

TAB 4



Gabriel Roeder Smith & Company
Consultants & Actuaries

One East Broward Blvd.
Suite 505
Ft. Lauderdale, FL 33301-1872

954.527.1616 phone
954.525.0083 fax
www.gabrielroeder.com

March 11, 2009

Board of Trustees
c/o Mr. Gary Lowe, Chairperson
City of Palmetto Police Officers Retirement Plan
P. O. Box 1209
Palmetto, FL 34220-1209

RECEIVED
MAR 16 2009

BY:.....

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

Dear Gary:

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:

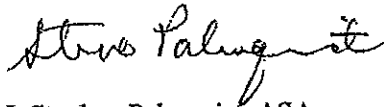
“Actuary is an independent contractor and not an agent, employee or subcontractor of the Board. Actuary will be governed in its relations with the Board by the duties and requirements of Florida law. The Actuary will not enter into any agreement or take any action contrary to that responsibility. The 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.”

Board of Trustees
March 11, 2009
Page 3

We welcome your questions and comments.

Sincerely,

A handwritten signature in cursive script that reads "Steve Palmquist".

J. Stephen Palmquist, ASA
Senior Consultant and Actuary

JSP/lgs

Cc: Scott Christiansen
Ken Davis
Theora Braccialarghe

Law Offices

Christiansen & Dehner, P.A.

63 Sarasota Center Blvd. Suite 107 Sarasota, Florida 34240 • 941-377-2200 • Fax 941-377-4848

January 8, 2009

RECEIVED

JAN 12 2009

CITY HALL

Mr. Steve Palmquist
Gabriel, Roeder, Smith & Company
One East Broward Blvd., Suite 505
Fort Lauderdale, Florida 33301

Re: City of Palmetto Police Officers' Retirement Plan

Dear Steve:

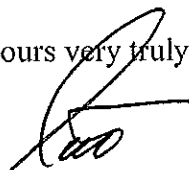
As directed by the Board of Trustees, please find, in triplicate, an original Actuarial Services Agreement between Gabriel, Roeder, Smith & Company and the Board of Trustees of the City of Palmetto Police Officers' Retirement Plan. The fiduciary language in this agreement is patterned after the document we sent regarding the Sebring Police plan, which language I discussed with your attorney. We have also included language increasing your fee. Please review this agreement, and should it meet with your approval, execute all three copies and return all three originals to:

Ms. Diane Ponder
Palmetto Police Officers' Retirement System
Post Office Box 1209
Palmetto, Florida 34220-1209,

for execution by the Chairman and Secretary of the Board. Once these agreements are signed by the Board, a fully-executed copy will be returned to you for your file, a copy provided to our office and a copy retained in the Board's files.

Should you have any questions regarding the enclosed, please do not hesitate to contact me.

Yours very truly,



Scott R. Christiansen

SRC/dm
enclosure

cc: Diane Ponder, with enclosure ✓

ACTUARIAL SERVICES AGREEMENT

THIS CONTRACT is entered into the ____ day of _____, 2009, between the BOARD OF TRUSTEES OF THE CITY OF PALMETTO POLICE OFFICERS' RETIREMENT PLAN, (herein referred to as the "Board") and GABRIEL, ROEDER, SMITH & COMPANY (herein referred to as the "Actuary").

WITNESSETH

WHEREAS, the Actuary has demonstrated the expertise and experience to perform the actuarial services outlined in said proposal.

NOW, THEREFORE, in consideration of services to be performed and payments to be made together with mutual covenants and conditions hereinafter set forth, the parties agree as follows:

1. The Actuary shall, within sixty (60) days of receipt of all required employee and financial data, complete and return to the Board the following for each of three (3) consecutive years beginning with an October 1, 2008 valuation:

- A. Actuarial valuation and report. In the course of the valuation, Actuary will determine the funding requirements and generally review the experience of the Fund. (6 copies)
- B. Information required for the Bureau of Local Retirement Systems per Chapter 112, Florida Statutes. (6 copies)
- C. Disclosure information for auditors per Governmental Accounting Standards Board. (6 copies)
- D. Individual Member Certificates which set forth the projected, accrued and vested benefits, along with a statement of accumulated member contributions on the valuation date.
- E. Respond to annual requests for information by auditor.

2. Following submission of the afordescribed information and material, the Actuary shall meet with the Board to discuss in detail the results of the valuation and do all that is required to make the valuation reasonably acceptable to the Board. After acceptance by the Board, Actuary shall file the report with all appropriate State agencies and do everything necessary to obtain State acceptance.

3. During the contract period, the Actuary shall also perform all benefit calculations for retirement, disability, death and for vested benefits. These calculations will be performed and the results provided to the Board within 5 working days of receipt by Actuary.

4. In consideration of the satisfactory performance of services and delivery of work products as provided in paragraphs 1, 2 and 3 of this contract, the Board agrees to pay the Actuary an annual fee of \$9,000.00. This fee shall be increased each year beginning October 1, 2009 in accordance with the change in the Consumer Price Index. It is agreed that this amount shall be the total compensation to Actuary for performance of the services in paragraphs 1, 2 and 3, including all expenses.

5. During the contract period, the Actuary shall also perform such additional actuarial services as may be requested by the Board including, but not limited to:

- A. Perform special actuarial studies to determine the costs associated with the implementation of alternative benefit improvements.
- B. Conduct meetings with employee groups to explain plan provisions and answer questions.
- C. Analyze funding trends to predict future contribution requirements.

The charges for this work shall be based upon the amount of time required to complete each task. A firm fee quotation prior to commencing any work shall be provided. The hourly charges shall be:

	<u>Hourly Rate</u>
Senior Actuarial Consultant (Principals)	\$306
Senior Analyst	\$140
Analyst	\$110
Administrative Assistant	\$ 84

6. This contract embodies the entire agreement of the parties hereto and no modification thereof shall be made except by written amendment agreed to and executed by both parties.

7. The Board shall deliver to the Actuary all employee and financial data and any such further information as the Actuary shall deem necessary from time to time in order to complete the job.

8. The Board may terminate this Contract at any time upon thirty (30) days written notice to Actuary. In the event that the Board determines to terminate this contract without cause, or in the event that the Board fails to perform any of its duties hereunder for a period of more than sixty (60) days after written notice by the Actuary of such failure, the Actuary may terminate this agreement and be entitled to compensation to the date of such termination, based on the actual work performed.

9. The term of this Contract shall be for three (3) years from date, and shall be deemed renewed for subsequent periods of one (1) year unless terminated by either party upon thirty (30) days notice to the other. There shall be no change in any terms unless mutually agreed to by the parties hereto.

10. Neither party hereto may assign, convey, or otherwise transfer any of its rights, obligations, or interest herein without the prior express written consent of the other party.

11. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida. All prior agreements between the parties are hereby terminated and superseded by this Agreement.

12. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

13. 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. Actuary shall act with the skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. 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.

In addition to any liability which Actuary may have under the previous paragraph, actuary shall be liable for a breach of responsibility of another entity which provides services to the Board ("provider") in the following circumstances:

- (1) if Actuary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other provider, knowing such act or omission is a breach;
- (2) if, by Actuary's failure to comply with the previous paragraph in the administration of its specific responsibilities, Actuary has enabled such other provider to commit a breach; or
- (3) if Actuary has knowledge of a breach by such other provider, unless Actuary makes reasonable efforts under the circumstances to remedy the breach or inform the Board of such breach.

14. Any action under this Agreement shall be brought in Manatee County, Florida.

15. Public Entity Crimes Bill - Section 287.133, Florida Statutes, provides that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

IN WITNESS WHEREOF, the Board has signed duplicates hereof, and GABRIEL, ROEDER, SMITH & COMPANY has caused its corporate name to be signed to said duplicates by its proper officers thereunto duly authorized on the day and in the year first above written.

**GABRIEL, ROEDER, SMITH
& COMPANY**

**BOARD OF TRUSTEES OF THE CITY
OF PALMETTO POLICE OFFICERS'
RETIREMENT PLAN**

By: _____
As Senior Consultant
and Actuary

By: _____
As Chairman

ATTEST:

ATTEST:

By: _____
As

By: _____
As Secretary

October 3, 2008

Board of Trustees
c/o Mr. Gary Lowe, Chairperson
PO Box 1209
Palmetto, FL 34220-1209

**Re: Valuation Fees for the October 1, 2008 Actuarial Valuation Report
City of Palmetto Police Officers' Retirement Plan**

Dear Trustees:

We are hereby requesting that the Board of Trustees consider an increase in our fees to produce the Actuarial Valuation Report. Our current charge for the Actuarial Valuation Report including a meeting to present results, Employee Benefit Statements and updating page 6a of the State report is \$6,951. We are requesting that this fee be increased to \$9,000 effective with the October 1, 2008 Valuation Report. The fee will increase in subsequent years in accordance with the Consumer Price Index.

Currently the fees are not covering our time charges, and for some years we are only covering 50% to 75% of our time charges. As a result, we are losing money on preparing the Actuarial Valuation Report. Our fees are not covering our time charges due to some or all of the following reasons:

- We have more quality control internally than a few years ago. We currently have a doer, checker, reviewer and peer reviewer to help ensure the accuracy of the information you are receiving.
- Many years have gone by without an increase in fees.
- The plan is amended very often. Each year that there is a plan amendment we have to show results both reflecting and not reflecting the plan change.

Our proposed fee is still only 0.12% of the value of the assets as of October 1, 2007. Please let us know if this fee increase is acceptable to the Board of Trustees.

We welcome your questions and comments.

Sincerely yours,

J. Stephen [redacted] ASA
Senior Consultant and Actuary

cc: Sharon Jones

Approved by Trustees
Oct 22, 2008