

## **AGREEMENT FOR SERVICES**

This Agreement for Services (Agreement) is between the Fire and Police Disability and Retirement Fund of the City of Portland (Fund) and Systems Advisory Services (SAS) at 18401 N.E. 149<sup>th</sup> Avenue, Brush Prairie, Washington 98606 (Contractor).

### **RECITALS:**

1. Whereas, the Contractor is engaged in the business to provide business and system analysis and recommendations and project management; and,
2. Whereas, the Fund staff recommended the selection of SAS for the provision of aided and seeing the information and business system re-engineering;

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, it is hereby agreed as follows:

### **AGREEMENT:**

#### **1. SCOPE OF CONTRACTOR SERVICES**

- (a) The Contractor shall provide services specifically to the Fund. The Contractor shall provide the Fund those services set out below:
  - (1) Assist in negotiation of final contracts and project schedules with Data Management Consultants (DMC);
  - (2) Participate in monthly status reviews and project management coordination;
  - (3) Conduct project assessment at each milestone (design, development, acceptance test) for project phases; and,
  - (4) Support/assist project improvement team(s) with implementation.

#### **2. TERM OF CONTRACTOR SERVICES:**

The Fund shall pay the Contractor at an hourly rate for time spent on work as described under "Scope of Contractor Services" at \$150 per hour for Contractor, not to exceed \$39,600. Should additional related work not specified in the Scope of Contractor Services be required to complete the intent of this agreement, said work as stipulated by the Fund shall be done at \$150 per hour by Contractor.

Because the Contractor will have access to confidential information regarding Fund Members, Contractor will not disclose or in any way communicate any such information it may observe or receive.

#### **3. SCOPE OF FUND SERVICES:**

Fund staff will provide Contractor with access to necessary documents and access to all involved systems and staff. Fund shall make available sufficient hours of staff personnel as is required to meet with consultant and provide such information as required. A project manager has been assigned by Fund and will oversee the work and provide support as needed.

4. **BILLING AND PAYMENT PROCEDURE:**

Contractor's billing and Fund's payment procedure shall be set out below:

On or before the 15<sup>th</sup> day of each month Contractor shall submit to the Fund a bill for work performed by the Contractor during the preceding month. Within thirty (30) days after receipt of the bill, provided the Project Manager has certified the payment is due, the Fund shall pay the amount certified to the Contractor.

5. **EFFECTIVE AND TERMINATION DATES:**

This Agreement shall be effective December 11, 2001 (or on the date the contract is executed, whichever is later) and shall terminate as of December 31, 2003. However, this contract may be extended at the option of the Fund.

6. **EARLY TERMINATION OF AGREEMENT:**

- (a) The Fund and the Contractor by mutual written agreement, may terminate this Agreement at any time.
- (b) The Fund, on thirty (30) days written notice to the Contractor may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- (b) Either the Fund or the Contractor may terminate this Agreement in the event of a breach of the agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the parties intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

7. **PAYMENT ON EARLY TERMINATION:**

- (a) In the event of termination under Section 6, Early Termination of Agreement, hereof, the Fund shall pay the Contractor for work performed in accordance with the Agreement prior to the termination date.
- (b) In the event of termination under Section 6, Early Termination of Agreement, hereof, by the Contractor due to breach by the Fund, then the Fund shall pay the Contractor as

provided in subsection (a) of this section.

- (c) In the event of termination under Section 6, Early Termination of Agreement, hereof, by the Fund due to a breach by the Contractor, then the Fund shall pay the Contractor as provided in subsection (a) of this section, subject to offsets of excess costs as provided for in Section 8. Remedies.
- (d) In the event of early termination, all of the Contractor's work product will become and remain property of the Fund.

8. **REMEDIES:**

- (a) In the event of termination under Section 6, Early Termination of Agreement, hereof, by the Fund due to a breach by the Contractor, then the Fund may complete the work either itself by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided for under Section 2, Terms of Contractor Services, the Contractor shall pay to the Fund the amount of the excess.
- (b) The remedies provided to the Fund under Section 6, Early Termination of Agreement and Section 8, Remedies, hereof, for a breach by the Contractor shall not be exclusive. The Fund shall also be entitled to any other equitable or legal remedies that are available.
- (c) In the event of a breach of this Agreement by the Fund, then the Contractor's remedy shall be limited to termination of the agreement and receipt of payment as provided in Section 6, Early Termination of Agreement and Section 7, Payment on Early Termination.

9. **FUND PROJECT MANAGER:**

- (a) The Fund Project Manager shall be Candace Walter or such other person as shall be designated in writing by the Administrator of the Fund.
- (b) The Fund Project Manager is authorized to approve work and billings hereunder, to give notices referred to herein to terminate this Agreement as provided herein and to carry out any other Fund actions referred to herein.

10. **COMPLIANCE WITH LAWS:**

- (a) In connection with its activities under this Agreement, the Contractor shall comply with all applicable federal, state and local laws and regulations.
- (c) In the event the Contractor provides goods and services to the Fund in the aggregate in the excess of \$2,500.00 per fiscal year, the Contractor agrees it has certified with the City's Equal Employment Opportunity certification process.

11. **OREGON LAW AND FORUM:**

- (a) This Agreement shall be construed according to the laws of the State of Oregon.
- (b) Any litigation between the Fund and the Contractor arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

12. **INDEMNIFICATION:**

- (a) The Contractor shall hold harmless, defend and indemnify for public liability and property damage the Fund and the Fund's officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them arising out of the Contractor's work or any subcontractor's work under this Agreement.
- (d) The Contractor shall hold harmless, defend and indemnify for professional liability the Fund and the Fund's officers, agents and employees against all claims, demands, actions and suits (including all attorney fees and costs) brought against any of them arising out of the Contractor's negligent acts or omissions or any subcontractor's negligent acts or omissions under this Agreement.
- (e) If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

13. **WORKERS' COMPENSATION INSURANCE:**

- (a) The Contractor, its subcontractors, if any, and all employees working under this Agreement are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Exhibit "B", if applicable, and shall be incorporated herein and made a term of this Agreement. The Contractor further agrees to maintain workers' compensation coverage for the duration of this Agreement.
- (b) In the event the Contractor's workers' compensation insurance coverage is due to expire during the term of this Agreement, the Contractor agrees to timely renew its insurance either as a carrier insured employer or a self insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the



Contractor agrees to provide the Fund such further certification of workers' compensation insurance as renewals of said insurance occur.

- (c) The Contractor agrees to accurately complete the City of Portland's questionnaire for workers' compensation insurance and for qualification as an Independent Contractor prior to commencing work under this Agreement. The Questionnaire is attached to this Agreement as Exhibit "C" and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of information on the Questionnaire by the Contractor shall constitute a breach of this Agreement. In the event of breach pursuant to this Section, the Fund may terminate the Agreement immediately and the notice requirement contained in Section 6, Early Termination of Agreement, hereof, shall not apply.

14. **SUBCONTRACTING:**

The Contractor shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the Fund. The Contractor shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Contractor as specified in this Agreement. Notwithstanding Fund approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the Fund shall incur no obligation other than its obligations to the Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Agreement, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

15. **ASSIGNMENT:**

The Contractor shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without prior written approval of the Fund.

16. **INDEPENDENT CONTRACTOR STATUS:**

- (a) The Contractor is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder.
- (b) The Contractor, its subcontractors and their employees are not employees of the Fund and are not eligible for any benefits through the Fund, including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

17. **OWNERSHIP OF DOCUMENTS/WORK PRODUCT:**

- (a) All work the Contractor performs under this Agreement shall be the property of the Fund. The Fund shall own any and all data, documents, plans, copyrights, specifications, working papers, and any other materials the contractor produces in connection with this Agreement. On completion or termination of the Agreement, the Contractor shall deliver these materials, as requested, to the Project Manager.

- (b) The Contractor may retain for its own use and at its own cost copies of the materials referred to in subsection (a), subject to the following exceptions:

No data or other information shall be provided to other clients, insurance companies or other service providers without the advance written approval of the Project Manager.

- (c) All reports, materials, and other work products prepared by the Contractor in connection with this engagement are prepared for the internal use of the Fund only, and not for publication or resale by the Fund.

18. **PROFESSIONAL LIABILITY:**

- (a) Contractor shall maintain professional liability insurance which shall provide coverage in the amount of \$1 million to protect Contractor from any and all claims, demands, actions, and suits for malpractice arising from the Contractor's work under this Agreement. The insurance shall provide that the insurance shall not terminate or be cancelled without sixty (60) days written notice first being given to the City Auditor.
- (b) Contractor shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to approval of the Fund Attorney. Failure to maintain professional liability insurance shall be cause for immediate termination of this Agreement by the Fund.

19. **NOTICE:**

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following address or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the Fund:	Candace Walter, Special Projects Manager Fire & Police Disability & Retirement Fund 1800 SW First Avenue, Suite 450 Portland, Oregon 97201
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If to the Contractor:	Dave Riley 18401 N.E. 149 <sup>th</sup> Avenue Brush Prairie, Washington 98606
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20. **SEVERABILITY:**

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

21. **INTEGRATION:**

This Agreement contains the entire agreement between the Fund and the Contractor and supersedes all prior written or oral discussions or agreements.

22. **FUNDS:**

The Fund certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.

23. **BUSINESS LICENSE:**

Contractor shall obtain a business license as required by PCC §§ 7.02.030 prior to beginning work under this Agreement. Contractor shall provide a business license number in the space provided at the end of this Agreement.

24. **COMMENCEMENT OF WORK:**

Contractor agrees that work being done pursuant to this Agreement will not be commenced until after:

- (a) Workers' compensation insurance is obtained, as outlined in Section 13, Workers' Compensation Insurance; and
- (b) This Agreement is fully executed by the parties and approved by the Fund's attorney; and
- (c) The effective date of this Agreement as specified in Section 5, Effective and Termination Dates.

25. **MAINTENANCE OF RECORDS:**

The Contractor shall maintain records on a current basis to support its billings to the Fund and to document the performance of services in accordance with this Agreement. The Fund or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the Contractor regarding its billing and performance of services. The Contractor shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this Agreement.

26. **AUDITS:**

- (a) The Fund, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement or during the three (3) year period established by Section 25, Maintenance of Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

- (b) If an audit discloses the payment to the Contractor under Section 3, Compensation, and Section 4, Billing and Payment Procedure, were in excess of the amount to which Contractor was entitled, then the Contractor shall repay the amount of the excess to the Fund.
- (c) If an audit disclosed that payment to a Contractor under Section 3, Compensation, and Section 4, Billing and Payment Procedure, were less than the amount to which Contractor was entitled, then the Fund shall pay the amount of the deficit to the Contractor.
- (f) If any audit shows the performance of services under Section 1, Scope of Contractor Services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the Fund may pursue remedies provided under Section 6, Early Termination of Agreement, and Section 8, Remedies.

27. **LIABILITY INSURANCE:**

- (a) The Contractor shall maintain public liability and property damage insurance that protects the Contractor and the Fund and its officers, agents and employees from any and all claims, demands, actions and suits for damages to property or personal injury, including death, arising from the Contractor's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The insurance shall be subject to statutory change as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the Fund and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Agreement, the Contractor shall provide a new policy with the same terms. The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.
- (b) The Contractor shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the Fund Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the Fund.

28. **BREACH OF AGREEMENT:**

- (a) The Fund or the Contractor shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection (b) of this section.
- (b) Neither the Fund nor the Contractor shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather. Should either the Fund or the Contractor fail to perform because of a cause described in this subsection, the Fund and the Contractor shall make a mutually acceptable revision in section 1, Scope of Contractor Services, Section 2, Scope of Fund Services, or Section 3, Compensation.

29. **ARBITRATION:**

- (a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Contractor and the Fund within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitrator shall be selected within thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Portland, Oregon, shall be governed by the laws of the State of Oregon, and shall be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within forty-five (45) days of the first meeting with the Contractor and the Fund. Insofar as the Contractor and the Fund legally may do so, they agree to be bound by the decision of the arbitrator.
- (b) Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Contractor shall continue to perform its work pending resolution of the dispute, and the Fund shall make payments as required by the Agreement for undisputed portions of the work.

30. **AMENDMENTS:**

- (a) The Fund and the Contractor may amend this Agreement at any time only by written amendment executed by the Fund and the Contractor. Unless otherwise provided, any amendment that increases the amount of compensation payable to the Contractor must be approved by the Board of Trustees. The Project Manager may agree to and execute any other amendment on behalf of the Fund.

- (b) Any change in the Scope of Contractor Services shall be deemed an amendment subject to subsection (a).

31. **NON-WAIVER:**

The Fund and the Contractor shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

32. **PROHIBITED INTEREST:**

- (a) No Fund trustee or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- (b) No Fund trustee or employee who participated in the award of this Agreement shall be employed by the Contractor during the period of the Agreement.

33. **PROFESSIONAL LIABILITY INSURANCE:**

- (a) The Contractor shall maintain professional liability insurance which shall provide coverage in the amount of \$1,000,000.00 to protect the Contractor from any and all claims, demands, actions and suits for malpractice arising from the Contractor's work under this Agreement. The insurance shall provide that the insurance shall not terminate or be canceled without sixty (60) days notice first being given to the City Auditor.
- (b) The Contractor shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the Fund Attorney. Failure to maintain professional liability insurance shall be cause for immediate termination of this Agreement by the Fund.

CONTRACTOR: SYSTEMS ADVISORY SERVICES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Business License No: \_\_\_\_\_

Social Security No: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Fund Attorney

FIRE & POLICE DISABILITY &  
RETIREMENT FUND

By: \_\_\_\_\_  
Babette Heeffle, Fund Administrator

Date: \_\_\_\_\_