

**OFFICE OF THE STATE TREASURER
STATE OF WASHINGTON**



**AGREEMENT
FOR
INVESTMENT ADVISORY SERVICES**

DECEMBER 2009

**JAMES MCINTIRE
STATE TREASURER**

**Office of the State Treasurer
State of Washington**

**Agreement
For
Investment Advisory Services**

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Attachments

- Exhibit A – Scope of Services
- Exhibit B – Schedule of Fees

**Office of the State Treasurer
State of Washington
P.O. Box 40200
Olympia, Washington 98504-0200**

**Agreement
For
Investment Advisory Services**

Terms and Conditions

1. Introduction

This Agreement is entered into by and between the Office of the State Treasurer, as agent of the state of Washington, hereinafter referred to as the “State,” and _____, hereinafter referred to as the “Investment Advisor”.

WHEREAS the state of Washington, acting by and through the Office of the State Treasurer of the state of Washington, issued a Request for Proposal (“RFP”), dated December 18, 2009, for the purpose of obtaining proposals for Investment Advisory Services; and

WHEREAS “the Investment Advisor” is a successful bidder;

The State, acting by and through the Office of the State Treasurer, hereby awards this Agreement for Investment Advisory Services to “the Investment Advisor”, subject to and in accordance with the terms set forth herein. This Agreement consists of the Terms and Conditions, Exhibit A Scope of Services, Exhibit B Schedule of Fees, and any subsequently adopted amendments which by this reference are incorporated herein.

2. Definitions

2.1 Definitions

Definitions as used throughout this Agreement shall have the meanings set forth below:

2.1.1 “Agreement” means the Agreement for Investment Advisory Services effective January 1, 2010.

2.1.2 “Due Care” means the degree of care and skill demonstrated by investment advisors acting in like capacity.

2.1.3 “Exhibit A” is the Scope of Services.

- 2.1.4** “Exhibit B” is the Schedule of Fees.
- 2.1.5** “Special Projects or Services” means special services or complex projects not specifically itemized by the Schedule of Fees or Scope of Services.
- 2.1.6** “Investment Advisory Services” may also be referred to as “Services,” and shall be inclusive of all Services performed by the Investment Advisor pursuant to the Terms and Conditions of this Agreement and the Scope of Services.
- 2.1.7** “Investment Advisor” is _____, and includes any subsidiary, affiliate, agent, subcontractor, representative or employee retained by the Investment Advisor as permitted under the terms of this Agreement.
- 2.1.8** “Investment Advisor’s Account Manager” shall mean an employee of the Investment Advisor who is permanently assigned as the primary contact person with whom the State Contract Administrator shall work for the duration of this Agreement.
- 2.1.19** “RCW” shall mean the Revised Code of Washington.
- 2.1.10** “RFP” shall mean the state of Washington, Office of the State Treasurer, Request For Proposal for Investment Advisory Services, dated December 18, 2009.
- 2.1.11** “State” shall mean the state of Washington, acting through the Office of the State Treasurer or designee. “State” shall also include, where the context so provides, agencies of the State, and public corporations and authorities created by the State.
- 2.1.12** “State Contract Administrator” means the Deputy State Treasurer for Investments, Office of the State Treasurer, as the designated administrator of this Agreement.
- 2.1.13** “Subcontractor” means a qualified entity not in the employment of the Investment Advisor, who is performing all or part of those Services under this Agreement under a separate agreement with the Investment Advisor.

3. General Provisions

3.1 Entire Agreement

This Agreement which includes these Terms and Conditions, and all attachments, exhibits and amendments thereto, constitutes the entire agreement between the Investment Advisor and the State and no other statements or representations, written or oral, shall be deemed a part thereof.

3.2 Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. All amendments, addenda, and orders signed during the life of this Agreement shall be governed by this Agreement. The parties further agree, that additional Extraordinary Services, appropriate to the scope of this Agreement, may be added to this Agreement by an instrument in writing and only with the written consent of both parties. Such writing shall include a specific description of the additional Extraordinary Services, pricing and additional terms and conditions as relevant. The additional Services shall be available under the same terms and conditions established herein except as specifically amended between the parties.

3.3 Notice

Any notice or demand which, under this Agreement or applicable law, must or may be given by the Investment Advisor, or the State, shall be in writing, properly addressed and, as an alternative to personal delivery, made by the most expeditious means available, with regard given to the time sensitivity of notice or demand being made to the addresses below or to such other address as may be specified from time to time by either party, or its successor, by notice to the other party.

To the Investment Advisor:

To the State:

Office of the State Treasurer
State of Washington
Attention: Douglas D. Extine
P.O. Box 40200
Olympia, Washington 98504-0200

Any such notice or demand may be transmitted via facsimile or email, provided that written notice as provided above is simultaneously given. For purposes of facsimile or email transmissions, the parties shall use the following numbers, or others, if notice of change is given to the other party:

Office of the State Treasurer: Fax: (360) 902-9044
Email: Doug.Extine@tre.wa.gov (Douglas Extine)

Investment Advisor: Fax:
Email:

3.4 Personal Liability

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

3.5 Hold Harmless and Indemnification

3.5.1 The Investment Advisor, and its Subcontractors, shall indemnify the State for any direct money damages, including costs or expenses, suffered by the State which are caused by the negligence, fraud, or failure to exercise Due Care by the Investment Advisor, or its' subsidiaries, affiliates, agents, Subcontractors' representatives or employees in performance of this Agreement.

3.5.2 Each party to this Agreement agrees to hold harmless the other party, to the extent authorized by law, from all losses (excluding attorney's fees and expenses) which relate to or result from lawsuits brought by non parties to this Agreement relating to activities covered by this Agreement from:

3.5.2.1 A failure by either party or its subsidiaries, affiliates, agents, subcontractors, representatives or employees to comply with any applicable federal, state or local law, rule or regulation;

3.5.2.2 Fraudulent or intentional misconduct by either party or its agents, subcontractors, representatives or employees.

3.5.2.3 A negligent act or omission or the breach of this agreement or a failure to exercise Due Care by the Investment Advisor, its subsidiaries, affiliates, agents, subcontractors, representatives or employees.

3.5.2.4 Nothing in this section shall be construed to mean either party is prevented from commencing a legal action against the other.

3.5.3 In the case of negligence of both the Investment Advisor and the State, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

3.6 Conflict and Severability

3.6.1. In the event of conflict between contract documents and applicable laws, codes, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Agreement to afford the State maximum benefits.

3.6.2 Any provision of the document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

3.7 Nondiscrimination

During the performance of this Agreement, the Investment Advisor, or its subsidiaries, affiliates, agents, subcontractors, or subcontractor's affiliates, agents or representatives shall comply with all federal and state of Washington nondiscrimination laws. In the event of noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Agreement may be rescinded, cancelled or terminated in whole or in part, and the Investment Advisor may be declared ineligible from further association with OST. The Investment Advisor shall be given a reasonable time to cure noncompliance.

3.8 Gifts and Gratuities

In accordance with Chapter 42.52 RCW, Ethics in Public Service Act, it is unlawful for any person to accept, directly or indirectly, any compensation, gratuity, or reward in connection with this Agreement from any person beneficially interested therein.

3.9 Rights and Remedies

In the event of any claim for default or breach of contract, no provision in this Agreement shall be construed, expressly or by implication, as a waiver by the State of any right to insist upon the strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement or by law, or as the acceptance of (or payment for) services, or to release the Investment Advisor from any responsibilities or obligations imposed by this Agreement or by law. Acceptance by the State of unsatisfactory performance with or without objection or reservation shall neither waive the right to claim damage for breach nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by the Investment Advisor.

3.10 Governing Law

This Agreement shall be governed in all respects by, and construed in accordance with the law and statutes of the state of Washington. The venue of any action hereunder shall be exclusively in the Superior Court for Thurston County, Washington.

3.11 Assignment

Except as otherwise provided in this Agreement, the Investment Advisor shall not subcontract or assign its obligations under this Agreement without the prior written consent of the State Contract Administrator. The Investment Advisor shall be responsible to ensure that all requirements of the Agreement shall be communicated to any and all subcontractors.

3.12 Independent Capacity

The parties intend that an independent contractor relationship will be created by this Agreement. The Investment Advisor, the Investment Advisor's employees, and subcontractors performing under this Agreement are not employees of the State. The Investment Advisor will not hold itself out as nor claim to be an officer or employee of the state of Washington by reason hereof, nor will the Investment Advisor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Financial Advisor.

3.13 Timeliness

The State and the Investment Advisor agree to provide services, and exchange information in a timely manner to meet time-critical deadlines.

3.14 Dispute Resolution

Except as otherwise provided in this Agreement, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the Investment Advisor, a representative appointed by the State, and a third party mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

4. Investment Advisory Services

4.1. Service Specifications

The Investment Advisor agrees to provide advisory Services in connection with the State's investment portfolios for (Treasury portfolio and LGIP portfolio and such other Services) as may be requested pursuant to the provisions of Exhibit A, and the terms of this Agreement.

5. Agreement Term and Termination

5.1 Term of Agreement and Survivorship of Terms

The initial term of this Agreement shall be for the period commencing _____ 2010 and ending _____ 2011, with an option on the part of the State to renew the Agreement for one or more extensions for a total period not to exceed six (6) years

5.2 Termination and Remedies

5.2.1 Termination for Convenience: The State or the Investment Advisor may terminate this contract, in whole or in part, at any time and for any reason by giving sixty (60) calendar days written termination notice to the other party.

5.2.2 Termination for Reduction in Funding or Withdrawal of Authority: In the event that either funding from the State is withdrawn, reduced, or limited, or the authority of the State to perform any of its duties is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to its normal completion, the State may terminate this Agreement, in whole or in part, at any time by giving sixty (60) calendar days written termination notice to the Investment Advisor.

5.2.3 Termination for Breach: The State shall be entitled, by written or verbal notice, to cancel this Agreement in its entirety or in part, for breach of any of the terms herein, and to retain all other rights against the Investment Advisor by reason of the Investment Advisor's breach as provided by law.

If it is subsequently found that the Investment Advisor was not in breach, the rights and obligations of the parties shall be the same as if a notice of termination had been issued pursuant to section 5.2.1.

The State Contract Administrator shall issue a written notice of breach providing a period not to exceed thirty (30) calendar days in which the Investment Advisor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate the Investment Advisor's liability for damages.

If the breach remains, after the Investment Advisor has been provided the opportunity to cure, the State may do one or more of the following:

5.2.3.1 Exercise any remedy provided by law;

5.2.3.2 Terminate this Agreement and any related contracts or portions thereof, by written or verbal notice;

5.2.3.3 Seek damages, if any apply.

5.2.4 Termination by Mutual Agreement: The State and the Investment Advisor may terminate this contract in whole or in part, at any time, by mutual agreement.

5.2.5 Termination Procedure: Upon termination of this contract the State, in addition to any other rights provided in this contract, may require the Investment Advisor to deliver to the State any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

The State shall pay to the Investment Advisor the agreed upon price, if separately stated, for completed work and services accepted by the State, and the amount agreed upon by the Investment Advisor for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the State, and (d) the protection and preservation of property.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5.2.6 Termination-related Obligations Antecedent to Date of Termination: Upon nearing the end of the final term of this Agreement, and without respect to either the cause or time of such termination, the Investment Advisor shall take all reasonable and prudent measures to facilitate and ensure an orderly transition to the successor Investment Advisor during the term of this Agreement.

5.2.7 Termination for Merger or Acquisition. Substitution of another organization to act as Investment Advisor under this Agreement may occur in the event of a merger or acquisition, provided the State's Contract Administrator is given written notice by the Investment Advisor, not less than sixty (60) calendar days prior to the effective date of such merger or acquisition. In this event, the successor Investment Advisor shall provide an automatic continuation of all terms of this Agreement, provided the successor Investment Advisor can meet all required terms of the Agreement. However, the State reserves the right to terminate the Agreement in the event a successor Investment Advisor is substituted by submitting notice of termination within the 60 calendar days prior to the effective date of such merger or acquisition.

5.3 Force Majeure

5.3.1 Definition: Neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising Due Care. Force majeure shall include acts of God, war, terrorism, riots, strikes, fire, floods, earthquakes, epidemics, or other similar occurrences.

5.3.2 Notification: If either party is delayed by force majeure, said party shall provide reasonable notice to the other party that there will be delay or non-delivery of reports or services. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable

and written notification of same shall be provided. The time of completion shall be extended for a period equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement.

- 5.3.3** Rights Reserved: The State reserves the right to suspend the Agreement and/or purchase services from the best available source during the time of force majeure, and the Investment Advisor shall have no recourse against the State.

5.4 Conflict of Interest

The Investment Advisor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this contract.

6. Contract Administration

6.1 Incorporated Documents

This Agreement shall consist of the Terms and Conditions as set forth herein, and the following documents, which are incorporated herein by reference:

- 6.1.1** Exhibit A – Scope of Services.
- 6.1.2** Exhibit B – Schedule of Fees.
- 6.1.3** Any subsequently adopted amendments.
- 6.1.4** Addendum’s evidencing agreements for Extraordinary Services.

6.2 Order of Precedence

- 6.2.1** The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.
- 6.2.2** If any provision of this Agreement shall be deemed to be in conflict with any statute or rule of law, such provisions shall be deemed modified to conform to said statute or rule of law. In the event of any inconsistency in this Agreement, the inconsistency shall be resolved in the order of precedence stated below:
 - 6.2.2.1** Applicable Federal and State Statutes and Regulations.
 - 6.2.2.2** The most recently adopted amendment or Addendum for Extraordinary Services.
 - 6.2.2.3** The Terms and Conditions of this Agreement.

6.2.2.4 Exhibit A – Scope of Services.

6.2.2.5 Exhibit B – Schedule of Fees.

6.3 Limitation of State’s Authority

Only the State Contract Administrator, or delegate by writing, shall have the express, implied, or apparent authority to alter, amend, modify, assign or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, assignment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by the State and the Investment Advisor unless otherwise provided herein.

6.4 State Contract Administrator

The State shall appoint an individual who will be the Contract Administrator for this Agreement and will provide oversight of the activities conducted hereunder. The State Contract Administrator will manage this Agreement on behalf of the State, and will be the principal point of contact for the Investment Advisor concerning the Investment Advisor’s performance hereunder. The State shall notify the Investment Advisor, in writing, when there is a change in staffing and a new Contract Administrator is assigned to this Agreement.

6.5 Investment Advisor’s Account Manager

The Investment Advisor shall appoint an individual who will be the Account Manager for the State account. The Investment Advisor’s Account Manager will be the principal point of contact for the State concerning the Investment Advisor’s performance hereunder. The Investment Advisor’s Account Manager will also serve as the focal point for business matters, support coordination, and administrative activities. The Investment Advisor shall notify the State, in writing, if a new Account Manager is assigned.

6.6 Advanced Payments Prohibited

No advance payment shall be made for services furnished by the Investment Advisor pursuant to this Agreement.

6.7 Invoice

The Investment Advisor shall provide an invoice to the State Contract Administrator for services rendered promptly following the completion of each debt issuance transaction.

6.8 Payment

The State shall pay the Investment Advisor in accordance with the schedule set forth in Exhibit B of this Agreement. Except as otherwise provided herein, such payments shall be due and payable within thirty (30) days after performance of such services or after receipt of properly prepared and submitted invoices, whichever is later.

6.9 Taxes

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Investment Advisor's staff shall be the sole liability of the Investment Advisor.

7. Investment Advisor's Responsibilities

7.1 Responsibility of Investment Advisor to Act with Due Care

The Investment Advisor shall exercise Due Care in performing its services hereunder.

7.2 Purchase and Sale of State Investments

The Investment Advisor shall not purchase or sell any securities to or from the State during the term of this Agreement until proposals are closed or the contract is awarded, whichever occurs first.

7.3 Confidentiality of State Records

7.3.1 The Investment Advisor acknowledges that material and information which has or will come into its possession or knowledge in connection with this Agreement, or its performance, may consist of confidential and proprietary data, the disclosure of which to, or use by, third parties could be damaging.

7.3.2 The Investment Advisor, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to authorized employees requiring such information, and not to release, sell or disclose it to any other party.

7.3.3 Access to such information shall not be granted except as authorized by law or agency rule.

7.3.4 Notwithstanding anything apparently to the contrary in the preceding provisions of this Section, the Investment Advisor may release the material and information described in this Section to its internal and external auditors (whether employees of the Investment Advisor or others) for official use and may also release it pursuant to a subpoena or other order issued by a court of competent jurisdiction. The Investment Advisor shall promptly notify the State of any such subpoena or order upon its receipt.

7.4 Registration with the Department of Revenue

The Investment Advisor shall complete registration with the Department of Revenue, PO Box 47476, Olympia, Washington 98504-7476, and be responsible for payment of all taxes due on payments made under this Agreement.

7.5 Licensing and Accreditation Standards

The Investment Advisor shall comply with all applicable local, state, and federal licensing requirements and standards necessary in the performance of this Agreement.

7.6 Workers' Compensation Insurance Coverage

The Investment Advisor shall provide or purchase applicable workers' compensation insurance coverage prior to performing work under this Agreement. The State will not be responsible for payment of industrial insurance premiums for the Investment Advisor, or any subcontractor, or employee of the Investment Advisor, which might arise under the workers' compensation insurance laws during performance of duties and services under this Agreement. Should the Investment Advisor fail to secure workers' compensation insurance coverage or fail to pay premiums on behalf of employees, the State may deduct the amount of premiums owing from the amounts payable to the Investment Advisor under this Agreement and transmit the same to the appropriate workers' compensation insurance fund.

7.7 Advertising

The Investment Advisor shall not advertise or publish information concerning this Agreement in any form or media without prior written consent from the State.

7.8 Auditing

The Investment Advisor shall permit representatives of the State Treasurer, an auditor selected by the State, and/or the Auditor of the state of Washington or their authorized assistant to examine the records of the Investment Advisor relating to the services rendered under this Agreement. If the Investment Advisor has contracted with a subcontractor(s), the Investment Advisor shall require its such entities to provide similar access to the designated State officials or their representatives.

Any audits required by this section which do not necessitate the compilation of records in addition to those which are otherwise required by other sections of this Agreement may be conducted without notice. Any audits required by this section which require the compilation of records in addition to those which are otherwise required by this Agreement may be conducted upon ten (10) days written notice from the State to the Investment Advisor. In either case, the State must provide written notice to the Investment Advisor as to the purpose and expected length of time for such audit.

The provisions of this section shall remain in effect for eighteen (18) months after the expiration, or sooner termination, of this Agreement.

7.9 Records Retention

The Investment Advisor shall maintain all books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. The Investment Advisor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit, by the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

8. Contract Execution

8.1 Ratification

Regardless of the date of signature and subject to its other provisions, the period of performance of this Agreement shall commence on _____ 2010, and be completed on _____ 2011, unless extended or terminated by one of the parties as provided herein.

8.2 Counterparts

This Agreement is to be executed in duplicate originals and each duplicate shall be deemed an original copy of the Agreement signed by each party, for all purposes.

8.3 Signature Blocks

In Witness Whereof the parties hereto, having read this Agreement in its entirety, including all attachments hereto, do agree in each and every particular and certify as to having authorization to contract on behalf of the party represented.

APPROVED
State of Washington,
Office of the State Treasurer

APPROVED

The Honorable James L. McIntire
State Treasurer

Date

Date

APPROVED AS TO FORM
State of Washington
Office of the Attorney General

Johnna Skyles Craig
Assistant Attorney General

Date

Exhibit A

SCOPE OF SERVICES **TRANSACTION SPECIFIC**

The State requires a combination of on-going, transaction-specific, and special projects services from its investment advisor. The investment advisor may provide services including but not limited to:

1. Monthly, via conference call

Review the portfolios' holdings and previous month cashflows and performance and provide observations/recommendations to OST portfolio managers. Provide advice on general financial market conditions and the outlook for bonds, new issues, new investment products, market trends, and investor preferences. The review may also include recommendations for performance enhancements, rebalancing, policy compliance, and insight on significant economic influences.

2. Quarterly, at OST offices

Attend quarterly meetings with the State Treasurer and the LGIP Advisory Committee. When scheduling allows we will also include the normal monthly review in the slate of meetings, in lieu of the conference call.

3. Periodic

Extended Asset Fund for LGIP participants The state is exploring the possibility of creating an Extended Asset Fund as an additional investment option for LGIP participants. The Extended Asset Fund would perform on a total return basis, and be priced using a variable net asset value. The Extended Asset Fund would mirror the investment policy currently being used by the Treasury Core. The investment advisor for the State will assist the Office of State Treasurer with the setup of the fund in addition to providing guidance in the RFP search for a Fund Administrator. The Investment Advisor will also provide investment expertise and scenario analysis for this project. Expected services include assisting OST with the following:

- i. Development of a Request for Proposal for a fund administrator.
- ii. Development of prospectus documents for the LGIP.
- iii. Updating and adding language to the OST investment policy.
- iv. Education of LGIP participants on the use and functionality of the Extended Asset Fund

ADDITIONAL SERVICES

4. Special Projects as necessary

Perform other tasks consistent with the purpose of the contract as may be specified by OST including any other service necessary, customary, or incidental to investment of State operating funds.

All services will be performed only upon request of the State. Work plans and budgets for any studies, extraordinary services or special analyses must be approved in advance by the State.

Exhibit B
Schedule of Fees