

Item 6.b.
Sugarman, Susskind, Braswell & Herrera

Item 6.b.i.

**Gabriel, Roeder, Smith & Company
Actuarial Services Contract**

**CONSULTING SERVICES AGREEMENT
BETWEEN THE
CITY OF DELRAY BEACH POLICE OFFICERS' RETIREMENT SYSTEM
AND
GABRIEL, ROEDER, SMITH & Company**

**Section I
General Information**

A. Purpose

The City of Delray Beach Police Officers' Retirement System hereby enters into a contractual agreement with Gabriel, Roeder, Smith & Company (GRS) for actuarial and consulting services. The client in this matter shall be the City of Delray Beach Police Officers' Retirement System (DBPORS) as represented by the Board of Trustees for such system. This Contract does not create any relationship between the Consultant and any other related private, not for profit, or governmental entity, including, but not limited to, the City of Delray Beach (Plan Sponsor) itself or participants in the DBPORS or any collective bargaining unit that may represent participants in the DBPORS. Such entities may rely upon GRS work products only with the permission of both GRS and the DBPORS. GRS shall have no obligation to work for such entities; however, GRS may freely elect to work for such an entity with explicit consent of the DBPORS and provided that copies of all related work products are provided to the DBPORS.

The Actuary certifies that it is professionally qualified as an independent Actuary to provide actuarial and consulting services in the public sector. Furthermore, the Actuary is an enrolled actuary as defined by Florida Statutes §185.02(11).

B. Entire Agreement and Order of Precedence

This Agreement forms the complete and exclusive contract between the parties as it relates to this transaction.

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 by a 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. The contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Florida. Venue as to any actions shall be in the appropriate federal or state court in Palm Beach County, Florida.

C. Term of Contract

The contract is for the 60-month period extending from September 1, 2017, through August 31, 2022. By mutual agreement of the parties, the contract may be renewed on a year-to-year basis, without re-bidding at the end of the contract term. Upon its expiration, in the absence of direct action to extend the contract, the contract shall automatically be extended for an additional year.

D. Contractor Responsibilities

GRS assumes responsibility for all contractual activities whether or not it performs them directly. GRS shall be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. The DBPORS reserves the right to interview the key personnel assigned by GRS to this project and to request reassignment of personnel deemed unsatisfactory by the DBPORS in its reasonable discretion.

If any part of the work is to be subcontracted, the DBPORS must be notified at least 30 days in advance, and must approve in writing. If any part of the work is to be subcontracted, the DBPORS reserves the right to approve the subcontractors in advance, and to require that GRS replace any subcontractors found by the DBPORS to be unacceptable in its reasonable discretion. GRS shall be responsible for adherence by the subcontractor to all provisions of the contract.

GRS warrants to the DBPORS that the services performed under this Contract will be performed in accordance with generally accepted industry standards. GRS agrees that all work will be performed at a rate of progress that will ensure timely completion thereof.

The Scope of the Services includes:

1. Prepare an annual Actuarial Valuation as of October 1 each year, in accordance with Florida Statutes Chapters 185 and 112 Part VII.
2. Attend at least one meeting per year to present the annual valuation.
3. Prepare annual individual employee Benefit Statements (**optional**).
4. Compute and verify retirement, death, disability, and termination benefits.
5. Consulting services regarding benefit and/or assumption changes.
6. Prepare economic actuarial impact statements, as necessary.
7. Coordinate with other service providers regarding other annual plan reports and necessary governmental filings.
8. Provide actuarial consultation and advisory services.
9. Respond to inquiries from State of Florida.
10. Keep Fund advised on developments in State and Federal legislation.
11. Make recommendations regarding Plan improvements and current trends.
12. Provide telephone consultations on plan matters.
13. All other duties as required or requested by the Trustees.

E. Client Responsibilities

The DBPORS agrees to review information supplied by GRS for general reasonableness, and to ensure that GRS has properly understood the assignment. In the event that the DBPORS finds a GRS work product to be unreasonable or otherwise unsatisfactory, the DBPORS shall not distribute such work product or otherwise make use of it, or rely upon it, until a correction has been made, or GRS has

explained matters to the satisfaction of the DBPORS. In the event of discovery of an error made by GRS in a calculation, the DBPORS agrees to take immediate and substantial steps to mitigate the effects of such error.

F. Accounting Records

GRS shall maintain all pertinent financial and accounting records and evidence pertaining to this contract in accordance with generally accepted accounting principles (GAAP).

G. Patent/Copyright Infringement and Employee Indemnification

GRS shall indemnify, defend and hold harmless the DBPORS and its employees and agents from and against all losses, liabilities, penalties, fines, damages and claims, and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the DBPORS to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity, or service supplied by GRS or its subcontractors, or the operation of such equipment, software, commodity, or service, or the use or reproduction of any documentation provided with such equipment, software, commodity, or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become, or in GRS' opinion be likely to become, the subject of a claim of infringement, GRS shall at its sole expense, (i) procure for the DBPORS the right to continue using the equipment, software, commodity, or service, or (ii) if such option is not reasonably available to GRS, replace or modify the same with equipment, software, commodity, or service of equivalent function and performance so that it becomes non-infringing, or (iii) if such options are not reasonably available to GRS, accept its return by the DBPORS with appropriate credits to the DBPORS against GRS' charges and reimburse the DBPORS for any losses or costs incurred as a consequence of DBPORS ceasing to use and returning the equipment, software, commodity, or service. The foregoing indemnification is void to the extent that DBPORS, its employees or agents modifies or misuses such equipment, software, commodity, or service.

GRS agrees to indemnify the DBPORS from claims made by GRS employees while working on the DBPORS premises on DBPORS projects, provided that the DBPORS has complied with all relevant Federal and State Laws related to workplace safety, and human rights, including, but not limited to anti-discrimination and anti-harassment laws; however, GRS shall not be required to indemnify the DBPORS with respect to any claim that is based on the DBPORS's negligence or misconduct. In any and all claims against the DBPORS, or any of its agents or employees, by any employee of GRS or any of its subcontractors, the foregoing indemnification obligation shall not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for GRS or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clauses.

The duty to indemnify will survive the expiration or early termination of the contract for a period of one year with respect to any claims based on facts or conditions which occurred prior to termination or expiration.

H. Liability Insurance and General Indemnity

GRS shall purchase and maintain such insurance as will protect it from claims which may arise out of or result from its performance under the contract, whether such performance be by GRS or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The insurance shall be written for not less than the greater of \$2,000,000 and any limits required by law, and shall include contractual liability insurance as applicable to GRS' obligations under the indemnification clause of this contract.

GRS agrees to indemnify DBPORS for the actual amount of all direct losses the DBPORS suffers due to gross negligence, error, breach of contract or willful misconduct on the part of GRS in performing the services hereunder in an amount not to exceed \$500,000 during any single year in which said negligence, error, or willful misconduct is alleged to have occurred, and not to exceed \$1,000,000 in total. The indemnification provided by GRS for any single act of negligence, error, or breach of contract shall not exceed \$500,000. Nothing in this paragraph shall apply to any liability which has been finally determined to have arisen from willful misconduct or fraud on the part of the Actuary or which cannot lawfully be limited, modified, or excluded. In the event of disputes, both parties to this contract agree to use mediation and arbitration as a first attempt towards resolution. In the event of disputes, both parties to this contract agree to the use of mediation and arbitration as a first attempt towards resolution.

I. Board Minutes

The DBPORS shall routinely provide GRS with copies of Board Minutes for GRS' reference in connection with work to be performed pursuant to this contract. With respect to meetings that the GRS Consultant attends and is directly or indirectly quoted in the minutes, the GRS Consultant will review the applicable sections of the minutes containing such direct or indirect quotes and let the Plan Administrator know if revisions are necessary.

J. Cancellation

The DBPORS, with 30 days written notice to GRS, may cancel the contract. GRS may also cancel the contract with 30 days written notice to the DBPORS for any of the following reasons: 1) The DBPORS, the DBPORS Plan Sponsor, or one or more plan participants or beneficiaries, or the State has filed a lawsuit against GRS in a matter related to the DBPORS, its participants, or its beneficiaries, 2) a member of DBPORS's Board or Staff has been found guilty of criminal or civil breach of fiduciary responsibility or other severe wrongdoing with respect to the DBPORS or GRS, or 3) a member of DBPORS's Board or Staff demands that GRS take actions deemed by GRS Management to be unethical or illegal. GRS may otherwise cancel the contract upon giving 90 days written notice to DBPORS. If the DBPORS cancels the contract for any reason other than the failure of GRS to fulfill the obligations of the quotation or contract, the DBPORS shall pay GRS' reasonable final invoice for work performed under the contract.

K. Delegation/Assignment

GRS shall not delegate any duties under this contract to a subcontractor unless the DBPORS has given prior written consent to the delegation. GRS may not assign the right to receive money due under the contract without the prior written consent of the DBPORS. In addition, the DBPORS reserves the right to approve subcontractors for this project and to require GRS to replace subcontractors who in the DBPORS's judgment are unacceptable.

L. Non-Discrimination Clause

In performing the contract, GRS agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, marital status, sexual orientation, physical or mental handicap or disability. GRS further agrees that every subcontract entered into for the performance of services hereunder will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor.

M. Fees

The fees set forth in this contract shall be firm for the duration of the contract. Other than routine fee updates for inflation, no fee changes will be permitted without prior written consent of the DBPORS. See Section II of this contract.

N. Modification of Services

The DBPORS reserves the right to modify the service requirements during the course of the contract subject to GRS acceptance and potential changes in pricing. Modifications may include adding, deleting, or altering the work to be performed under the contract. Any changes in pricing (increases or decreases) proposed by GRS as a result of service modifications are subject to written acceptance by the DBPORS. In the event that price changes are not acceptable to the DBPORS, the contract may be canceled

O. Confidentiality

GRS shall instruct its employees and the employees of any subcontractor to keep as confidential information concerning the business of the DBPORS, its financial affairs, its relations with its participating municipalities and courts, members, retirees and beneficiaries, and its employees, as well as any other information which may be specifically classified as confidential by the DBPORS. At the DBPORS' request, GRS or any subcontractor(s) and each of their employees may be required to sign confidentiality statements prior to beginning or continuing to work on the contract.

GRS will not print full Social Security numbers on documents used for communication with the DBPORS or its participants. In the event that the DBPORS directs GRS to make exceptions to this policy, the DBPORS agrees to indemnify, defend, and hold harmless GRS for any illegal use, misuse, security breaches or identity thefts related to such information by individuals other than GRS employees.

GRS will not reveal or disclose either information or findings concerning this contract with anyone who does not have a substantial need-to-know and who has not been expressly authorized in writing by the DBPORS to receive the information/findings. GRS shall ensure that commercially reasonable safeguards and procedures are implemented to protect confidential information.

GRS will comply with public records laws, specifically to:

1. Keep and maintain public records required by the DBPORS to perform the service.
2. Upon request from the DBPORS or its public records custodian, provide the DBPORS with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if GRS does not transfer the records to the public agency.
4. The DBPORS understands, acknowledges and agrees that (i) GRS is providing services which cannot be performed by the DBPORS and (ii) subject to Chapter 119, Florida Statutes, internal work papers, proprietary information, source code, and software may not be public records.
5. Upon completion of the contract, transfer, at no cost, to DBPORS all public records in possession of GRS or keep and maintain public records required by the DBPORS to perform the service. If GRS transfers all public records to DBPORS upon completion of the contract, GRS shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If GRS keeps and maintains public records upon completion of the contract, GRS shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to DBPORS, upon request from DBPORS or its public records custodian, in a format that is compatible with the information technology systems of DBPORS.

**IF GRS HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE
PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE
CUSTODIAN OF PUBLIC RECORDS:**

**CITY OF DELRAY BEACH POLICE OFFICERS' RETIREMENT SYSTEM
ANNE WOODS, ADMINISTRATOR
609 HOMEWOOD BOULEVARD
DELRAY BEACH, FL 33445
561-243-4707
DELRAYP-F@COMCAST.NET**

P. Record Retention

GRS shall retain records of the DBPORS work appropriate to its business needs in accordance with its standard retention policy. Following the completion of the retention policy period, GRS shall be permitted to dispose of all records unless otherwise directed by the DBPORS in writing. Records which are subject to Florida public records requirements, as referenced in Section O., will have already been provided to the DBPORS after the work was initially completed. If requested by the DBPORS, such records shall once again be provided to the DBPORS prior to be disposed of, at the Fund's expense. GRS' standard retention policy for valuation reports, studies and actuarial impact statements is seven (7) years.

Q. Tax Advice, Legal Advice, and Investment Advice

Based upon its general background and research on Federal Income Tax, Legal Issues, and Investment Matters, GRS employees may from time to time provide general comments and information on same. However, no GRS work product shall be deemed to provide income tax advice, legal advice, or investment advice unless such work product contains one of the following phrases or substantially equivalent language.

- "This work product is intended to provide income tax advice."
- "This work product is intended to provide legal advice."
- "This work product is intended to provide investment advice."

No oral communication of any GRS employee shall be interpreted to provide income tax advice, legal advice, or investment advice. Further, no GRS work product shall be used for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) marketing or recommending to another party any tax-related matter addressed within the work product.

R. Third Party Dealings

Except as may be required by law or legal process, GRS will not provide information related to the DBPORS to third parties except with the permission of, and under the specific direction of, the DBPORS. By giving such direction and permission, the DBPORS agrees to indemnify, defend, and hold harmless GRS, or to require such third party to indemnify GRS, with respect to any such third party's use of GRS work products. GRS shall not review any third party work product except under the specific written direction of the DBPORS to do so, and only for reasonable compensation. Such review if undertaken shall be limited to those areas in which GRS has expertise, and shall specifically exclude conclusions related to income tax, investment matters, and legal matters.

S. Communications

The DBPORS shall appoint an individual to serve as GRS' main contact throughout the term of this agreement. GRS shall presume, with no duty of inquiry that all assignments given by such main contact are given with the permission of the DBPORS's Board. GRS shall presume, with no duty of inquiry, that all communications and materials provided to such main contact will be transmitted to the DBPORS's Board. GRS shall not take direction from any other individual without explicit consent of such main contact.

T. Limitations

GRS shall act with due diligence in all matters in which it provides services under this contract. GRS acts only as the independent actuary for the DBPORS and makes recommendations based upon the DBPORS funding policies. GRS does not provide legal or investment advice to the DBPORS. GRS shall act with due diligence in all matters in which it provides services under this contract, but shall not serve as a fiduciary of the DBPORS. However, GRS will serve as a fiduciary to the extent required by law and to the extent that GRS makes decisions on behalf of the DBPORS. GRS shall not be responsible under any circumstance for making employee or employer contributions to the DBPORS.

No provision of this contract shall be interpreted to require GRS to provide income tax advice, investment advice, or legal advice to the DBPORS. GRS has no responsibility for the performance or non performance of the DBPORS's assets, the structure of the DBPORS's portfolio, or the selection or termination of investment managers and consultants. GRS is not a registered municipal advisor with the SEC.

U. Warranty

GRS warrants that all work performed under the contract will be performed by individuals who are qualified under the requirements as are from time-to-time issued by various actuarial and other professional bodies. GRS warrants that the work product will be subject to an internal peer review procedure. Finally GRS warrants that GRS has no direct or indirect financial relationship to the DBPORS, other than the relationship described in this contract. Other than as expressly set forth herein, GRS makes no other express or implied warranties of any kind, including without limitation, any implied warranty of merchantability or fitness for a particular use. When performing all services under this contract, GRS shall act in the best interests of participants and beneficiaries of the DBPORS.

V. Ownership

GRS has created, acquired or otherwise has rights in, and may, in connection with the performance of services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, templates, software systems, user interfaces and screen designs, general purpose consulting and software tools, benefit administration systems, data, documentation, and other proprietary information and processes ("GRS Technology").

All GRS Technology is and will remain the sole property of GRS, and the DBPORS shall acquire no right or interest in such property. The DBPORS will honor GRS' copyrights, patents, trademarks and other intellectual property rights relating to the services provided hereunder and the GRS Technology and will not use GRS' name, copyrights, patents, trademarks or other intellectual property without GRS' prior written consent.

Nothing contained in this contract will prohibit GRS from using any of the GRS Technology, its general knowledge or knowledge acquired under this Agreement to perform services for others.

The census data provided by the DBPORS will remain the sole property of the DBPORS. Such data will be provided to DBPORS upon request.

W. Force Majeure

GRS shall not be liable for any delays or non-performance hereunder resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions of or the failure to cooperate by the DBPORS (including, without limitation, entities or individuals under the DBPORS's control, or any of their respective officers, directors, employees, or other personnel or agents), acts or omissions of or the failure to cooperate by any third party, fire or other casualty, act of God, strike or labor dispute, war, terrorism or other violence, or any law, order or other requirement of any governmental agency or authority.

X. Independent Contractor

The DBPORS and GRS are independent entities, and neither the DBPORS nor GRS is, nor shall be considered to be, an agent, distributor, joint venturer, partner, fiduciary or representative of the other. Neither the DBPORS 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.

Section II

Services and Fees

A. Scope

GRS shall perform actuarial and consulting services for the DBPORS for the period from September 1, 2017, through August 31, 2022. By mutual agreement of the parties, the contract may be renewed on a year-to-year basis. Upon its expiration, in the absence of direct action to extend the contract, the contract shall be automatically extended for an additional year.

B. Services and Fees

The regular and special services to be performed by GRS are:

<u>Services</u>	<u>Fees</u>
1. Preparation of the Annual Actuarial Valuation Report and Annual Employee Benefit Statements; attendance at one Board meeting to review the Annual Valuation Report	\$16,000 ^{1,2}
2. Compliance with Chapter 2013-100 (Senate bill 534)	\$3,000
3. GASB No. 67 Exhibits	\$2,500
4. Actuarial Certification of Annual Chapter 185 State Money	\$600
5. Service Purchase Calculations	\$450 each
6. Benefit Calculations	\$300 each
7. State Annual Report	\$3,000
8. Attendance at Board meetings other than item 1 above	Hourly Rates
9. Actuarial Studies or Impact Statements requested by the Board	Hourly Rates

¹ This fee will be adjusted annually by the change in Consumer Price Index (All Urban Consumers, U.S. All items, 1982-84 = 100) from September of one year to September of the next year. The annual adjustment will be no more than 3% per year.

² Same as our fee for Annual Actuarial Valuation Report and Employee Benefit Statements for the General Employees' Retirement Plan

The DBPORS shall pay these fees to GRS within 30 days of receiving an invoice.

The Annual Actuarial Valuation fee is based on the scope of work currently required by the State of Florida and GASB.

GRS is not constrained from supplementing this list with additional items or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques, within the price schedule set forth in the proposal, unless agreed otherwise by the parties in writing.

C. Other Services

From time-to-time, the DBPORS may require services other than those described. GRS may be asked to provide communication services, applied technology services, defined contribution plan services, funding policy development or other supplemental consulting services not described above. Fees for such services shall be based on the hourly rates mutually agreed upon by the parties at the time and such services shall be subject to the terms described in a Letter of Engagement.

If GRS is required by governmental regulation, subpoena, or other legal process to produce records or any personnel as a witness or if GRS is called as an expert witness with respect to the services provided to the DBPORS, the DBPORS will reimburse GRS for the costs of professional time and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in responding to such requests, so long as GRS is not a party to the proceeding in which the information is sought.

D. Transition

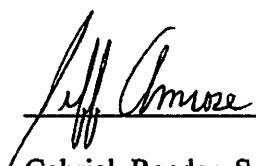
If at the termination of this contract, another vendor succeeds GRS as the DBPORS's actuary, GRS shall fully cooperate in the transition of actuarial services, including providing the successor firm with the most recent actuarial valuation data, assumptions, and results. Such cooperation is contingent upon the DBPORS's agreement to pay GRS' reasonable final invoice for work performed under this contract. GRS shall charge fees for the first 10 hours of transition work requirements in accordance with the hourly rates. For hours in excess of 10, the fees shall be based upon 150% of the otherwise applicable rates.

E. Actuarial Audit

In the event that an Actuarial Audit of GRS's work for the DBPORS is performed during the term of this contract, GRS shall cooperate with the actuarial audit and the DBPORS shall pay GRS reasonable fees associated with such services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the 1st day of September 2017.

For GRS:



Gabriel, Roeder, Smith & Company

September 26, 2017

{00093175.DOCX;1}2017-
2-7

For the DBPORS:



City of Delray Beach Police Officers' Retirement
System

Sept. 19, 2017

GRS

-11-