

INVESTMENT CONSULTING AGREEMENT

THIS INVESTMENT CONSULTING AGREEMENT, effective January 1, 2014 (this "Agreement"), is by and between Watershed Investment Consultants, Inc. ("Watershed"), and City of Lincoln for the Lincoln Police & Fire Pension Plan ("Client").

WHEREAS, Watershed is a SEC-Registered Investment Adviser that provides investment consulting services to various institutional and individual clients;

WHEREAS, Client desires to engage Watershed to perform certain investment consulting services in accordance with the terms of this Agreement; and

WHEREAS, Watershed desires to provide certain investment consulting services in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the above recitals and the mutual promises made herein, the receipt and sufficiency of which are hereby acknowledged, Client and Watershed further agree as follows:

AGREEMENT

1) **Services.** Watershed will provide Client with the investment consulting services more particularly described on Exhibit A attached hereto and incorporated herein (the "Services"). The Services shall be consultative, and Client will retain all decision-making authority with respect to the management and administration of its investment program, including the appointment of any and all investment managers and the making of all final decisions regarding investment policy. As compensation for the Services, Client hereby agrees to pay Watershed the fees set forth on Exhibit B attached hereto and incorporated herein (the "Fees"). All Fees and expenses shall be paid in full within thirty (30) days of the invoice date.

2) **Confidentiality.** In connection with the performance of the Services under this Agreement, Watershed will hold all Confidential Information that it receives concerning Client in strict confidence, and will not disclose any such Confidential Information to any third party except to the extent necessary or helpful in connection with the performance of the Services or as required by applicable law. For purposes of this Agreement, Confidential Information shall mean any of the following information: (a) any information identified by Client as confidential, (b) any information related to the financial affairs, information, objectives, circumstances and opinions of the Client, and (c) any notes, compilations, analyses, reports or other documents prepared by Watershed that contain any of the foregoing. Notwithstanding the foregoing, Confidential Information shall not include any

information that (a) is or becomes publicly available through no act or omission of Watershed, (b) was in Watershed's lawful possession on a non-confidential basis prior to the disclosure thereof in connection with this Agreement, or (c) was independently developed by Watershed, without use of any information disclosed by Client hereunder. Client acknowledges that the manager profiles, performance histories and other information contained in Watershed's databases and reports are proprietary information of Watershed, and Client agrees not to (i) disclose any such information to any third party, except to the extent necessary or helpful with respect to the management and administration of its investment programs and except as required by law, or (ii) use such information except as contemplated by this Agreement. All materials and documents developed by Watershed on behalf of Client shall become property of Client.

3) **Limits on Liability.** In connection with the performance of its duties under this Agreement, Watershed will not be liable for any losses or expenses incurred as a result of any act or omission by any investment manager, custodian, or other third party. In no event will Watershed be liable for consequential damages, including lost profits, loss of investment, or other incidental damages incurred by Client based on the Scope of Work to be performed by Watershed under this Agreement. Nothing contained herein shall in any way constitute a waiver or limitation of any rights that Client may have under applicable Federal and State securities law. Watershed shall not be liable for any delays or failures in performance due to circumstances beyond its reasonable control. Watershed's total liability to Client for work performed shall never exceed the annual cash fee paid by Client for Services under this Agreement.

4) **Indemnification.** Watershed shall indemnify and hold harmless the Client from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the agreement caused in whole or in part by Watershed's, or its agents', own negligence or willful misconduct. Likewise, Client shall indemnify and hold harmless Watershed from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the agreement and is caused in whole or in part by Client's, or its agents', own negligence or willful misconduct.

5) **Term.** The term of this Agreement shall be for three years, (the "Term"). The Agreement may be renewed for two additional one (1) year time periods unless terminated in writing by either party hereto as provided herein. Notwithstanding the foregoing, either party to this Agreement shall have the right to terminate this Agreement at any time by giving at least thirty (30) days written notice to the other party. Upon termination of this Agreement, Watershed shall be entitled to the payment of all Fees due and payable for Services rendered, and the reimbursement of expenses incurred hereunder, through the effective date of termination. All Fees shall be prorated as of the termination date. Upon notice of termination, Watershed shall not thereafter provide any reports to Client. If Watershed has been retained to compute investment returns, Watershed shall calculate

and reconcile returns through the month-end previous to the date when notice of termination was provided.

6) **Relationship.** The Parties understand and agree that Watershed is an independent contractor and that Watershed is not, and shall not be deemed to be, an employee, agent, servant, partner, or affiliate of Client.

7) **Change to Services.** Any change of the Services resulting in extra expense to Watershed shall be considered beyond the normal scope of the Agreement. In addition to the foregoing Services, Client may require additional services, which will be negotiated separately. Payment to Watershed for such work because of the change of the Services shall be negotiated at the time of the anticipated change and shall be mutually agreed to by written amendment of this Agreement.

8) **Disputes.** Client and Watershed agree as follows regarding any disputes that arise between the Parties under this Agreement:

- (a) **Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration as otherwise provided herein. The Parties shall agree on a mediator and said mediation shall be held in either Denver, Colorado or Lincoln, Nebraska, as agreed on by the parties.
- (b) **Arbitration.** If mediation does not resolve the dispute, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the AAA, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties agree that the controversy or claim be submitted to three arbitrator(s), that the Parties will faithfully observe this arbitration provision and the AAA rules, that the Parties will abide by and perform any award rendered by the arbitrator(s), and that a judgment of the court having jurisdiction may be entered on the award. Said arbitration shall be held in either Denver, Colorado or Lincoln, Nebraska, as agreed on by the parties.
- (c) **Arbitration Costs and Expenses.** The costs, expenses, and fees of AAA and the arbitrator(s), shall be shared equally between the parties.
- (d) **Attorney Fees.** Each Party shall be responsible for its own costs and expenses, including attorney fees, incurred in connection with said arbitration or court proceeding.

9) **Notices.** Any notice provided for by this Agreement, and any other notice or demand, which any Party may wish to send to any other Party relating to the subject matter of this Agreement shall be in writing and either delivered by recognized national overnight courier delivery service such as Federal Express, UPS, or DHL; hand delivered; or sent by certified mail, return receipt requested, postage prepaid and addressed to the Party for which such notice or demand is intended at that Party's address as follows, which may be changed by written notice:

If to Client:

City of Lincoln, FBO Lincoln Police & Fire Pension
Attn: Doug McDaniel, Personnel Director
555 South 10th Street, Room 302
Lincoln, NE 68508

If to Watershed:

Watershed Investment Consultants, Inc.
Attn: Dale Connors, Managing Director
6400 Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111-4955

10) **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Nebraska.

11) **Assignment.** Neither party hereto may assign this Agreement without the prior written consent of the other party.

12) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assignees of the Parties.

13) **Miscellaneous.**

a) This Agreement is for the sole benefit of Watershed and Client, and shall not be construed as conferring any rights on any third party.

b) This Agreement sets forth the entire agreement between Watershed and Client with respect to the services described herein and may not be amended except by a written instrument signed by both parties hereto. Any previous written or oral agreements and understandings between the parties with respect to the subject matter hereof are superseded by this Agreement.

c) Client has a right to terminate this Agreement without penalty within five (5) business days after entering into this Agreement.

IN WITNESS WHEREOF, this Agreement is duly executed as of the dates signed below.

Watershed Investment Consultants, Inc.

City of Lincoln

Name: Dale A. Connors

Name: _____

Title: Managing Director

Title: _____

Signature: 

Signature: _____

Date: November 27, 2013

Date: _____

The above-signed Client acknowledges that Client has received a copy of Part II of form ADV, as required by Rule 204-3 under the Investment Advisers Act of 1940.

EXHIBIT A

Description of Services

Following are the investment consulting services provided under this Agreement.

1. Attend up to four meetings annually and as needed conference calls;
 - a. All investment consulting reports will be presented at a meeting as needed.
 - b. At the quarterly meeting the following shall be addressed:
 - i. Current asset allocation and recommendations for change if needed;
 - ii. Actuarial earnings rate assumption and how to attempt to earn this rate of return with the least amount of assumed risk;
 - iii. Portfolio's compliance to the Investment Policy;
 - iv. Review investment managers and recommend replacement of managers if necessary with manager(s) believed to be most suitable; and
2. Prepare quarterly performance evaluation reports;
 - a. Performance evaluation reports will be sent out 1 week prior to the meeting, depending on custodial report timing, and will be presented at the meeting
3. Review and update the Investment Policy Statement, as needed;
4. Evaluate investment objectives, asset allocation strategy, and investment structure, as
 - a. needed;
5. Conduct investment manager searches, as needed; and
6. Provide ongoing investment education, as needed.

EXHIBIT B

Description of Fees

Annual Fee: \$80,000

CPI Adjustment: The fee will be adjusted on March 31 of each calendar year based on the previous calendar year's inflation rate as measured by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, not seasonally adjusted (CPI-U), or 5%, whichever is less. In the case of a negative CPI rate, the CPI adjustment will be 0%. The first CPI adjustment will be reflected in the March 31, 2015 invoice.

Billing: Quarterly invoices will be sent to Client on the last day of each calendar quarter and are due within 30 days of the invoice date.

The first billing date will be December 31, 2013 and will cover the period from December 1, 2013 through December 31, 2013.

Fees include investment consulting-related services listed in Exhibit A and related incidental expenses such as postage, express mail, messenger charges, long distance phone calls, copying, report preparation, etc. Reasonable travel related expenses for up to three people to attend Client meetings in Lincoln, Nebraska are not included in the fees listed above. Itemized statements for reasonable travel related expenses as addressed herein shall be submitted to Client for reimbursement. Additionally, any investment consulting-related services involving vendor expenses not directly controlled by Watershed are not included in the fees listed above and must be pre-approved by Client.