

**AGREEMENT FOR SERVICES**  
**Between**  
**OHIO RETIREMENT STUDY COUNCIL,**  
**PENSION TRUSTEE ADVISORS, INC., and KMS ACTUARIES, LLC.**

This agreement for the performance of an actuarial audit of the Ohio Police and Fire Pension Fund ("OP&F") shall be effective starting February 11, 2016, between Pension Trustee Advisors, Inc., 7600 Arapahoe Road, Suite 125, Centennial, Colorado 80112, KMS Actuaries, LLC, 814 Elm Street, Suite 204, Manchester, New Hampshire 03101 (collectively "PTA/KMS"), and the Ohio Retirement Study Council, 30 East Broad Street, 2<sup>nd</sup> Floor, Columbus, Ohio 43215 ("ORSC") (hereinafter jointly referred to as "the Parties").

**I. RECITALS**

WHEREAS, ORSC exists and operates pursuant to Chapter 171 of the Ohio Revised Code;

WHEREAS, ORSC desires to retain PTA/KMS to provide the services as outlined in the December 31, 2015 proposal (the "Services"), which is attached hereto as Exhibit 2 and incorporated herein; and

WHEREAS, PTA/KMS has decided to enter into this Agreement to provide the Services pursuant to the stated terms and conditions below.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the Parties hereto agree to the following:

**II. CONTRACT AND SERVICES**

- A. PTA/KMS shall provide to ORSC the Services specifically described in this Agreement, and as set forth in the December 31, 2015, proposal.
- B. This Agreement is for the performance of an actuarial audit for the primary purpose of independent verification and analysis of the assumptions, procedures, and methods used by the consulting actuaries (Buck Consultants) of OP&F for:
  - 1. OP&F's annual pension actuarial valuation as of January 1, 2015;
  - 2. The five-year experience review for the period January 1, 2007 to December 31, 2011; and
  - 3. OP&F's annual retiree health care actuarial valuation as of January 1, 2015, including GASB Statement 43 disclosures.
- C. A secondary purpose of the audit will be to determine whether retiree contributions to health care benefits and prescription drug costs (premiums) are being determined appropriately and consistently for all benefit groups.

- D. As part of the independent verification and analysis, the actuarial audit shall include the following:
1. Assessment of the validity, completeness, and appropriateness for OP&F's structure and funding objectives of the demographic and financial information used by the consulting actuary in the valuation of OP&F;
  2. Assessment of whether the consulting actuary's valuation method and procedures are reasonable and consistent with generally accepted actuarial standards and practices appropriate for OP&F's structure and funding objectives, and are applied as stated by the actuary. If deviations from accepted standards are found during the audit, PTA/KMS should obtain the rationale for the deviations and determine their effects, including their monetary impact;
  3. Assessment of whether the actuarial valuation assumptions are reasonable and consistent with generally accepted actuarial standards and practices, are reasonable based on OP&F's experience, and are appropriate for OP&F's structure and funding objectives. The assumptions evaluated should include both demographic and economic assumptions, such as mortality, retirement, separations rates, levels of pay adjustments, rates of investment return, and disability factors;
    - a. As part of this assessment, PTA/KMS should consider and specifically address whether actual experience is appropriately evaluated in experience studies conducted by the consulting actuary at least every five years and whether recent changes in assumptions are appropriate, reasonable, and supported by the experience studies. Also, PTA/KMS should review the gain/loss analysis from the last four actuarial valuation reports.
  4. Perform parallel valuations of pension benefits as of January 1, 2015, and of retiree health care benefits as of January 1, 2015, using the validated member census data and the same actuarial assumptions described in Paragraph D(3) above;
    - a. If PTA/KMS recommends assumption adjustments to more accurately reflect present and future assets, liabilities, and costs of OP&F, PTA/KMS should provide detailed rationale for those recommendations, and describe the general effect on OP&F's condition resulting from the proposed changes in assumptions.
  5. Assessment of whether OP&F appropriately, consistently, and evenly determines retiree contributions to health care and whether the implementation of OP&F's health care policies differ from those determinations.
- E. PTA/KMS will provide ORSC with monthly reports regarding its findings, an initial draft of its preliminary findings and recommendations, a second draft of the narrative



report, and a final report. The final report shall be delivered to ORSC at least seven days prior to the presentation date. The final report will, at a minimum, meet the requirements as set forth in Exhibit 1.

- F. PTA/KMS shall make its Working Papers available for review and duplication by ORSC and its designees during the period of this Agreement and for a period of not less than four years after the last payment date.
- G. The ORSC reserves the right to use and reproduce the reports and data produced and delivered pursuant to this Agreement and reserves the right to authorize others to use or reproduce those materials.
- H. PTA/KMS shall be responsible for coordinating and obtaining needed information from the state retirement systems via video conferences, telephone conferences or email. PTA/KMS shall be responsible for all its travel arrangements, if necessary, travel expenses and clerical support.
- I. PTA/KMS shall not be deemed to be a "named fiduciary" as this term is defined under ERISA or any similar or successor law.
- J. Pursuant to this Agreement, PTA/KMS has no authority and is not authorized or empowered to implement, adopt or effectuate any recommendation, proposal or advice it provides to the ORSC without the prior written consent of the ORSC.
- K. With respect to performing the Services pursuant to this Agreement, ORSC relies upon the specific skills and background of the principals of PTA/KMS and anticipates that they will perform substantially all of the Services outlined herein. Should PTA/KMS determine it needs to employ other agents and separate firms to provide services under this Agreement, PTA/KMS will consult with ORSC prior to engaging said agents or separate firms, and, if no conflicts of interest are present and if ORSC agrees to the employment in writing, PTA/KMS shall pay all fees related to any such work performed by such firm with no additional cost to ORSC. PTA/KMS shall not utilize the services of any agent or separate firm without first receiving the written approval of ORSC, which approval shall be given at the sole discretion of ORSC. ORSC's determination as to the existence of a conflict shall be final.

PTA/KMS and ORSC agree that PTA/KMS is an independent contractor and this Agreement does not constitute a partnership, joint venture, or business relationship with ORSC other than that of a contract for service. PTA/KMS agrees it is an independent contractor and not an employee of ORSC in the performance of Services under this Agreement. No other relationship to ORSC or the retirement systems is implied or intended. It is fully understood and agreed that PTA/KMS is an independent contractor and neither PTA/KMS nor its personnel shall at any time, or for any purpose, be considered public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

### **III. WARRANTIES AND REPRESENTATIONS**

#### **A. PTA/KMS acknowledges, represents and warrants that:**

1. It has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and to perform the Services under this Agreement, and that all are current;
2. It is an experienced financial service provider competent and sufficiently staffed to enter into this Agreement and to provide all of the Services that PTA/KMS has agreed to provide;
3. The person or persons executing this Agreement on behalf of PTA/KMS is authorized to do so;
4. PTA/KMS will not seek nor accept future work with or on behalf of the Ohio Public Employees Retirement System, the State Teachers Retirement System, the School Employees Retirement System, the Ohio Police and Fire Pension Fund, the Highway Patrol Retirement System, ("the Systems") as a contractor for activities relating to the Services for one year from the date of full execution of this Agreement;
5. All information in PTA/KMS's Proposal attached hereto as Exhibit 2 is true and accurate;
6. It will protect the confidential nature of all information obtained from the Systems and ORSC, unless such information is already public, and will not use any information received hereunder for any purpose other than the Services to be provided under this Agreement.

#### **B. ORSC acknowledges and represents that:**

1. At the request of PTA/KMS, the ORSC shall promptly direct the Systems to provide, and advise the Systems' service providers to provide, reasonable access to the information, resources, cooperation and other assistance reasonably necessary to enable PTA/KMS to perform the Services hereunder; and
2. The person executing this Agreement on behalf of ORSC is authorized to do so.

### **IV. LIABILITY: LIMITS AND RELATED PROVISIONS**

#### **A. ORSC recognizes and agrees that it alone, and not PTA/KMS is:**

1. Empowered either to accept, modify, or reject any findings, recommendations or advice of PTA/KMS; and



2. Empowered and obligated to prudently monitor the performance of PTA/KMS through the progress reports and drafts presented to it by PTA/KMS.
- B. PTA/KMS shall not be responsible for liability, losses, claims, fees or expenses resulting from or relating to any of the following:
1. Information from ORSC, OP&F or other representatives or service providers of OP&F on which PTA/KMS reasonably relied;
  2. The failure of ORSC, other representatives or service providers of OP&F to: (1) properly perform their duties, or (2) adequately provide PTA/KMS accurate, timely, necessary or reliable information or cooperation;
  3. Acts or omissions of any investment manager to OP&F; and
  4. The functions or responsibilities of ORSC or service providers to OP&F, including rendition of legal or accounting advice.
- C. In no event shall any party be liable to any other party for any indirect or consequential damages.

PTA/KMS agrees to indemnify and hold harmless ORSC and its agents and employees from and against all claims, suits, judgments, loss, liability or damages, including litigation costs and/or reasonable attorney's fees, arising out of or resulting from PTA/KMS's willful misconduct, negligent performance or negligent or intentional failure to properly perform any of the tasks, services and duties that are the subject of this Agreement. The acceptance of said Services shall not operate as a waiver of such right of indemnification.

## **V. COMPENSATION**

- A. ORSC agrees to pay PTA/KMS a maximum fee not to exceed \$116,700.00 as compensation for the Services timely provided pursuant to this Agreement.
- B. Payment for the Services shall be made within 30 days of receipt of an appropriate invoice. Invoices will be issued monthly or quarterly, to be determined at PTA/KMS discretion, and shall be based on the hours completed and expenses accrued to date and be sent to ORSC, 30 E. Broad St., 2<sup>nd</sup> Floor, Columbus, Ohio 43215.
- C. PTA/KMS shall maintain work logs for the duration of this Agreement, submit them with PTA/KMS's monthly or quarterly reports as required in Section II above, and retain them for three years pursuant to Section VII below.

## **VI. TIME OF PERFORMANCE**

- A. PTA/KMS shall commence performance under this Agreement on February 11, 2016, and the Services shall be concluded on or before December 31, 2016.

## **VII. RECORDS: MAINTENANCE AND RETENTION**

- A. PTA/KMS shall maintain all pertinent records, data, and evidence pertaining to this Agreement in accordance with best practices and other procedures specified by the ORSC. Financial records and work papers, work product and the like shall be made available, upon written request, to ORSC or its designee(s) at any time during the Agreement period, and any renewal or amendment thereto, and for three years from the acceptance by ORSC or PTA/KMS's final reports and final payment on this Agreement.
- B. Any information received from ORSC or OP&F shall be considered confidential information. PTA/KMS agrees that confidential information shall not be disclosed to any third party and shall be used solely to perform the Services. PTA/KMS may be liable for unintentional disclosure of confidential information. However, information received from ORSC or OP&F will not be considered confidential information if:
  - 1. The information is or comes to be generally available to the public during the course of PTA/KMS's performance of the Services;
  - 2. The information was independently developed by PTA/KMS without resort to information from the ORSC or OP&F;
  - 3. PTA/KMS receives the information from another source who is not under an obligation of confidentiality to ORSC or the Systems; or
  - 4. The information is subject to disclosure pursuant to the Ohio Public Records Act.

## **VIII. NON-INFRINGEMENT AND OWNERSHIP**

- A. PTA/KMS represents and warrants that, to the best of its knowledge, no program, process, composition, writing, equipment, appliance or device, or any trademark, service mark, logo, idea, or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided, or used by PTA/KMS (other than that supplied by ORSC, or another vendor at ORSC's request) infringes or will infringe any patent, copyright, trademark, or other service mark of any person, or is or will be a trade secret of any other person.
- B. All data, materials, reports, submissions, programs, and software originated and prepared under this Agreement and presented to ORSC, shall be the property of ORSC without limitation as to use.

## **IX. TERMINATION AND MODIFICATION**

- A. If PTA/KMS defaults in any way on this Agreement, ORSC may immediately terminate this Agreement by transmitting written notice of such default and



termination to PTA/KMS. In the event of default by PTA/KMS, ORSC may procure the services of any third party to perform the remainder of PTA/KMS's obligations under this Agreement without liability to PTA/KMS, except as set forth in Paragraph IV(D). Default is defined as the failure or neglect on the part of PTA/KMS to perform, or otherwise abandon, any of its obligations under this Agreement or any subsequent amendment thereto. PTA/KMS shall reimburse ORSC for any reasonable fees and/or costs, without limitation, that ORSC incurs in such alternative performance in excess of the compensation that would have been owed to PTA/KMS under this Agreement upon demand. ORSC will compensate PTA/KMS for the work that ORSC deems satisfactory and that was completed prior to the default. The right of ORSC to procure such alternative performance is in addition to any other rights it may have.

- B. This Agreement may be terminated at any time by the mutual written consent of ORSC and PTA/KMS.
- C. ORSC may terminate this Agreement without cause upon thirty days' written notice to PTA/KMS. Upon receipt of the termination, PTA/KMS shall cease work on the terminated activities under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs.
- D. If ORSC terminates this Agreement prior to the due date for the presentation by PTA/KMS of its final reports, ORSC will pay PTA/KMS for work performed from the effective date of this Agreement until the date of transmission or mailing of the written notice of such default and/or termination, less any payments previously made.

## **X. MISCELLANEOUS PROVISIONS**

- A. **NONDISCRIMINATION.** Pursuant to Section 125.111 of the Ohio Revised Code, PTA/KMS agrees that it, or any person acting on behalf of PTA/KMS, will not discriminate, by reason of race, creed, color, religion, sex, age, disability, national origin, or ancestry against any citizens of this state in the employment of any person qualified and available to perform the work under this Agreement, or any amendment or renewal thereof. PTA/KMS further agrees that it, any employee, or any person acting on behalf of PTA/KMS shall not, in any manner, discriminate against, intimidate, or retaliate against any employees hired for the performance of work under this Agreement, or any amendment or renewal thereof, on account of race, creed, color, religion, sex, age, handicap, national origin, or ancestry.
- B. **NOTICES.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given or received if delivered by hand or facsimile capable of making a copy, or mailed, express, or certified or registered mail, return receipt requested, as follows:

If to the ORSC:

Bethany Rhodes  
Director and General Counsel  
Ohio Retirement Study Council  
30 East Broad Street, 2<sup>nd</sup> Floor  
Columbus, Ohio 43215

If to PTA/KMS:

William B. Fornia  
President  
Pension Trustee Advisors, Inc.  
7600 E. Arapahoe Road, Suite 125  
Centennial, CO 80112

AND

Linda L. Bournival  
Consulting Actuary  
KMS Actuaries, LLC.  
814 Elm Street, Suite 204  
Manchester, NH 03101

In the event either party receives notices of any legal proceeding or claim resulting from or arising out of this Agreement, it shall give the other immediate notice thereof. PTA/KMS shall provide all assistance reasonably requested by ORSC and/or the State of Ohio in their defense of such legal proceeding or claim. In the event ORSC receives notice of an indemnified claim(s) described in Paragraph IV(D), ORSC shall give PTA/KMS immediate written notice thereof and shall provide all assistance reasonably requested by PTA/KMS in its defense of such legal proceeding or claim.

- C. INTERPRETATION. The provisions of this Agreement and the referenced Exhibits represent the entire understanding of the parties with respect to the subject matter of this Agreement, and this Agreement supersedes all prior oral or written agreements, proposals or understandings between the parties concerning the subject matter of this Agreement. In the case of any conflict between the referenced documents, this Agreement shall prevail; if this Agreement is silent on the issue, the RFP attached as Exhibit 1 shall prevail.
- D. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties and the representatives, successors, and assigns of ORSC. This Agreement is not assignable by PTA/KMS without the express written consent of ORSC.
- E. MODIFICATION. ORSC reserves the right to modify the Services required during the course of this Agreement. Such modifications shall be made in writing, and may include changing the scope of Services and/or any other modifications deemed necessary. Any changes in pricing proposed by PTA/KMS related to such



modifications are subject to acceptance of ORSC. Any such acceptance or modification must be in writing to be effective. Changes in the scope of Services may be increased or decreased. In the event the price proposed by PTA/KMS resulting from the requested changes are not acceptable to ORSC, ORSC shall not be bound to the price proposed and may terminate the request for modified services with PTA/KMS. In the event ORSC and PTA/KMS cannot agree on a price for the requested modified services, nothing in this Agreement shall prohibit ORSC from entering into an agreement with a party outside of this Agreement for the requested modified services.

- F. OHIO ETHICS LAW. By signing this Agreement, PTA/KMS certifies that it will adhere to the requirements of Ohio Ethics law as provided by Chapters 102 and 2921 of the Ohio Revised Code.
- G. HEADING NOT CONTROLLING. Headings used in this Agreement are used for reference purposes only and shall not be deemed as part of this Agreement.
- H. COMPLIANCE WITH ALL LAWS.
  - 1. Each party agrees that it shall perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect. If any terms or provisions of this Agreement shall be found to be illegal or unenforceable, such term or provision shall be deemed stricken and this Agreement shall remain in full force and effect, provided that the balance of the Agreement thereafter does not fail of its essential purpose.
  - 2. PTA/KMS agrees that if PTA/KMS becomes the subject of any inquiry, investigation, study, review, probe, or examination of any governmental regulatory body, it will immediately advise ORSC in writing pursuant to the notice provisions in Section X(B). Such investigation will cause for immediate termination of this Agreement.
- I. GOVERNING LAW. This Agreement and any amendment or renewal thereof shall be governed by and construed in accordance with the laws of the State of Ohio. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought in any court of appropriate jurisdiction in Ohio and PTA/KMS hereby irrevocably consents to such jurisdiction.
- J. DRAFTING OF AGREEMENT. The parties hereto shall be deemed to have participated equally in the drafting of this Agreement and the choice of language, terms, and conditions contained herein, including, but not limited to, any and all exhibits and/or schedules, created contemporaneously herewith or for the purpose of being attached hereto. For the purpose of enforcement, construction, and interpretation, all such documents, language, terms, exhibits, conditions, and covenants, shall be deemed to be equal work product of each party and each party

represents and agrees that it has had the opportunity to consult legal counsel regarding this Agreement.

- K. SURVIVAL. The provisions contained in II(F), III, IV(C-D), V, VII, VIII, and X(B) shall survive any termination or expiration of this Agreement.
- L. EXHIBITS. The exhibits to this Agreement are hereby made a part of this Agreement as though fully set forth herein.
- M. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- N. FACSIMILE SIGNATURES. Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date written above.

**OHIO RETIREMENT STUDY COUNCIL**

By: 

Bethany Rhodes, Director and General Counsel

Federal Tax ID: 31-0743644


**PENSION TRUSTEE ADVISORS**

By: 

William B. Fornia, President

Federal Tax ID: 27-3092477

**KMS ACTUARIES, LLC.**

By: 

Linda L. Bournival, Consulting Actuary

Federal Tax ID: 45-2158124