

# Actuarial Services Contract

This Actuarial Services Contract (“Contract”) is made by and between **{Insert name of Plan}** (the “Plan”), acting administratively through Madison County, Mississippi (“County”), and Cavanaugh Macdonald Consulting, LLC, (the “Actuary”), under the following terms and conditions under which the Actuary agrees to provide services to the Plan.

## 1. SCOPE OF SERVICES

The Governmental Accounting Standards Board (GASB) has issued new standards requiring that Plan prepare disclosure information for other post-employment benefits (OPEB) other than pensions as required by authoritative standards established by GASB. The new standards (GASB 74 and 75) will impact the Plan. The Plan’s OPEB arises mainly because the Plan’s retirees are included in the Plan's insurance group for all lines of coverage. Both the active employees and the retirees are included in the rating process by the Plan's insurance providers. This fact results in an OPEB because the blended insurance premium rates charged to retirees are presumably lower than the rates would be if the retirees were rated separately, and the blended rates paid by the Plan for active employees are presumably higher than they would be if the retirees were rated separately. The Actuary agrees, at the request of the Plan, to assist the Plan and the staff by providing the following actuarial services:

- A. The Actuary will prepare annual GASB 74 and/or 75 disclosure report(s) of the Plan’s OPEB, resulting from the Plan, as defined and in accordance with Statements 74 and 75 of GASB. The disclosure reports will detail the liabilities of the Plan’s OPEB resulting from the Plan, and provide the necessary calculations and information for compliance with GASB Statements 74 and 75. The report will include the necessary information to demonstrate the cross-over test as required by GASB to estimate the appropriate discount rate. The report will be completed within 10 weeks of the receipt of all necessary data and financial information, will determine the liability for all benefits promised to the active, retired and inactive members as of each valuation date.
- B. Maintain full and accurate records with respect to all matters covered under this Contract.
- C. At the Plan’s request, work with vendors contracted with the Plan to enable the provision of necessary services to the participants of the Plan.
- D. As requested by the Plan, provide such advice and services regarding issues and matters of impact or interest to the Plan for which the Actuary has the technical capability to render.

It is mutually understood and agreed by both parties that this is not an exclusive actuarial contract. The Plan is free to contract with other professionals to perform similar and like services as those contained in this Contract. Payment for work performed by the Actuary shall not be affected by this provision.

## 2. CONTRACT TERM

- A. The effective date of this Contract will be December 1, 2020. This Contract's term will be for three years, with an option to renew for an additional three-year term upon mutual agreement by both parties. No later than three (3) months prior to September 30, 2023, the Plan will notify the Actuary, in writing, of the Plan's intent as to renewal of the Contract for the additional three-year term.
- B. This Contract may be terminated by either party, with or without cause, upon at least thirty (30) days prior written notice of intent to terminate.
- C. All records and information provided by the Plan or through its third party contractors to the Actuary are the sole property of the Plan and shall be returned, if so requested by the Plan, to the Plan within thirty (30) days of the termination date of this Contract. The Actuary shall be entitled to retain and utilize data that have been captured, computed, or stored in the Actuary's databases to the extent that such data cannot be identified or linked to the Plan or an individual Plan Participant.
- D. Upon termination of this Contract, the Actuary shall fully cooperate with the Plan and the new Actuary during the transition of the Plan to the new Actuary. Upon request of the Plan, the Actuary shall provide all information maintained by the Actuary in relation to the Plan in a time frame specified by the Plan. Information provided shall be in a format designated by the Plan. The Actuary shall provide such explanation of the information provided as to facilitate a smooth transition.

## 3. CONSIDERATION

The Plan agrees to compensate the Actuary for services approved by the Plan and performed by the Actuary under the terms of this Contract as follows:

- A. The unit rates listed in Exhibit A, "Fees", of this Contract shall constitute the entire compensation due to the Actuary for services and all of the Actuary's obligations hereunder regardless of the difficulty, materials, or equipment required. The unit rates include, but are not limited to, all applicable taxes, fees, general office expense, overhead, profit, and all other direct and indirect costs, incurred or to be incurred, by the Actuary. No additional compensation will be provided by the Plan for any expense, cost, or fee not specifically authorized by this Contract, or by written authorization from the Plan.
- B. The unit rates listed in Exhibit A, "Fees", of this Contract are firm for the duration of this Contract and are not subject to escalation for any reason, unless this Contract is duly amended.
- C. The Actuary shall submit all invoices, in a form acceptable to the Plan with all of the necessary supporting documentation, prior to any payment of allowable costs. Such invoices will, at a minimum, include the name of each individual, the individual's job title/staff level, the number of hours worked during the period, the hourly rate, the total compensation requested for the individual, the total amount due the Actuary for the period invoiced, and the project or work type.

- D. The payment of an invoice by the Plan shall not prejudice the Plan's right to object to or question any invoice or matter in relation thereto. Such payment by the Plan shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. Actuary's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Plan, on the basis of audits, not to constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices.
- E. The Plan reserves the right to deduct from amounts which are or shall become due and payable to the Actuary under this Contract between the parties any amounts which are or shall become due and payable to the Plan by the Actuary. Notwithstanding anything to the contrary herein, any reduction of payments to Actuary shall be made only with the prior agreement of both parties. In addition, in the event of termination of this Contract for any reason, Actuary shall be paid for services rendered and allowable expenses incurred up to the effective date of termination.
- F. The Plan agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts within forty-five (45) days of receipt of the invoice. The Plan may, at its sole discretion, require the Actuary to submit invoices and supporting documentation electronically at any time during the term of this Contract. Actuary understands and agrees that the Plan is exempt from the payment of taxes. All payments shall be in United States currency. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Actuary shall remain responsible and liable for full performance.

#### **4. ACCESS TO RECORDS**

The Actuary agrees that the Plan or any of its duly authorized representatives, at any time during the term of this Contract, shall have access to and the right to audit and examine any pertinent books, documents, papers, and records of the Actuary related to the Actuary's charges and performance under this Contract. The Actuary shall retain such records for a period of six (6) years after final payment under this Contract, unless the Plan authorizes in writing their earlier disposition. The Actuary agrees to refund to the Plan any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until completion of the action and resolution of all issues that arise from it. Information generated by the Actuary may be subject to the Public Records Law of the State of Mississippi. Unless otherwise required by law, the Plan will not disseminate, sell, or license any proprietary information to others without the Actuary's prior written approval. The Actuary recognizes that it may have access to certain confidential and proprietary information pertaining to the business of the Plan. The Actuary agrees that it will not, at any time, directly or indirectly disclose such confidential or proprietary information to any other person or organization for any purpose except as may be required by law, or as reasonably relates to the services being provided by the Actuary pursuant to this Contract, without the express, written approval of the Plan.

## **5. APPLICABLE LAW**

This Contract shall be governed by and construed in accordance with the laws of the County, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the County. The Actuary shall comply with applicable federal, state, and local laws and regulations.

## **6. ASSIGNMENT**

The Actuary shall not assign or subcontract, in whole or in part, its rights, or obligations under this Contract without prior written consent of the Plan. Any attempted assignment without said consent shall be void and of no effect.

## **7. COMPLIANCE WITH LAWS**

The Actuary understands that the County is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Actuary agrees during the term of this Contract that the Actuary will strictly adhere to this policy in its employment practices and provision of services. The Actuary shall comply with, and all activities under this Contract shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

## **8. INDEPENDENT CONTRACTOR**

The Actuary shall perform all services as an independent contractor and shall at no time act as an agent for the County. No act performed or representation made, whether oral or written, by the Actuary with respect to third parties shall be binding to the Plan.

## **9. MODIFICATION OR RENEGOTIATION**

This Contract may be modified, altered, or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate this Contract if federal and/or County revisions of any applicable laws or regulations make significant changes in this Contract necessary.

## **10. REPRESENTATION REGARDING CONTINGENT FEES**

The Actuary represents that it has not retained a person to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The Plan will not pay any commissions and/or any brokerage, percentage, finder's service, or contingent fees for securing or executing any of the services outlined in this Contract.

## 11. REPRESENTATION REGARDING GRATUITIES

The Actuary represents that it has not violated, is not violating, and promises that it will not violate any prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

## 12. TERMINATION FOR CONVENIENCE

- A. Termination. The Plan may, when the interests of the County so require, terminate this Contract in whole or in part for the convenience of the County. The Plan shall give written notification of the termination to the Actuary specifying the part of the Contract terminated and when termination becomes effective.
- B. Actuary's Obligations. The Actuary shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, the Actuary will stop work to the extent specified. The Actuary shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Actuary shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The Plan may direct the Actuary to assign the Actuary's right, title and interest under terminated orders or subcontracts to the County. The Actuary must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## 13. TERMINATION FOR DEFAULT

- A. Default. If the Actuary refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified within this Contract, or any extension thereof; otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of Contract, the Plan may notify the Actuary in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by the Plan, the Plan may terminate the Actuary's right to proceed with this Contract or such part of this Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part, the Plan may procure similar supplies or services in a manner and upon the terms deemed appropriate by the Plan. The Actuary shall continue performance of the Contract to the extent it is not terminated.
- B. Actuary's Duties. Notwithstanding termination of this Contract and subject to any directions from the Plan, the Actuary shall take timely, reasonable, and necessary actions to protect and preserve property in the possession of the Actuary in which the County has an interest.
- C. Compensation. Payment for completed services delivered and accepted by the County shall be at the Contract price. The Plan may withhold from amounts due the Actuary such sums as the Plan deems to be necessary to protect the Plan against loss because of outstanding lien holders.
- D. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the Actuary shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Actuary to make progress in the prosecution of the work hereunder which endangers performance) if the

Actuary has notified the Plan within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the County and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather or other causes beyond the Actuary's reasonable control. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes similar to those set forth above, the Actuary shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtained from other sources in sufficient time to permit the Actuary to meet the Contract requirements. If any failure to perform was occasioned by any one or more of the excusable clauses, and that, but for the excusable cause, the Actuary's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the County under the clause of this Contract entitled "Termination for Convenience".

- E. Erroneous Termination for Default. If, after notice of termination of the Actuary's right to proceed under the provisions of this clause, it is determined for any reason that the Contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (D) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause of this Contract entitled "Termination for Convenience".
- F. Additional Rights and Remedies. The rights and remedies provided under this clause are in addition to any other rights and remedies provided by law or under this Contract.

#### **14. ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract. All modifications to this Contract must be made in writing by the Plan.

#### **15. OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

The Plan shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the project which is the subject of this Contract, except for the Actuary's internal administrative and quality assurance files and internal project correspondence. If so requested by the Plan, the Actuary shall deliver such documents and work papers to the Plan upon termination or completion of this Contract. The foregoing notwithstanding, the Actuary shall be entitled to retain a set of such work papers for its files. The Actuary shall be entitled to use such work papers only after receiving written permission from the Plan and subject to any copyright protections.

#### **16. INDEMNIFICATION**

To the fullest extent allowed by law, the Actuary shall indemnify, defend, save and hold harmless, protect, and exonerate the County, its Commissioners, Plan Members, officers, employees, agents,

and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Actuary and/or its partners, principals, agents, employees, and/or Subcontractors in the performance of or failure to perform this Contract.

## **17. INSURANCE**

The Actuary shall maintain, throughout the term of this Contract, at its own expense, professional and comprehensive general liability insurance. Such policy of insurance shall provide a minimum coverage in the amount of One Million Dollars (\$1,000,000) annual aggregate limit for professional (errors and omissions) coverage, and One Million Dollars (\$1,000,000) annual aggregate limit for comprehensive general liability coverage through an appropriately licensed insurance company. The Actuary shall annually provide the Plan a current Certificate of Insurance.

## **18. THIRD PARTY ACTION NOTIFICATION**

The Actuary shall give the Plan prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Actuary by any entity that may result in litigation related in any way to this Contract.

## **19. NOTICE**

All notices required or permitted to be given under this Contract must be in writing and personally delivered or sent by certified United States mail postage prepaid, return receipt requested, to the party to whom the notice should be given at the addresses set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address. The addresses to which notices are initially to be sent are as follows:

- (a) If to the Plan:

Executive Director  
{Please insert information here}

- (b) If to Actuary:

Ed Koebel  
Chief Executive Officer  
Cavanaugh Macdonald Consulting, LLC  
3550 Busbee Pkwy, Suite 250  
Kennesaw, Georgia 30144  
Facsimile No: (678) 388-1730

**20. PERSONNEL**

The Plan shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or Subcontractors assigned to the work by the Actuary. If the Plan reasonably rejects staff or Subcontractors, the Actuary must provide replacement staff or Subcontractors satisfactory to the Plan in a timely manner and at no additional cost to the Plan. The day-to-day supervision and control of the Actuary’s employees and Subcontractors is the sole responsibility of the Actuary.

**21. RECOVERY OF MONEY**

Whenever, under the Contract, any sum of money shall be recoverable from or payable by the Actuary to the Plan, the same amount may be deducted from any sum due to the Actuary under the Contract or under any other contract between the Actuary and the Plan. The rights of the Plan are in addition and without prejudice to any other right the Plan may have to claim the amount of any loss or damage suffered by the Plan on account of the acts or omissions of the Actuary.

**22. FAILURE TO ENFORCE**

Failure by the Plan at any time to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of the Plan to enforce any provision at any time in accordance with its terms.

**Madison County**  
**{Insert name of Plan}**

**Cavanaugh Macdonald Consulting, LLC**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: Chairman \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



**EXHIBIT A**

**FEES**

The following project and hourly fees will apply during the term of this Contract:

**PROJECT FEES:**

<b><u>PROJECT</u></b>	<b><u>ALL-INCLUSIVE FEE</u></b>
Annual Actuarial OPEB GASB 74/75 Disclosure Reports for Plan (See Section 1.A.)	\$10,000

**HOURLY FEES:**

<b><u>STAFF LEVEL</u></b>	<b><u>FY 2021</u></b>	<b><u>FY 2022</u></b>	<b><u>FY 2023</u></b>
Consulting Actuary	412.00	412.00	412.00
Managing Director	360.00	360.00	360.00
Senior Actuary	340.00	340.00	340.00
Senior Consultant	300.00	300.00	300.00
Consultant	285.00	285.00	285.00
Administrative	136.00	136.00	136.00

NOTE: Hourly fees are provided for use with any additional (outside the annual projects and/or scenarios described in Section 1.A) actuarial and/or consulting services requested by the Plan and provided by the Actuary.

**All rates are guaranteed through the term of the Contract.**