

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 Data Management Consultants ("DMC") at 10445 SW Canyon Road, Suite 266, Beaverton, OR 97005 ("Contractor").

RECITALS

1. Whereas, Contractor is engaged in the business of providing systems design and programming services;
2. Whereas, Contractor holds the software source code for Fund's current system; and,
3. Whereas, Fund has elected to convert the existing version of the FoxPro application to Visual FoxPro ("VFP") and will obtain sufficient hardware to adequately support and run VFP; and,
4. Whereas, Fund staff recommended the selection of Contractor;

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

AGREEMENT

1. SCOPE OF CONTRACTOR SERVICES

Contractor will perform the conversion services, development services, and maintenance and support specified in this Agreement and in the appendices attached and made a part of this Agreement (the "Project Appendices"). Contractor will perform the development services in phases. Each phase is identified on a separate Project Appendix. These Project Appendices maybe modified by mutual consent of the Fund and the Contractor.

Major Development

All services identified in the Project Appendices as an improvement ("Improvement") are considered a Major Development and will be completed according to the steps set forth below and according to any mutually agreed upon deadlines set forth in design meetings between Contractor and Fund.

(a) System Design.

Contractor will provide Fund with Detailed Specifications for each Improvement by the Design Date. Detailed Specifications will include schedule of hours, fees and completion date and some or all of the following as appropriate: (i) the input and output formats, (ii) program descriptions, (iii) data and file layouts, (iv) flowcharts, (v) screen descriptions, (vi) security procedures, (vii) telecommunications requirements, (viii) documentation requirements, (ix) implementation schedule, (x) procedures and training schedule, (xi) performance criteria, and (xii) testing plan. Fund will review the Detailed Specifications and inform Contractor in writing by the Response Date if the Detailed Specifications do not comply with the Profile identified in the relevant Project Appendix for each

Improvement or fulfill its intent. It is understood that the detail in the Project Appendices may need to be amended at the Design Phase. Contractor will make any modifications to the Detailed Specifications that are necessary to achieve the Improvement and comply with the Profile. Contractor will submit to Fund any modifications made to the Detailed Specifications and Fund will have seven (7) working days to inform Contractor if the modification does not comply with the Profile. This process will continue until the Detailed Specifications comply with the Profile. If Fund does not respond in writing by the Response Date or within seven (7) working days of receipt of any modifications to the Detailed Specifications, Fund will be deemed to have accepted the Detailed Specifications unless Fund has requested, in writing to Contractor, an extension of the seven (7) day period.

Upon acceptance of the Detailed Specifications, Contractor will present a schedule of hours, fees and completion date for the Software Development, Training and Implementation of the Improvement. The schedule of hours, fees and completion date will be approved in writing by Fund prior to further development work by Contractor. Once the schedule of hours, fees and completion date are approved by Fund for the Improvement, there will be no changes by either party to the scope, fees or completion date for the Software Development, Training and Implementation of the Improvement without the execution of a Change Order, as defined below.

(b) Software Development.

Contractor will design and develop software to implement each Improvement according to the Detailed Specifications.

(c) Acceptance Testing.

Contractor will make the software for each Improvement available to Fund through a test system prior to final delivery. Contractor will train testing staff, if necessary, prior to each test commencing. The Test System will consist of a separate directory located on the appropriate machine with representative data and current programs for the purpose of testing Improvements and Development while being isolated from the live system. Contractor will inform Fund in writing that the Improvement is available for testing (the "Testing Notice"). Fund will have ten (10) working days from the Testing Notice to evaluate the Improvement and determine whether the Improvement performs and functions according to the Detailed Specifications. Fund will report any deficiencies in the Improvement to Contractor. Upon confirming a deficiency does exist, Contractor will make any corrections to the Improvement. If Fund does not notify Contractor of a deficiency within ten (10) working days of the Testing Notice, Fund will be deemed to have accepted the Improvement ("Acceptance") unless Fund has requested, in writing to Contractor, an extension of the ten (10) working day period. The Fund will review Acceptance Test Plan with contractor.

(d) Training and Documentation.

Upon Acceptance, Contractor will deliver the Documentation to Fund. Documentation means the converted databases, if applicable to that Improvement, source code and any other appropriate material as determined by Contractor. The format of documentation will be agreed upon by parties prior to the completion of phase one of the project.

Upon Acceptance, Contractor will conduct training for that Improvement at Fund's facility, if training is included in the Project Appendix for that Improvement. The training will educate employees, selected by Fund, in the operation of the Improvement. Fund will provide Contractor with

reasonable resources for facilitating the training.

(e) Business Process Realignment (as necessary).

Fund will, at Fund's expense, take all necessary steps in preparing its business for the implementation of the Improvements.

(f) Implementation.

After Acceptance, Training and Business Process Realignment, Contractor will implement the Improvement at Fund's facilities.

Minor System Enhancements

Contractor agrees to make Minor System Enhancements to the system as identified by Fund. Minor System Small Enhancements are those enhancements that require minimal programming hours as reasonably determined by Contractor. Fund will maintain a prioritized list of Minor System Enhancements requested. The current prioritized list of Minor System Enhancements is set forth in Project Appendix E. Contractor and the Project Manager, defined in Section 7, will meet monthly to review the progress toward completing Minor System Enhancements and to agree on which Minor System Enhancements Contractor will address in the following month. The Project Manager and Contractor will agree on an estimated amount of development hours necessary for the month to address Minor System Enhancements. Fund will be responsible for properly testing the changes as Contractor completes the Minor System Enhancements.

Change Order

Either party may provide written notice to the other party proposing changes to accepted Detailed Specifications or changes to the approved schedule of hours and fees for the Software Development, Training and Implementation of an Improvement (a "Change Order"). Following the submission of a Change Order, the parties will promptly meet to negotiate in good faith the changes contemplated by the Change Order. A Change Order will have a contractually binding effect only when agreed to in writing by both parties.

Technology Maintenance

Contractor will provide Technology Maintenance to Fund upon Fund's timely payment of the monthly Technology Maintenance and Support payment set forth in Exhibit A3. The maintenance provided under this Agreement will consist of the services set forth in Exhibit A3 and:

(a) The right of up to three (3) of Fund's employees (the "Designated Employees") to contact Contractor by telephone or e-mail and to consult with Contractor regarding functions and operations of the Improvements.

(b) The right to obtain from Contractor certain updates to the Improvements that are reasonably necessary in Contractor's judgment to correct reproducible errors, which have been brought to Contractor's attention by the Designated Employees.

(c) Contractor will make the Technology Maintenance available only during Contractor's normal business days and normal business hours.

- (d) Contractor will resolve problem within boundaries of Billing Procedure.

Contractor is not obligated to provide maintenance for any modifications to the Improvements or Documentation performed by Fund or under Fund's direction.

In the event Fund wishes to obtain from Contractor additional services with respect to the Improvements, Contractor agrees to negotiate in good faith for the provision of those services.

2. CONFIDENTIALITY

Because Contractor will have access to confidential information regarding Fund Members ("Personal Member Information"), Contractor will not disclose or in any way communicate any Personal Member Information it may observe or receive except to those employees who have a need to know.

Because Fund and Contractor may receive Confidential Information in the process of performing this Agreement, Fund and Contractor will not disclose Confidential Information of the other party to any third party or any employee not authorized to receive the Confidential Information. Confidential Information includes all proprietary information of each party including, without limitation, (a) trade secrets, inventions, products, ideas, processes, formulas, source code, data, software, programs, other works of authorship, know-how, improvements, discoveries, developments, engineering, hardware configuration information, designs and techniques; (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; and (c) information regarding the skills and compensation of employees or independent contractors of each party

3. SCOPE OF FUND SERVICES AND FUND RESPONSIBILITIES

Fund will make available sufficient hours of staff personnel as is required to meet with Contractor and provide information. The Project Manager will oversee the work and provide support as needed. Fund will furnish and make available its equipment and facilities required for development, testing, training, installation, operation, and maintenance of the Improvements.

(a) Operating Environment.

At Fund's expense, Fund will obtain the hardware and software identified in Exhibit A1. Contractor will perform installation and set up of hardware and software as described in Exhibit A2 prior to Implementation of any Improvement. Fund assumes full responsibility for the overall effectiveness and efficiency of the operating environment in which the Improvements are to function, including, but not limited to, maintaining heating, ventilation, air conditioning, and electrical power in accordance with Contractor's specifications and those of the manufacturer of any hardware with which the programs are used. Fund acknowledges that the Improvements will be developed using VFP as the primary development tool, which requires Microsoft Win2000 Terminal Server as the operating system.

(b) Access to Premises.

Fund will grant Contractor access to Fund's premises, facilities and equipment via a high speed connection through terminal access and such other access as Contractor may deem necessary to perform its obligations under this Agreement and ensure the enforcement of the provisions of this Agreement.

4. BILLING AND PAYMENT PROCEDURE

Contractor's rate schedule on the effective date of this Agreement is:

Conversion of Foxpro 2.6 to Visual Foxpro: \$100 per hour
Set Up & Installation: \$100 per hour during normal business hours
Set Up & Installation: \$200 per hour during non-normal business hours
System Design: \$125 per hour
Software Development of Detailed Specifications: \$100 per hour
Implementation and Training: \$100 per hour
Technology Maintenance & Support/Minor System Enhancements: \$100 per hour during normal business hours and as set forth in Exhibit A3.

Contractor's rate schedule will be increased (not decreased) for each year, beginning with the year commencing on the first anniversary of the effective date of this Agreement, in accordance with the increase in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical statistical area in which Portland, Oregon is located on the basis of 1982-1984 = 100).

On or before the 15th day of each month Contractor will submit to Fund a detailed invoice and project status report for work performed by Contractor during the preceding month and for the Technology Maintenance. Fund will pay the invoice within fourteen (14) working days of the invoice date.

5. EFFECTIVE AND TERMINATION DATES

This Agreement will be effective December 11, 2001 (or on the date the contract is executed, whichever is later) and will terminate as of December 31, 2006. This Agreement may be extended upon the mutual written agreement of the parties.

6. EARLY TERMINATION; BREACH; REMEDIES

(a) Fund and Contractor, by mutual written agreement, may terminate this Agreement at any time. Upon mutual termination, Fund will pay all fees due and outstanding under this Agreement. Upon Fund's payment of all fees due and outstanding, Fund will own all Improvements completed prior to mutual termination according to Section 16.

(b) Fund and Contractor, on thirty (30) days' written notice to the other party, may terminate this Agreement for any reason deemed appropriate in the terminating party's sole discretion. Upon termination under this Section 6(b), Fund will pay in full at the end of the thirty (30) days' notice period all fees due and outstanding under this Agreement. Upon Fund's payment of all fees due and outstanding, Fund will own all Improvements completed prior to termination according to Section 16.

(c) Either Fund or Contractor may terminate this Agreement in the event of a breach of this Agreement by the other. Prior to termination under this Section 6(c), the party seeking the termination will give to the other party written notice of the breach and of the party's 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 this Agreement at any time by giving a written notice of termination.

(d) Upon breach of this Agreement by Fund for failure to pay invoices, Contractor may

terminate this Agreement and take possession of all Improvements delivered to Fund for which Fund has not submitted payment.

(e) Upon breach of the Confidentiality provisions of this Agreement, the nonbreaching party may immediately terminate this Agreement and is entitled to equitable relief including orders for specific performance and injunctions, as well as monetary damages.

7. FUND PROJECT MANAGER

(a) Fund assigns Candace Walter, or such other person as the Administrator of Fund will designate in writing to Contractor, as Project Manager.

(b) The Project Manager is authorized by Fund to act as its representative and to approve work and fees, to give notices, to terminate this Agreement, and to carry out any other Fund actions.

8. COMPLIANCE WITH LAWS

(a) In connection with its activities under this Agreement, Contractor will comply with all applicable federal, state and local laws and regulations.

(b) In the event Contractor provides goods and services to Fund that in the aggregate exceed \$2,500.00 per fiscal year, Contractor will promptly commence and diligently pursue certification through the City's Equal Employment Opportunity certification process.

9. OREGON LAW AND FORUM

(a) This Agreement will be construed according to the laws of the State of Oregon.

(b) Any litigation between Fund and Contractor arising under this Agreement or out of work performed under this Agreement will occur in the state or federal courts located in Multnomah County, Oregon.

10. INDEMNIFICATION

(a) Contractor will hold harmless, defend and indemnify for public liability, property damage or professional liability Fund and Fund's officers, agents and employees against all claims, demands, actions and suits (including reasonable attorney fees and costs) brought against any of them arising out of Contractor's negligent acts or omissions or any subcontractor's negligent acts or omissions under this Agreement. Fund will give prompt written notice of any claims, demands, actions and suits that may give rise to a claim of indemnification within twenty (20) days of learning of or obtaining knowledge of the claims, demands, actions and suits. Failure to give prompt written notice will relieve Contractor of its indemnification obligation.

(b) 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 the services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

11. LIMITATION OF LIABILITY

CONTRACTOR IS MAKING NO WARRANTY, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR A THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER IN CONTRACT OR TORT, DUE TO ANY FORESEEN OR UNFORESEEN CAUSE FROM FUND'S OR THE CONTRACTOR'S USE OR THE PERFORMANCE OF THE IMPROVEMENT DEVELOPED UNDER THIS AGREEMENT. FUND'S SOLE REMEDY AGAINST CONTRACTOR FOR ANY FAILURE OF IMPROVEMENTS SUPPLIED BY CONTRACTOR WILL BE REPAIR, REPLACEMENT OR CORRECTION OF DEFICIENCIES BY CONTRACTOR. IN NO EVENT WILL CONTRACTOR'S LIABILITY UNDER THIS AGREEMENT FOR ANY CAUSE EXCEED THE AMOUNTS PAID BY FUND PURSUANT TO THIS AGREEMENT.

12. 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.

(b) 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.

13. SUBCONTRACTING

Fund approves Contractor's subcontracting of its work under this Agreement to Christian Berrigan of Enterprise Data Solutions, Inc. Contractor will not subcontract its work under this Agreement, in whole or in part to any other subcontractors without the written approval of Fund. Contractor remains obligated for full performance under this Agreement.

13. ASSIGNMENT

Contractor will not assign this Agreement, in whole or in part, or any right or obligation under this Agreement, without prior written approval of Fund.

14. INDEPENDENT CONTRACTOR STATUS

(a) Contractor is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments made under this Agreement.

(b) Contractor, its subcontractors and their employees are not employees of Fund and are not eligible for any benefits through Fund, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

15. OWNERSHIP OF IMPROVEMENTS/DOCUMENTATION/WORK PRODUCT

Contractor grants Fund the rights, to the extent Contractor can grant these rights, to use the Improvements and Documentation for Fund's internal use. Contractor will provide Fund source code of the application software prior to the Acceptance Testing during each project phase. Contractor grants Fund ownership rights to the application software developed for Fund to be used for Fund's internal use only and not for publication or resale by the Fund. Fund grants Contractor the irrevocable rights to use, reproduce, distribute, develop derivative works of application software developed for Fund. The Fund shall own any and all data, documents, plans, 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.

16. NOTICE

Any notice provided for under this Agreement will be sufficient if in writing and delivered personally to the following address or email address with reply required 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 specifies in writing:

If to Fund: Candace Walter, Special Projects Manager
Fire & Police Disability & Retirement Fund
1800 S.W. First Avenue, Suite 450
Portland, Oregon 97201
cwalter@ci.portland.or.us

If to Contractor: Rick Gustafson
Data Management Consultants
10445 SW Canyon Road, Suite 266
Beaverton, Oregon 97005
rick@dmcwest.com

17. SEVERABILITY

Each provision of this Agreement will be treated as a separate and independent clause, and the unenforceability of any one clause will in no way impair the enforceability of any of the other clauses in this Agreement. If one or more of the provisions contained in this Agreement is, for any reason, held to be excessively broad as to scope, activity, or subject so as to be unenforceable at law, that provision or provisions will be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law.

18. INTEGRATION

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

19. FUNDS

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

20. BUSINESS LICENSE

Contractor will obtain a business license as required by PCC §§ 7.02.300 prior to beginning work under this Agreement. Contractor will provide a business license number in the space provided at the end of this Agreement.

21. COMMENCEMENT OF WORK

Contractor will not commence work under this Agreement until after:

- (a) The required workers' compensation insurance, if any, is obtained, as outlined in Section 12; and
- (b) This Agreement is fully executed by the parties and approved by Fund's attorney; and
- (c) The effective date of this Agreement as specified in Section 5.

22. MAINTENANCE OF RECORDS

Contractor will maintain records on a current basis to support its billings to Fund and to document the performance of services in accordance with this Agreement. Fund or its authorized representative will have the authority to inspect, audit and copy, on reasonable notice and at convenient times set by Contractor, any records of Contractor regarding its billing and performance of services. Contractor will retain these records for inspection, audit and copying for two (2) years from the date of completion or termination of this Agreement.

23. AUDITS

(a) 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 this Agreement or during the two (2) year period established by Section 24. 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 any payment to Contractor in excess of the amount to which Contractor was entitled (an "Overpayment"), Contractor will repay the Overpayment to Fund within ninety (90) days of being notified of the Overpayment. Contractor may object to the determination of an Overpayment by notifying Fund of its objection within thirty (30) days of receiving the notification of the Overpayment.

(c) If an audit discloses that payment to Contractor was less than the amount to which Contractor was entitled, Fund will pay the amount of the deficit to Contractor within thirty (30) days of notice of the deficient payment.

24. LIABILITY INSURANCE

Contractor will maintain public liability and property damage insurance that protects Contractor and Fund and Fund's officers, agents and employees from any and all claims, demands, actions and suits for damages to property or personal injury, including death, arising from Contractor's work under this Agreement. The insurance will 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 will be without prejudice to coverage otherwise existing and will name as additional insureds Fund and its officers, agents and employees. The insurance will protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Agreement will 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, if obtained, must apply as to claims between insureds on the policy and for any damages or injuries arising out of the use of automobiles or other motor vehicles by Contractor.

25. BREACH OF AGREEMENT

(a) Fund or Contractor will 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 Fund nor Contractor will breach 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. The 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 Fund or Contractor fail to perform because of a cause described in this subsection, Fund and Contractor will make a mutually acceptable revision to the scope of the services, compensation and other necessary provisions.

26. ARBITRATION

(a) Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of Contractor and Fund within sixty (60) days of notification in writing by either party, will be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator will be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Multnomah. The arbitration, and any litigation arising out of or in connection with this Agreement, will be conducted in Portland, Oregon, will be governed by the laws of the State of Oregon, and will be as speedy as reasonably possible. The applicable arbitration rules for the Multnomah County Courts will apply unless the parties agree in writing to other rules.

(b) Contractor will continue to perform its work pending resolution of the dispute, and Fund will make payments as required by the Agreement.

27. AMENDMENTS

Fund and Contractor may amend this Agreement at any time only by written amendment executed by Fund and Contractor. Unless otherwise provided, any amendment that increases the amount of compensation payable to Contractor must be approved by the Board of Trustees. All schedules of hours and fees for the Software Development, Training and Implementation of an Improvement as described in Section 1(a) are not considered amendments to this Agreement for the purposes of this Section 29. The Project Manager may agree to and execute any other Amendment on behalf of Fund.

28. NON-WAIVER

Fund and Contractor will not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing clearly identifying the breach waived. An express written waiver as to one breach will not be deemed a waiver of any other breach not expressly identified.

29. NONSOLICITATION

During the course of this Agreement and for a period of 12 months following completion of all Project Appendices, Fund agrees to make no offers of employment to employees of Contractor and Contractor agrees to make no offers of employment to Fund's trustees or employees. Contractor and Fund acknowledge that the harm caused by the breach of this provision is incapable of accurate estimation. Therefore, upon breach of this provision, the breaching party will pay the nonbreaching party liquidated damages in an amount equal to the salary of the employee for the month prior to the month in which the offer was made, times twelve (12). The parties acknowledge that this annualized salary is a reasonable forecast of just compensation for the harm caused by the breach.

CONTRACTOR:

DATA MANAGEMENT CONSULTANTS, INC.

**FIRE & POLICE DISABILITY &
RETIREMENT FUND**

By:

By:

Babette Heefle, Fund Administrator

Title:

Date:

Date:

Business License No: 192787

Social Security No:

APPROVED AS TO FORM:

Fund Attorney

EXHIBIT A1

LIST OF CURRENT HARDWARE AND SOFTWARE

FUND IS RESPONSIBLE FOR OBTAINING

<u>HARDWARE DESCRIPTION</u>	<u>DELL PART #</u>
DELL POWEREDGE 2500 1.26GHZ	220-7586
2 ND PROCESSOR 1.26 GHZ	311-1267
512K CACHE	
2GB SDRAM, 133MHZ, 4X512MB DIMMs	311-6574
STANDARD WINDOWS KEYBOARD	310-4100
DELL MONITOR P780, 17"	320-0091
18GB, U160M, SCSI, 1 in, 10K HD	340-1937
18GB, U160M, SCSI, 1 in, 10K HD	340-1937
3.5", 1.44MB FLOPPY DRIVE	340-2557
WINDOWS 2000 SERVER, 5 CLIENT	310-1261
LICENSES, 4GB UTILITY PARTITION	420-0236
MICROSOFT SYSTEM MOUSE	310-3777
PV100T, DDS4, 20/40G, INTERNAL TAPE	340-2560
24X, IDE CD-ROM	313-8993
1X6 HOT-PLUGGABLE HHD BACKPLANE	311-6578
USER=S AND TROUBLESHOOTING GUIDE	310-0840
FOR POWEREDGE 2500	
VERITAS SERVER TAPE SOFTWARE	420-2833
TOWER CHASSIS	310-0841
3YRS BRONZE SUPPORT, NEXT BUSINESS	900-8550
DAY ONSITE	900-8552
REDUNDANT POWER SUPPLY 2+1	310-5086
DELL POWERCONNECT 3024, MANAGED SWITCH,	220-2108
24 PORT, 10/100 FAST ETHERNET, 2 PORTS	
3YRS SAME DAY, 4 HR RESPONSE PARTS	950-1642
DELIVERY, (7 DAYSX24HOURS)	950-1640

<u>SOFTWARE DESCRIPTION</u>	<u>MANUFACTURES PART NUMBER</u>
MICROSOFT WINDOWS 2000 SERVER	(3) C78-00001
15 ADDITIONAL CLIENTS	
MICROSOFT WINDOWS 2000 SERVER	C79-00002
TERMINAL SERVICES - 20 CLIENTS	
MICROSOFT VISUAL FOXPRO 7.0	340-01071
PROFESSIONAL EDITION	
FOXFIRE! - VER. 6.0	FFSTDDEV
DEVELOPER STANDARD EDITION	
VFP DEVELOPMENT BASE CLASS	DMC-0012

EXHIBIT A2

Estimated Hardware / Software

Setup and Installation

Data File Server Setup	14 Hours @ \$100/Hr	\$ 1,400
Install Windows 2000 Operating System		
Installation of MS-Terminal Server		
Create Login Script & Access Rights		
Setup Network Print Queues		
Setup Users, Passwords, & Access Rights		
Install Tape Drive		
Install & Configure Back Up Exec Tape Software		
Workstations	12 Hours @ \$200/Hr.	\$ 2,400
Install & Configure Windows 2000 Terminal Server Client		
Remove Novell Client		
Setup Network Services & Protocols for Windows 2000 Network		
Setup Network Access		
Install & Setup Printer Drivers		
◆ On Site Conversion & Implementation	8 Hours @ \$200/hr.	\$ 1,600
Install New Hardware		
Convert Data from Novell Server to Windows 2000 Terminal Server		
Configure Printer Network Cards for Microsoft Networking		
Setup Drive Mapping on Windows 2000 Terminal Server		
TOTAL	34 Hours	\$ 5,400

NOTE:

1. Contractor's Professional Service Hourly rate is \$ 100 PER HOUR DURING NORMAL BUSINESS HOURS as defined as 8:00 A.M. to 5:00 P.M. weekdays, excluding Contractor's published Holidays.
2. Contractor's Professional Service Hourly rate is \$ 200 PER HOUR FOR ALL NON NORMAL BUSINESS HOURS (Nights, Weekends, Holidays, Etc.)

EXHIBIT A3

TECHNOLOGY MAINTENANCE & SUPPORT AGREEMENT

Contractor will provide up to ten (10) hours of technology maintenance and support per month to Fund, including access to Contractor's software AHot Line@support, in consideration of Fund's payment to Contractor of \$1,000 per month. Fund agrees to pay Contractor for all hours in excess of ten (10) hours per month at Contractor's hourly rate stated below.

Contractor's Professional Service Hourly rate is \$100 PER HOUR DURING NORMAL BUSINESS HOURS, defined as 8:00 A.M. to 5:00 P.M. Pacific Time weekdays, excluding Contractor's published Holidays.

Contractor's Professional Service Hourly rate is \$200 PER HOUR FOR ALL NON NORMAL BUSINESS HOURS (Nights, Weekends, Holidays, Etc.).

Contractor's Monthly Technology and Support Maintenance charge allows Fund's Designated Employees to call Contractor's AHot Line@support as often as required between the hours of 8:00 A.M. to 5:00 P.M. Pacific Time during Contractor's Normal Business Hours to request Support for the following Software Modules:

SOFTWARE SUPPORT MODULES

DISABILITY/EXPEDITING SYSTEM

PENSION SYSTEM

FOXFIRE SOFTWARE

MICROSOFT VISUAL FOXPRO VER. 7.0

MICROSOFT WINDOWS 2000 SERVER

MICROSOFT WINDOWS 2000 TERMINAL SERVER

VERITAS BACKUP EXEC VER. 8.6

VFP DEVELOPMENT BASE CLASS

MS WINDOWS DESKTOP OPERATING SYSTEMS

EXHIBIT B

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Signature _____ Date _____ Entity _____

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor; standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

Project Manager Signature _____

Date _____

SECTION C

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:

- _____ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
- _____ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
- _____ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
- _____ D. Labor or services are performed only pursuant to written contracts;
- _____ E. Labor or services are performed for two or more different persons within a period of one year; or
- _____ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____

Date _____

EXHIBIT C

INSURANCE (The Project Manager must answer and initial 2, 3, and 4 below).

During the term of this contract Contractor shall maintain in force at its own expense, each insurance noted below:

1. Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).
2. _____ Required and attached or Waived by City Attorney : _____

General Liability insurance with a combined single limit of not less than \$500,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract:
3. _____ Required and attached or Waived by City Attorney : _____

Automobile Liability insurance with a combined single limit of not less than \$500,000 each occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or nonowned vehicles, as applicable:
4. _____ Required and attached or Waived by City Attorney : _____

Professional Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract.
5. On all types of insurance. There shall be no cancellation, material change, reduction of limits, or intent not to renew the insurance coverage(s) without 30-days written notice from the Contractor or its insurer(s) to the City.
6. Certificates of insurance. As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to the City at the time contractor returns signed contracts. The certificate will specify all of the parties who are Additional Insured and will include the 30-day cancellation clause that provides that the insurance shall not terminate or be cancelled without 30 days written notice first being given to the City Auditor. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

PROJECT APPENDIX A

Phase One

Conversion from Microsoft Foxpro 2.6 to Microsoft Visual Foxpro: Microsoft Foxpro 2.6 was used as the development platform for the current database as utilized today by the Fire and Police Disability and Pension Fund. The migration from version 2.6 to version 3.0 requires a very significant conversion effort with a certain amount of software redevelopment due in part to the change from a procedural programming language to an object oriented programming system.

Start Date: October 9, 2001

Completion Date: December 31, 2001

The Current Foxpro 2.6 System Contains

96 Screens

82 Database Files

43 Reports

106 Processing Programs

Estimation of Hours for Conversion of Foxpro 2.6 to Visual Foxpro

Conversion of Basic User Screens (Approximately 60)	20 – 20 (Hours)
Conversion of more complex Screens	75 - 100 (Hours)
Software Development of Additional Conversion Tools	15 - 30 (Hours)
Testing	<u>15 - 30</u> (Hours)
Total	125 – 180 Hours
Estimated Conversion Cost	\$12,500 - \$18,000

PROJECT APPENDIX B

Phase Two

Contractor will begin work on the Improvements in Phase Two upon Implementation of all Phase One services.

Improvement: Incorporate Claim Based Structure to Database. The database will need to be modified to make the claim number a primary index field to most major files. Various screens will need to be modified to support this database change and allow multiple open claims per member by pay period. The database will need to be designed to not allow duplication of claim numbers. The injury screen will default to claim number order with the active claim listed first.

Profile:

- ☐ Allow for multiple open claims per member
- ☐ All transactions (time loss, medical, member, member reimbursement, notes, etc.) would be recorded under the proper claim number
- ☐ Allow for lookup by claim number
- ☐ Injury screens should default to claim number order (active claim first)
- ☐ Disallow reuse of claim numbers

VFP (Hours)

System Design	4
Development	10 – 30
Implementation	2 – 4

Improvement: Develop Electronic Integration of TARS/EPAN for TL Claims. A process will need to be developed to import a TL file and match the data to the database and produce detailed and exceptions reports as needed. The user will need a screen to edit the file and post the file once the editing is completed.

Profile:

Generation of TL to be paid (to be set-up by BIT):

- ☐ Generate a file of all fire and police members who have any no-pay DOE and "injury" comment in any TAR transaction
- ☐ Key information: TAR date, employee number, hours, and rate of pay
- ☐ Rate of pay computed similar to rate computed for regular hours worked, including longevity pay

Import to Foxpro system:

- ☐ Capture TL file generated above
- ☐ Generate list of all transactions of the file
- ☐ Match file with Foxpro database and generate exceptions report, listing the following

conditions:

- ☐ TL reported but no claim approved
- ☐ NO TL reported but member status is TL (indicating member returned to work)
- ☐ Allow for correction of TL file, once any follow-up is completed
- ☐ Post TL information to the Foxpro database (dates, hours, and rates to be used for generation of TL checks)

VFP (Hours)

System Design	1 – 2
Development	8 – 16
Implementation/Training	1 – 2

Improvement: Develop Performance Metrics and Statistics. Fund requested approximately 12 set reports be developed for metrics and statistics. The database will not need to be modified or new screens developed.

Profile:

- ☐ Generate Board Agenda (key information: all pending claims for approval, all payments to be ratified)
- ☐ Generate lost time statistics
- ☐ Statistics: number, average cost per claim, average days off
- ☐ Dimensions: by bureau, cause of injury, body part
- ☐ Report of members on TL status with approval for limited duty (for Bureaus)
- ☐ Report of members on TL status with approval for limited duty, including current monthly costs (for Fund)
- ☐ Expediting Committee Report: member, first time loss date, all transactions relating to claim, including notes, wage offset, hours paid, rate of pay and period pay

VFP (Hours)

System Design	6 – 8
Development	24 – 36
Implementation/Training	2 – 3

Improvement: Implement Tickler / Diary Functionality. The Tickler option will require adding new files and fields to the database with screens and reports.

Profile:

Diary:

- ☐ Allow for entry of non-financial activity/notes on a claim or any transaction relating to a claim
- ☐ Key information to be captured: date of entry, person entering note, free form note
- ☐ When reviewing history on a claim, allow for viewing all notes history in addition

to other transactions

Tickler:

- ☐ Allow any person to enter a management plan for a claim: activities that are necessary, person responsible for the activity, status (e.g., planned, completed), target dates (e.g., review physician chart notes on mm/dd/yy; complete claim review on mm/dd/yy)
- ☐ Allow any person to view all of their pending follow-up activities based on an entry of a date range and/or selected claims
- ☐ Allow for printing planned activities, sorted by person, follow up date, and claim
- ☐ Generate reminders (queries and/or reports) for planned activity that are past due
- ☐ "Tickler" actions that should be generated automatically by person responsible for managing claim:
 - ☐ member on TL disability for 5 months
 - ☐ member on TL disability for 9 months
 - ☐ member on TL disability for one month before eligible retirement age
 - ☐ pending status of claim every 30 days
 - ☐ continuously off work for 4 years
 - ☐ one year after moved to monthly
 - ☐ 2 months prior to disabled members reaching 30 years of service (New Plan), reaching 64th birthday (Old Plan) or their children turning 18
- ☐ Supervisors report: request above "tickler" reports for all claims

VFP (Hours)

Diary

System Design	3
Notes per file	3
Assuming 3 files	
Implementation	2

Tickler

System Design	6
Screens	15 – 30
Reports	8 – 12
Outlook Interface	12 – 24
Implementation	2 – 4
Training	2 – 4

Improvement: Implement Mail Merge Letters. Processes will need to be developed to select and export the database files for batch processing of letters. A database screen will be developed to allow the user to select a member or vendor and a letter type to merge with that record. A history file of letters sent by member or vendor will be updated by the process.

Profile:

- ☐ Export mail merge files (Word) for the following correspondence:
 - Approval/claim number letters (key information: member name and address, claim number, diagnosed condition, date of diagnosed condition, reoccurrence of injury, date of reoccurrence)
 - Waiver and new claim acceptance letters (key information: member name and address, claim number)
 - First and final pension check letters (key information: member name and address)
- ☐ Generate mail merge files for all check runs for generation of mailing labels (key information: member name and address)
- ☐ Generate mail merge file for any selected claim(s): name and address

VFP (Hours)

System Design	4 – 6
Database Changes	2 – 4
Screens	3 – 6
Batch Processes (6 Letter Types)	12 – 24
Implementation	2 – 4
Training	4 – 8

PROJECT APPENDIX C

Phase Three

Contractor will begin work on the Improvements in Phase Three upon Implementation of all Phase Two services.

Improvement: Create an Accrual A/P System. Contractor will develop the features as outlined in the document within the Fund Database and Fund will use Create A Check for the check writing. The majority of the development must be put into the custom database to provide the reporting as required by Fund.

Profile:

- ☐ Allow for entry of approved invoices by vendor (for all bills paid by Fund, including member expense reimbursement)
- ☐ Check for duplicate invoices
- ☐ Allow for assignment of pay date based on terms of the invoice
- ☐ For bills relating to a claim(s), capture costs against the claim(s)
- ☐ Generate report of open invoices (to be paid) by payment date and claim number
- ☐ Generate vendor checks and check registers based on scheduled payment date
- ☐ Allow for voiding any checks and other adjustments against open invoices
- ☐ Generate posting summary report(s) to be used for preparing journal entries to the City of Portland's accounting system (invoices, payments, and all other adjustments)
- ☐ Generate 1099's

- ☐ Generate Agenda Report and ad hoc Trial Balance Report
- ☐ Give warning and disallow negative amounts (net)
- ☐ Allow multiple message line capability on payment stubs
- ☐ Generate complete info (time, name of member, meeting date, voided amount) on reports
- ☐ Allow multiple destinations for direct deposits

	<u>VFP (Hours)</u>
System Design	10
Development	
Database/Screens	30 – 60
Reports	20 – 40
1099's and Media	10 – 20
Checks/Stubs/Direct Deposit	6 – 16
Implementation	2 – 4
Training	4 – 8

Improvement: Pension Estimate. This process requires taking the formulas from a current spread sheet and incorporating them into the system in a data entry screen process used to produce an estimated pension form.

Profile:

Functionality from Payroll system:

- ☐ Provide an inquiry screen to entry of member employee number and potential retirement date
- ☐ Calculate monthly Base pay to be used for basis of pension:
 - Base pay for the 12 months prior to the potential retirement date, considering all regular add to pay (e.g., longevity, coach, acting) and step increases that will be effective from current date and potential retirement date, or
 - Highest annual pay in prior 3 years, if member was in higher paid position

Functionality from Foxpro system:

- ☐ Allow for entry of the following for requested retirement meeting: member, date of appointment, retirement date, and monthly gross pay to be used as basis of pension (from Payroll system query)
- ☐ Based on date of birth and years of service compute: age at retirement, years of service at retirement (adjusted for time loss days), earliest retirement date (based on age and years of service)
- ☐ Allow for establishing estimated pension COLA percentage (for base pay and separate percentage for longevity pay) for each of the next 25 years
- ☐ Compute base rate of pay (\$/hr) for each of the next 25 years, considering COLA percentage for each year
- ☐ Compute base monthly pension for member and survivor for four elective accrual rates (2.25%, 2.4%, 2.6% and 2.8%); computation based on monthly gross pay at retirement

- times percentage of final pay (varies by elective accrual rate)
- ☐ Compute base monthly pension with base tax offset for above accrual rates, per Senate Bill 656 and House Bill 3349 (9.89% for pension earned prior to 10/1/91, plus 1% to 4% for pension earned after 10/1/91)
- ☐ Allow for changing retirement date, additional projected premium pay (increasing monthly gross pay at retirement), and adding other supplemental income during retirement planning meeting with member to forecast total monthly retirement income
- ☐ Print Estimated Pension for member (see current spreadsheet). Incorporated in the pension estimate is an explanation of components in the pension estimates

VFP (Hours)

System Design	2 – 4
Development	8 – 16
Implementation/Training	2 – 3

Improvement: Support Calculations of Prorations, including Adjustments to Posted History. This process requires creating the appropriate screens to allow the user to adjust Pension History including deductions. Also, the Pension Calculation screens all need to be modified to calculate the first month and avoid reentry. Calculate the prorated final pension payment.

Profile:

- ☐ For first month of pension utilize current feature that performs the calculation and avoid re-entry (fix problem with retirement on 31st of month)
- ☐ For final pension payment:
 - Allow for entry of time of death
 - Compute percent of days in the month the member/spouse was eligible
 - Apply the percentage to monthly pension and use for the last check
- ☐ If a regular pension check for the month had already been posted, allow for the following options:
 - Void the posted check and reissue the correct final pension check
 - Don't generate the final pension check; generate a refund request (could be a mail merge file with name, address, date of death, and amount to be refunded)
 - In either way, post the adjustments in Member transaction history
 - Allow for tax deductions

VFP (Hours)

System Design	1 – 2
Development	6 – 12
Implementation/Training	1 – 2

PROJECT APPENDIX D

Phase Four

Contractor will begin work on the Improvements in Phase Four upon Implementation of all Phase Three services.

Improvement: Improve Ability To Do Retro Checks. The Disability and Expediting System needs to be modified to allow for creation of retro checks similar to the Pension System. There will be some minor database changes and screen development along with some new retro check processes.

Profile:

- ☐ Allow for entry of retro dates and percentage of pay or retro period
- ☐ Based on historical TL and/or pension payments generated during the retro period, compute retro amounts (also considering all other transactions during that period, such as voids)
- ☐ Generate retro checks

VFP (Hours)

System Design	4 – 6
Development	10 – 20
Implementation/Training	2 – 3

Improvement: Support Death Benefit Determination for Multiple People. Create child tables and screens to support multiple entries for Alternate Check and Alternate 1099 Address.

Profile:

- ☐ Allow for multiple entries for "Alternative Check" and "Alternate 1099 Address" button

VFP (Hours)

System Design	1 – 2
Development	3 – 6
Implementation/Training	1 – 2

Improvement: Improve Pension Cost of Living Adjustments. Allow for a global update with a separate COLA rate for Old Plan and New Plan members. Create a COLA audit and history files with inquiry screens.

Profile:

- ☐ Add x.xx% to the final month of the prior year for "new" plan members
- ☐ For "old" plan members, apply x.xxxx% to the final month of the prior year

VFP (Hours)

System Design	1 – 2
Development	6 – 12
Implementation/Training	1 – 2

PROJECT APPENDIX E

Phase Five

Phase Five services will be conducted according to the procedures set forth in Section 1, Minor System Enhancements.

Minor System Enhancements: Any user reported "bug" in the software will be corrected as part of the support agreement at no additional cost. There are very few of these listed on the document and most of these can be corrected when the system is converted to Visual Foxpro. Based upon the limited information provided on the small enhancements, the following outlines the estimated time to accomplish these items.

Profile:

- ☐ Have member contribution amount automatically brought forward to widow's master
- ☐ Fix – Get rid of WATCOM Win 386 Error which appears disallows launch of Foxpro after activity of PC
- ☐ Fix – When in Injury Screen and user switches to Master Screen, Injury Screen should not revert to last member in system
- ☐ List all fields in FoxFire lists and improve usability
- ☐ Make "designate a run time" options work in FoxFire reports
- ☐ Add claim number to Injury History Screen
- ☐ Add ability to preview and run only pages needed of reports (i.e., transactions sheets)
- ☐ Change Time Loss Screen to number of hours missed instead of number of days
- ☐ Add PKA field (previous known as) with date changed and ability for multiple names
- ☐ In claim TX box on Injury Screen, allow for more information
- ☐ Fix – On Injury Screen, Claims Status box should not automatically change
- ☐ Add totals to all columns on Transaction History Reports
- ☐ Add box for rank at retirement
- ☐ Add box for RX on Injury Screen
- ☐ Fix – If retirement date is 31st of month then the calculation for First Payment Amount is not being done correctly on Pension Application. It is producing \$0 amount, which is not correct
- ☐ Fix – Spousal information is not appearing on Pension Application
- ☐ Add DRO information to Pension Applications, Member Master and Pension Master

VFP (Hours)

System Design	4 – 6
Development	10 – 20
Implementation/Training	2 – 4