

## **PENSION CONSULTING SERVICES AGREEMENT**

THIS AGREEMENT, entered into as of the \_\_\_\_\_ day of November in the year of 2012, by and between LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government created pursuant to KRS Chapter 67A (hereinafter the "Client" or "LFUCG"), and PUBLIC FINANCIAL MANAGEMENT, INC., a Pennsylvania corporation with an office in Philadelphia, Pennsylvania (hereinafter "PFM") and PFM ASSET MANAGEMENT LLC, a Delaware limited liability company with an office in Harrisburg, Pennsylvania (hereinafter "PFMAM," and together with PFM, the "Advisors").

### **WITNESSETH**

WHEREAS, Advisors were selected as the most responsive to LFUCG's RFP No. 25-2012 Pension Consulting Services; and

WHEREAS, the Client desires to avail itself of the experience, sources of information, advice, assistance and facilities available to the Advisors and to have the Advisors undertake certain duties and responsibilities and to perform certain services on behalf of the Client as a pension consultant, as provided herein; and

WHEREAS, the Advisors are willing to provide such services on the terms and conditions hereinafter set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

#### **1. DOCUMENTS.**

This Agreement shall consist of the terms herein, LFUCG's RFP No. 25-2012 Pension Consulting Services (the "RFP", which is attached as Exhibit "A" and incorporated herein by reference), Advisor's Response (which is attached as Exhibit "B" and incorporated herein by reference). To the extent of any conflict among and between the terms, the terms of this document shall prevail, followed by the RFP and the Response).

#### **2. SERVICES OF THE ADVISORS.**

(a) PFM will serve as a pension consultant to the Client. The scope of the engagement will include:

- Consulting with members of the Task Force on appropriate alternate pension options for new, current employees and current retirees, and making recommendations on retirement plan changes
- Reviewing and analyzing options for pension reform developed by the Task Force
- Liaising between Task Force members and the actuarial firm that advises Kentucky Retirement Systems, Cavanaugh and Macdonald, to evaluate the impact of pension reform scenarios on new, current and retired policemen and firefighters, the impact of reforms on projected costs for the Lexington-Fayette Urban County Government (the annual required contributions) and the impact of reforms on the pension system's unfunded liability
- Providing guidance to the Task Force on national public-sector and private-sector pension system benchmarks
- Liaising with the Lexington-Fayette Urban County Government's Law and Finance departments as necessary

(b) PFMAM will perform the following in connection with the engagement:

- Evaluating investment policies and guidelines of the current pension system, comparing it with national benchmarks and suggest improvements

(c) PFM shall provide the following three deliverables:

1. A PowerPoint presentation providing a detailed overview of LFUCG's current pension program for fire and police employees. This presentation will include: descriptions of the benefit structure; historical and projected costs in the context of national cost trends and the LFUCG's overall fiscal environment; and comparisons to similar jurisdictions elsewhere in the United States. Presentation to Task Force and stakeholders.
2. PowerPoint presentation consisting of a comprehensive actuarial and fiscal analysis of pension options which will achieve a sufficient, sustainable, and affordable retiree benefit package. These options will reflect best practices, emerging innovations and new ideas that can work for the System. For each option, the analysis will provide a ten-year cost projection, along with information about how the option would impact employees and the LFUCG. Presentation to Task Force and stakeholders.
3. Final report in narrative format with final recommendations. Presentation to Task Force and stakeholders.

### **3. COMPENSATION.**

(a) For services performed hereunder, the Advisors will invoice the Client for an agreed upon sum not to exceed \$149,089, as follows: the Advisors will invoice the Client in three installments; \$50,504 upon satisfactory completion of the first deliverable described in Section 2, \$49,165 upon satisfactory completion of the second deliverable described in Section 2, and \$42,321 upon satisfactory completion of the third deliverable described in Section 2. The Client agrees to pay the Advisors within thirty (30) days of receipt of each invoice.

(b) In addition to the foregoing fees, the Advisors shall be reimbursed for reasonable out-of-pocket expenses, including the expense of reasonable and necessary travel, meals and lodging incurred in the performance of services inclusive of the not to exceed amount noted in 3(a). Any extraordinary costs or expenses for which the Advisors seek reimbursement shall be approved, in writing, in advance. Consultant shall not be reimbursed for expenditures on alcoholic beverages.

(c) If and to the extent that the Client shall request the Advisors to render services other than those to be rendered by the Advisors hereunder, such additional services shall be compensated separately on terms to be agreed upon between the Advisors and the Client.

### **4. EXPENSES.**

(a) The Advisors shall furnish at their own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for their respective consulting services.

(b) Except as expressly provided otherwise herein, the Client shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of the Client's independent auditors and legal counsel.

### **5. REGISTERED ADVISOR; DUTY OF CARE.**

PFMAM hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. PFMAM shall immediately notify the Client if at any time during the term of this Agreement it is not so registered or if its registration is suspended. PFMAM agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the Client may have under any federal securities laws.

**6. PFMAM'S OTHER CLIENTS.**

The Client understands that PFMAM performs investment and advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The Client agrees that PFMAM, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the Client.

**7. TERM.**

This Agreement may be terminated by the Client in the event of any material breach of its terms by providing PFM with notice by certified mail, return receipt requested, and providing at least ten (10) days to cure. This Agreement may be terminated by the Client at any time and for any reason, on not less than thirty (30) days' written notice to PFM. The Advisors may terminate this Agreement immediately upon any material breach of its terms by the Client or by providing the Client with notice by certified mail, return receipt requested, and providing at least ten (10) days to cure.

**8. FORCE MAJEURE.**

The Advisors shall have no liability for any losses arising out of the delays in performing or inability to perform the services which it renders under this Agreement which result from events beyond their control, including interruption of the business activities of the Advisors or other financial institutions due to acts of God, acts of governmental authority, acts of war, terrorism, civil insurrection, riots, labor difficulties, or any action or inaction of any carrier or utility, or mechanical or other malfunction.

**9. DISCIPLINARY ACTIONS.**

PFMAM shall promptly give notice to the Client if PFMAM shall have been found to have violated any state or federal securities law or regulation in any final and unappealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, the Financial Industry Regulatory Authority ("FINRA"), or any regulatory authority of any State based upon the performance of services as an investment advisor.

#### **10. INDEPENDENT CONTRACTOR.**

The Advisors, their respective employees, officers and representatives shall not be deemed to be employees, agents, partners, servants, and/or joint ventures of the Client by virtue of this Agreement or any actions or services rendered under this Agreement.

#### **11. BOOKS, RECORDS AND REPORTS.**

The Advisors shall maintain appropriate records of all its activities hereunder.

#### **12. PFMAM'S BROCHURE.**

PFMAM warrants that it has delivered to the Client PFMAM's current Securities and Exchange Commission Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). The Client acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.

#### **13. INDEMNIFICATION; HOLD HARMLESS.**

The Advisors agree to defend, indemnify and hold harmless the Client, its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest from any and all losses resulting from negligent or willfully wrongful acts of the Advisors or their employees, agents, owners, principals, licensees, assigns, and subcontractors or consultants of any tier, or arising from any errors or omissions of the Advisors. Such losses include, but are not limited to, claims, liens, demands, causes of action, judgments, penalties, interest, court costs, legal fees, and litigation expenses that arise or are incurred as a result of personal injury or death (including employees of the Client) or property damage (including property of the Client).

The above agreement to defend includes: (1) investigating, handling, responding to, providing a defense for, and defending all such claims, liens, demands, and causes of action; (2) paying all reasonable expenses related thereto; and (3) using attorneys approved in writing by the Client, which approval shall not be unreasonably withheld. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

#### **14. INSURANCE.**

The Advisors shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to the Client in order to protect the Client

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 Advisors.

<b><u>Coverage</u></b>	<b><u>Limits</u></b>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability	\$1 million per occurrence, \$2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- (a) All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. The Client shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- (b) The General Liability Policy shall be primary to any insurance or self-insurance retained by the Client.
- (c) The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) for any services performed pursuant to this Agreement, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by the Client.
- (d) The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, the Advisor shall notify the Client and obtain similar insurance that is commercially available and acceptable to the Client.
- (e) The Client shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.

- (f) Said coverage shall be written by insurers acceptable to the Client and shall be in a form acceptable to the Client. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals - After insurance has been approved by the Client, evidence of renewal of an expiring policy must be submitted to the Client, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with the requirements of this Section 14.

Right to Review, Audit and Inspect – The Advisors understand and agree that the Client may review, audit and inspect any and all of its records and operations to insure compliance with the requirements of this Section 14.

Default – The Advisors understand and agree that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that the Client may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging the Advisors for any such insurance premiums purchased, or suspending or terminating the work.

## **15. MODIFICATION.**

This Agreement shall not be changed, modified, terminated or discharged in whole or in part, except by an instrument in writing signed by both parties hereto, or their respective successors or assigns.

## **16. SUCCESSORS AND ASSIGNS.**

The provisions of this Agreement shall be binding on the Advisors and their respective successors and assigns, provided, however, that the rights and obligations of the Advisors may not be assigned without the consent of the Client.

## **17. NOTICE**

Written notices required under this Agreement shall be sent by regular mail, certified mail, overnight delivery or courier, and shall be deemed given when received at the parties' respective addresses shown below. Either part must notify the other party in writing of a change in address.

Client's Address

Lexington-Fayette Urban County Government  
Government Center  
200 East Main Street  
Lexington, KY 40507  
Attn: Scott Shapiro, Senior Advisor to the Mayor

Advisors' Address

Public Financial Management, Inc.  
Two Logan Square, Suite 1600  
18<sup>th</sup> & Arch Streets  
Philadelphia, PA 19103-2770  
Attn: Michael Nadol

PFM Asset Management LLC  
Two Logan Square, Suite 1600  
18<sup>th</sup> & Arch Streets  
Philadelphia, PA 19103-2770  
Attn: Jim Link

**18. SUBCONTRACTING.**

Unless otherwise required or permitted under this Section 17, the Advisors shall not assign any interest in this Agreement or subcontract any of the work performed under the Agreement without the prior written consent of the Client. The Client agrees that PFM shall enter into contracts with The Hay Group and The Kapoor Company to perform services under this contract as described in section VII of Exhibit B, Advisor's Response.

**19. APPLICABLE LAW.**

This Agreement shall be construed, enforced, and administered according to the laws of the Commonwealth of Kentucky. The Advisors and the Client agree that, should a disagreement arise as to the terms or enforcement of any provision of this Agreement, each party will in good faith attempt to resolve said disagreement prior to filing a lawsuit.

**20. EXECUTION AND SEVERABILITY.**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision. Each party to this Agreement represents that the person or



persons signing this Agreement on behalf of such party is authorized and empowered to sign and deliver this Agreement for such party.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the date set forth in the first paragraph of this Agreement.

**PUBLIC FINANCIAL MANAGEMENT, INC.**

By: Michael Nadol

Name: Michael Nadol

Title: Managing Director

**PFM ASSET MANAGEMENT LLC**

By: Valery J. Link

Name: Jim Link

Title: Managing Director

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_