 P.M.

DRAFT

City Of Newport
Retirement Board of Trustees
December 4, 2015

CALL TO ORDER

Johnson called meeting to order at 9:06 A.M., in Conference Room A of the Newport City Hall.

Nebel briefed the Trustees on the
need to review Amendments 1 & 3 to the Employees Retirement Plan and retroactive approval to 2011.

The 2016 Restatement of the Employees Retirement Plan needs to be reviewed by the IRS by the end of January 2016.

Review of Amendment No1. To the City Of Newport Employees' Retirement Plan (2009 Restatement)

Nebel reported that Amendment No.1 to the City of Newport Employees' Retirement Plan was never enacted by the City of Newport. He stated that this was a rather significant amendment in that it reflects changes that resulted from the IRS review of the 2009 Restatement of the Retirement Plan. He noted that this amendment should have been approved in 2011. He added that after conducting an extensive review and search for records, Amendment No. 1 could not be found in any city records or in the records of West Coast Trust or either of the actuarial services that are used for retirement purposes. He stated that a draft copy of Amendment No.1 was discovered when the city attorney contacted a law firm that had done previous work for the city on the retirement plan. He added that they had a copy of an unexecuted document in their files for the City. He noted that by voluntarily notifying the IRS of the oversight in not acting upon these changes, the city will be responsible for an additional fee to the IRS. He stated that upon approval of the amendment and payment of the fee, the City's retirement system will be in good stead with the IRS. He reported that several questions were raised by the Trustees:

1. Johnson asked if Amendment 1 might have been given to Actuarial; Nebel replied, that the actuaries were asked by the Finance Director and they did not have them.

2. A question was asked as to what the penalty is. Murzynsky replied it has not been determined.

3. This amendment would be approved retroactively. The City needs to review how it would handle any individual lump sum payments during the time affected by the retroactivity and would the City have to potentially address retroactively any payments. Is the City starting with a clean slate upon approval of the Amendment?

4. Section 1 – Questions as to the provisions regarding post-severance payments were raised. As an example, we have severance provisions in a number of Department Head, City Attorney and City Manager agreements that state "The City shall continue to pay salary for a period of four months following the effective date of termination, and continue to provide health insurance coverage for the same four month period"

a. How does this Section address this provision?

b. The City has paid settlement claims in the past for terminated employees or provided some sort of lump sum payment in the case of termination. How would this paragraph effect these scenarios?

c. For purposes of our post 2012 employees, retirement is based on base wage, not overtime call pay, etc. We do not payout unused sick leave on retirement for either post or pre employees as well. Does this paragraph impact those provisions?

Review of Amendment No 3. To the City Of Newport Employees' Retirement Plan (2009 Restatement

Amendment No. 3 retroactively addresses employees who are members of the Newport Employees' Association or employees that are part of the Newport Police Employees' Association who are nonsworn officers hired after October 15, 2012. Amendment No. 2 addressed the non-union employees. After these provisions were negotiated into the contracts, the city did not follow through with making the same changes to the retirement plan as should have been done in order to update the document. In both employee groups these provisions were included in the labor contracts. This amendment will result in a retroactive adjustment to the 2009 Restatement. This is consistent with how the retirement program has been administrated. A series of questions were developed for legal counsel.

1. Section 1 – In reading this, a pre-2012 employee would start over if they withdraw the Money Purchase portion of their retirement in terms of vesting. This would, in effect, make them a new post 2012 employee for purposes of retirement. How would this language impact a post 2012 employee who left after three years (50%) vested, who cashed out their retirement, as we want to require, and then returns to work for the City. It was the City Manager's interpretation that they would be immediately vested at 50% of new contributions.
   What happens to the previous 50% that was forfeited by the employee when they initially resigned?
   Would that be credited back to the employee? Should this be discussed in the restatement?
2. Section 2(b) – True-up. A question was raised at what true-ups are. It appears that if a contributions are made by a post 2012 employee throughout the "Allocation Period" into a 457(b) plan on an uneven basis but amounts to over 3% over the year that the City could adjust the monthly contributions (if less than 3% of income was put in for some months) up to the 3% to reflect the annual amount put in by the employee. Is that basically correct?
3. Section 4 – There appears to be an incorrect year 2/3rds the way down the paragraph. It says 2015, but I believe it should be 2012. (Also in the Restatement)

Review of City Of Newport Employees' Retirement Plan 2016 Restatement

Attached is a copy of the draft 2016 Retirement Restatement for your review. Please note that this restatement is required by the IRS and incorporates the provisions of the three amendments to the 2009 Restatement. Furthermore, it impacts federal legislative and regulatory changes that have occurred since the last restatement. These changes effect sections 5.03-1 and 7.01-4. Attorney Christine M. Moehl from Saalfeld Griggs PC of Salem Oregon has incorporated these changes into this Restatement. It is my suggestion that the Trust to review the Restatement and provide any recommendations to the City Council on this matter. There are several specific things that the Retirement Trust should discuss in reviewing the Restatement:

1. The Newport Retirement Trust was designated in the 2009 Restatement as the body that an individual would appeal a decision of the Finance Director on a determination regarding retirement benefits. There was some question by Trustees as to whether that was appropriate. In my mind, I believe that the Retirement Trust would have more background on the pension plan than any other group would and I believe it is appropriate for them to be the adjudicators of these issues. Please note that the city is required to indemnify and defend Trustees acting in their official capacities.
2. The current plan allows post 2012 employees to make contributions into the city's Retirement Plan. This is contrary to current practices. Christine Moehl has indicated that she has modified the 2016 Restatement to clearly indicate that employees can only contribute funds into a deferred compensation plan in order to leverage the match from the city which would go into the city's Money Purchase Plan.
3. We had some discussion about post 2012 employees who leave and then come back into city employment as to whether vesting should start over or continue were that employee left off. It is my general feeling that vesting should start were that employee left off.
4. In the handbook for 6 plus 3 Plan we indicted a mandatory payment of funds upon termination. This is not defined in the plan and there may be some advantages to both retired employees and the plan by allowing employees to not have to withdrawal their funds from the plan upon termination. It would still be appropriate that when funds are withdrawn in one total lump sum to avoid administrative expenses. This is something that we should discuss.

Overall as we are getting more employees in the Defined Contribution Plan it is necessary for us to be thinking how we are going to administer that plan going into the future. This is a good opportunity to help clean-up and define that process a little clearer. A number of questions or comments were raised by the Trustees for legal counsel.

1. Cover – Delete refer to 2009
2. The Trust inquired about the inclusion of definitions for key terms (i.e. Commissioner, Suspense Accounts, True-ups, Allocation periods, Limitation Year, money purchase, etc.) While some of these may be explained somewhere in the document, it is difficult to find those sections when the term is used somewhere else in the document. Is it possible to have a section on definitions as either part of the restatement or to accompany the restatement?

3. Sections 4.03, 4.04 – An explanation is needed as to how these sections on "Limits on Contributions" impact our retirement plan?
4. Sections 6.01 – 2015 is used instead of 2012.
5. Section 6.05-2 – It appears that Section 3, paragraph (d) of Amendment #1 is missing. Is this by design or was inadvertently omitted? What significance does this have on our plan?
6. Section 7.01-4 – Is this a new requirement? How would this work for purposes of our plan?
7. Section 8.01-1 – Does this mean that a post 2012 employee (DC only) would be 100% vested at age 62 regardless of years of service? Also if we hired an employee 62 or older would they be 100% vested immediately or after 6 months of service?
8. Section 8.02-5 (and maybe other sections) – This section indicates that a terminated employee may elect to withdraw the vested portion of the fund. In discussing this with the Trust, both the Trust and the City would like to have a limitation as to how long a terminated/retired employee can keep their funds in the retirement system per our earlier email exchange on 10-31. We would like to have terminated/retired post 2012 employees request payment of Money Purchase Accounts of funds within 180 days of termination or the funds will paid out by the administrator. This would be for any Money Purchase Accounts, if not annuitized, for pre 2012 employees who retire as well unless they defer their retirement. Is this something that we can do? Can this be part of the restatement?
9. Section 12.09 (a) – Should assumptions used by the retirement plan be modified? Would there be legal issues in modifying the assumptions?
10. Signatory page – Can you take out "by a unanimous vote of the" from this sentence?

<u>Committee Actions</u>

MOTION was made by Schulz, seconded by Cohen, to have Nebel forward these questions to the attorney, write a draft of changes to the Employee Retirement Plan 2016 Restatement for any individual comments and if no objections are made by the Trustees forward them to the City Council Meeting, January 7, 2016, for approval. The motion carried unanimously in a voice vote.

MOTION was made by Schulz, seconded by Cohen, to recommend Amendments 1 & 2 of the 2009 Restatement of Retirement Plan retroactive to 2011, be approved by Council. The motion carried unanimously in a voice vote.

MOTION was made by Schulz, seconded by Cohen, to recommend Amendment 3 of the 2009 Restatement of the Retirement Plan be approved by Council retroactive to October 15, 2012. The motion carried unanimously in a voice vote.

Nebel will be putting together a binder for each Committee member. The binder will include all the information for the Employee Retirement Plan since conception.

Reappointments to the Retirement Trust

Attached is a letter from Mayor Roumagoux requesting Committee advice as to any reappointments of members for an additional term effective January 1st. There is one term that expires on the Trust on December 31st. This is an opportunity for the committee to make a recommendation going forward on this reappointment.

Schulz confirmed he would not be renewing his term on the committee. His term will expire December 2015.

Johnson submitted his letter of resignation from the committee. He stated distance and bank duties as reason.

Nebel requested Trustees to submit recommendations for replacement Trustees. Nebel will give them to the Mayor for review and appointment.

Adjournment

Having no further business, the meeting adjourned at 10:36 a.m.

Spencer Nebel
City Manager
CITY OF NEWPORT
169 S.W. Coast Hwy.
Newport, OR 97365
s.nebel@newportoregon.gov

MEMO

DATE: January 26, 2016

TO: The City of Newport Retirement Trust

FROM: Spencer Nebel, City Manager

SUBJECT: Retirement Trust Meeting of January 28, 2016

Background:
On December 4, 2015 a special meeting of the Newport Retirement Trust, was held for the Trustees to review proposed Amendment No. 1, and Amendment No. 3 to the 2009 Retirement Plan Restatement as well as the proposed 2016 Retirement Plan Restatement for the City of Newport. The Retirement Trust approved a motion recommending, that the City Council take action on the amendments and restatement at the City Councils January 4 meeting, subject to a final review of responses to the questions in the Trust documents by individual members of the Trust prior to that time. At the special meeting there were various question posed by the Trustees which were forwarded on to Christine Moehl of Saalfeld Griggs. The responses to those questions along with a draft report to the City Council were forwarded to the Trustees on Wednesday, December 23 for review by the Trustees. There were no more additional questions or comments concerns expressed by the any of the Trustees prior to the January 4, 2016, City Council meeting.

On January 4, 2016, the City Council unanimously adopted the two amendments to the 2009 Restatement as well as the 2016 Restatement of the Newport Employees' Retirement Plan Restatement.

Please note that the amendments to 2009 restatement have been submit with form 8951 and a check for $5,000 to the IRS's Voluntary Compliance Program. In addition the Favorable Determination Letter submission to the IRS for the Restatement has been filed with form 8717 including a check in the amount of $2,500 for this fee. In accordance with the IRS requirements, notice to interested parties has been posted as required.

I appreciate the effort that the Trustees put in to the reviewing these various technical and complicated documents. I do believe that the documents will accurately reflect the current status of the retirement plan going forward. We will compile all of the significant documents in binders for city staff and the Trustees future reference.

Respectfully submitted,

Spencer R. Nebel
City Manager

Cc: Mike Murzynsky
Kay Keady

Spencer R. Nebel
City Manager
City of Newport, Oregon 97365
541-574-0601
s.nebel@newportoregon.gov

From: Christine M. Moehl [mailto:CMoehl@sglaw.com]
Sent: Wednesday, December 16, 2015 11:52 AM
To: Spencer Nebel <S.Nebel@NewportOregon.gov>
Cc: Steven Rich <S.Rich@NewportOregon.gov>; Barbara James <B.James@NewportOregon.gov>; Michael Murzynsky <M.Murzynsky@NewportOregon.gov>
Subject: RE: Retirement Summaries for the City of Newport

Hi, Spencer: Thanks for your patience. Year-end is a busy time around here. Please see my responses below in red. And I've attached a revised copy of the redlined restatement and Amendment 3. Thanks!

Christine M. Moehl | Lawyer
Employee Benefits & Executive Compensation

Saalfeld Griggs PC

Park Place, Suite 200 | 250 Church Street SE | Salem, Oregon 97301
office: 503.399.1070 | direct: 503-485-4219 | fax: 503.371.2927
Email | Web | Bio | LinkedIn

This message & attachments hereto are privileged and confidential. Do not forward, copy, or print without authorization. Sender has scrubbed metadata from the attachment & recipient shall not scan for metadata erroneously remaining. If recipient does not agree to all conditions above, recipient shall delete this message & the attachments & notify sender by email.

From: Spencer Nebel [mailto:S.Nebel@NewportOregon.gov]
Sent: Saturday, December 05, 2015 3:59 PM
To: Christine M. Moehl
Cc: Steven Rich; Barbara James; Michael Murzynsky
Subject: RE: Retirement Summaries for the City of Newport

Hi Christine:

We had a meeting with the Newport Retirement Trust and Staff has had a chance to review the documents. We have a number of questions and a couple of corrections:

1) Amendment #1 – This amendment is approved retroactively. Do we need to review how we handled any individual lump sum payments during the time effected by the retroactivity and would we have to potentially address retroactively any payments, or are we ok starting with a clean slate upon approval of the Amendment? We are OK starting with a clean slate. The actuary would have applied any necessary code section 415 limits to payments that occurred in the interim so there are no qualification errors to worry about.
2) Amendment #1 Section 1 – We aren't sure what this means regarding post-severance payments. As an example, we have severance provisions in a number of Department Head, City Attorney and City Manager agreements that state "The City shall continue to pay salary for a

period of four months following the effective date of termination, and continue to provide health insurance coverage for the same four month period" a) How does this Section address this provision? The 4 months of salary payments after termination of employment will not be included in the definition of post-severance compensation because these payments are not for "compensation for services." Instead, the payments are most similar to "severance pay" which is excluded from the definition of post-severance compensation. B) The City has paid settlement claims in the past for terminated employees or provided some sort of lump sum payment in the case of termination. How would this paragraph effect these scenarios? Any amount paid for back wages or accrued leave to the terminated employees would be considered as post-severance compensation and included for purposes of determining a participant's benefit under the plan. However, any other amounts would not be included. C) For purposes of our post 2012 employees, retirement is based on base wage, not overtime call pay, etc. We do not payout unused sick leave on retirement for either post or pre employees as well. Does this paragraph impact those provisions? It does not. You can continue to administer the plan this way. However, if you ever start to payout unused sick leave on retirement, then you will need to included it as compensation for purposes of determining benefits due under the plan.

3) Amendment #3 Section 1 – In reading this, a pre-2012 employee would start over if they withdraw the Money Purchase portion of their retirement in terms of vesting. This would, in effect, make them a new post 2012 employee for purposes of retirement. (This is ok with us) How would this language impact a post 2012 employee who left after three years (50%) vested, who cashed out their retirement, as we want to require, and then returns to work for the City. It is my interpretation that they would be immediately vested at 50% of new contributions. Under this scenario, they would immediately participate in the plan upon their rehire and all of their years of service with the City would count towards vesting in future contributions. What happens to the previous 50% that was forfeited by the employee when they initially resigned? Would that be credited back to the employee? Should this be discussed in the restatement? As the plan reads now, the forfeited amount would not be restored to the rehired participant. Because you are a governmental plan, this is perfectly acceptable. In the private sector, plans must give participants the option to repay the amount that was distributed from the plan upon their termination. Then, if the participant elects to repay the distributed amount, the employer must restore their forfeited benefit. If you'd like to add a provision like this to the plan restatement, please let me know.

4) Amendment #3 Section 2(b) – True-up. We aren't sure what they are. It appears that if a contributions are made by a post 2012 employee throughout the "Allocation Period" into a 457(b) plan on an uneven basis but amounts to over 3% over the year that the City could adjust the monthly contributions (if less than 3% of income was put in for some months) up to the 3% to reflect the annual amount put in by the employee. Is that basically correct? That is correct. The City has the option to adjust the 3% matching contribution to the annual deferrals made by the employee, but you do not have to.

5) Amendment #3 Section 4 – There appears to be an incorrect year 2/3rds the way down the paragraph. It says 2015, but I believe it should be 2012. (Also in the Restatement) Thank you for catching this!

6) Restatement Cover – Delete 2009 My copy doesn't have 2009 on the cover.

7) Restatement - The Trust inquired about the inclusion of definitions for key terms (i.e. Commissioner, Suspense Accounts, True-ups, Allocation periods, Limitation Year, money purchase, etc.) While some of these may be explained somewhere in the document, it is difficult to find those sections when the term is used somewhere else in the document. Is it possible to have a section on definitions as either part of the restatement or to accompany the restatement? Yes. These can be added upon restatement. Please provide me with a list of terms that you would like defined and I will incorporate them.

8) Restatement Sections 4.03, 4.04 – Can you explain how these sections on "Limits on Contributions" impact our retirement plan? These sections are here to make sure that the Plan does not exceed the Code section 415 limit for any participant in any given year and, if the limit is exceeded, to provide ordering rules regarding the refund or forfeiting of excess contributions. Code section 415 limits are the maximum amounts that the IRS will allow a participant to receive each year in a qualified retirement plan. This provision basically serves as a "fail-safe" to provide that the plan will never lose its qualified status because there is a mechanism to correct annual contributions in excess of the 415 limit.
9) Restatement Sections 6.01 – 2015 is used instead of 2012. Done. Thanks for catching this.
10) Restatement Section 6.05-2 – It appears that Section 3, paragraph (d) of Amendment #1 is missing. Is this by design or was inadvertently omitted? What significance does this have on our plan? Thanks, again, for catching this. I added the provision. This provision has no effect on the administration of the plan because it is only applicable to benefits paid in 2004 and the actuary would have applied the required transition rule. However, the IRS wanted this language in the plan document so we had to add it.
11) Restatement Section 7.01-4 – Is this a new requirement? How would this work for purposes of our plan? This is a new requirement. It comes from the HEART Act which was a piece of legislation that was aimed at providing survivor benefits to the beneficiaries of people who die in active service in the military. In your plan, if an employee was to die in active service in the military, then they would be considered 100% vested and their survivor benefit under 7.01 would go to their beneficiary. This provisions basically prohibits the City from considering an active duty employee who dies while in active service as terminated, instead of deceased.
12) Restatement Section 8.01-1 – Does this mean that a post 2012 employee (DC only) would be 100% vested at age 62 regardless of years of service? Yes. Also if we hired an employee 62 or older would they be 100% vested immediately or after 6 months of service? Immediately. This is the way the prior plan document worked, as well. If this is not the intent, we can add a service requirement on restatement. For example, the plan could provide that an employee is immediately vested upon reaching age 62 and completing 5 years of service. Then, an employee who has hired at age 62 would need to work for 5 years to become 100% vested). However, this provision could only apply to new hires after the effective date of the restatement.
13) Restatement Section 8.02-5 (and maybe other sections) – This section indicates that a terminated employee may elect to withdraw the vested portion of the fund. In discussing this with the Trust, both the Trust and the City would like to have a limitation as to how long a terminated/retired employee can keep their funds in the retirement system per our earlier email exchange on 10-31. We would like to have terminated/retired post 2012 employees request payment of Money Purchase Accounts of funds within 180 days of termination or the funds will paid out by the administrator. This would be for any Money Purchase Accounts, if not annuitized, for pre 2012 employees who retire as well unless they defer their retirement. Is this something that we can do? Can this be part of the restatement? We can draft the restatement this way. However, based on the research that my associate attorney completed, I am not entirely positive that the IRS will approve this provision. In the private sector, the IRS does not allow amounts over $5,000 to be distributed without a participant's consent. The regulations are not entirely clear how this provision applies to governmental plans and many governmental plans have incorporated this provision into their documents. After reviewing the restatement, the IRS may come back to us and require us to apply a $5,000 cap. Or, they may let it go through, in which case we have the blessing from the IRS to administer the plan the way you wish. My suggestion is that we draft the restatement in the manner outlined above, but the City should hold off on processing distributions in this manner until the IRS approves the restatement.

14) Restatement Section 12.09 (a) – Should these assumptions be modified? Would there be legal issues in modifying the assumptions? We should loop the actuary in on the discussion regarding the best assumptions to use. It is possible to change assumptions on a prospective basis only.
15) Restatement Signatory page – Can you take out "by an unanimous vote of the" from this sentence? Done.

After reviewing these questions/requests let me know your thoughts on how to proceed.

Spencer R. Nebel
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