

**TAB 3**



March 11, 2009

Board of Trustees  
c/o Ms. Ellen Leonard, Chairperson  
City of Palmetto Retirement Plan  
516 8<sup>th</sup> Avenue West  
Palmetto, FL 34220

**Re: Proposed Actuarial Services Agreement prepared by Christiansen and Dehner, P.A.**

Dear Ellen:

The Board's attorney has prepared an Actuarial Services Agreement providing that GRS is a fiduciary of the Plan. The purpose of this letter is to detail GRS' rationale for not accepting the language which states or implies that GRS is a fiduciary.

- 1) It is the opinion of the general counsel of the American Academy of Actuaries that the traditional role of the pension actuary, to value the reserves of the plan, is one of a consultant or expert but not one of a fiduciary. This opinion has been upheld in several court cases. The traditional role of an actuary does not meet the definition of a fiduciary under ERISA in that the actuary: a) has no discretionary control or authority over the assets in the plan, b) does not render investment advice for compensation and c) has no discretionary responsibility for the administration of the plan. We do not meet any of the above qualifiers in that we do not have discretionary authority over any of the Plan's assets, we do not provide investment advice to the Plan and we do not have responsibility for the administration of the Plan.
- 2) It is possible for an actuary to become a fiduciary if state common law creates a fiduciary responsibility or if the actuary undertakes responsibilities that go beyond the traditional role. In both cases, however, the determination of whether a fiduciary relationship exists is based on the facts and circumstances. We believe that in such cases the determination is best made by the courts.
- 3) GRS recognizes that it is bound by Florida law and specifically Section 112.656. We believe (and our legal counsel believes) that this section does not impose the responsibilities of a fiduciary on GRS as the Plan's actuary. However, regardless of the interpretation of the statute and in recognition of its ambiguity, GRS is willing to be considered a fiduciary of the Plan, but only to the extent required under the statute. This should provide comfort to the Plan that we are in compliance with the law, however it is interpreted.
- 4) Furthermore, if the facts and circumstances of the situation provide that GRS' role has changed such that it has become a fiduciary, then GRS will be governed by such standards regardless of whether it has agreed to act as fiduciary under its contract.
- 5) We do not believe that actuaries are generally accepting fiduciary liability in cases where they are not engaged in one of the three primary responsibilities described by ERISA (discretion over assets, providing investment advice or administration). Unfortunately, we are prevented by anti-

competition laws from discussing this matter with our major competitors (Milliman, Buck, Wyatt, Mercer and AON). It is possible that sole practitioners or small firms who are incorporated in such a way that they have little to lose (and plans have little to gain) may have accepted inappropriate fiduciary responsibility. By the Plan's limiting its pool of acceptable actuaries to firms whose resources or quality of service are not comparable to major actuarial firms, a Plan trustee may be breaching its own fiduciary responsibility with no apparent benefit of additional protection.

- 6) GRS is the actuary for more than 40 statewide pension plans and approximately 500 municipal plans similar to yours. None of these plans has required GRS to accept contractual fiduciary liability similar to your proposal.
- 7) GRS does have professional liability insurance; however, fiduciary liability has always been excluded. It is believed that removing such exclusion may be prohibitively expensive (at best) or impossible (at worst). In requiring unnecessary fiduciary liability, the Plan may be causing an unnecessary expense or limiting available insurance.
- 8) The co-fiduciary responsibility that comes with the acceptance of contractual fiduciary responsibility is a particular problem for GRS. In many cases our contact with the Plan is limited to annual presentations and telephone calls. This may contrast with investment advisors and attorneys who may attend trustee meetings on a regular basis. We may not realize that a breach of fiduciary liability has occurred even if we saw it happen because we do not have access to all of the facts.
- 9) Any reluctance that we may have in accepting fiduciary liability does not limit in any way our responsibility to perform our actuarial work in a manner consistent with the current actuarial standards of practice.

We would like to see Paragraph 13 of the Agreement rewritten as:

“Actuary is an independent contractor and not an agent, employee or subcontractor of the Board. Actuary will be governed in its relations with the Board by the duties and requirements of Florida law. The Actuary will not enter into any agreement or take any action contrary to that responsibility. The Actuary will not accept or perform an engagement involving the Plan's members for any organization other than the Plan without prior written consent of the Board. Actuary warrants to the Board that the services performed under this Agreement will be performed in accordance with generally accepted industry standards.

In all of its relations with the Board, Actuary shall discharge its duties with respect to the Plan solely in the interest of the participants and their beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the Plan. By execution of this Agreement, Actuary acknowledges that it shall be subject to the standards set forth in 112.656, Florida Statutes, to the extent they are applicable to Actuary.”

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We welcome your questions and comments.

Sincerely,

A handwritten signature in black ink that reads "Steve Palmquist". The signature is written in a cursive style with a large, prominent "S" at the beginning.

J. Stephen Palmquist, ASA  
Senior Consultant and Actuary

JSP/lgs

Cc: Scott Christiansen  
Ken Davis  
Theora Braccialarghe