

Montana Public Employees' Retirement Board – Actuarial Services
MPERA2022-1000

THIS CONTRACT is entered into by and between the State of Montana Public Employees' Retirement Board, (MPERB), whose address and phone number are 100 North Park, Suite 200, PO Box 200131, Helena, Montana, (406) 444-3154, and Cavanaugh Macdonald Consulting, LLC, (Contractor), whose address and phone number are 3550 Busbee Parkway, Suite 250, Kennesaw, GA 30144 and 678-388-1700.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is January 1, 2023, through December 31, 2027, unless terminated earlier as provided in this Contract. In no event is this Contract binding on MPERB unless MPERB'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. MPERB may renew this Contract under its then-existing terms and conditions, to include the agreed to firm fixed costs listed under Section 4 of this Contract, in 1-year intervals, or any interval that is advantageous to MPERB. This Contract, including any renewals, may not exceed a total of seven (7) years.

2. SERVICES

Contractor shall provide MPERB the following actuarial services as enumerated below.

2.1 Signature of Qualified Actuary Required. The Contractor will ensure that all actuarial work product delivered to the MPERB is reviewed, approved, and signed by a qualified actuary authorized to legally bind the Contractor. Upon MPERB's discovery of any error contained within the work completed by Contractor, the Contractor will complete any re-work that needs to be completed at no cost to MPERB.

2.2. Provide Information Regarding Industry Developments. The Contractor will inform the MPERB of any new developments concerning Actuarial Standards of Practice applicable to the services rendered by Contractor to MPERB under this Contract.

2.3. Prepare Actuarial Cost Estimates of Proposed Legislation and Plan Design Modifications. The Contractor will provide timely actuarial calculations and financial impact estimates of legislative proposals, planned statutory amendments, proposed changes to existing rules, the enactment or promulgation of new rules, or potential plan design modifications and present the findings of the same as requested by MPERB. MPERB expects the consulting actuary will need to prepare an average of 20-25 estimates biannually. The majority of these pricing requests will occur in the months leading up to or during a legislative session. This will require the actuary's response within one to three (1-3) calendar days of such a request, including Saturdays. For purposes of calculating response time, the day a request is sent by MPERB to the consulting actuary is considered the first calendar day of this period.

2.4 Legislative Testimony. The Contractor will attend legislative hearings, as requested, that impact MPERB and will testify at such hearings, as necessary, regarding the actuarial status and funding methodology of the plans administered by MPERB.

2.5. Provide General Actuarial Consultation and Advisory Services within Necessary Timeframes. The Contractor will provide general actuarial consultation and advisory services related to the normal business operations of MPERB. Those services may be provided in meeting, by telephone call, through email, and by written correspondence. Those services may also include public testimony to committees, boards, commissions, and legislators on any technical, policy, funding or administrative issues arising during the course of operation of the system. The Primary Actuary of the Contractor, or an agreed upon substitute, will be readily accessible to MPERB by telephone within one working day and will be available for meetings within three (3) working days of a request. The Primary Actuary will attend a minimum of one (1) board meeting per contract year and will be available for educational discussions with MPERB, MPERB staff, and/or other individuals.

2.6 Assist in Establishing Actuarial Specifications for the Data Files. The Contractor will provide advice on the proposed form and content of data files transmitted by MPERA to it, and if necessary, make suggestions for system modifications to ensure that the full range of data needed for costing proposed legislation, and performing actuarial valuations and experience studies is available and adequately maintained.

2.7 Perform annual actuarial valuations according to standards of practice. The Contractor will conduct annual actuarial valuations of all of the MPERB-administered defined benefit retirement plans, which will include the Volunteer Firefighters' Compensation Act (VFCA) and the PERS-DCRP Disability Other Post-Employment Benefit Plan (OPEB). MPERB will deliver all data necessary to Contractor by July 31st of each year in order for Contractor to complete the requirements of this section. The valuations must be performed in conformity with the Actuarial Standards of Practice set by the Actuarial Standards Board. The assumptions and actuarial funding methods must comply with the provisions of the Governmental Accounting Standards Board. These actuarial valuations will be used to determine the funding status of the plans including the financial position of the funds, normal costs of the pension plan, and the unfunded actuarial accrued liability of each plan based upon present and prospective assets and liabilities of the plan. Contractor must provide a statement in each valuation report certifying the retirement plan is or is not actuarially sound. These valuations must include, but will not be limited to the following separate components:

- 1) A summary of valuation results;
- 2) A sensitivity analysis related to future experience of select actuarial assumptions;
- 3) An analysis of assets to include statements of fiduciary net position, statements of changes in fiduciary net position, a determination of the actuarial value of assets, historical investment returns, and a comparison of the market value of assets to the actuarial value of assets;
- 4) An analysis of actuarial present value of future benefits for actives, retirees, and beneficiaries;
- 5) An analysis of employer contributions to include normal cost contribution rates as a percentage of salary and the calculation of unfunded actuarial accrued liability;
- 6) An analysis of cash flow to include historical cash flow analysis;

- 7) An analysis of actuarial gains or losses to include historical actuarial gains or losses;
- 8) A risk analysis in accordance with ASOP 51 using key risk metrics related to historical asset volatility ratios, historical cash flows, liability maturity measurements as well as the ratios of the number of retirees and beneficiaries to the number of active members in each plan; and
- 9) Appendixes detailing actuarial procedures and methods, a summary of valuation assumptions and benefit provisions, valuation data, comparative schedules, financial statement information, and a glossary of terms used throughout the valuation.

2.7.1. Reporting of Material Assumption Variations. If analyses of the current data during the performance of the valuation indicates any material variations from current economic or demographic assumptions, the valuation report will identify and discuss the variations and present an estimate of the effect on the normal cost and/or the unfunded actuarial liability of the retirement plan.

2.7.2 Guaranteed Annual Benefit Adjustment (GABA) Calculation. The Contractor will include calculations in the PERS annual actuarial valuation to determine the proper level of the Guaranteed Annual Benefit Adjustment (GABA) for PERS retirees hired on or after July 1, 2013. Such retirees hired on or after July 1, 2013, are subject to a “sliding scale” GABA ranging from 0% to 1.5% as provided under Mont. Code Ann. § 19-3-1605(5). For these retirees hired on or after July 1, 2013, if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, the applicable percentage rate must be reduced by 0.1% for each 2% below the 90% funded level. If the amortization period for the system is 40 years or greater, the applicable GABA percentage rate is 0% and the retirement allowance may not be increased.

2.7.3 Completion of Valuation Reports. The Contractor will deliver the actuarial valuations to the Executive Director of MPERA by September 15th of the year performed. Contractor must deliver the valuation reports in both electronic PDF format as well as hard copy format. Ten (10) hard copies of the valuation report must be provided in tabbed, three (3) ring binders.

2.8 ACFR information. The Contractor will provide all financial information and reports required for the ACFR for the fiscal year period upon the request of the MPERB in both Word and Excel format. This will include, but not be limited to: a summary of the plan, description of actuarial assumptions and cost methods, an analysis of actuarial gains or losses, a display of age groups and service matrices for active members, and a display of retired lives by age groups and types of benefits. In addition, the reports shall clearly explain cash flow history, historical investment returns, and smoothing. If the firm creates other or improved tables in the future or if the standards require new tables, MPERB requires that the Contractor will make those tables available for its use.

2.9 GASB Statements 67 and 68. The Contractor will perform actuarial analysis and provide plan information disclosures necessary for MPERB to comply with financial statement reporting requirements set forth in GASB 67 and GASB 68. Contractor shall also prepare the calculations of proportionate share, net pension liability by employer, pension expense and deferred inflows and outflows by employer. MPERB will deliver financial information to Contractor by August 1st of each year in order for Contractor to complete the requirements of this section. Final GASB 67 and 68 reports will be delivered to MPERB one (1) week after delivery of the valuation reports required under Section 2.7 above. These reports must be in a PDF format. The schedules that will be delivered as part of the reports must also be in an Excel format that can be shared with employers. As part of these services, upon request by MPERB, the Contractor will work with and answer questions posed by any representative of the Montana Legislative Audit Division (LAD) conducting an independent audit of MPERA during any year of the contract between MPERB and the Contractor. If at any point in time, LAD or MPERB discover any error solely attributable to the Contractor related to GASB 67 or GASB 68 work performed, the Contractor will re-run any GASB 67 or GASB 68 report at any point in time during any year of the contract at no additional cost.

2.10 Perform periodic experience studies of all MPERB-administered defined benefit retirement plans. The Contractor will perform a periodic experience study, in accordance with Actuarial Standards of Practice set by the Actuarial Standards Board and the provisions of the Governmental Accounting Standards Board, of all defined benefit retirement plans administered by MPERB to include the VFCA and the PERS-DCRP-OBEP Plan. The experience study must include a review and recommended changes, if necessary, of the actuarial assumptions, both economic and demographic, used by the MPERB to value assets and cost and liabilities of each defined benefit plan it administers. This study will be completed upon the request of the MPERB and will generally occur every 4-5 years. This experience study must include, but will not be limited to, an examination of the following economic and demographic assumptions:

- 1) Price Inflation;
- 2) Real Rate of Return;
- 3) Investment Return;
- 4) Real Wage Growth;
- 5) Wage Inflation;
- 6) Payroll Growth;
- 7) Rates of Post-Retirement Mortality;
- 8) Rates of Post-Retirement Disabled Mortality;
- 9) Rates of Pre-Retirement Mortality;
- 10) Rates of Service Retirement;
- 11) Rates of Disability Retirement;
- 12) Rates of Withdrawal; and
- 13) Rates of Salary Increase for Merit and Promotions.

2.10.1 Actuarial Cost and Actuarial Equivalency Factor Tables. The experience study must include a review and recommended updates of all actuarial cost, actuarial equivalency, present value, survivorship, and section 415(b) limits factor tables used to conduct MPERB operations should there be a change to assumptions currently in use by the MPERB. The timeline for the furnishing of updated tables to the MPERB will be mutually agreed upon by Contractor and the MPERB when the MPERB makes an official request to Contractor to have an experience study completed.

2.11 Actuarial Audit. During the contract period, a firm, other than Contractor, will perform a comprehensive review of the Public Employees' Retirement System's (PERS) actuarial assumptions and methodology for reasonableness given the financial objectives of the System. The review will also include an audit of the valuation results for as many years as the firm deems appropriate based on generally accepted actuarial standards and practices. Contractor will work cooperatively with, provide requested information to, and fully answer any questions by any representative of the actuarial audit firm while they conduct their audit and develop their audit report. Any requested information in the possession of the Contractor that, in the sole opinion of the actuarial audit firm, is necessary for the actuarial audit firm to complete its review and audit under this section must be provided to the actuarial audit firm within ten (10) calendar days of receiving a request for such information.

3. WARRANTIES

3.1 Warranty of Services. Contractor warrants that the services provided conform to the Contract requirements, including all descriptions and specifications made a part of this Contract. MPERB'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, MPERB may require Contractor to promptly correct, at Contractor's expense, 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.

4. CONSIDERATION/PAYMENT

4.1 Payment Schedule. In consideration of the actuarial services to be provided under this Contract, MPERB shall pay Contractor according to the following schedule:

4.1.1. Firm Fixed Costs:

Actuarial Valuations	
FY2023 Actuarial Valuation	\$136,125
FY2024 Actuarial Valuation	\$136,125
FY2025 Actuarial Valuation	\$136,125
FY2026 Actuarial Valuation	\$136,125
FY2027 Actuarial Valuation	\$136,125
FY2028 Actuarial Valuation	\$136,125
FY2029 Actuarial Valuation	\$136,125

GASB 67 & 68 Reports	
FY2023 GASB 67 & 68 Reports	\$156,389
FY2024 GASB 67 & 68 Reports	\$156,389
FY2025 GASB 67 & 68 Reports	\$156,389
FY2026 GASB 67 & 68 Reports	\$156,389
FY2027 GASB 67 & 68 Reports	\$156,389
FY2028 GASB 67 & 68 Reports	\$156,389
FY2029 GASB 67 & 68 Reports	\$156,389

Experience Study	\$71,500
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Transitional Services	No Charge
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4.1.2. Travel

Cost Per Trip Per Person	\$1500.00, with a maximum total amount of \$3000 for all persons
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4.1.3. Hourly Rates:

Primary Actuary	\$450.00
Consulting Actuary	\$420.00
Senior Actuary	\$380.00
Actuarial Analyst	\$330.00

4.1.4. Legislative Proposals

Non-Funding Bills	\$2,500.00
Funding Bills	\$3,500.00

4.1.4. Actuarial Audit

Actuarial Audit	\$15,000.00
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4.2 Withholding of Payment. In addition to its other remedies under this Contract, at law, or in equity, MPERB may withhold payments to Contractor if Contractor has breached this Contract.

4.3 Payment Terms. MPERB has thirty (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 MPERB's electronic funds transfer payments.

4.4 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, MPERB is not obligated to pay the invoice.

5. ACCESS AND RETENTION OF RECORDS

5.1 Access to Records. Contractor shall provide the State of Montana, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. MPERB may terminate this Contract under Section 15, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

5.2 Retention Period. Contractor shall create and retain all records supporting the actuarial services performed under this Contract for a period of seven years after either the completion date of this Contract or termination of the Contract.

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without MPERB's prior written consent. (18-4-141, MCA) Contractor is responsible to MPERB 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 MPERB under this Contract.

7. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

Contractor shall defend, indemnify and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from (i) the services performed or products provided or (ii) other acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors.

8. REQUIRED INSURANCE

8.1 General Requirements. Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

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

8.3 Specific Requirements for Professional Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$5,000,000 per occurrence and \$10,000,000 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.

8.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by MPERB. At the request of MPERB either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MPERB, 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.

8.5 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 must be received by the Public Employees' Retirement Board, P.O. Box 200131, Helena, MT 59620-0131 before Contract execution. *The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify MPERB immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. MPERB reserves the right to require complete copies of insurance policies at all times.

8.6 Specific Requirements for Cyber/Data Information Security Insurance. The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with 2-6-1501, MCA through 2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, MPERB requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the MPERB. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third-party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the MPERB will accept "claims made" coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

9. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for MPERB 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 MPERB, P.O. Box 200135, Helena, MT 59620-0135.

10. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, 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. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, 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 on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression,

national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

11. DISABILITY ACCOMMODATIONS

MPERB 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 the MPERB. Interested parties should provide as much advance notice as possible.

12. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 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. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

13. INTELLECTUAL PROPERTY/OWNERSHIP

13.1 Permissible Use. Contractor shall make available to MPERB, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for MPERB to receive the benefits of this Contract.

13.2 Title and Ownership Rights. MPERB retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by MPERB (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

13.3 Ownership of Work Product. Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as MPERB may reasonably request, to perfect MPERB's ownership of any Work Product.

13.4 Copy of Work Product. Contractor shall, at no cost to MPERB, deliver to MPERB, upon MPERB's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of MPERB's request, or such expiration or termination.

13.5 Ownership of Contractor Pre-Existing Materials. Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to MPERB (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor

shall provide full disclosure of any Contractor Pre-Existing Materials to MPERB before its use and to prove its ownership. If, however, Contractor fails to disclose to MPERB such Contractor Pre-Existing Materials, Contractor shall grant MPERB a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for MPERB to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 13.3, Ownership of Work Product**, or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

14. PATENT AND COPYRIGHT PROTECTION

14.1 Third-Party Claim. If a third party makes a claim against MPERB that the products furnished under this Contract infringe upon or violate any patent or copyright, MPERB shall promptly notify Contractor. Contractor shall defend such claim in MPERB's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify MPERB against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If MPERB reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

14.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for MPERB the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by MPERB shall be prevented by injunction, MPERB will determine whether the Contract has been breached.

15. CONTRACT TERMINATION

15.1 Termination for Convenience. MPERB may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. MPERB shall give notice of termination to Contractor at least thirty (30) days before the effective date of termination. MPERB shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date MPERB's termination takes effect. This is Contractor's sole remedy. MPERB 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.

15.2 Reduction of Funding. MPERB must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support MPERB'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, MPERB shall terminate this Contract as required by law. MPERB shall provide Contractor the date MPERB's termination shall take effect. MPERB 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, MPERB shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date MPERB's termination takes effect. This is Contractor's sole remedy. MPERB 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.

16. EVENT OF BREACH – REMEDIES

16.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- 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 MPERB approval or breaching section 21.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

16.2 Actions in Event of Breach. Upon Contractor's material breach, MPERB may:

- Terminate this Contract under Section 15.1, Termination for Convenience, 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.

17. 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.

18. 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.

19. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the MPERB'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.

20. LIAISONS AND SERVICE OF NOTICES

20.1 Contract Liaisons. All project management and coordination on MPERB's behalf must be through a single point of contact designated as MPERB'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 MPERB's liaison and Contractor's liaison.

Hollie Resler is MPERB's Contract Liaison
100 North Park, Suite 200
Helena, MT 59620-0131
Telephone: (406) 444-0177
Fax: (406) 444-5428
E-mail: hollie.resler@mt.gov

Todd Green is Contractor's Contract Liaison
3550 Busbee Pkwy, Suite 250
Kennesaw, GA 30144
Telephone: (678) 388-1705
Fax: (678) 388-1730
E-mail: ToddG@cavmacconsulting.com

20.2 Notifications. MPERB'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, e-mails 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.

20.3 Identification/Substitution of Personnel. 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. MPERB reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. MPERB'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. MPERB 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.

21. MEETINGS

21.1 Technical or Contractual Problems. Contractor shall meet with MPERB'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 MPERB in the performance of their respective obligations, at no additional cost to the MPERB. MPERB may request the meetings as problems arise and will be coordinated by MPERB. MPERB 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.

21.2 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 MPERB, 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.

22. 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 a new actuarial firm hired by MPERB. 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. These transition services require the Contractor to share all

plan documents, all prior valuation reports, all copies of the data used by the Contractor during its most recent valuation, and any other necessary information, in the sole opinion of the new actuary, that is required to effectuate an effective transition between itself and Contractor during this time period.

23. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, MPERB of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 7, Defense, Indemnification/Hold Harmless.

24. CONFIDENTIALITY.

All information obtained by Contractor concerning active, inactive, terminated, or retired plan participants is the sole property of MPERB and such information shall remain confidential and not be used or transmitted to others for any purpose whatsoever.

Contractor shall treat as confidential all active, inactive, terminated, or retired plan participant data received from MPERB and shall not disclose the information other than to provide the services provided for under this Contract, unless agreed to in writing by the parties. Any breach of this section by Contractor requires it to indemnify and hold MPERB harmless from and against all losses, claims, damages, penalties, costs and expenses arising out of any disclosure made in violation of this provision.

25. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

26. PERSONAL PROPERTY TAX

All personal property taxes will be paid by Contractor.

27. AUTHORITY

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

28. SEVERABILITY

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.

29. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

29.1 Contract. This Contract consists of fourteen (14) numbered pages. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

29.2 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.

30. WAIVER

MPERB'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.

31. EXECUTION

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

**STATE OF MONTANA
Public Employees' Retirement Board
100 North Park, Suite 200
Helena, MT 59620-0131**

**CAVANAUGH MACDONALD CONSULTING, LLC
3550 Busbee Pkwy, Suite 250
Kennesaw, GA 30144
FEDERAL ID # 61-1489078**

BY: _____
Maggie Peterson, Board President

BY: _____
Todd Green, President

(Signature)

(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

MPERB Chief Legal Counsel (Date)