

**CONSULTING SERVICES AGREEMENT  
CITY OF LONG BEACH AND HYAS GROUP, LLC  
32431**

THIS AGREEMENT for consulting services is made by and between the HYAS GROUP, LLC, an Oregon limited liability company ("Consultant") and the CITY OF LONG BEACH, a municipal corporation ("Client" or "City") as of November 7, 2011.

WHEREAS, Consultant desires to perform, and Client desires to have Consultant perform, certain general services for the City of Long Beach 457 Deferred Compensation Plan ("Plan").

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

**SECTION 1. DEFINITIONS:**

1.1 Scope of Work - means each document agreed upon by Client and Consultant for specific Services to be performed and the Deliverables to be provided to Client and any other performance requirements mutually agreed to between the parties. The Scope of Work attached as Exhibit A shall be deemed incorporated herein in its entirety by reference.

1.2 Custom Portfolio Management Agreement (PMA) - means separate document that outlines the specific responsibilities and the compensation associated with the management of the Client Custom Target-Date Portfolios. The Custom Portfolio Management Agreement attached as Exhibit B shall be deemed incorporated herein in its entirety by reference.

1.3 Portfolio Management Services – means the services under the PMA, which Consultant shall provide to Client.

1.4 Deliverables - means, with respect to the Scope of Work, the items specified in such Scope of Work as deliverables of the Consultant.

1.5 Services - means all of the services under the Scope of Work and the Portfolio Management Services, which Consultant shall provide to Client under this Agreement and the PMA.

1.6 Consultant Work Product - means any and all items and information delivered to Client or its employee(s), or otherwise generated by Consultant or its agent in the course of providing Services under this Agreement, whether in hard copy or electronic form, including all Deliverables, works of authorship, reports, designs, analyses and other supporting material, summaries and recommendations.

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## SECTION 2. SERVICES:

Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Client the services described in the Scope of Work attached as Exhibit A – Annual Consulting Services Scope of Work and in the PMA attached as Exhibit B – Custom Portfolio Management Agreement, in the manner specified therein.

2.1 Term of Services. The term of this Agreement shall begin on the date first noted above and shall continue for 12 months unless terminated under Section 7. The Client reserves the ability to renew this agreement for two additional 12 month terms. Fees and services may be renegotiated upon mutual agreement in writing signed by both parties.

2.2 Duties of Consultant. Consultant shall provide the Services and the Consultant Work Product during the term of this Agreement in accordance with the terms and conditions of this Agreement and the Scope of Work. Consultant will provide all resources, facilities, management, labor, expertise, skills, tools and equipment necessary for the performance of its obligations under this Agreement and any Scope of Work. Without limiting the foregoing, Consultant shall: (i) keep Client advised of the progress of the delivery of the Services and the status of the Deliverables; (ii) permit any designated representative of Client periodically to review the work of Consultant personnel performing Services and preparing Deliverables; (iii) perform the Services in a timely manner and provide the Deliverables in accordance with the Scope of Work; and (iv) keep accurate records of work performed, evidence of which Consultant shall provide to Client upon Client's request.

2.3 Assignment of Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement and the duties and responsibilities under this Agreement shall not be subcontracted to any other person or entity, in whole or in part, without Client's prior written approval. In the event that Client, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Client of such desire of Client, reassign such person or persons.

2.4 Changes to Scope of Work. Client may at any time by written notice make changes within the general reach of any Scope of Work, and if agreed in writing by Consultant, the Consultant shall proceed without delay to perform the Scope of Work as changed. However, should any change to a Scope of Work result in a material change to the performance, schedule or cost of the Scope of Work, Client and the Consultant shall enter into an amendment of the Scope of Work signed by both parties before providing Services, Deliverables and or Company Work Product to Client.

## SECTION 3. COMPENSATION:

Consultant shall furnish specialized services, including Annual Consulting Services and Custom Portfolio Management Services more particularly described in Exhibits A and B, respectively, attached to this Agreement and incorporated by this

reference, in accordance with the standards of the profession. Consultant shall be paid for these services from Plan proceeds and by the Client's Plan Administrator and Record Keeper and in the manner described below, in a total amount not to exceed Ninety Thousand Dollars (\$90,000) per year, at the rates or charges described below.

3.1 Annual Consulting Services. Consultant shall be paid a sum not to exceed Sixty Thousand Dollars (\$60,000) annually in accordance with the Scope of Work for the Services, Deliverables and Consultant Work Product. Client shall make quarterly payments of Fifteen Thousand Dollars (\$15,000) and such payments shall be Consultant's sole compensation, including travel and all other expenses for its rendering of the Annual Consulting Services and preparation and delivery of the Consultant Work Product. Consultant shall invoice Client at the address listed in this Agreement for the Services, Deliverables or Company Work Product and shall be paid in due course following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

3.2 Custom Portfolio Management Services Consultant shall be paid a sum not to exceed Thirty Thousand Dollars (\$30,000) annually for Custom Portfolio Management Services as described under the PMA. Client shall make quarterly payments of Seven Thousand Five Hundred Dollars (\$7,500) and such payments shall be Consultant's sole compensation, including travel and all other expenses for its rendering of the Custom Portfolio Management Services and preparation and delivery of the Consultant Work Product. Consultant shall invoice Client at the address listed in this Agreement for the Portfolio Management Services as described under the PMA and shall be paid in due course following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

**SECTION 4. CONSULTANT'S REPRESENTATIONS, WARRANTIES AND COVENANTS:**

Consultant represents, warrants and covenants as follows:

4.1 Compliance with applicable law. Throughout the term of this Agreement, Consultant, its employees and authorized agent(s): (i) shall comply with all applicable state and local laws, regulations, rules, and federal orders respecting the performance by Consultant of its duties and responsibilities under this Agreement; and (ii) shall obtain and maintain all licenses, permits and approvals required by any federal, state or local licensing, regulatory, or other agency or authority for performance of the work required by this Agreement or the Scope of Work.

4.2 Use of qualified personnel. Consultant will use qualified individuals with suitable training, experience, capabilities, skill and licenses to perform its obligations under this Agreement.

4.3 Quality of Work. Consultant will perform this Agreement and any Scope of Work hereunder in a manner consistent with industry standards reasonably applied to the performance of such work. The Services and Consultant Work Product provided hereunder shall (i) be of good and marketable quality; (ii) be free from all defects in design, materials, workmanship, performance and title; and (iii) meet the applicable specifications, samples, descriptions and requirements specified in the Scope of Work and this Agreement.

**SECTION 5. STATUS OF CONSULTANT:**

5.1 Independent Contractor. Client and Consultant are independent contractors and have no power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances shall any employee of one party be deemed to be the employee of the other for any purpose. Nothing herein shall be construed as implying a joint venture, agency, employer-employee or partnership relationship between the parties hereto. Consultant is solely responsible for all of its own taxes, withholdings, and other similar statutory obligations related to this Agreement and the Scope of Work.

**SECTION 6. LEGAL:**

6.1 Governing Law. This Agreement will be governed and interpreted in accordance with the laws of the State of California and applicable federal law.

6.2 Force Majeure. Neither party shall be liable for any delay or failure in performance due to acts of God, earthquake, flood, riots, fire, epidemics, war or terrorism. Each party shall immediately notify the other party of the occurrence of such an event affecting such party and shall use all reasonable efforts to recommence performance as soon as possible. The obligations and rights of the excused party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

6.3 Legal Proceedings. Consultant will have no obligation to render advice or take any action with respect to securities or other investments, or the issuers thereof, which become subject to any legal proceedings, including bankruptcies.

6.4 Indemnity. Consultant shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, including attorneys' fees, court costs, expert and witness fees, and other costs and fees of litigation, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Consultant's breach or failure to comply with any of its obligations contained in this Agreement, or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Consultant, its officers, employees, agents, subcontractors, or anyone under Consultant's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").

In addition to Consultant's duty to indemnify, Consultant shall have a separate and wholly independent duty to defend Indemnified Parties at Consultant's expense by legal counsel approved by City from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Consultant shall be required for the duty to defend to arise. City shall notify Consultant of any Claim, shall tender the defense of the Claim to Consultant, and shall assist Consultant, as may be reasonably requested, in the defense.

If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (2) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

The provisions of this Section shall survive the expiration or termination of this Agreement.

6.5 Ambiguity. In the event of any conflict or ambiguity between this Agreement and any Exhibit, the provisions of this Agreement shall govern.

6.6 Costs. If there is any legal proceeding between the parties to enforce or interpret this Agreement or to protect or establish any rights or remedies under it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

6.7 Conflict of Interest. Consultant, by executing this Agreement, certifies that, at the time Consultant executes this Agreement and for its duration, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of Client and the interests of that other client. And, Consultant shall obtain similar certifications from Consultant's employees, subconsultants and contractors.

6.8 Insurance Provision. Unless waived or modified by the Client, Consultant shall obtain and maintain at its expense, until completion of performance and acceptance by City, the following insurance placed with an insurer admitted to write insurance in California or an authorized nonadmitted insurer having a rating of or equivalent to A:VIII by A.M. Best Company:

a. Commercial General Liability insurance. Commercial General Liability insurance (equivalent in coverage to ISO form CG 00 01 11 85 or 88), including but not limited to broad form contractual liability, products and completed operations liability, and independent contractors liability in an amount not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

b. Commercial Automobile Liability insurance. Commercial Automobile Liability insurance (equivalent in coverage to ISO form CA 00 01 06 92) in an amount not less than \$500,000 combined single limit per accident for bodily injury and property damage covering Auto Symbol 1 (Any Auto). If the vendor does not use an automobile in connection with vendor's work, your Department can send Risk Management a memo or e-mail requesting waiver of the requirement and providing Risk Management with the Scope of Work.

c. Professional Liability or Errors and Omissions Liability insurance. If the vendor is providing professional or quasi-professional services to the City, or services requiring licensure, certification, or special training or expertise, Professional Liability or Errors and Omissions Liability insurance in an amount not less than \$1,000,000 per occurrence or claim. If you have any questions about whether professional liability or errors and omissions liability insurance is required, send Risk Management an inquiry by e-mail or memo with a copy of the Scope of Services.

d. Workers' Compensation and Employer's Liability insurance. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability insurance in an amount not less than \$1,000,000 per accident. If the vendor is not subject to the State's Workers' Compensation laws, the vendor should provide you with a written reason as to why this coverage is not applicable (e.g., vendor is a sole proprietor, partnership or other organization with no employees). If Workers' Compensation laws are not applicable, Employer's Liability insurance is not required.

## SECTION 7. TERMINATION, MODIFICATION AND EXTENSION:

7.1 Termination. Client may terminate this Agreement at any time, with or without cause, by giving thirty (30) days written notice to Consultant. In the event of a termination under this subsection, Consultant shall immediately cease work on the terminated matter(s), performing only efforts reasonably necessary to wind down and preserve work that has been performed. In the event of a termination of this Agreement for any reason, Consultant shall be obligated to deliver, and Consultant will be compensated for, only Services and Consultant Work Product actually performed or prepared by Company prior to the date of termination, and delivered to and accepted by Client within a reasonable time after the effective date of termination. Client, however,

may condition payment of such compensation upon Consultant delivering to Client any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or Client in connection with this Agreement.

7.2 Transition. Consultant shall, if requested by Client take all reasonable steps to achieve an orderly transition upon termination and provide reasonable training for Client or third party personnel.

7.3 Amendments. The parties may amend this Agreement upon mutual written agreement.

#### SECTION 8. GENERAL:

8.1 Employer Securities. If the Plans are permitted to hold "employer securities" (as defined at ERISA § 407(d)(1)) or real property, we will not have any role or responsibility, either arising from this Agreement or otherwise, to advise you or any other fiduciary with respect to the decision to invest, hold or dispose of such employer securities or real property. You will indemnify, defend and hold us harmless from any claim, liability or expense relating to the employer securities and real property held by the Plan.

8.2 Proxy Voting. We do not exercise proxy voting authority over client securities. The obligation to vote client proxies at all time rests with you. However, you are not precluded from contacting us for advice or information about a particular proxy vote. However, we will not be deemed to have proxy voting authority as a result of providing such advice to you.

Should we inadvertently receive proxy information for a security held in the Plan's account, we will immediately forward such information to you, but we will not take any further action with respect to the voting of such proxy. Upon termination of this Agreement, we will make a good faith and reasonable attempt to forward proxy information inadvertently received by us on your behalf to the forwarding address you provide to us.

8.3 Risk. You recognize that there may be loss or depreciation of the value of any investment due to the fluctuation of market values. You represent that no party to this Agreement has made any guarantee, either oral or written, that the Plan's investment objectives will be achieved. We will not be liable for any error in judgment and/or for any investment losses in the absence of malfeasance, negligence or violation of applicable law. Nothing in this Agreement will constitute a waiver or limitation of any rights, which you may have under applicable state or federal law, including without limitation state and federal securities laws.

8.4 Confidentiality. In connection with the performance of our services under this Agreement, we will hold any confidential information received from you in strict confidence. We will not disclose such information to any third party, except in compliance with our privacy policy, as necessary to perform our services on your behalf, or as

required by law. You also agree that you will respect the proprietary nature of our work product, and only disclose our advice, reports and recommendations to others in a manner consistent with the intended purposes of our engagement.

8.5 No Waiver. No waiver of rights under this Agreement or the Scope of Work hereunder by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

8.6 Assignment. Neither this Agreement nor any rights under this Agreement (nor any Scope of Work hereunder), other than monies due or to become due, shall be assigned or otherwise transferred by Consultant (by operation of law or otherwise) without the prior written consent of Client.

8.7 Severability. In the event that any of the terms of this Agreement or any Scope of Work hereunder or the performance of any obligation by either party there under becomes or is declared to be illegal by any court of competent jurisdiction or other governmental body, such term(s) shall be null and void and shall be deemed deleted from this Agreement or the Scope of Work. All remaining terms of this Agreement shall remain in full force and effect.

8.8 Entire Agreement. This Agreement and the Scope of Work expressly incorporated herein, are the complete agreement between the parties hereto concerning the subject matter of this Agreement and replace any prior oral or written communications (including invoices) between the parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of the parties hereto.

8.9 Acknowledgement of Receipt of Form ADV. Client acknowledges that it has received and has had an opportunity to read Consultant's firm brochure (Form ADV, Part 2A) and applicable brochure supplements (Form ADV, Part 2B) prior to, or at the time of, entering into this Agreement.

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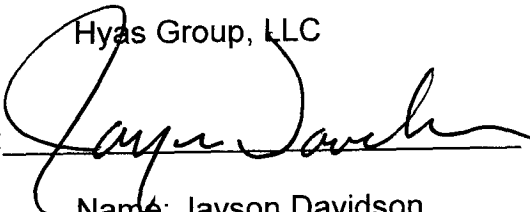


8.10 Acknowledgement of Receipt of Privacy Notice. Client acknowledges that it has received and has had an opportunity to read Consultant's privacy notice prior to, or at the time of, entering into this Agreement.

City of Long Beach

Hyas Group, LLC

x:  Assistant City Manager

x: 

Name: Patrick H. West  
Title: City Manager  
**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

Name: Jayson Davidson  
Title: Managing Partner

Date:

Date: 10-14-2011

Address:

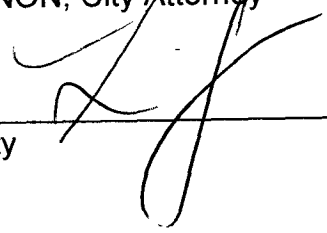
333 W. Ocean Blvd., 13<sup>th</sup> Floor  
Long Beach, CA 90802

Address:

108 NW 9<sup>th</sup> Avenue, Suite 203  
Portland, Oregon 97209

This Agreement is approved as to form on 11/7, 2011.

ROBERT E. SHANNON, City Attorney

By   
Deputy

## **EXHIBIT A ANNUAL CONSULTING SERVICES - SCOPE OF WORK**

### Creation and review of Investment Policy Statement

- Develop a Statement of Purpose
- Develop a Statement of Responsibility
- Determine investment goals and objectives
- Create investment guidelines
- Set investment performance review and evaluation criteria

### Analysis of current investment options and overall portfolio structure

- Review of current portfolio structure and investment managers
- Assess client and market driven factors
- Analysis of current investment managers utilizing proprietary research tools
- Determine fund overlap and/or under-weighted asset classes
- Offer recommendation and implementation strategy

### Comprehensive investment manager search for each asset class and management style

- Select appropriate screening criteria
- Initiate data collection and review
- Provide comprehensive risk *and* return analysis
- Identify suitable finalist candidates
- Present results to Committee and offer recommendation

### Ongoing due diligence for each investment option in the plan

- Produce attributions on each fund manager
- Evaluate attributions according to sector returns and weights, capitalization breakdown, asset class and style benchmarks
- Compare portfolio statistics (standard deviation, beta, alpha, Sharpe Ratio, and R-squared) to the asset class benchmark
- Conduct on-site manager evaluation, as necessary

### Quarterly performance reports and account review

- Illustrate and communicate big picture thematic, economic and specific asset class trends
- Present fund performance against its relative asset class benchmark
- Create asset allocation charts
- Provide investment manager attribution reports and due diligence notes
- Provide in-person presentation of annual performance report at client location

Custom Portfolio Management (further described under separate agreement)

- Evaluate risk tolerance, spending needs, and overall retirement objectives
- Develop appropriate menu of low or negatively correlated asset classes to maximize expected return while minimizing risk
- Perform portfolio optimization
- Construct custom pre-mixed portfolios
- Create and manage age/retirement date glide path
- Assist the client with ongoing monitoring and periodic rebalancing

## EXHIBIT B

### Hyas Group, LLC Portfolio Management Agreement

This **Portfolio Management PMA** (the "PMA") is entered into to be effective as of this day of November 7, 2011, by and between the **Hyas Group, LLC**, an Oregon limited liability company ("**Consultant**") and the City of Long Beach, California ("**Client**").

#### RECITALS

**WHEREAS, Consultant** is an investment advisory firm providing investment advisory and management services to client accounts; and

**WHEREAS, Client** holds certain assets in an investment account (the "Portfolios"); and

**WHEREAS, Client** has provided to **Consultant** a true and complete description of all assets held in the Portfolios, as of the effective date of this PMA; and

**WHEREAS, Client** agrees that the assets in the Portfolios as of the effective date of this PMA, any additional assets delivered by **Client** (or **Client's** authorized designee) to the Portfolios' custodian of assets after the effective date of this PMA, and all proceeds of Portfolios asset sales, reinvestments, all income derived thereon, and additions or accretions thereto, shall be included in and deemed a part of the Portfolios; and

**WHEREAS, Client** seeks to retain **Consultant** for the purpose of providing investment advisory and management services to the Portfolios, and **Consultant** is willing to provide such services for the consideration and upon the terms and conditions as hereinafter set forth in this PMA.

**NOW THEREFORE**, in consideration of the mutual agreements and promises contained herein, the parties agree as follows:

1. **Appointment of Consultant**

**Client** hereby appoints **Consultant** as non-discretionary manager of the Portfolios. **Consultant** is charged with providing ongoing recommendations and analysis in support of the administration of the portfolios. It is the **Consultant's** responsibility to develop an asset allocation, funding and rebalancing strategy for the Portfolios; and to present said strategy to the **Client** for approval.

2. **Custody and Record Keeping of Portfolios Assets**

**Client** shall appoint an institution of appropriate resources and experience to serve as custodian to the Portfolios' assets and to take and maintain custody of all Portfolios assets.

All Portfolios assets shall be delivered to and remain in the custody of the duly appointed custodian.

**Client** shall appoint an institution of appropriate resources and experience to serve as recordkeeper to the Portfolios' assets and to establish and maintain the participant account information for all individuals invested in the Portfolios. All participants that have assets invested in the Portfolios will have an established account recorded with the recordkeeper.

### **3. Reports and Confirmations**

**Consultant** shall furnish written reports to **Client** containing investment data and relevant economic commentary, as appropriate, each calendar quarter. **Consultant** shall also provide other reports at such times and in such manner as **Client** shall reasonably request.

**Client** shall instruct the custodian and recordkeeper to deliver directly to **Client**, with copies to **Consultant**, periodic reports detailing Portfolios transactions and participant balances affected during the reporting period and providing fair market values of the Portfolios' assets as of the end of such reporting periods.

### **4. Term & Termination**

The term of this PMA shall coincide with the term of the Consulting Services Agreement. Either party may terminate this PMA without penalty upon thirty (30) days prior written notice to the other party.

**Client** may terminate this PMA immediately if **Consultant** fails to comply with the provisions of Section 7 of this PMA.

This PMA shall immediately terminate in the event of its assignment or attempted assignment by either party, subject to the provisions of Section 9 of this PMA.

**Consultant** may immediately terminate this PMA if **Client** knowingly fails to comply with the provisions of Section 6 of this PMA, and in such an event, **Client** shall not be entitled to receive any refund of fees paid for time remaining in the quarterly period during which the termination occurs.

### **5. Information Furnished By Client**

**Client** shall provide to **Consultant** all financial, economic, and other information as may be reasonably requested by **Consultant** to perform the services required hereunder. **Client** shall furthermore be responsible for providing to **Consultant** all documents relating to the administration and establishment of the Portfolios. As appropriate, **Client** shall immediately notify **Consultant** of any changes with respect to the authority of **Client** over the Portfolios, any changes in the objectives,

limitations, policy guidelines or instructions regarding investment and reinvestment of the Portfolios, and any other information that may have a material effect on the Portfolios, **Client**, **Consultant**, or **Consultant's** ability or authority to act for the Portfolios.

**Client** expressly, agrees, understands and warrants that **Consultant** shall not be liable for any losses, damages or other costs suffered by the Portfolios that are caused by or in any manner result from a failure by **Client** to disclose information required to be disclosed pursuant to this Section 6.

**6. Standard of Care.**

The duties of **Consultant** shall be confined to those expressly set forth herein, and no implied duties are assumed by or may be asserted against **Consultant** hereunder. **Consultant** shall be obligated to exercise care and diligence in the performance of its duties hereunder and to act in good faith in performing the services provided for under this PMA. **Consultant** shall be liable for any damages arising directly or indirectly out of **Consultant's** failure to perform its duties under this PMA to the extent such damages arise directly out of **Consultant's** willful malfeasance, bad faith, gross negligence in the performance of its duties, or reckless disregard of its obligations and duties hereunder.

Without limiting the generality of the foregoing or any other provision of this PMA, **Consultant** shall not be liable for the validity or invalidity or authority or lack thereof of any instruction, notice or other instrument that **Consultant** reasonably believes to be genuine and to have been signed or presented by **Client** or a duly authorized representative of **Client**.

**7. Record Retention and Confidentiality.**

**Consultant** shall keep and maintain on behalf of the Portfolios all books and records which **Consultant** is, or may be, required to keep and maintain pursuant to any applicable statutes, rules and regulations relating to the maintenance of books and records in connection with the services to be provided hereunder. **Consultant** further agrees that all such books and records shall be the property of the **Client** and to make such books and records available for inspection by **Client** or by the SEC at reasonable times except when requested to divulge such information by duly-constituted authorities or court process.

All information, documents and materials of any kind furnished by **Client** to **Consultant** shall be treated as confidential and not disclosed to third parties without **Client's** written consent unless such disclosure is required by law. In addition, all investment advice, including strategies and materials rendered or used by **Consultant** shall be treated by **Client** as confidential and not disclosed to third parties without **Consultant's** express written consent. **Consultant** is authorized to disclose, provide copies of, and communicate information obtained from **Client** or developed by **Consultant** to such persons so designated in writing by **Client**.

**8. Non-Assignable**

Neither **Consultant** nor **Client** may assign, convey or otherwise transfer any of the rights, obligations or interests under this PMA without the prior express written consent of the other party, which consent may be withheld for any reason whatsoever.

**9. Limitation on Liability**

The services provided by **Consultant** pursuant to this PMA are largely a matter of professional judgment, and **Consultant** shall in no way be liable for the success or performance of any investment advice rendered hereunder or for any act or omission to act by it or any affiliated person of **Consultant** in the course of rendering services hereunder, as long as the investment advice is rendered in good faith and with reasonable care. This limitation on liability is valid; however, only to the extent it does not violate federal and state securities and other laws. Federal and state securities and other laws may impose liabilities under certain circumstances on persons, who nonetheless act in good faith, and this PMA shall therefore not constitute a waiver or limitation of any right **Client** has under such laws.

**Consultant** shall in no way be liable for the performance or failure of performance of any third party not specifically engaged by **Consultant** to assist in the execution of **Consultant's** duties under this PMA. This limitation on liability includes, but is not limited to, the services performed by any custodian or recordkeeper engaged by the **Client** to provide services.

**10. Amendment of this PMA**

No provision of this PMA may be changed, waived, discharged, or terminated orally, but only by a written instrument signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

**11. Waiver**

The waiver by either party of the breach of any provision of the PMA by the other party shall not extend to future breaches of this same or any other provision herein.

**12. Notices**

Any notices required hereunder shall be sent by certified mail addressed as follows:

If to **Consultant**:

Dale Parker  
Principal  
6500 NW Macadam Ave., Ste. 300  
Portland, OR 97239

If to **Client:**

Debbie Mills  
Department of Human Resources  
333 W. Ocean Blvd. 13<sup>th</sup> Floor  
Long Beach, CA 90802