

MPERA ACTUARIAL AUDIT SERVICES DOA15-3018T

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, Public Employees Retirement Administration (MPERA or State), whose address and phone number are P.O. Box 200131, Helena, MT 59620-0131, (406) 444-3154 and Cavanaugh Macdonald Consulting, LLC, (Contractor), whose address and phone number are 3550 Busbee Parkway, Suite 250, Kennesaw, GA 20144 and 678-388-1700.

1. **EFFECTIVE DATE, DURATION, AND RENEWAL**

1.1 Contract Term. The contract's initial term is, upon contract execution, through June 30, 2015, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The legal counsel signature approving legal content of the contract does not constitute an authorized signature.

1.2 Contract Renewal. The State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in two-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

2. **COST ADJUSTMENTS**

2.1 Cost Increase by Mutual Agreement. After the contract's initial term and if the State agrees to a renewal, the parties may agree upon a cost increase. The State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. **SERVICES**

Contractor shall provide the State actuarial audit services as defined in RFP15-3018T to review the work of the plan's Consulting Actuary to provide independent assurance the Consulting Actuary's work was performed in accordance with actuarial standards of practice; that the procedures used are appropriate and reliable to properly determine the system's net pension liability; to help plan fiduciaries assess whether the plan is meeting its funding objectives; to increase public trust in how the plan is being governed; to discover errors; and provide recommendations for improving the actuarial valuation process.

3.1 Scope Summary. The audit will include consideration of the PERS-DB plan and all of its members (active and inactive), retirees and beneficiaries.

3.2 Expressly Excluded from Scope of Audit Services. The scope of the audit will not include:

- a. review, evaluation, or verification of work performed by the Consulting Actuary related to compliance with GASB Statement 68; or
- b. review, evaluation, or verification of work performed by the Consulting Actuary as a second valuation version based on a different guaranteed annual benefit adjustment (GABA) percentage than that used in the primary valuation - Contractor will review, evaluate, and verify only the primary valuation scenario run by the Consulting Actuary.

3.3 Scope Specifications. The Contractor will audit the services of the Consulting Actuary based on the actuarial valuation produced by the Consulting Actuary as of June 30, 2014. MPERA shall provide the FY2014 actuarial valuation to the Contractor upon execution of the contract. The Contractor will conduct and complete its audit services, including providing all required written analysis and/or reports, within 90 days of receipt of the actuarial valuation, or by January 31, 2015, whichever is earlier. The Contractor will present its

final report to the Public Employees' Retirement Board (PERB) by February 27, 2015 and complete provision of consulting time to MPERA by June 30, 2015.

The Contractor will not duplicate Consulting Actuary's valuation results. Rather, the Contractor shall review the primary FY 2014 actuarial valuation completed by the Consulting Actuary and any other documentation and information the Contractor believes necessary, review the actuarial methodology employed by the Consulting Actuary, and compare and confirm the Consulting Actuary's valuation results. Following the Contractor's review and sampling or employment of other verification methods as appropriate, the Contractor will provide a written opinion on the following points:

- a. Determine if the Consulting Actuary's valuation procedures are technically sound and based on generally accepted actuarial standards.
- b. Determine if the census data used by the Consulting Actuary is valid, complete and contains the necessary data elements.
- c. Determine if the Consulting Actuary's determinations of demographic and economic actuarial assumptions are reasonable and are based on generally accepted actuarial standards.
- d. Determine if the actuarial cost method and actuarial asset valuation method used by the Consulting Actuary are reasonable, including whether different methods may be more appropriate.
- e. Determine if the Consulting Actuary's valuations results can be verified, including:
 - i. verification that appropriate mathematical calculations are being made accurately; and
 - ii. verification that plan liabilities and assets are being appropriately valued.
- f. Evaluate the adequacy of the Consulting Actuary's method used to establish the actuarial factors provided to MPERA to calculate the following: service and disability retirement, service purchases, early retirement, non-increasing annuities and survivorships. This evaluation shall include a review of the variables or assumptions used by the Consulting Actuary to establish these factors.
- g. Provide up to 10 hours of consulting time to MPERA. Any hours needed beyond 10 will be charged at the hourly billing rate proposed in Section 5.

3.4 Report Requirements. The Contractor shall write a formal report which specifically addresses each item in a-f above. The report must summarize the scope, results, and conclusions of the Contractor and the Contractor will present the report during one of the PERB's regularly scheduled meetings.

The Contractor must print and submit 25 copies and one electronic copy of the final report to MPERA.

3.5 Report Timing. The final report will be due January 31, 2015 and the Contractor will present the final report to the PERB no later than February 27, 2015. Offerors shall detail a plan to meet the proposed deadlines.

3.6 Access to Information. The Contractor will have access to records and staff in order to perform audit work.

3.7 Standards. The services shall be performed in accordance with the code of professional conduct for actuaries adopted by the five U.S. based actuarial organizations, including the Casualty Actuary Society, the Conference of Consulting Actuaries, the Society of Actuaries, the American Academy of Actuaries, and the American Society of Pension Professionals and Actuaries.

3.8 Confidentiality. All material and information in which there is an individual right to privacy shall be kept confidential by the Contractor. The Contractor may not use confidential information except in the fulfillment of this contract. Contractor must ensure information obtained is kept confidential and in conformance with all applicable state and federal laws.

If access to the plans' census data is required to complete the work described in this contract, the data must be returned or destroyed within 30 days of the receipt of the related report. The offeror must provide MPERA with a certification that the requirement was fulfilled.

4. WARRANTIES

4.1 Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. the State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the actuary services to be provided, the State shall pay Contractor \$25,000.00.

Travel costs to present the report to the PERB, including costs for airfare, lodging, and car rental will be reimbursed at the actual costs incurred by the Contractor up to \$1,500. Per Diem rates will be reimbursed at State rates.

5.2 Withholding of Payment. In addition to its other remedies under this contract, at law, or in equity, the State may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than, in the aggregate, 20% of the total value of the subject statement of work or applicable contract.

5.3 Consulting Rates. The hourly rate for consulting services that exceeds the 10 hours requested shall be \$396.00.

5.4 Payment Terms. Unless otherwise noted in the solicitation document, the State has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate electronic funds transfer payments.

5.5 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the State is not obligated to pay the invoice.

6. ACCESS AND RETENTION OF RECORDS

6.1 Access to Records. Contractor shall provide the State or their authorized agent's access to any records necessary to determine contract compliance. the State may terminate this contract under section 14, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

6.2 Retention Period. Contractor shall create and retain all records supporting the actuary services for a period of eight years after either the completion date of this contract or termination of the contract.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA.) Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this contract.

8. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, and save the State of Montana and its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State of Montana or the State, under this contract.

9. REQUIRED INSURANCE

9.1 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

9.2 Specific Requirements for Professional Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

9.3 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State of Montana its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

9.4 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The procurement officer or the State reserves the right to require complete copies of insurance policies at all times.

10. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

11. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504

of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

12. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

13. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

14. CONTRACT TERMINATION

14.1 Termination for Cause. The State may, by written notice to Contractor, immediately terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms or conditions contained in this contract.

14.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

14.3 Reduction of Funding. The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

15. EVENT OF BREACH – REMEDIES

15.1 Event of Breach by Contractor. Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this contract;
- Failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval and breaching Section 20.1 obligations; or
- Voluntary or involuntary bankruptcy or receivership.

15.2 Event of Breach by State. The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

15.3 Actions in Event of Breach.

Upon the Contractor's material breach, the State may:

- Terminate this contract under Section 14, and pursue any of its remedies under this contract, at law or in equity; or
- Treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the State's material breach, the Contractor may:

- Terminate this contract after giving the State written notice of the stated failure as provided in Section 14.2 and pursue any of its remedies under this contract, at law or in equity.
- Treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

16. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

17. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

18. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

19. LIAISONS AND SERVICE OF NOTICES

19.1 Contract Liaisons. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

Barbara Quinn is the State's liaison.
100 N Park Avenue, Suite 200
PO Box 200131
Helena, MT 59620-0131
(406) 444-3154
Fax: (406) 444-5428
E-mail: bquinn@mt.gov

John Garrett is Contractor's liaison.
3550 Busbee Parkway, Suite 250
Kennesaw, GA 20144
678-388-1700
john@cavmacconsulting.com

19.2 Notifications. The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

19.3 Identification/Substitution of Personnel. The personnel identified or described in Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under this contract and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

20. MEETINGS

20.1 Technical or Contractual Problems. Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

20.2 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

20.3 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any the State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by Contractor. This is Contractor's sole remedy. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

21. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

22. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA.)

23. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

24. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

25. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

26. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

26.1 Contract. This contract consists of nine numbered pages, any Attachments as required, RFP15-3018T, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

26.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

27. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

28. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

**STATE OF MONTANA
Montana Public Employees Retirement Admin.
100 N Park Avenue, Suite 200
P.O. Box 200131
Helena, MT 59620-0131**

**Cavanaugh Macdonald Consulting, LLC
3550 Busbee Parkway, Suite 250
Kennesaw, GA 20144**

FEDERAL ID # 61-1489078

BY: _____
(Name/Title)

BY: _____
(Name/Title)

(Signature)

(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Legal Counsel (Date)

Approved as to Form:

Procurement Officer (Date)
State Procurement Bureau