

DENVER EMPLOYEES RETIREMENT PLAN
REQUEST FOR PROPOSALS
FOR PROFESSIONAL AUDITING SERVICES
September 9, 2019

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I. INTRODUCTION

The Denver Employees Retirement Plan (DERP) is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending December 31, 2019, with the intended extension of the engagement to audit the financial statements for each of the four subsequent fiscal years. These audits are to be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The Denver Employees Retirement Plan is a qualified 401(a) governmental defined benefit pension plan established by the City and County of Denver, Colorado (the City) to provide pension and post retirement health benefits for its employees. Pursuant to the standards issued by the Governmental Accounting Standards Board, DERP is a cost-sharing multiple-employer defined benefit plan. Current participating employers in DERP are the City and the Denver Health and Hospital Authority (DHHA). DERP staff also participates.

The following schedule shall be followed by DERP in selecting an independent audit firm:

- | | |
|--------------|---|
| September 9 | Distribute RFP |
| September 27 | Proposals must be in possession of DERP |
| October 18 | Notification of selected firm |

II. AUDIT REQUIREMENTS

DERP desires the auditor to express an opinion on the fair presentation of its statement of plan net position as of December 31, and the related changes in plan net position for the year(s) then ended in conformity with the generally accepted auditing standards identified above. The audit should include examining evidence supporting amounts and disclosures in the financial statements and performing any other procedures necessary to provide a reasonable basis for expressing an opinion. The audit should include examining evidence of DERP's compliance with laws, regulations, and contracts and performing procedures as necessary to render a report. The audit should also perform procedures intended to consider DERP's compliance with applicable Internal Revenue Code requirements for tax exempt status, including inspection of DERP's most recent tax determination letter from the Internal Revenue Service.

The auditor shall issue a report on their consideration of DERP's internal control over financial reporting and compliance with legal matters to the Retirement Board and management. The report should note any control deficiency, significant deficiency, or material weakness observed while planning and performing the audit of the financial statements. It is understood that, by issuing a report, the auditor is not expressing an opinion on the effectiveness of DERP's internal controls and may not necessarily identify all deficiencies in internal control.

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DERP is a component unit of the City; accordingly DERP's financial statements are included in the City's comprehensive annual financial report as a pension trust fund. It is anticipated that DERP's auditor may be required to coordinate with the City's auditor with respect to this matter.

DERP publishes a comprehensive annual financial report (CAFR) which includes the audited financial statements. DERP will send its CAFR to the Government Finance Officers Association (GFOA) for review in its Certificate of Achievement for Excellence in Financial Reporting program. It is anticipated that the auditor will not be required to provide special assistance in the preparation of the CAFR. However, the auditor will be asked to review a draft of the CAFR before it is finalized and submitted to the GFOA by no later than June 30, 2020. DERP's 2018 CAFR may be viewed online at www.derp.org.

In addition, the auditor shall perform an audit of schedules related to GASB Statement No. 68, Accounting and Financial Reporting for Pensions – an Amendment of GASB Statement No.27, and GASB Statement No. 75, Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions. with the objective of expressing an opinion about whether these schedules are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States,

At a minimum, the following meetings shall be attended by the auditor:

1. Entrance conference with DERP's Audit Committee, Executive Director, and key finance personnel. The purpose of this meeting will be to present and review the written audit plan, schedule fieldwork, including any interim work, and establish overall liaison for the audit.
2. Exit conference with DERP's Audit Committee, Executive Director, and key finance personnel. The purpose of this meeting is to present and review the results of the audit and the report on internal controls.
3. Exit conference with the Audit Committee and any interested Retirement Board or Advisory Committee members, without DERP staff present. The purpose of this meeting is to facilitate direct communication with the Audit Committee about any concerns.
4. Presentation of the audit report to DERP's Board at the regularly scheduled May 2020 meeting. Generally, meetings are held on the third Friday of the month.
5. Any additional meetings requested by the Audit Committee.

By no later than December 13, 2019, the auditor shall provide DERP a written DERP-specific detailed audit plan and list of schedules or other information to be prepared and/or provided by DERP.

The auditor shall have drafts of the audit and internal control report available for DERP's review by no later than April 15, 2020. The review of the draft audit report will be completed as expeditiously as possible. It is not expected that this process should exceed five working days. During that period, the auditor should be available for any meetings that may be necessary to discuss the draft audit report. Once all issues for discussion are resolved, the final signed report

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shall be delivered to DERP's Executive Director within five working days. It is anticipated that this process will be completed and the final report delivered by no later than April 30, 2020.

DERP's accounting staff and responsible management personnel will be available during the audit to assist the auditor by providing information, documentation, and explanations as necessary. The preparation of any audit confirmations will be the responsibility of DERP. An

initial report draft will be prepared by DERP during fieldwork.

III. PROPOSAL REQUIREMENTS

The proposal should demonstrate the qualifications of the audit firm and the particular staff to be assigned to the engagement. It should also specify an audit approach that will meet the request for proposal requirements.

The proposal should identify the principal supervisory and management staff, including engagement partner, manager, supervisors, and specialists, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in Colorado. The primary contact person at the audit firm with phone/email address should be indicated.

The proposal should identify the government and public employee retirement system auditing experience of each person to be assigned to the engagement. The proposal should identify those engagements performed in the past five years by the proposing firm that included an audit of a defined benefit public employee retirement system or other engagements similar to the engagement described in this request for proposals. The proposal should include three professional references with applicable contact information.

The proposal should set forth a work plan to include an explanation of the audit methodology to be followed, proposed segmentation of the engagement, staff to be assigned to each proposed segment, extent to which statistical sampling is to be used in the engagement, and the approach to be taken to gain and document an understanding of DERP's internal control structure.

Exhibit ii to this RFP contains the DERP contract provisions for this engagement. The response to this RFP must include an acknowledgement of familiarity with and agreement to these provisions, or any specific changes in them that would be proposed.

The dollar cost bid should be the all-inclusive maximum price to perform the audit engagement as described in this request for proposals for the current year and each of the four option years. The total price shall include all direct and indirect costs including out-of-pocket expenses. The proposal should include a schedule of professional fees and expenses that supports the total all-inclusive maximum price.

Any additional services shall be performed only if set forth in an addendum to the contract between DERP and the audit firm. Any such additional work agreed upon shall be performed at the same rates set forth in the schedule of fees and expenses included in the dollar cost bid.

Progress payments will be made on the basis of hours of work completed during the course of the engagement. Interim billing shall cover a period of not less than one calendar month.

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Five bound copies of the proposal should be submitted to Steven E. Hutt, Executive Director, by no later than close of business on September 27, 2019.

IV. CONTACT INFORMATION

A pre-proposal conference is not scheduled, however a meeting may be arranged or specific questions answered by contacting Heather Darlington, CPA, Director of Finance and Operations, at (720) 723-2734 or hdarlington@derp.org.

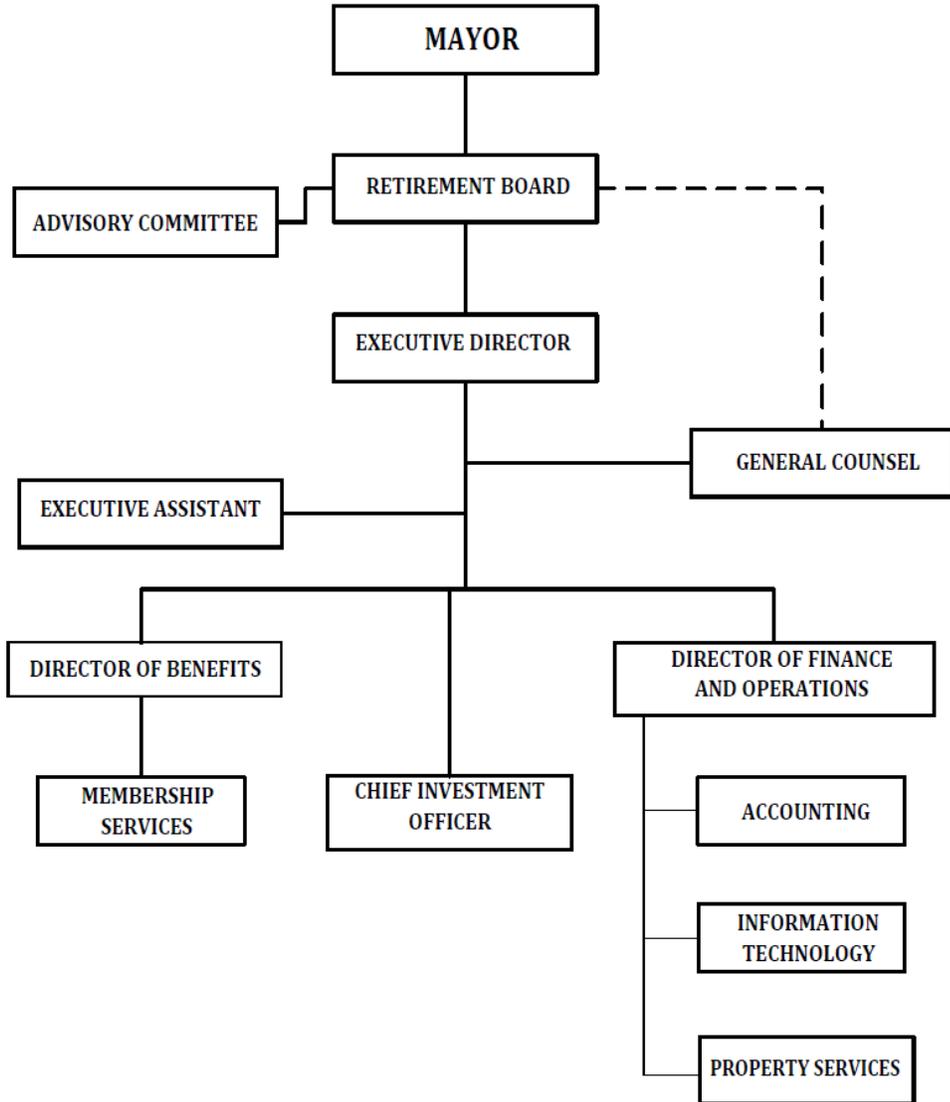
V. EVALUATION OF PROPOSALS

The following factors will be considered by DERP in the evaluation of each proposal. Proposals should clearly give sufficient detail to enable evaluation based upon these factors. Some factors may be weighed more heavily than others, however all factors are necessary for proper evaluation:

- The firm's past experience and performance on comparable defined benefit/public pension plan engagements.
- Personnel qualifications including the experience of the professionals who would be involved with the audit.
- The organizational structure of the firm, the audit manager's access to the firm's top management, and the firm's ability to respond expeditiously to DERP's needs.
- Proposer's stated understanding of the requirements.
- Soundness and adequacy of the audit approach.
- References.

The total cost will be considered. Although it is of lesser importance as an evaluation factor, it nevertheless will be a significant consideration. The impact of its importance will increase with the degree of similarity of the proposals received in relation to the other factors on which selection is to be based.

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Exhibit i: Organizational Structure



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Exhibit ii: Draft Contract Requirements

This Auditing Services Agreement ("Agreement") is made and entered into this ___ day of October, 2019 at Denver, Colorado, by and between the Denver Employees Retirement Plan (hereinafter referred to as "the Plan" or "Plan"), and [insert auditing firm's name] (hereinafter referred to as "Auditor"), for the performance of auditing services for the fiscal year ending December 31, 2019.

RECITALS

WHEREAS, the Plan is a duly qualified 401(a) governmental defined benefit retirement plan established and existing by Ordinance under the Revised Municipal Code of the City and County of Denver; and

WHEREAS, Ordinance Section 18-403(e)(3) requires the Plan to have a complete audit of the trust fund, including the health benefits account, once each year; and

WHEREAS, the Retirement Board has voted to accept the Auditor's proposal to provide the Auditing Services and such related Special Projects as the Retirement Board deems advisable; and

WHEREAS, Auditor desires to perform the auditing services, and has represented to the Plan that it is qualified to perform the aforesaid services; and

WHEREAS, the Plan has determined Auditor is qualified to perform the aforesaid services and desires to retain Auditor for those purposes.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

1. Description of Services.

A. Work to be Performed. Auditor agrees to perform the work and provide the services set forth in the manner and form as described in the body of this Agreement and in Exhibit "A" (Scope of Work), attached hereto and incorporated herein by reference. To the extent provisions of this agreement may conflict with the standard engagement letter, the content of this agreement will supersede those affected sections. The quality of service provided by the Auditor under this Agreement shall be at least equivalent to that which Auditor provides to other clients it serves in the same capacity. Auditor shall be held to the standard of care, skill, prudence and diligence that applies to other auditors practicing in a like benefit auditing firm.

B. Quality of Services. Auditor's services and deliverables will meet the requirements and standards set forth in this Agreement. Auditor will promptly correct any errors or omissions in the provision of such services and deliverables, at no cost or expense to the Plan, within ten (10) business days after request by the Plan. In the event of any excused interruption of service, or excused failure to perform as herein agreed, Auditor agrees to use its best efforts to immediately restore or reasonably provide such services to the Plan.

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2. Compensation and Payment.

A. Compensation. The Plan shall compensate Auditor for services rendered under this Agreement at the “not to exceed maximum prices” and hourly rates set forth on Exhibit B attached hereto and incorporated herein by reference.

B. Expenses. Auditor’s expenses are included in the compensation described in Section 2(A) and therefore Auditor is not entitled to any separate reimbursement for any expenses incurred by it in discharging its duties under this Agreement, unless otherwise agreed, in writing, by the Plan.

C. Invoices and Payment.

(1) Auditor will submit to the Plan an invoice for service(s) performed during the course of the engagement. Progress payments will be made on the basis of hours of work completed and interim billing shall cover a period of not less than a calendar month. The Plan will pay Auditor on the basis of invoices submitted to it in arrears. All invoices are subject to the review of the Plan’s Executive Director. Approved invoices will be paid within thirty (30) days of receipt.

(2) The Auditor shall perform additional mutually agreed to related services on an as-needed basis (“Special Project(s)”). In no event shall the Auditor perform any Special Project(s) unless and until requested to do so by the Retirement Board or an authorized representative thereof, and the Auditor shall not commence work upon any Special Project(s) unless and until the Retirement Board or such authorized representative approves the Auditor’s Estimate of the costs of the Special Project pursuant to the provisions of Section 2(C)(3) hereof. Any work performed by the Auditor without having obtained such an approval shall not be chargeable to the Plan.

(3) Upon its receipt of a request from the Retirement Board or its authorized representative for a Special Project(s), the Auditor shall submit to the Retirement Board or such authorized representative a written estimate which shall set forth (a) the work to be performed, (b) the schedule for completion of the project, (c) the number of hours required, and (d) the total anticipated cost (the “Estimate”). The Retirement Board or the authorized representative may, in its sole discretion, approve or disapprove the Estimate, which, approval or disapproval shall be communicated to the Auditor in a timely manner.

3. Term and Termination.

A. General Term.

(1) Subject to the termination provisions set forth in Sections 3(A) through 3(E) below, the term of this Agreement commences on the Agreement Date and continues until the Auditor’s completion of the Scope of Work for the fiscal year ending December 31, 2019, with an option of extending the contract for each of the subsequent four (4) years. Any extension granted shall be for a term of not more than one (1) fiscal year and shall be governed by the terms and provisions set forth in this Agreement and shall continue until otherwise

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terminated in accordance with the terms hereof.

(2) The phrase “term of this Agreement” or similar phrase means the original term, and any extensions or renewals thereof.

B. Termination for Convenience. Either party may terminate this Agreement, or any portion of the services to be performed by Auditor, without cause, at any time, by delivering to the other party a written Notice of Termination for Convenience specifying the extent to which Auditor’s services are terminated and the Effective Termination Date. The Effective Termination Date may be no earlier than thirty (30) calendar days after such Notice of Termination for Convenience is sent. The Plan’s termination of this Agreement under this Section 3(B) is not a waiver of the Plan’s right to make a claim against Auditor for damages resulting from any default by Auditor which occurred prior to the Effective Termination Date.

C. Termination by the Plan for Default. The Plan may immediately terminate this Agreement, or any portion of the services to be performed by Auditor, by delivering to Auditor a written Notice of Termination for Default that specifies the Effective Termination Date, under any one of the following circumstances:

(1) If Auditor fails to perform any other provision of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances fails to cure such default within twenty (20) calendar days (or such longer period as the Plan may authorize in writing) after receipt of written notice from the Plan specifying such default;

(2) Upon notice but without further cure period, if Auditor repeatedly fails to perform according to this Agreement following notice and failure to cure pursuant to Section 3(C)(1) hereof;

(3) Without notice or cure period if Auditor materially breaches any of the warranties, representations, agreements, and covenants made in Section 5 (Auditor’s Representations, Warranties and Covenants), or in Section 9 (Conflicts and Disqualification), or if Auditor fails to maintain the insurance required under Section 4(B);

(4) Without notice or cure period if Auditor is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; or

(5) Without notice or cure period if Auditor attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining the Plan’s prior written consent.

D. Force Majeure. Auditor may not be terminated for default, if Auditor’s failure to perform under this Agreement arises solely from causes of Force Majeure.

E. Rights, Remedies and Responsibilities upon Termination. If this Agreement is terminated, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions also apply to any termination of this Agreement.

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(1) Recovery of Reasonable Damages Upon Default. If the Plan terminates this Agreement in whole or in part for default pursuant to Section 3(C) above, the Plan is entitled to recover from Auditor all reasonable damages resulting from such default. By way of example and not limitation, the Plan may procure, upon such terms and in such manner as the Plan may deem appropriate, services similar to those terminated, and Auditor will be liable to the Plan for any excess cost of such similar services.

(2) Payment when Terminated for Convenience. If the Plan terminates this Agreement for convenience, the Plan will pay Auditor for work already performed but for which Auditor has not been compensated through the Effective Termination Date.

(3) Payment Withheld for Default. The Plan shall not authorize and shall withhold payment for services provided if the Plan terminates this Agreement for default. In the event the damages caused by such default are less than the withheld payment for services, the amount withheld in excess of the damages shall be paid to Auditor.

(4) Good Faith Transfer. Upon any termination of this Agreement by the Plan, and to the extent directed by the Plan, Auditor will cooperate with the Plan in good faith to effect a smooth and orderly transfer of such services and all applicable records to a successor designated by the Plan. Auditor will respond promptly to reasonable inquiries of such successor Auditor with respect to the Work Papers and matters of continuing accounting significance to the Plan. Upon termination of this Agreement, Auditor will retain all Work Records according to the record retention provisions set forth in Section 7 below.

F. Renewal. This Agreement may be renewed for four successive one-year periods beyond the original term under the same terms and conditions, with compensation as set forth in Exhibit B. Neither party is required to renew or extend this Agreement.

4. Indemnification and Insurance.

A. Indemnification of the Plan.

(1) The Auditor agrees to perform all services in accordance with auditing standards generally accepted in the United States of America established by the Auditing Standards Board of the American Institute of Certified Public Accountants and the standards for financial audits of the United States Government Accountability Office (GAO) Government Auditing Standards issued by the Comptroller General of the United States. The Auditor agrees to indemnify and hold the Plan, its officers, directors, agents and employees harmless for any loss, liability, cost, expense (including reasonable attorneys' fees) or damage incurred or sustained by the Plan caused by the acts or omissions of the Auditor during performance of services under this Agreement. This indemnification obligation shall survive the expiration or earlier termination of this Agreement. Auditor agrees to indemnify, defend, save, and hold harmless the Plan, its officers, directors, agents and employees from and against any and all liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, expenses (including defense costs and attorneys' fees) and claims for damages resulting from:

(a) Any bad faith, negligence, or willful misconduct by Auditor in its performance of services under the terms of this agreement;

(b) Any actual infringement of intellectual property rights, including infringement of any patent, trade secret, service mark, copyright; and

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(2) Auditor shall have no right to settle or compromise any such claim without the consent of the Retirement Board or an authorized representative thereof, which consent cannot be unreasonably withheld, if such settlement or compromise involves the issuance of injunctive or other non-monetary relief binding upon the Plan or which has any collateral estoppel effect on the Plan.

B. Insurance. Without in anyway affecting the indemnity provisions herein, Auditor will provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations, from insurers rated at least A-X by A.M. Best & Company or otherwise approved in writing by the Plan. Such insurance will be primary and not contributing with any other insurance maintained by the Plan. None of the policies may be modified or terminated (other than for failure to pay the premium) without best efforts to provide at least thirty (30) days prior written notice to the Plan and without at least ten (10) days notice of termination for failure to pay the premium. On or before the commencement date of this Agreement, Auditor will provide evidence to the Plan's Executive Director with a certificate of insurance. Such evidence shall specify this Agreement and describe the nature, amount and term of the insurance provided. Auditor's failure to procure or maintain the insurance described in this Section 4(B) will constitute a material breach upon which the Plan may immediately terminate this Agreement for default, pursuant to Section 3(C) above. The limits of insurance described herein shall not limit the liability of the Auditor and Auditor's officers, employees, agents, representatives or subcontractors.

(1) Liability. Such insurance, except Professional Liability Insurance, will be endorsed naming the Plan as an additional insured, and will include:

(a) General Liability. General liability insurance written on a commercial general liability form or a comprehensive general liability form covering the hazards of premises/operations, contractual, independent contractors, products/completed operations, broad form property damage, and personal injury with a combined single limit of not less than \$5,000,000 per occurrence. The limit may be met by a combination of General Liability Insurance and Excess Liability coverage.

(i) If written with an annual aggregate limit, the policy limit should be three times the required occurrence limit.

(ii) If written on a claims made form, Auditor will continue to name the Plan as an additional insured or will be endorsed to provide an extended reporting period of not less than five (5) years commencing upon expiration or termination of this Agreement.

(2) Professional Liability. Errors and omissions professional liability insurance with a limit of at least \$10,000,000 per claim. Auditor will notify the Plan in writing of any change in coverage amount subsequent to the Effective Date. Auditor warrants its professional liability insurance is applicable to Auditor's actions and obligations under this Agreement.

C. Failure to Procure and Maintain Insurance. Auditor's failure to procure and maintain insurance required by this Section constitutes a material breach of contract upon which the Plan may terminate this Agreement.

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D. Cooperation Regarding Insurance. The Plan may elect to procure insurance against loss or damage it may sustain in connection with Auditor's performance under this Agreement. Auditor will promptly cooperate with any reasonable request for information regarding Auditor, which is required to obtain such insurance.

5. Auditor's Representations, Warranties and Covenants.

Auditor makes the following representations, warranties, covenants and agreements, acknowledging they constitute a material inducement to the Plan to enter into this Agreement.

A. Authorization. This Agreement has been duly authorized, executed and delivered by Auditor and constitutes the legal, valid and binding agreement and obligations of Auditor, enforceable against Auditor in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity. Auditor is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any contract or agreement, that would be breached or violated by Auditor's execution, delivery or performance of this Agreement.

B. Gratuities. No gratuities in the form of gifts, entertainment or otherwise, were offered or given by Auditor or its Agents to any officer, fiduciary, or employee of the Plan with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. Auditor covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance, continuation, and/or amendment of this Agreement.

C. Conflicts of Interest With Persons Related to the Plan. No Plan employee or fiduciary whose position with the Plan enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person, does or will have any direct or indirect financial interest in this Agreement.

D. Changes. Auditor will notify the Plan in writing within ten (10) business days of any of the following changes: (i) Auditor becomes aware that any of its representations, warranties, covenants, or agreements set forth herein has been breached or ceases to be true at any time during the term of this Agreement; (ii) there is a change in Auditor's personnel assigned to perform services under this Agreement; (iii) there is any change in control of Auditor; (iv) Auditor becomes aware of any other material change in its business organization, including without limitation the filing for bankruptcy relief; or (v) Auditor becomes aware of an actual conflict arising out of work it performs on behalf of the Plan.

E. Auditor and its Agents. Auditor's Agents who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any consent decree with respect to any matter involving infringement of intellectual property rights, breach of fiduciary duty, or fraud.

6. Required Licenses, Certificates and Permits.

Any licenses, certificates or permits required by the federal, state, county or local governments for Auditor to provide the services and work described in Exhibit A must be

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procured by Auditor and be valid at the time Auditor enters into this Agreement. Further, during the term of this Agreement, Auditor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Auditor at no expense to the Plan.

7. Records and Audits.

A. Record Keeping. Auditor will keep and maintain accurate and complete records related to the performance of Auditor or its Agents under this Agreement, including but not limited to any pertinent activity, dates and time spent providing services hereunder, invoices billed to the Plan, proprietary data, and any other records created by Auditor or its Agents in connection with this Agreement ("the Plan's Records"). Auditor will keep and maintain such Plan Records for no less than five (5) years following the termination of this Agreement.

B. Record Review and Audit. Auditor agrees that the Plan, or any duly authorized representative of the Plan, will have access to and the right to examine, audit, excerpt, copy or transcribe any of the Plan's Records at any time during the term of this Agreement, or at any time for up to five (5) years after the termination of this Agreement. The Plan agrees that any such review and audit will be conducted in a manner to minimize interference with Auditor's normal business activities. Upon reasonable advance notice to Auditor (which will in no event be less than three (3) business days), Auditor will make the Plan's Records available for review and audit during normal business hours. Auditor will make the persons responsible for creating and maintaining the Plan's Records available to the Plan during such review and audit for the purpose of responding to the Plan's reasonable inquiries. The Plan will pay all costs associated with such audit, other than any costs incurred by Auditor to make personnel available as required by the preceding sentence; *however*, if the audit reveals that Auditor has materially violated any of the provisions of this Agreement, Auditor will pay all costs associated with such audit. Notwithstanding anything to the contrary herein, neither the Plan nor any duly authorized representative of the Plan shall be given access to the confidential or proprietary information or trade secrets of the Auditor or any third party.

8. Confidentiality; Proprietary Rights.

A. The Plan's Proprietary Rights. All reports under this Agreement become the sole property of the Plan. Both parties hereto acknowledge that Auditor retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as Auditor protects the Plan's interests in all of its confidential records and property. The Auditor agrees that it will not use any Proprietary Information or disclose it to any other party at any time, except (i) pursuant to the prior written approval of the Retirement Board or its duly authorized representative, or (ii) as may be required under any federal, state or local law, rule or regulation or by a court of competent jurisdiction, and that all Proprietary Information shall be the exclusive property of the Retirement Board and the Plan.

B. Member Records. Auditor acknowledges that when performing under this Agreement, Auditor may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. Auditor will maintain the confidentiality of all Member Records according to all applicable federal, state and local laws, regulations, ordinances and directives relating to confidentiality.

C. The Plan's Policies, Procedures and Strategies. Auditor will protect the security

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of and keep confidential all materials, data, and other information received by Auditor regarding the Plan's assets and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.

D. Auditor's Proprietary Materials.

(1) Absent Auditor's written consent authorizing disclosure, the Plan will use reasonable means to protect and maintain the confidentiality of any of Auditor's materials, which Auditor considers to be proprietary, so long as:

(a) Auditor clearly and prominently marks all such material "confidential;" and

(b) Public disclosure of such material is not required under any federal, state or local law, rule or regulation.

(2) If an action is commenced against the Plan that challenges the Plan's refusal to disclose Auditor's proprietary material, Auditor will defend the Plan in the action, and will pay any judgment for damages or attorneys' fees that may be entered as a result of the Plan's refusal to disclose Auditor's confidential material. The Plan will provide notice to Auditor so Auditor can get a protective order or opinion of counsel to turn over confidential material.

(3) The Plan's obligations under subsection (1) do not apply to:

(a) Any confidential information that the Plan can demonstrate has become public information through no breach of this Agreement by the Plan; and

(b) The Plan's Records.

9. Conflicts and Disqualification.

Auditor hereby affirms that there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a Conflict of Interest. A Conflict of Interest means that because of other activities or relationships with other persons, Auditor or its subcontractor is unable or potentially unable to render impartial assistance or advice to the Plan, or Auditor's objectivity in performing the agreement work is or might be otherwise impaired.

If an actual or potential Conflict of Interest arises subsequent to the date of this agreement, Auditor shall make a full disclosure in writing to the Plan of all relevant facts and circumstances. This disclosure shall include a description of actions that Auditor has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. Auditor will continue performance of work under the Agreement until notified by the Plan of any contrary action to be taken.

10. Independent Contractor Status.

In performing under this Agreement, Auditor is at all times acting in the capacity of an independent contractor. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between the Plan and Auditor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

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Auditor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The Plan shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Auditor. Auditor understands and agrees that all persons furnishing services pursuant to this Agreement are, for purposes of workers' compensation liability, employees solely of Auditor and not employees of the Plan.

11. Changes and Amendments.

The Plan and Auditor reserve the right to amend any such terms and conditions of this agreement which may become necessary. Any revisions hereto will be accomplished by written agreement executed by both parties making specific reference to this Agreement and reciting the parties' intention that it constitutes an amendment.

12. Notices.

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which the Plan or Auditor shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To the Plan: Denver Employees Retirement Plan
Attention: Steven E. Hutt, Executive Director
777 Pearl Street
Denver, CO 80203

To Auditor: _____
Attention: _____

13. Section Headings; Interpretation.

Caption and paragraph headings used in this Agreement are for convenience and reference only and do not affect in any way the meaning, construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement. The language in all parts of this Agreement is to be construed according to its fair meaning, and not strictly for or against any party hereto.

14. Entire Agreement.

This Agreement contains the entire and exclusive Agreement between the parties hereto and supersedes all previous oral and written agreements or understandings, and all contemporaneous oral and written negotiations, commitments, understandings and communications between the parties, relating to the subject matter of this Agreement.

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15. Severability.

If any provision of this Agreement is held by any court to be void, illegal, invalid, or unenforceable, in whole or in part, the remaining terms and provisions will not be affected thereby, and each of such remaining terms and provisions of this Agreement will be valid and enforceable to the fullest extent permitted by law.

16. Waiver.

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

17. Governing Law and Venue.

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Colorado without regard to principles of conflicts of laws. Should either party initiate a lawsuit over any matter relating to or arising out of this Agreement (whether in contract, tort, or both), such lawsuit will be filed and conducted in the federal or state courts located in Denver County, Colorado, and all parties consent to such venue and the personal jurisdiction of such courts.

18. Assignment and Delegation.

Auditor may not assign any of its rights or delegate or subcontract any of its duties hereunder without the Plan's prior written consent, which consent may be granted or withheld in the Plan's sole discretion. Any attempted assignment or delegation in violation of this provision is void and entitles the Plan to terminate this Agreement. Despite the Plan's consent, no assignment releases Auditor of any of its obligations or alters any of its primary obligations to be performed under this Agreement. Payments to any assignee under this Agreement shall be subject to set-off, recoupment, or other reduction for any claim that the Plan may have against Auditor. If Auditor is a partnership, this Agreement inures to the benefit of the surviving or remaining partners of such partnership.

19. Execution in Counterparts.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

20. Time of the Essence.

Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

21. Advice of Attorney.

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

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22. Authority to Execute.

The persons signing this Agreement are duly authorized to execute the document on behalf of and to bind their respective parties.

IN WITNESS WHEREOF, the Denver Employees Retirement Plan has caused this Agreement to be subscribed on its behalf by its duly authorized officer, and Auditor has caused this Agreement to be subscribed on their behalf by its duly authorized officer(s), as of the day, month, and year first written above.

The Plan:

Auditor:

DENVER EMPLOYEES
RETIREMENT PLAN

[insert Auditor's Name]

By: _____

By: _____

Name: Steven E. Hutt

Name:

Title: Executive Director

Title:

APPROVED AS TO FORM:

The Plan's Legal Department

By: _____

Name: James E. Thompson III

Title: General Counsel

DENVER EMPLOYEES RETIREMENT PLAN
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**Exhibit A
SCOPE OF WORK**

The Auditor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as included in the Auditor's Proposal dated [insert proposal date] incorporated herein and attached hereto as Exhibit C.

The Auditor will provide services as set forth below:

- Audit the combining Statement of Fiduciary Net Position of the Plan as of December 31, 2019 and the related combining Statement of Changes in Fiduciary Net Position for the year then ended.
- Examine, on a test basis, evidence supporting the amounts and disclosures in the financial statements and assessing the accounting principles used and significant judgments and estimates made by management, as well as evaluating the overall financial statement presentation. This includes but is not limited to necessary audit procedures as they relate to the actuarial report and investment valuations.
- Examine, on a test basis, evidence about the Plan's compliance with laws, regulations and provisions of contracts and performing such other procedures as considered necessary to render a report.
- Render a report on the financial statements.
- Render a report on the GASB 68 and GASB 75 schedules.
- Produce other written reports and other written documents (deliverables) by the dates indicated in Exhibit C.
- Attend both an entrance and an exit conference with the Plan's Audit Committee, the Executive Director, and key finance personnel.
- Attend an exit conference exclusively with the Plan's Audit Committee and any interested Retirement Board or Advisory Committee members.
- Present the final audit report to the Retirement Board at the regularly scheduled May, 2020 Board meeting.
- Attend any additional meetings requested by the Audit Committee.

**Exhibit B
COMPENSATION**

The Auditor shall be compensated for the services provided under this Agreement as follows:

[insert agreed upon compensation]

**Exhibit C
AUDITOR'S PROPOSAL**

[attach the Auditor's RFP proposal here]