
Agreement

THIS AGREEMENT, entered into this 29th day of August, 2023, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and Gabriel, Roeder, Smith & Company hereinafter referred to as the "ACTUARY".

BACKGROUND RECITALS:

The COUNTY selected ACTUARY to provide Other Post Employment Benefit Actuarial services ("Services"), based on a proposal submitted in response to Request for Proposals 2023053.

That the COUNTY and the ACTUARY, in consideration of their mutual covenants, herein agree with respect to the performance of professional consulting services by the ACTUARY, and the payment for those services by the COUNTY, as set forth in this Agreement.

The ACTUARY shall provide the COUNTY with consulting services and such other related services as defined in the scope of work, provided as Exhibit 1.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. COUNTY OBLIGATIONS

The COUNTY will provide the ACTUARY with a copy of any preliminary data or reports available as required in connection with the work to be performed under this Agreement, together with all available documents in the possession of the COUNTY pertinent to the Services. The ACTUARY shall satisfy itself as to accuracy of any data provided. The ACTUARY is responsible for bringing to the COUNTY's attention, for the County's resolution, material inconsistencies or errors in such data that come to the ACTUARY'S attention.

The COUNTY will cooperate fully with the ACTUARY in order that all phases of the work may be properly scheduled and coordinated.

2. RESPONSIBILITIES OF THE ACTUARY

The ACTUARY agrees to perform all necessary Services in connection with the work set forth in Exhibit 1.

The ACTUARY agrees to complete the work within the time frame specified.

The ACTUARY will maintain an adequate staff of qualified personnel.

The ACTUARY will comply with all present and future federal, state, and local laws, rules, regulations, policies, codes, and guidelines applicable to the Services performed under this Agreement.

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

The ACTUARY will cooperate fully with the COUNTY in order that all phases of the work may be properly scheduled and coordinated.

The ACTUARY shall report the status of the Services under this Agreement to the County Project Manager upon request, and hold all drawings, calculations and related work open to the inspection of the County Project Manager or his authorized agent at any time, upon reasonable request.

All documents, reports, maps, contract documents, and other data developed by the ACTUARY for the purpose of this Agreement, are, and shall remain, the property of the COUNTY. The foregoing items will be created, maintained, updated, and provided in the format specified by the COUNTY. When all work contemplated under this Agreement is complete, and upon final payment, all of the above data shall be delivered to the County Project Manager.

The ACTUARY shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY.

ACTUARY is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. ACTUARY is also responsible for obtaining proof of E-Verify registration and utilization for all subconsultants.

ACTUARY shall act with due diligence in all matters in which it provides services under this contract. ACTUARY acts only as the independent actuary for the COUNTY and makes recommendations based upon COUNTY funding policies. ACTUARY does not provide legal or investment advice to the COUNTY. ACTUARY is not a fiduciary, within the meaning of any applicable state or federal law, or member of the board of trustees for the COUNTY, and therefore, ACTUARY does not vote on matters of governance and does not make decisions of any kind on behalf of the COUNTY. ACTUARY relies, as it must, on audited financial statements, demographic data, and member benefit information provided by the COUNTY and/or the employer, and is not engaged to audit this data. ACTUARY shall not be responsible under any circumstance for making employee or employer contributions to COUNTY.

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

3. TERM; DURATION OF AGREEMENT

The term of the agreement shall commence on October 1, 2023. This Agreement shall remain in full force and effect for a period of six years, with one two-year extension available upon acceptance by both parties, unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section 8 "Termination".

4. COMPENSATION

The COUNTY shall pay to the ACTUARY a mutually agreed upon maximum amount not-to-exceed professional fee for each completed report, on a deliverable basis, all as set forth in Exhibit 2. Duly certified invoices shall be submitted to the Finance Director, in detail sufficient for proper prepayment and post payment audit. Upon submittal of a proper invoice the Finance Director will determine if the tasks or portions thereof have been satisfactorily

completed. Upon a determination of satisfactory completion, the Finance Director will authorize payment to be made. All payments for services shall be made to the ACTUARY by the COUNTY in accordance with the Florida Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

No additional payment will be due to the ACTUARY for administrative copies, printing, per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for ACTUARY's personnel.

The COUNTY may at any time notify the ACTUARY of requested changes to the Services, and thereupon the COUNTY and the ACTUARY shall execute a mutually agreeable amendment to this agreement. Should this amendment result in the reduction in services, the ACTUARY shall be paid for the Services already performed and also for the Services remaining to be done and not reduced or eliminated, upon submission of invoices as set forth in this Agreement.

The COUNTY may, at any time and for any reason, direct the ACTUARY to suspend Services, in whole or in part under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The ACTUARY shall resume its Services upon the date specified, or upon such other date as the COUNTY may thereafter specify in writing. Where the COUNTY has suspended the Services under this Agreement for a period in excess of six (6) months, the compensation of ACTUARY for such suspended Services may be subject to modification. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this Agreement.

5. ADDITIONAL WORK

If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request the ACTUARY to provide, either directly by the ACTUARY or by a sub consultant, such additional services by a written amendment to this Agreement.

6. OWNERSHIP AND REUSE OF DOCUMENTS

Ownership and Copyright: Ownership and copyright of all reports, tracings, plans, electronic files, specifications, field books, survey information, maps, contract documents, and other data first developed by the ACTUARY pursuant to this Agreement, shall be vested in the COUNTY. Said materials shall be made available to the COUNTY by the ACTUARY at any time during normal business hours upon reasonable request of the COUNTY. On or before the tenth day after all work contemplated under this Agreement or individual Work Order is complete, all of the above materials shall be delivered to the County Project Manager.

Reuse of Documents: All documents, including but not limited to reports, drawings and specifications, prepared or performed by the ACTUARY pursuant to this Agreement, are related exclusively to the services described herein. They are not intended or represented to be suitable for reuse by the COUNTY or others on extensions of this project or on any other project. The COUNTY's reuse of any document or drawing shall be at the COUNTY's own risk. The COUNTY shall not hold the ACTUARY liable for any misuse by others.

7. INSURANCE AND INDEMNIFICATION

During the performance of the work covered by this Agreement, the ACTUARY shall provide the COUNTY with evidence that the ACTUARY has obtained and maintains the insurance listed in the Agreement.

ACTUARY shall maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ACTUARY, its agents, representatives, or employees. The cost of such insurance shall be included in the ACTUARY's fees.

Minimum Scope of Insurance

- A. Worker's Compensation as required by the State of Florida. Employers Liability of \$100,000 each accident, \$500,000 disease policy limit, and \$100,000 disease each employee.
- B. General Liability \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include premises/operations, products/completed operations, contractual liability, and independent contractors. COUNTY shall be named an "Additional Insured" on the certificate of insurance.
- C. Auto Liability \$500,000 combined single limit per accident for bodily injury and property damage. Coverage shall include owned vehicles, hired vehicles, and non-owned vehicles.

ACTUARY's insurance coverage shall be primary.

All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida.

The insurance policies procured shall be occurrence forms, not claims made policies.

The insurance companies chosen shall provide certificates of insurance prior to signing of contracts, to the Indian River County Risk Management Department.

The ACTUARY shall ensure any subconsultants to maintain the insurance as detailed herein.

The ACTUARY shall indemnify, defend and hold harmless COUNTY 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 COUNTY to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity, or service supplied by ACTUARY 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 ACTUARY's opinion be likely to become, the subject of a claim of infringement, ACTUARY shall at its sole expense, (i) procure for COUNTY the right to continue using the equipment, software, commodity, or service, or (ii) if such option is not reasonably available to ACTUARY, 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 ACTUARY, accept its return by COUNTY with appropriate credits to COUNTY against ACTUARY's charges and reimburse COUNTY for any losses or costs incurred as a consequence of COUNTY ceasing to use and returning the equipment, software, commodity, or service. The foregoing indemnification is void to the extent that COUNTY, its employees or agents modifies or misuses such equipment, software, commodity, or service.

ACTUARY agrees to indemnify COUNTY from claims made by ACTUARY employees while working on COUNTY premises on COUNTY projects, provided that COUNTY 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, ACTUARY shall not be required to indemnify COUNTY with respect to any claim that is based on COUNTY's negligence or misconduct. In any and all claims against COUNTY, or any of its agents or employees, by any employee of ACTUARY 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 ACTUARY 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.

8. TERMINATION

This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to the ACTUARY; or (b) by the ACTUARY, for any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

In the event of termination by the COUNTY, the COUNTY's sole obligation to the ACTUARY shall be payment for those portions of satisfactorily completed work previously authorized. Such payment shall be determined on the basis of the percentage of work complete, as estimated by the ACTUARY and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the ACTUARY, elect to employ other persons to perform the same or similar services.

The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

In the event that the ACTUARY merges with another company, becomes a subsidiary of, or makes any other substantial change in structure, the COUNTY reserves the right to terminate this Agreement in accordance with its terms.

In the event of termination of this Agreement, the ACTUARY agrees to surrender any and all documents first prepared by the ACTUARY for the COUNTY in connection with this Agreement.

The COUNTY may terminate this Agreement for refusal by the ACTUARY to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by the ACTUARY in conjunction with this Agreement.

The COUNTY may terminate this Agreement in whole or in part if the ACTUARY submits a false invoice to the COUNTY.

ACTUARY certifies that it and those related entities of ACTUARY as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. OWNER may terminate this Contract if ACTUARY, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

ACTUARY certifies that it and those related entities of ACTUARY as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, create pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria. COUNTY may terminate this agreement if ACTUARY is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

9. MISCELLANEOUS PROVISIONS

Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the ACTUARY or employees or sub-consultants of the ACTUARY are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

Merger; Modification. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the ACTUARY and the COUNTY.

Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

Remedies; No Waiver. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a waiver of any other delinquency or default. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

No Pledge of Credit. The ACTUARY shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by ACTUARY shall survive the termination or expiration of this Agreement.

Construction. The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the parties or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsperson shall be inapplicable to this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

10. Public Records Compliance

Indian River County is a public agency subject to Chapter 119, Florida Statutes. The ACTUARY shall comply with Florida's Public Records Law. Specifically, the ACTUARY shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County 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 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 the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the ACTUARY or keep and maintain public records required by the County to perform the service. If the ACTUARY transfers all public records to the County upon completion of the contract, the ACTUARY shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the ACTUARY shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF THE ACTUARY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ACTUARY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of the ACTUARY to comply with these requirements shall be a material breach of this Agreement.

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

OWNER:

ACTUARY:

INDIAN RIVER COUNTY _____

By: _____
Joseph H. Earman, Chairman

By: _____
(ACTUARY)

By: _____
John A. Titkanich, Jr., County Administrator

(CORPORATE SEAL)

Attest _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
William K. DeBraal, County Attorney

Address for giving notices:

Ryan L. Butler, Clerk of Court and Comptroller

License No. _____
(Where applicable)

Attest: _____
Deputy Clerk

(SEAL)

Agent for service of process: _____

Designated Representative:
Elissa Nagy, CPA, CGFO
Finance Director
Indian River County Clerk of Court and Comptroller
1801 27th Street, Vero Beach, FL 32960
(772) 226-1570
enagy@clerk.indian-river.org

Designated Representative:
Name: _____
Title: _____
Address: _____

Phone: _____
Email: _____

(If ACTUARY is a corporation or a partnership, attach evidence of authority to sign.)

Exhibit 1– Scope of Work

The County’s fiscal year is October 1st – September 30th. The full actuarial valuation completed every other year, beginning with October 1, 2023, will be based on data as of October 1st of that year, and the valuation report will be due prior to March 1st of the following year.

Required GASB 74 and 75 reports shall be completed as of September 30th each year, beginning with September 30, 2024. These reports are necessary for the County’s year-end close and should be provided by November 5th each year.

Actuarial firm will request all necessary data to be provided by the County’s Finance Department, and provide suggested letters to various parties for the Finance Department to utilize in gathering the data.

Reports on the County’s OPEB plan will include:

- Service cost
- Total OPEB liability
- Interest on total OPEB liability
- Changes of benefit terms
- Differences between expected and actual experience pertaining to economic or demographic factors
- Changes or assumptions about future economic or demographic factors
- Contributions from active and inactive members (provided by Finance Department)
- Net investment income (schedule provided by Finance Department)
- Benefit payments (provided from insurance company)
- Administrative expenses (provided by Finance Department)
- OPEB fiduciary net position
- Net OPEB liability
- Fiduciary net position as a percentage of total OPEB liability
- Inflation and healthcare cost trend rates assumptions: including 1 percentage point higher and 1 percentage point lower than the assumed healthcare cost trend rate
- Assumptions made about projected cash flows in and out of the OPEB plan
- Covered-employee payroll
- Net OPEB liability as a percentage of covered-employee payroll
- Actuarially determined contributions (ADC)
- Amount of contributions recognized during fiscal year in relation to the ADC
- Amount of contributions in relation to ADC as a percentage of covered-employee payroll
- Annual money-weighted rate of return on OPEB plan investments (information provided by Finance Department)
- Other data as outlined and required in GASB OPEB Statements

Additional services may include:

- Determine the implicit rate subsidy, if any, and the impact it would have on the OPEB liability
- Use an acceptable actuarial cost allocation method to assign costs to specific accounting periods
- Analyze the data to assess any inconsistencies and make recommendations for enhancing data quality
- Review and update plan documents and design

- Recommend alternatives for reducing the cost of benefits and/or recommendations on managing the OPEB liability (this may include changes in plan design)
- Provide information useful in assessing future funding requirements on the County's cash flows
- Assist the Finance Department in the information required for their Annual Comprehensive Financial Report (ACFR) including new required supplementary information (RSI) disclosure requirements
- Prepare an allocation plan for funding liabilities and assigning cost to appropriate classes of participants

Exhibit 2 - Pricing

The lump sum fees below include all costs associated with performing the entire Scope of Work (excluding items identified in the RFP as "OPTIONAL"), and the overall performance of the contract, including all travel and out of pocket expenses associated with such performance:

Fiscal Year Beginning	GASB 74 Report Fee	GASB 75 Report Fee	Full Valuation Report Fee	Total Year Report fee (sum of row)
October 1, 2023	\$2,300	\$2,300	\$11,000	\$15,600
October 1, 2024	\$2,300	\$2,300	\$ 0 (not required)	\$4,600
October 1, 2025	\$2,300	\$2,300	\$11,000	\$15,600
October 1, 2026	\$2,300	\$2,300	\$ 0 (not required)	\$4,600
October 1, 2027	\$2,300	\$2,300	\$11,000	\$15,600
October 1, 2028	\$2,300	\$2,300	\$ 0 (not required)	\$4,600
October 1, 2029*	\$2,300	\$2,300	\$11,000	\$15,600
October 1, 2030*	\$2,300	\$2,300	\$ 0 (not required)	\$4,600
Total of annual fees (sum of years 1-8)				\$80,800

*if extension is exercised

Hourly rate for supplemental tasks, if requested by County (inclusive of all overhead, incidentals, per diem, travel, etc.), to be billed in quarter hour increments:

Staff/Position Title	Hourly rate
Senior Consultant	\$400
Consultant	\$325
Senior Actuarial Analyst	\$270
Actuarial Analyst	\$225
Administrative Assistant	\$125