

Appendix C

ACTUARIAL SERVICES AGREEMENT

This Actuarial Services Agreement (“Agreement”), effective _____ (the “Effective Date”), is between _____ (the “Actuary”) and the Minnesota Legislative Commission on Pensions and Retirement (the “Commission” or “LCPR”). The Actuary and the LCPR may each be referred to as a “Party” and collectively as the “Parties.”

Preamble

- A. The Commission is authorized by [Minnesota Statutes, section 3.85](#), as a joint commission of the Minnesota Legislature consisting of members of the Minnesota House of Representatives and the Minnesota Senate. The Commission employs three full-time staff. The Commission provides legislative oversight to Minnesota’s public pension funds and plans, advises the legislature on pension and retirement policy, and drafts and considers legislation related to pension and retirement plans and policy.
- B. The Commission contracts for actuarial services to assist in its policy-making and oversight roles under the authority granted in [Minnesota Statutes, section 3.85, subdivision 5](#).
- C. The Commission issued a request for proposal on September 26, 2019, which was published in the State Register on September 30, 2019. The Actuary was one of the responding firms. After conducting a diligent review process, the Commission approved the appointment of the Actuary, subject to execution of an actuarial services agreement satisfactory to the Parties, and now wishes to enter into this Agreement with the Actuary.

Accordingly, the Parties agree as follows:

SECTION 1: DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below and, when such meaning is intended, the term is capitalized:

- 1.3 “Deliverable” means the physical or electronic report or other written work product produced by the Actuary for the Commission under this Agreement.
- 1.4 “Executive Director” means the executive director of the Commission.

- 1.5 “Retirement Systems” means the Minnesota State Retirement System (MSRS), the Minnesota Public Employees Retirement Association (PERA), the Minnesota Teacher’s Retirement Association (TRA), and the Saint Paul Teachers Retirement Fund Association.
- 1.6 “Standards for Actuarial Work” means the document so titled, adopted by the Commission under [Minnesota Statutes, section 3.85, subdivision 10](#), and containing the standards and rules governing actuarial work performed for public pension plans in Minnesota.

SECTION 2: TERM OF CONTRACT

- 2.1 **Effective date.** The Effective Date of the Agreement is the date set forth in the first paragraph of this Agreement. The Actuary must not begin work under this Agreement until this Agreement is fully executed and the Actuary has been notified by the Executive Director to begin work.
- 2.2 **Expiration.** The “Expiration Date” of the Agreement is _____ or 36 months after the Effective Date, whichever occurs later.
- 2.3 **Term.** The term of the agreement begins on the Effective Date and terminates on the Expiration Date. The parties may choose to extend the term of this agreement by up to two (2) years by mutual written consent. Under no circumstances may the term of this Agreement, including extensions, exceed five (5) years.

SECTION 3: ACTUARY SERVICES

- 3.1 **Services provided.** The Actuary shall provide the actuarial services detailed in section 3.5 (“Fixed Fee Services”), sections 3.6 and 3.7 (“Requested Services”), and Exhibit A (collectively the “Services”), in a manner consistent with the terms of this Agreement. The services shall be provided by one or more of the individuals assigned by the Actuary to perform services under this Agreement, which are listed in Exhibit C, along with each individual’s hourly rate.
- 3.1 **Communication.** All final reports, testimony, advice, or other communication made by the Actuary to the Commission must be made in a manner that is understandable by a person lacking expertise in actuary science. Communication must be clear, concise, and contain minimal jargon.
- 3.2 **Time.** The Actuary shall comply with the time requirements described in Exhibit A for Fixed Fees Services and shall complete Requested Services by due dates agreed upon with the Executive Director. In the performance of this Agreement, time is of the essence.

3.4 **Standard for reviews.** Except for the review of the Standards for Actuarial Work, under clause 3.5(a), when conducting a review under sections 3.5 or 3.6, the Actuary must evaluate whether the reviewed product is free of technical inaccuracies, is generally clear, conforms with actuarial best practices, and was prepared in accordance with:

- (a) Applicable state statutes, including [Minnesota Statutes, Chapter 356](#);
- (b) The Standards for Actuarial Work; and
- (c) Applicable actuarial standards of practice.

3.5 **Fixed Fee Services.** Fixed Fee Services are the following:

- (a) Review of the Standards for Actuarial Work. The Actuary shall conduct an initial review of the Standards of Actuarial Work and deliver a final written report of the review by April 1, 2020 (or such other date as may be agreed upon with the Executive Director). The review will evaluate the standards' conformity with applicable state statutes and actuarial standards. The review will also evaluate the standards for technical accuracy, clarity and conformity with actuarial best practices. The Actuary must produce a report that explains its findings and describes any recommended changes. At the request of the Commission, the Actuary will present their review to the Commission.
- (b) Review of annual actuarial valuations. The Actuary shall biennially review the annual actuarial valuations of the major statewide and one local public pension plans as detailed in Exhibit A and prepare a written report for each review.
- (c) Replication of annual actuarial valuations. The Actuary shall conduct a replication of an actuarial valuation by independently performing its own valuation using the same input data as used by the plan's actuary. The Actuary will replicate one pension plan's actuarial valuation each year as detailed in Exhibit A and prepare a written report.
- (c) Review of quadrennial experience studies. The actuary shall review the 2019 experience studies as detailed in Exhibit A and prepare a written report for each review.

3.6 **Requested Services.** Requested Services are the following:

- (a) Review of cost estimates for proposed legislation. At the request of the Commission, the Actuary must review, replicate, or independently prepare an actuarial cost estimate for proposed legislation being considered by the Commission. The Actuary must prepare a written report of the actuarial cost estimate and deliver the report to the Commission by an agreed-upon due date.

- (b) Review of factor tables. At the request of the Commission, the Actuary must review the optional annuity factors, present value factor and early retirement factors prepared by the applicable pension plan's consulting actuary. The Actuary must prepare a written report of the review and deliver the report to the Commission by an agreed-upon due date.
- (c) Advice. At the request of the commission, the Actuary must provide advice to the Commission or Commission staff on topics related to their actuarial expertise. The Actuary shall be available to respond to requests for advice given the fast pace of the legislative process.
- (d) Special projects. At the request of the Commission and as further agreed upon by the Parties, the Actuary must perform studies, research, or other work on pension benefits, pension funding, or other actuarial topics related to the Retirement Systems or Minnesota's fire relief associations. The actuary must prepare a written report summarizing their work.

3.7 **Presentations to the Commission.** At the request of the Commission, the Actuary must provide a senior actuary to make an in-person presentation to the Commission describing the Actuary's work on any of the Services. The senior actuary must be one of the individuals listed in Exhibit C. Presentations must conform to the requirements in section 3.1. In-person presentations are made at a public meeting of the Commission.

SECTION 4: PROVISION OF SERVICES

4.1 **Requesting services.**

- (a) The Actuary shall perform Fixed Fee Services without any further request or action by the Commission.
- (b) The Actuary shall perform Requested Services only upon the written request by the Chair or Executive Director of the Commission. If requested by the Executive Director, prior to beginning work on any requested service, the Actuary shall provide an estimate via email of the number of hours or amount of fees that it expects to incur to complete the requested service and obtain the Executive Director's consent to the estimate via email. If the Actuary determines that the project cannot be completed within the estimated number of hours or amount of fees, the Actuary shall provide notice to the Executive Director via email indicating how much additional work is needed and providing an estimate of the number of hours or amount of fees to complete the requested services. The Actuary shall not continue work on the requested service until it has received via email the approval of the Executive Director to complete the services within the revised estimate.

- 4.2 **Explanation and clarification.** Upon request of a member of the Commission or Commission staff and without additional compensation, the Actuary must provide an explanation or clarification to the Commission regarding any previously provided service. The Actuary must respond to all relevant questions from the Commission related to prior services performed by the Actuary.
- 4.3 **Restrictions on personnel changes.** Services performed under this Agreement by the Actuary shall be provided by the professional team listed as senior team members in Exhibit B, with assistance by internal staff. The Actuary must obtain the approval of the Commission before substituting such professional personnel or assigning additional professional personal to perform services under this Agreement.
- 4.4 **Copies of reports.** Paper or electronic copies of all final reports produced by the Actuary under this Agreement shall be delivered as directed in Exhibit D.
- 4.5 **Copies of correspondence.** The Actuary must provide a copy to the Executive Director of any written or electronic correspondence the Actuary has with any of the Retirement Systems or their advisors.
- 4.6 **Communication and notice.** Unless otherwise stated in this Agreement, the Actuary will communicate with the Commission through the Executive Director or other Commission staff. Any communication that is required to be in writing may be made via email.

Notice requirements under this Agreement are satisfied when (i) made in writing, either in hard copy or via email, and (ii) delivered to representatives of the Parties at the office or email addresses set forth below, unless changed by either party by notice to the other party. Notice is effective upon receipt.

If to the Commission:

Executive Director
Legislative Commission on Pensions and Retirement
55 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
Saint Paul, MN 55155
susan.lenczewski@lcpr.leg.mn

Copy to:

Commission Assistant
[same address, above]
lisa.diesslin@lcpr.leg.mn

If to the Actuary:

- 4.7 **Commission responsibilities.** The Commission shall cooperate with the Actuary including providing the Actuary with timely access to data, information and Commission staff. The Commission is solely responsible for the performance of its personnel and agents. The Commission shall approve each Deliverable that conforms in all material respects to the requirements set forth in this contract. Deliverables are deemed accepted by the Commission if not rejected, in writing, within sixty (60) days of delivery.
- 4.8 **LCPR Authorized agent.** The Commission acts through either of its authorized agents, each of whom, acting individually, has the authority to direct the work of the Actuary. The authorized agents are the Chair of the Legislative Commission on Pension and Retirement and the Executive Director of the Legislative Commission on Pension and Retirement.

SECTION 5: COMPENSATION AND PAYMENT

- 5.1 **Compensation.** The Commission will pay the Actuary for Fixed Fee Services described in this Agreement on a fixed fee basis as described in Exhibit B. The Commission will pay the Actuary for Requested Services described in this Agreement on an hourly basis as described in Exhibit C. Services which are provided at an hourly rate will be paid for at the hourly rates described in Exhibit C based on the hourly rates and time actually spent. The total obligation of the Commission for all compensation under this Agreement will not exceed \$ _____.
- 5.2 **Invoices.** The Commission will promptly pay the Actuary after the Actuary presents an itemized invoice for the services actually performed and the Commission determines that the services have been satisfactorily performed. An itemized invoice must provide detail of the services performed and supporting documentation for any out-of-pocket expenses. For services performed on an hourly basis, the invoice must also include the name of each actuary or consultant who rendered services, the date or dates that the services were rendered, and the number of hours rendered by the actuary or consultant to perform the service.

Invoices must be submitted timely and according to the following schedule: invoices will be submitted monthly for services performed during the previous month. Each payment is subject to the receipt, the acceptance, and the approval of the Commission, which has the right to withhold payment if services are unacceptable. In exercising the right to

withhold payment, the Executive Director will provide written notice of such action to the Actuary within five (5) working days prior to the payment due date.

- 5.3 **Retainage.** In accordance with [Minnesota Statutes, section 3.225, subdivision 6, paragraph \(b\)](#), no more than 90% of the amount due for any Fixed Fee Service may be paid until the final product has been reviewed by the Commission and the Commission determines that the final product is satisfactory. The Commission will pay the balance due promptly upon the determination that the Actuary has satisfactorily fulfilled all the terms of the fixed fee project.
- 5.4 **Condition of payment.** All Services provided by the Actuary under this contract must be performed to the Commission's satisfaction as determined at the sole discretion of the Executive Director and in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. The Actuary will not receive payment for work found by the Commission to be unsatisfactory or performed in violation of federal, state, or local law.

SECTION 6: DATA AND INFORMATION

- 6.1 **Data acquisition.** As required to perform Services under this Agreement, the Actuary must make all commercially reasonable efforts, including entering into an agreement with a Retirement System to obtain from the applicable Retirement System the demographic or other data necessary to perform the required service. If the Actuary is unable to obtain required data from a Retirement System, the Actuary must notify the Commission.
- 6.2 **Data handling.** When storing, receiving, transmitting, using, or otherwise handling data received from a Retirement System, the Actuary must comply with all applicable requirements of the Minnesota Government Data Practices Act.
- 6.3 **Deliverables property of Commission.** Deliverables delivered to the Commission by the Actuary for services under this Agreement are the property of the Commission. Except as otherwise stated in this Agreement, only the Commission may distribute, copy, or otherwise make public Deliverables. The Actuary may not use the Deliverables for any purpose other than for the performance of its obligations under this contract, unless it has obtained the prior written consent of the Executive Director of the Commission. The Actuary may retain copies of the Deliverables for archival purposes.
- 6.4 **Non-disclosure.** Unless otherwise directed by the Executive Director or Commission Chair, the Actuary shall keep confidential:
- (a) Correspondence between the Commission and the Actuary regarding services under this Agreement;

- (b) Deliverables or other work product prepared for the Commission which has not been made public by the Commission; and
- (c) Information regarding proposed legislation.

The duration of the Actuary's obligation under this section 6.4 begins on the execution date and terminates ten (10) years following termination of this Agreement.

- 6.5 **State audits.** The Actuary shall keep such books, records, documents, and accounting procedures and practices that are relevant to this Agreement available for examination by the Commission, the State Auditor, and/or the Legislative Auditor during the term of this Agreement and for a minimum of six years following the expiration or termination of this Agreement.

SECTION 7: COMPLIANCE WITH STATE LAW

- 7.1 **No discrimination in employment.**¹ *The Actuary agrees to comply with [Minnesota Statutes, section 181.59](#), which prohibits discrimination in employment by reason of race, creed, or color. In accordance with section 181.59, the Actuary agrees:*

(a) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(b) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (a), or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(c) that a violation of this section is a misdemeanor; and

(d) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

- 7.2 **Workers' compensation insurance.** In accordance with [Minnesota Statutes, section 176.182](#), the Actuary agrees to provide to the LCPR acceptable evidence of compliance with the workers' compensation insurance coverage requirement of [Minnesota Statutes, section 176.181, subdivision 2](#).

¹ The Italicized provisions are under consideration by legal counsel and may be deleted from the Agreement.

7.3 **Affirmative action plan.**¹ *If the Actuary (i) has more than 40 full-time employees within the State of Minnesota on a single working day during the 12 months prior to the Effective Date, or (ii) has more than 40 full-time employees on a single working day during the 12 months prior to the Effective Date in the state where the Actuary has its primary place of business, the Actuary agrees to comply with the affirmative action plan requirements of [Minnesota Statutes, section 363A.36](#). The Actuary agrees to provide to the LCPR, by the date of execution of this Agreement, a certificate of compliance issued by Minnesota Commissioner of Human Rights or a certification that the Actuary is in compliance with federal affirmative action requirements, as applicable.*

As required under [Minnesota Rules, part 5000.3600, subpart 9](#), it is hereby agreed between the parties that [Minnesota Statutes, section 363A.36](#), and [Minnesota Rules, parts 5000.3400 to 5000.3600](#) are incorporated into this Agreement or any modification of it. A copy of [Minnesota Statutes, section 363A.36](#), and [Minnesota Rules, parts 5000.3400 to 5000.3600](#) are available upon request from the Commission.

7.4 **Federal taxpayer identification number.** As required by Minnesota Statutes, section 270C.65, subdivision 3, at the time this Agreement is executed, the Actuary agrees to provide to the LCPR its federal taxpayer identification number, Social Security number, or Minnesota tax identification number.

7.5 **Professional services contracts with the LCPR.** This Agreement is governed by [Minnesota Statutes, sections 3.225](#) and [3.226](#). The Actuary agrees that the requirements of [Section 3.225, subdivision 6](#), take precedence over any conflicting provision in this Agreement. The Actuary represents that it does not discriminate against Israel as prohibited by [Section 3.226](#).

7.6 **Government Data Practices Act.**¹ *The Actuary agrees to comply with the Government Data Practices Act, [Minnesota Statutes, chapter 13](#), as it applies to all data provided by the LCPR and to all data created, gathered, generated, or acquired in accordance with this Agreement.*

SECTION 8: INDEMNIFICATION

8.1 The Actuary shall indemnify, save, and hold harmless the Commission, the Minnesota Legislature, and their agents and employees from any claims or causes of action, including attorney's fees incurred by the Commission or the legislature resulting from the negligent or wrongful acts in its performance of services under the terms of this Agreement. This clause will not be construed to bar any legal remedies the Actuary may have for the Commission's failure to fulfill its obligations under this Agreement.

¹ The Italicized provisions are under consideration by legal counsel and may be deleted from the Agreement.

SECTION 9: TERMINATION

- 9.1 **Termination for cause.** This Agreement shall terminate 30 days after written notice of termination of one party to the other for the material breach of any other provision, covenant, or obligation of this Agreement, unless such breach is corrected to the non-breaching party's reasonable satisfaction within such 30-day notice period.
- 9.2 **Termination due to legislative action.** The Commission may immediately terminate this Agreement if the Minnesota legislature does not appropriate sufficient funds to allow for payment for the services in this Agreement or the Minnesota Legislature takes other action limiting the Commission's authority to contract for actuary services. If this occurs, termination will occur upon delivery of written notice of termination to the Actuary. The Commission is not obligated to pay for services provided after delivery of the notice. The Commission shall pay the Actuary for services satisfactorily performed to the extent that the funds are available.
- 9.3 **Termination for convenience.** This Agreement may be terminated prior to the Expiration Date for the convenience of the Parties upon the mutual agreement of the Parties.
- 9.4 **Unilateral right to terminate.** Pursuant to [Minnesota Statutes, section 3.225, subdivision 6](#), the Commission may unilaterally terminate this Agreement prior to completion, upon payment of just compensation, if the Commission determines that further performance under this Agreement would not serve the purposes of the Commission or the legislature.
- 9.5 **Effect of termination.** Upon termination under any of the provisions in this Section 9, the Actuary must deliver to the Commission all Deliverables and work in progress. The Commission shall pay the Actuary for services satisfactorily performed to the termination date, unless the last sentence of section 9.2 applies.

SECTION 10: GENERAL PROVISIONS

- 10.1 **Assignment.** The Actuary shall not assign, transfer, or subcontract any rights or obligations under this Agreement without the prior written consent of the Commission.
- 10.2 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 10.3 **Entire agreement.** This Agreement and the attached exhibits contain all negotiations and agreements between the Commission and the Actuary. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

- 10.4 **Force majeure.** Neither party shall be liable for any delays or non-performance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law order or requirement of any governmental agency or authority.
- 10.5 **Governing law, jurisdiction, and venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.
- 10.6 **Severability.** If any portion of this Agreement is found to be illegal or unenforceable, the illegal or unenforceable provision will be deleted from the Agreement and the Agreement will remain fully enforceable minus the deleted provision.
- 10.7 **Survival of terms.** All clauses which are intended by their nature to survive the expiration or termination of this Agreement shall survive to the extent so indicated.
- 10.7 **Waiver.** If the Commission fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 10.8 **Signed separately.** This Agreement may be signed at separate times and in separate locations by the Parties and takes effect on the date both Parties are in receipt of fully executed Agreements, or the Effective Date, whichever is later.

The Parties hereby accept the terms of this Agreement as of the dates set forth below.

For the Actuary:

Signature: _____
Its: _____

Date: _____

For the Commission:

Signature: _____
Its: _____

Date: _____

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Exhibits

- A: Description of Fixed Fee Projects (similar to Appendix B to the RFP)
- B: Actuary's fees for the Fixed Fee Projects
- C: Professionals assigned to perform work under this Agreement, with each individual's hourly rate
- D: Delivery of Final Reports, to whom and in what format

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