

**SOFTWARE SERVICES AGREEMENT
BETWEEN THE
TOWN OF PALM BEACH RETIREMENT SYSTEM
AND
GABRIEL, ROEDER, SMITH & COMPANY**

A. Purpose

The Board of Trustees of the Town of Palm Beach Retirement System (Board) hereby enters into a contractual agreement with Gabriel, Roeder, Smith & Company (GRS) for software services described in subsection B.

B. Description of Services

GRS will develop the Benefit Calculator for the Board for use by Town Personnel and employees of the Town. GRS will also set up DROP and Share Plan accounting, with quarterly statements and the most recent balance available to DROP and Share Plan members on GRS Advantage.

C. Schedule

GRS estimates that Phase I of this engagement will be completed, including all testing and changes, within ninety days following the Board's acceptance of this agreement and receipt of participant census data. If Phase I will not be completed within this time frame, GRS shall notify the Board in writing of the expected completion date.

D. Initial Project Cost

Fees for this project will be based on time spent and current hourly rates with a maximum (not-to-exceed) cost for the initial delivery of \$35,000. If the project scope changes significantly after the start of development the final cost may exceed the maximum. Should this situation arise, GRS will immediately provide the Board with an updated estimate, and the Board shall be required to approve the additional fees before work may continue. Should the Board be billed for additional fees prior to Board approval, the Board reserves the right to withhold payment until and unless such fees are approved.

E. Annual Maintenance Fee

The Board will be billed an annual maintenance fee to cover the following support services:

1. Maintaining a working version of the software hosted on a secure server that is under the control of GRS.
2. Importing biweekly payroll feeds into the GRS system.
3. Providing fixes for reported programming errors.
4. Updating the IRC 415 screener annually.
5. Providing telephone/e-mail support as needed during GRS business hours.

The first year fee shall be \$11,200. Fees in subsequent years shall increase based on changes in the Consumer Price Index. GRS shall notify the Board in writing of such fee increases immediately upon learning of such increase. The Board shall be required to approve any increase in fees before work may continue. Should the Board be billed for additional fees prior to Board approval of such fees, the Board reserves the right to withhold payment until and unless such fees are approved. Additional development and support time shall be billed at GRS' hourly rates, currently as follows:

1. Valmiki Ramsewak: \$307
2. Joshua DeAndy: \$227
3. Kevin Beardsley: \$323

Hourly rates are adjusted annually. Hourly rate increases shall not be binding upon the parties unless GRS has notified the Board of such fee increases in writing.

F. Project Phases

Phase 1 – Benefit Calculator

GRS shall begin the initial phase of the project which shall involve defining the project scope in detail and composing a suite of test cases. GRS uses automated test cases to confirm the accuracy of its software and shall work with HR to define a comprehensive set of tests.

Once the final scope has been defined and the test cases designed, GRS shall develop the software. During development, the Board shall receive monthly progress reports. Development tasks include user interface components, the back-end database and the calculation engine.

Upon completion of development, GRS shall make the software available to the Board. Town Personnel shall be given a period of time to test the software and make sure that it performs to their expectations. GRS shall make adjustments as necessary and deliver new versions during this phase. Once the Town Personnel are satisfied that the software meets its requirements, an authorized representative of the Board shall sign a document indicating this and the project shall be considered complete and made available to the participants.

Phase 2 – DROP Accounting

GRS shall begin work on this phase upon completion of the Benefit Calculator (Phase 1). Phase 2 shall consist of providing plan members with online access to their DROP accounting statements.

Phase 3 – Share Plan Accounting

GRS shall begin work on this phase upon completion of the DROP Accounting (Phase 2). Phase 3 shall consist of providing plan members with online access to their Share Plan accounting statements.

G. Invoicing

GRS will invoice the Board for fees and expenses incurred during the development of the software on a monthly basis. The annual maintenance fee invoicing will begin upon completion of the software. Generally, the annual maintenance fee will be billed quarterly, at the beginning of each quarter. Hourly charges for other work will generally be billed on or about the 5th day of each month for Services provided during the preceding month.

H. Board Responsibilities

The cost and schedule estimates contained in this Agreement are based on our understanding that the Board will make available any personnel (including legal counsel, system trustees, accountants, and other service providers), as appropriate to enable GRS to perform the Services and to ensure successful completion of the project. We also anticipate that Town Personnel will provide any necessary data and information in a timely manner and that such data will be accurate and in acceptable formats and media. If Town Personnel are unable to participate in the project as specified in project plans or if information provided is inaccurate, incomplete, or delayed, then the scope of the project may be different (and GRS' fees may be higher) than described in this Agreement. Upon learning additional fees will be necessary, GRS shall immediately notify the Board in writing of such additional fees. The Board shall be required to approve the additional fees before work may continue. Should the Board be billed for additional fees prior to Board approval, the Board reserves the right to withhold payment until and unless such fees are approved.

Upon completion of the project, Town Personnel will continue to provide any necessary data and information in a timely manner. Such data will be accurate and in acceptable formats and media as agreed upon during the initial project.

I. Software Enhancements

The Board may request modifications to the software by contacting the GRS consultant assigned to the account. For each requested modification, the assigned GRS consultant will provide an engagement letter including a fee quote and a description of the services to be performed. The Board shall be required to approve all fees prior to performance of services. Failure of the Board to pay the Board-approved fee within 30 days of the completion of the modification by GRS will be treated as default of contract.

J. Incorporation by Reference

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and Conditions in Section of solicitation number RFP No. 2019-20 Pension Administrator – Rebid as set forth in section “Additional Services”.
- c. Contractor’s response to solicitation number RFP No. 2019-20 Pension Administrator – Rebid as set forth in section ““Defined Benefit Administration Technology” and any

subsequent information submitted by Contractor during the evaluation and negotiation process.

The failure of a party to insist upon strict adherence to any term of the contract shall not be considered a waiver, or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the contract. The contract may not be modified, amended, extended, or augmented, except in writing executed by the parties, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

Each provision of the contract shall be deemed to be severable from all other provisions of the contract and, if one or more of the provisions of the contract shall be declared invalid, the remaining provisions of the contract shall remain in full force and effect. This agreement shall be construed and enforced according to the laws of the State of Florida, without regard to choice of law or conflict of law principles. The parties agree jurisdiction and venue over any disputes shall be in state and federal courts located in Palm Beach County, Florida.

K. Term of Services Provided

The term of services provided under this contract shall commence upon signature of this agreement by both parties and continue in effect until cancelled by either GRS or the Board.

L. Cancellation

The System or GRS may cancel the contract with thirty (30) days written notice, at any time in case of default by either party, or at the end of a maintenance period for any reason. Default is defined as the failure of the Board or GRS to fulfill the obligations of this contract in a timely manner.

M. Warranty and Release of Liability

GRS warrants that it will make reasonable good faith efforts to ensure that the web-based software produces correct results. While GRS intends for the web-based software to produce accurate results, GRS cannot and will not be held liable for actions taken by the Board, Town Personnel and employees of the Town or any third party upon the results of the web-based software.

The Board agrees that in any event, including an error in the software, GRS' liability shall be limited as set forth under item N "Indemnification" (below). In the event of a dispute, both parties waive their right to a jury trial.

N. Indemnification

To the fullest extent allowed by law the GRS shall protect, defend, reimburse, indemnify and hold harmless the Board, its members, the Town of Palm Beach, and the Town's officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, reasonable attorneys or other professional fees, or other reasonable expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character in connection with, or arising directly or indirectly out of any negligent act, error or willful misconduct related to this Contract and the Work performed hereunder. Without limiting the generality of the foregoing, GRS's Indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, defects in materials or workmanship due to

negligence, error or willful misconduct, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. GRS agrees to investigate, respond, adjust and provide a defense for all and any such claims, demands and actions at GRS's sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent. Notwithstanding the foregoing, GRS's Indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the Town, or by the Town's officers, agents and employees. GRS acknowledges and agrees that Town would not enter into a contract without this indemnification of Board and Town by GRS, and that Board's entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract. Nothing in this Contract shall be construed to affect in any way the Board's rights, privileges, and immunities as set forth in Florida Statutes 768.28.

O. Independent Contractor

Client and GRS are independent entities, and neither Client nor GRS is, nor shall be considered to be, an agent, distributor, joint venturer, partner, fiduciary or representative of the other. Neither Client nor GRS shall act or represent itself, directly or by implication, in any such capacity in respect of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective immediately.

For GRS:

Vahmika N. Rousewood

Gabriel, Roeder, Smith & Company

Date: Aug 12, 2019

For Town of Palm Beach Retirement System:

By: _____

Name: _____

Title: _____

Date: _____