

# Investment Counsel Services

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## Request for Proposal

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March 2020

**Orange County Employees Retirement System (OCERS)**

2223 E Wellington Avenue Suite 100

Santa Ana, CA 92701 USA

1-(714)-558-6200

<http://www.ocers.org>

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## Section 1: Introduction

The Orange County Employees Retirement System (“OCERS”) is requesting proposals from qualified firms interested in providing investment counsel services under the direction and supervision of OCERS’ General Counsel. OCERS intends to add to the current pool of pre-qualified law firms to utilize on an as-needed basis.

Those who wish to be considered must submit their completed proposal by Friday, April 24<sup>th</sup>, 2020, 5:00 p.m., Pacific Time. Specific instructions for proposal submissions are contained in Section 7 of this RFP.

Questions about this RFP must be submitted in writing by Friday, April 20<sup>th</sup>, 2020 at 5:00 p.m., Pacific time, to Jim Doezie, Contracts, Risk & Performance Administrator Contracts, at [jdoezie@ocers.org](mailto:jdoezie@ocers.org).

## Section 2: Background

OCERS was established in 1945 under the provisions of the County Employees Retirement Law of 1937, and provides members with retirement, disability, death, and cost-of-living benefits. There are approximately 42,000 members served by OCERS, of which over 15,000 are retirees. OCERS is governed by a nine member Board of Retirement (“Board”) which has plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement system. OCERS has over ninety employees and the Board appoints a Chief Executive Officer who is responsible for the management of the agency. For additional information about OCERS, please refer to the OCERS website at [ocers.org](http://ocers.org).

As of December 31, 2019, OCERS’ portfolio had a net asset value of \$17.3 billion. OCERS’ asset allocation is as follows:

### OCERS’ Current Asset Allocation

Asset Class	Current Allocation	Target Allocation
Global Public Equity	39.3%	35.0%
Private Equity <sup>1</sup>	10.0%	10.0%
Core Fixed Income	16.2%	17.0%
Credit	10.1%	11.0%
Real Assets <sup>2</sup>	13.0%	17.0%
Risk Mitigation	9.9%	10.0%
Cash Overlay	1.5%	0.0%

<sup>1</sup> The private equity asset class includes private equity fund-of-funds and private debt; private debt managers with fund-level leverage were recently moved from the credit allocation to private equity.

<sup>2</sup> The real assets asset class includes energy, infrastructure, timber, agriculture, and real estate.

## Section 3: Scope of Services and Requirements

The detailed scope of services for this engagement is outlined in the attached Exhibit “A” (“Scope of Services”). The primary objectives are to provide OCERS with a wide range of investment counsel services related to a defined benefit public employee retirement plan.

The firm selected for this engagement will be expected to meet requirements that include, but are not limited to, the following:

1. The firm must have all necessary permits and licenses to perform the requested services, and must be bonded where applicable.
2. Minimum insurance coverage must include the following items, and proof of such insurance must be provided to OCERS prior to the commencement of work, on an annual basis, and upon request:
  - Commercial General Liability: \$2M per occurrence, \$2M aggregate
  - Automobile Liability: \$1M per occurrence, \$2M aggregate
  - Workers Compensation: \$1M per occurrence, \$1M aggregate
  - Professional Liability: \$2M per occurrence, \$3M aggregate

OCERS must be listed as an additional insured on the above policies.

3. The firm shall provide all personnel, equipment, tools, materials, vehicles, supervision, and other items and services necessary to perform all services, tasks, and functions as requested in this RFP.
4. The initial term of the contract awarded pursuant to this RFP will be for a three (3) year period, with OCERS retaining the option to renew the contract, on an annual basis, for up to an additional three (3) years.
5. All work under the contract awarded shall be performed and all equipment furnished or installed in accordance with applicable safety codes, ordinances, and other regulations, including the regulations of the State of California, Division of Industrial Safety and the provisions of the California Labor Code, the Occupational Safety and Health Act of 1970, the California Occupational Health and Safety Act.
6. Minimum Qualifications  
All respondents are required to sign and return the “Minimum Qualifications Certification,” attached as Exhibit “B”.

## Section 4: General Conditions

All terms, conditions, requirements, and procedures included in this RFP must be met for a proposal to be qualified. A proposal that fails to meet any material term, condition, requirement, or procedure of this RFP may be disqualified. OCERS reserves the right to waive or permit cure of non-material errors or omissions. OCERS reserves the right to modify, amend, or cancel the terms of this RFP at any time.

OCERS may modify this RFP prior to the date fixed for submission of a proposal by posting, mailing, emailing or faxing an addendum to the respondents known to be interested in submitting a proposal. Failure of a respondent to receive or acknowledge receipt of any addendum shall not relieve the respondent of the responsibility for complying with the terms thereof.

A respondent's proposal shall constitute an irrevocable offer for the 120 days following the deadline for submission of proposals. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Proposals will not be returned to respondents.

By submitting a proposal, the respondent acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements unless clearly and specifically noted in the proposal submitted.

## Section 5: Point of Contact

A quiet period will be in effect from the date of issuance of this RFP until announcement of the selection of a firm or firms under this RFP. During the quiet period, respondents are not permitted to communicate with any OCERS staff member or Board Member regarding this RFP except through the Point of Contact named herein. Respondents violating this quiet period may be disqualified at OCERS' discretion. Respondents having current business with OCERS must limit their communications to the subject of such business.

OCERS' normal business hours of operations are from 08:00 to 17:00 Monday through Friday, except for federal and state holidays.

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### The Point of Contact for all matters relating to this RFP is:

**Name:** Jim Doezie

**Title:** Contracts, Risk & Performance Administrator

**Address:** OCERS  
2223 E Wellington Ave., Suite 100  
Santa Ana, CA 92701

**Telephone:** (714) 569-4884

**Email:** [jdoezie@ocers.org](mailto:jdoezie@ocers.org)

**OCERS Website:** [www.OCERS.org](http://www.OCERS.org)

**Status:** See the OCERS website for status of the RFP and announcements. These items can also be found here:  
<http://www.ocers.org/rfp/requestforproposal.htm>

## Section 6: Response to Request for Proposal

Proposals must be submitted to the Point of Contact identified in [Section 5](#), and delivered by the due date and time stated below in the RFP Schedule. OCERS will accept electronic, paper, or both types of submissions. If paper copies are submitted, two (2) copies must be submitted.

## RFP Schedule

The following timetable constitutes a tentative schedule for this RFP process. OCERS reserves the right to modify this schedule at any time.

Deliverable	Date	Time
Release of RFP	March 13, 2020	5:00 pm, PT
RFP Questions Deadline	March 20, 2020	5:00 pm, PT
RFP Answers Posted	March 25, 2020	5:00 pm, PT
RFP Submission Deadline	April 24, 2020	5:00 pm, PT
OCERS Review of RFP Submissions	May 29, 2020	
Selection of Finalists	June 5, 2020	
Interviews of Finalists	To be determined	
Service Award [or recommendation to the Board]	To be determined	

## Section 7: Proposal Requirements

Proposals must include the following information:

1. The Minimum Qualifications Certification.
2. The "Proposal Cover Page and Check List," attached as Exhibit "C."
3. An executive summary that provides the respondent's background, experience, and other qualifications to provide the services included in the Scope of Services.
4. A description of the respondent including:
  - a. Brief history, including year the respondent firm was formed.
  - b. Ownership structure
  - c. Office locations
  - d. Organization chart
  - e. Number of employees
  - f. Annual revenues
  - g. Areas of practice including firm specialties, strengths and limitations
5. Identity of the Lead Counsel to be assigned to OCERS as well as any other attorneys intended to render legal services under the proposal, and professional background and area(s) of specialization of each.

6. At least three (3) references for which the respondent has provided investment counsel services to public pension plans, preferably, at least one of which is located in California. Please include for each reference the individual point of contact, a summary of the work performed, and the length of time the respondent provided each service.
7. The names of the California public pension clients you have represented and the capacity of that representation, including which you have represented as investment counsel. Please also list the names of those public pension clients outside of California that you have represented and identify the types of transactions handled.
8. Copies of any pertinent licenses required to deliver respondent's product or service (e.g., business license).
9. An explanation of the pricing proposal for the scope of work including hourly rates, fees, costs, billing practices, and payment terms that would apply. OCERS does not place any limits on the approach to pricing and is open to presentation of more than one pricing alternative for the scope of work, or portions of it. Indicate whether you are receptive to flat fee billing or not to exceed billing arrangements per transaction. The respondent should represent that the pricing offered to OCERS is, and will remain, equivalent to or better than that provided to other public pension fund or institutional investor clients, or should provide an explanation as to why this representation cannot be provided.
10. An explanation of all actual or potential conflicts of interest that the respondent may have in contracting with OCERS.
11. A description of all past, pending, or threatened litigation, including malpractice claims, administrative, state ethics, disciplinary proceedings, and other claims against respondent or any of the individuals proposed to provide services to OCERS.
12. Any other information that the respondent deems relevant to OCERS' selection process.

## Section 8: Evaluation Criteria

Responses will be evaluated based upon the following:

1. Experience and reputation of the respondent.
2. Quality of the team proposed to provide services to OCERS, including staffing depth, experience, turnover, and compensation.
3. Pricing and value.
4. Delivery and payment terms.
5. Compliance with technical standards contained in this RFP.
6. The organization, completeness, and quality of the proposal.
7. Information provided by references.
8. Other factors OCERS determines to be relevant.

*The factors will be considered as a whole, without a specific weighting.*

OCERS may require one or more interviews with or personal presentations by finalists to be conducted with staff, Board Members, and/or the entire Board of Retirement.

If the information in the proposal is deemed to be insufficient for evaluation, OCERS may request additional information or reject the proposal outright at OCERS' sole discretion. False, incomplete, or unresponsive statements in connection with a proposal may result in rejection of the proposal.

## **Section 9: Non-Discrimination Requirement**

By submitting a proposal, the respondent represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religion, color, national origin, ethnic group identification, mental disability, physical disability, medical condition, genetic information, marital status, ancestry, sex, gender, sexual orientation, gender identity, gender expression, age, or military and veteran status.

## **Section 10: Notice Regarding the California Public Records Act and the Brown Act**

The information submitted in response to this RFP will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Section 6250, et. seq., the "Act"). The Act provides generally that all records relating to a public agency's business are open to public inspection and copying unless specifically exempted under one of several exemptions set forth in the Act. If a respondent believes any portion of its proposal is exempt from public disclosure or discussion under the Act, the respondent must provide a full explanation and mark such portion "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," and make it readily separable from the balance of the response. Proposals marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY" in their entirety will not be honored, and OCERS will not deny public disclosure of all or any portion of proposals so marked.

By submitting a proposal with material marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," a respondent represents it has a good faith belief that the material is exempt from disclosure under the Act; however, such designations will not necessarily be conclusive, and a respondent may be required to justify in writing why such material should not be disclosed by OCERS under the Act. Fee and pricing proposals are not considered "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY". If OCERS receives a request pursuant to the Act for materials that a respondent has marked "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY," and if OCERS agrees that the material requested is not subject to disclosure under the Act, OCERS will either notify the respondent so that it can seek a protective order at its own cost and expense, or OCERS will deny disclosure of those materials. OCERS will not be held liable, however, for inadvertent disclosure of such materials, data, and information or for disclosure of such materials if deemed appropriate in OCERS' sole discretion. OCERS retains the right to disclose all information provided by a respondent.

If OCERS denies public disclosure of any materials designated as "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY", the respondent agrees to reimburse OCERS for, and to indemnify, defend and hold harmless OCERS, its Boards, officers, fiduciaries, employees, and agents from and against:

1. Any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including, without limitation, attorneys' fees, expenses, and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to OCERS' non-disclosure of any such designated portions of a proposal; and
2. Any and all Claims arising from or relating to OCERS' public disclosure of any such designated portions of a proposal if OCERS determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdiction.



## Section 11: Contract Negotiations

OCERS will propose a contract to the successful respondent, which will contain such terms as OCERS, in its sole discretion, may require. In addition, the selected firm will agree that this RFP and the firm's proposal will be incorporated by reference into any resulting contract.

This RFP is not an offer to contract. Acceptance of a proposal neither commits OCERS to award a contract to any respondent, nor does it limit OCERS' right to negotiate the terms of a contract in OCERS' best interest, including the addition of terms not mentioned in this RFP. The final contract must, among other terms and conditions required by OCERS, allow OCERS to terminate the contract a) for OCERS' convenience, b) if funds are not appropriated for the services to be provided, or c) for default.

The general form of the contract OCERS intends to use is included as Exhibit "D" ("Legal Services Agreement"). OCERS reserves the right to make changes to this contract prior to execution, including material changes. The final Scope of Services to be included in the contract will be determined at the conclusion of the RFP process.

By submitting a proposal without comment on the Legal Services Agreement, respondent will be deemed to have agreed to each term in the Legal Services Agreement, and to not seek any modifications to it. If respondent objects to any term in the Legal Services Agreement, or wishes to modify or add terms to the Legal Services Agreement, the proposal must identify each objection and propose language for each modification and additional term sought. A rationale should be included for each objection, modification, or addition.

## Section 12: Reservations by OCERS

In addition to the other provisions of this RFP, OCERS reserves the right to:

1. Cancel or modify this RFP, in whole or in part, at any time.
2. Make such investigation as it deems necessary to determine the respondent's ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.
3. Reject the proposal of any respondent who is not currently in a position to perform the contract, or who has previously failed to perform similar contracts properly, or in a timely manner, or for any other reason in OCERS' sole discretion.
4. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.
5. Award a contract, if at all, to the firm which will provide the best match to the requirements of the RFP and the service needs of OCERS in OCERS' sole discretion, which may not be the proposal offering the lowest fees.
6. Request additional documentation or information from respondents, which may vary by respondent. OCERS may ask questions of any respondent to seek clarification of a proposal or to ensure the respondent understands the scope of the work or other terms of the RFP.
7. Reject any or all proposals submitted in response to this RFP.
8. Choose to not enter into an agreement with any of the respondents to this RFP or negotiate for the services described in this RFP with a party that did not submit a proposal.

9. Determine the extent, without limitation, to which the services of a successful respondent are or are not actually utilized.
10. Defer selection of a bidder to a time of OCERS' choosing.
11. Consider information about a respondent other than, and in addition to, that submitted by the respondent.

**Exhibit A**  
**Scope of Services**

Investment counsel, under the supervision of the General Counsel, will be expected to provide the following range of investment legal services to OCERS Investment Staff and Board of Retirement:

- Review, negotiate and assist in drafting and/or restructuring alternative investment agreements, including but not limited to, limited partnership agreements, side letters, and other investment-related documents.
- Negotiate and draft investment management agreements for public market investments.
- Negotiate and draft other investment-related agreements as needed from time to time as directed.
- Provide advice and counsel regarding standard and non-standard terms, and which terms should be accepted or negotiated including MFN elections.
- Provide advice on other various issues, including but not limited to California, U.S. and foreign laws and regulations that apply to OCERS' investment activities and holdings.
- Advice and counsel staff on investment policy compliance and other issues as may be requested from time to time.
- Attendance at Board of Retirement and/or other meetings at the request of the General Counsel.
- Provide training for OCERS staff and Board of Retirement, if requested.
- Represent OCERS in investment-related litigation, if requested.
- Advice on investment-related tax issues, if requested.

In addition to the foregoing, core skills and expertise of the attorneys assigned to OCERS shall include excellent oral and written communication skills, sound judgment, the ability to work well with and maintain the confidence of the Board and staff, and the ability to deliver services in a timely and cost effective manner.

**Exhibit B**

**MINIMUM QUALIFICATIONS CERTIFICATION**

All firms submitting a proposal in response to this RFP are required to sign and return this attachment, along with written evidence of how the respondent meets each qualification.

The undersigned hereby certifies that it fulfills the minimum qualifications outlined below, as well as the requirements contained in the RFP.

Minimum Qualifications include:

1. At a minimum, the firm should have at least five (5) years prior experience in providing investment legal counsel to public pension funds with assets in excess of \$1 billion, and assigned Lead Counsel shall have at least ten (10) years' comparable experience, preferably including California public pensions.

**The undersigned hereby certifies that they are an individual authorized to bind the Firm contractually, and said signature authorizes verification of this information.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title (please print)

\_\_\_\_\_  
Name of Firm

**Exhibit C**

**PROPOSAL COVER PAGE AND CHECK LIST (TO BE SUBMITTED ON FIRM'S LETTERHEAD)**

Respondent Name:

Respondent Address:

***By submitting this response, the undersigned hereby affirms and represents that they have reviewed the proposal requirements and have submitted a complete and accurate response to the best of their knowledge. By signing below, I hereby affirm that the respondent has reviewed the entire RFP and intends to comply with all requirements.***

Respondent specifically acknowledges the following:

1. Respondent possesses the required professional expertise and has sufficient capacity to provide the services outlined in the RFP.
2. Respondent has no unresolved questions regarding the RFP and believes that there are no ambiguities in the scope of services.
3. The fee schedule submitted in response to the RFP is for the entire scope of services and no extra charges or expenses will be paid by OCERS.
4. Respondent has completely disclosed to OCERS all facts bearing upon any possible interests, direct or indirect, that Respondent believes any member of OCERS, or other officer, agent, or employee of OCERS presently has, or will have, in this contract, or in the performance thereof, or in any portion of the profits thereunder.
5. Materials contained in the proposal and all correspondence and written questions submitted during the RFP process are subject to disclosure pursuant to the California Public Records Act.
6. Respondent is not currently under investigation by any state or federal regulatory agency for any reason.
7. Except as specifically noted in the proposal, respondent agrees to all of the terms and conditions included in OCERS Services Agreement.
8. The signatory below is authorized to bind the respondent contractually.
9. Respondent has experience with the following funds as indicated in the table below, which lists OCERS fund investments over the past three years. Please indicate whether your firm has:
  - Reviewed the fund on behalf of one of your clients.
  - Reviewed prior vintages of the fund.
  - Represented the fund's asset manager as an investment counsel.

<b>Fund Name</b>	<b>Reviewed Fund</b>	<b>Reviewed Prior Funds</b>	<b>Represented Asset Manager</b>
<b>Alcentra European Direct Lending Fund III SCSp</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Ashmore Emerging Markets Blended Debt</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>BlueBay Asset Management</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Silver Rock Tactical Allocation Strategy</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Wellington Blended Opportunistic Emerging Market Debts</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Monroe Capital Private Credit III</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Owl Rock Technology Finance Corp</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>H.I.G. Advantage Buyout Fund</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Thoma Bravo Fund XIII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Accel-KKR Growth Capital Partners III</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Vista Equity Partners Fund VII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Hellman &amp; Friedman Capital Partners IX</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>GGV Capital VII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>GGV Capital VII Plus</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Accel-KKR Capital Partners VI</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Cinven Capital Management VII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>EQT Ventures II</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Genstar Capital Partners IX</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>HealthQuest Partners III</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Advent International GPE IX</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Clearlake Capital Partners VI</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Harvest Partners VIII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Spark Capital Growth Fund III</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Spark Capital VI</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Stone Point Trident VIII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Systematic Financial Management L.P. (SCV FCF)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Kayne Anderson Energy Fund VIII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Kayne Anderson Energy Income Fund II</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Blackstone Infrastructure Partners L.P.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Graham Quant Macro</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>H.I.G. Middle Market LBO III</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Kayne Anderson Core Real Estate</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Kayne PEIF II - B</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Global Infrastructure Partners IV (GIP IV)</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Advent Global Technology</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Clarion Lion Industrial Trust</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>LBA Logistics Value Fund VII</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Oak HC/FT III</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Principal U.S. Property Account</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Warwick Partners IV</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>AlphaSimplex Adaptive Trend Fund</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>BH-DG Systematic Trading Fund</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Systematica Alternative Markets Fund L.P.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>AQR Style Premia Fund, L.P.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>PIMCO MAARS ROVER</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Two Sigma Risk Premia Fund</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Blackstone Life Sciences Fund V</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Encap Energy Capital XI</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>BlackRock Renewable Power Fund II</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Argo Capital Platform2017</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Exhibit D**  
**Legal Services Agreement**

This Legal Services Agreement ("Agreement") is made and entered as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the Orange County Employees Retirement System, a public body, corporate and politic ("OCERS") and \_\_\_\_\_, a \_\_\_\_\_ ("Special Counsel").

**ARTICLE 1. INTRODUCTION**

- 1.1 OCERS, through its General Counsel ("General Counsel"), and on behalf of, and at the direction of the OCERS Board of Retirement, enters into this contract pursuant to Government Code Section 31529.9, and shall administer this Agreement on behalf of OCERS.
- 1.2 OCERS and Special Counsel desire to enter into this Legal Services Agreement, which includes and incorporates Attachments A and B hereto, pursuant to the following terms and conditions.

**ARTICLE 2. SERVICES AND COMPENSATION**

- 2.1 Special Counsel agrees to provide legal services to and on behalf of OCERS as set forth in more detail in Attachment A and in accordance with the Fee Schedule, Attachment B. OCERS will only pay for services it has specifically requested. The General Counsel is Special Counsel's sole guide as to OCERS' interests. This applies to new issues, assignments, and contacts with third parties, as well as to litigation strategy.
- 2.2 Special Counsel shall designate one or more lead attorneys ("Lead Counsel"), depending on the range of services to be provided, who shall be the primary liaison between Special Counsel and the General Counsel. Lead Counsel shall be identified in writing and approved by General Counsel at the outset of the engagement or initiation of a new matter. Special Counsel shall promptly notify the General Counsel in the event of any change in, or the addition of Lead Counsel for any particular matters.
- 2.3 Prior to any engagement, and at any time during the course of the engagement, Special Counsel shall identify and disclose to the General Counsel any existing or prospective engagement for another client that could create an actual or potential conflict of interest with Special Counsel's representation of OCERS. OCERS retains complete discretion to waive a conflict if Special Counsel requests such a waiver. No such waiver is valid unless it is in writing and signed by the General Counsel.

**ARTICLE 3. BILLING REQUIREMENTS**

- 3.1 The following billing requirements ("Requirements") are intended to ensure that OCERS meets its fiduciary duty to obtain superior legal services in the most cost-effective manner. Failure to comply with these Requirements is likely to result in the reduction or nonpayment of invoices. By submitting



an invoice to OCERS, Special Counsel represents and certifies that its billing practices comply with these Requirements.

3.2 Written authorization by General Counsel shall be obtained before Special Counsel commences work on any new matter.

### 3.3 Assignment of Staff

A. Special Counsel shall obtain the General Counsel's approval before assigning any attorney to work on an OCERS matter ("Key Persons"). All Key Persons and other legal professionals (e.g. paralegals) permitted to bill to a matter shall be identified in writing and approved by General Counsel at the outset of the engagement or initiation of a new matter. Any additions, changes or substitutions of Key Persons during the course of the engagement shall be approved in advance, in writing, by the General Counsel. When feasible, Key Persons shall be part of the budget process.

B. Special Counsel shall staff matters in the most efficient and cost effective manner. Key Persons assigned shall have the level of skill and experience necessary to perform the assigned tasks.

C. Unless the General Counsel agrees in advance, the number of Key Persons working on a specific matter shall not exceed the following:

1. Transactional/Advice Matters: No more than two.
2. Litigation Matters: Between one and three, depending on the complexity of the matter.
3. All Other Matters: No more than two.
4. Two or more Key Persons shall not perform the same task on a matter when one would be sufficient. Unless approved in advance by the General Counsel, only one attorney shall bill for attending hearings, trials, arbitrations, mediations, depositions, meetings, conferences, and the like.
5. Special Counsel shall obtain the General Counsel's approval in advance to add or substitute a Key Person due to staff departures, or unforeseen increase in the scope of the work for a matter, or for any other reason. In such instances, Special Counsel shall not bill for the new Key Person to obtain familiarity or fluency on the matter.
6. All firm personnel billing on an OCERS matter shall either be partners/members or firm employees. Special Counsel shall obtain the General Counsel's prior approval to retain contract or temporary personnel to work on an OCERS matter.

In such instances, OCERS will not pay more than the firm's cost of such personnel plus a nominal markup for overhead.

7. Clerical, secretarial, and administrative work is part of law office overhead and shall not be billed to OCERS, regardless of who performs it. Paralegals may bill to an OCERS matter only if identified and approved in advance by the General Counsel.
8. On litigation matters, OCERS expects the Lead Counsel to personally perform the following tasks: depose named adverse parties, critical witnesses and experts; prepare critical OCERS' witnesses for deposition and trial; prepare for and attend critical depositions of OCERS representatives, mediations, settlement conferences and arbitrations; confer with the General Counsel on litigation and trial strategy; and fulfill other responsibilities as the General Counsel requests. If a Lead Counsel cannot personally perform these tasks, Special Counsel shall discuss the matter with the General Counsel well in advance of the scheduled date.

#### 3.4 Billing Format

- A. Invoices shall itemize all work performed on a matter in chronological order by individual task or activity.
- B. Invoices shall reflect activity for only one case or matter.
- C. If numerous tasks are undertaken in one day, each task shall be separately identified with a specified time for performing that task. "Block billing," i.e., combining into one time entry several different tasks performed by a biller during a single period, is not acceptable.
- D. Each entry on an invoice shall include a detailed description of the task and/or activity to enable OCERS to determine its purpose and necessity. Generic descriptions such as "attention to file," "review correspondence," or "interoffice conference" are not acceptable. Entries for telephone calls and meetings shall specify the participants by name and the subject matter discussed.
- E. Entries shall be for the actual amount of time expended on the task to the nearest tenth of an hour. Minimum fixed times for specified tasks are not permitted.
- F. Invoices shall be for services provided by month, and shall include the monthly billing totals and totals per assignment, and the total billed to date for the contract year. All invoices shall be submitted for approval no more than 60 days after the end of the month in which the services were performed.

3.5 Special Counsel shall prepare a proposed budget for any new engagement or matter/case and submit it to the General Counsel for approval, unless specifically waived by the General Counsel. Budgets shall be in the following format:

A. Transactional Matters:

1. Identify the Key Persons proposed to work on the matter in addition to Lead Counsel.
2. Identify and describe with as much specificity as possible the broad tasks or phases expected to be required. For example, Special Counsel should anticipate the key documents that will have to either be reviewed or drafted and the types of issues that will need to be researched and addressed. If these are known, the budget shall identify them and approximate the number of hours required to perform them.
3. Describe any anticipated travel and/or out-of-town meetings and approximate the cost of each.
4. Identify any need for special consultants, experts, and other significant out-of-pocket expenses, and approximate the cost.

B. Litigation Matters.

1. Identify the Key Person(s) proposed to work on the matter in addition to Lead Counsel.
2. Identify and describe a litigation strategy including major pre-trial pleadings such as demurrers and motions for summary judgment. The litigation strategy shall also outline a discovery plan anticipating, where possible, significant witnesses, documents or data demands and potential areas for discovery challenges.
3. Describe any anticipated travel and/or out-of-town meetings or hearings and approximate the cost of each.
4. Identify any need for expert witnesses, and other significant out-of-pocket expenses, and approximate the cost.
5. Special Counsel will have the option of submitting a budget either for its complete handling (from assignment through resolution) or for particular temporal periods (e.g., by quarter-year) or significant phases (e.g., through demurrer, through summary judgment).

C. Advice/Opinions

1. Identify the Key Person(s) proposed to work on the matter in addition to Lead Counsel.
2. Identify with as much specificity as possible the number of attorney hours and/or total fees to be expected.
3. Identify any other costs expected and the approximate cost of each.

D. OCERS understands the difficulty in predicting the amount of work that will be required in a particular matter, and that much depends on the actions and reactions of third parties. Special Counsel is expected demonstrate a strategic approach to resolution of the matter so that OCERS can make an informed decision regarding whether and how to proceed with the work. If Special Counsel later determines that the matter requires work beyond the budgeted amount, Special Counsel shall consult with General Counsel as early as possible to evaluate the need to adjust the budget as appropriate.

3.6 Reimbursable Costs and Expenses

- A. Absent written agreement to the contrary, OCERS will not reimburse Special Counsel for any mark-up or administrative fee in excess of actual out-of-pocket expenses. Additionally, all expenses and costs shall be reasonable and otherwise comply with these Requirements. Special Counsel shall obtain advance authorization for fees for court related expenses or IRS filings, messenger services to deliver documents to the court and as otherwise provided below.
- B. Other administrative services such as routine photocopying, postage, telephone charges, facsimile and internet charges, legal research services, administrative support services, secretarial overtime, and all other overhead costs shall be reimbursed by a flat fee to be calculated monthly at 3.5% of the hourly billings for each account.
- C. Special Counsel shall obtain prior approval before incurring extraordinary expenses such as electronic discovery systems, data management or document management systems, experts, consultants, investigative services, litigation support services, videotaping of depositions and extensive travel.
- D. OCERS will reimburse for the actual cost for the reasonable and necessary use of the following:
  1. Messenger delivery service;
  2. Overnight mail delivery service; and
  3. Volume photocopy (up to \$.10 per page).

E. Special Counsel shall avoid unnecessary travel and will only be reimbursed for pre-approved reasonable travel such as reasonable airfare, lodging, meal and related expenses incurred in providing services to OCERS. Travel billing shall indicate the actual round trip travel time, reduced by the usual commuting time from home to the office or vice versa, if appropriate. Absent written agreement to the contrary, OCERS will NOT pay for the following:

1. Business-class or first-class airfare.
2. Luxury transportation such as limousines and full-sized or larger car rentals.
3. Meals or other incidental expenses for attorney or staff members when they are working in their normal (geographic) office location.
4. Personal incidental expenses incurred while working on OCERS matters.

F. Unless otherwise agreed by the General Counsel, OCERS will pay for time spent traveling as follows:

1. For time spent traveling locally (less than 100 miles round trip), OCERS will pay at one-half of the biller's hourly rate.
2. For time spent traveling long distances (100 miles or more round trip) OCERS will pay at one-half of the biller's hourly rate, unless the biller is actually working on OCERS matters, for which time OCERS will pay the biller's regular hourly rate except to the extent that such time is spent performing services for another client (including pro bono clients), in which case no travel time will be paid.

G. Nonbailable and Non-reimbursable Items

1. Services. Absent written agreement to the contrary, the following fees and charges are not permitted:
  - i. Time or services for any activity not expressly authorized by OCERS.
  - ii. Time for reviewing or analyzing the firm's conflict of interest issues.
  - iii. Time required for a firm's attorneys to become competent in his or her area of expertise.
  - iv. Intra-office conferences between firm personnel.
  - v. Time spent to prepare responses to OCERS' external auditors.

- vi. Time billed for more than one attorney or paralegal to perform the same task or duplicate review, analysis, or legal research of or on documents.
- vii. Time for repetitive reviewing of work product caused by case reassignment, training and development, or other inefficiencies.
- viii. Time for more than one attorney attending court appearances, arbitrations, mediations, depositions, meetings, conference calls, and so forth.
- ix. Work performed by summer associates or law clerks who are not licensed to practice law.
- x. Time for case administration (e.g., reviewing the status of assignments given to firm personnel, preparing or reviewing bills).
- xi. Time and/or expenses incurred due to change or departure of law firm personnel.
- xii. Work customarily performed by secretaries and other administrative personnel.
- xiii. Staff overtime charges.

2. Costs and Expenses. OCERS expects Special Counsel to anticipate and include the following types of expenses and disbursements as part of firm overhead as set out in Paragraph B, above. Therefore, absent written agreement to the contrary, OCERS will not reimburse for any of the following:

- i. Routine copying charges (day-to-day).
- ii. Routine postage.
- iii. Office supplies.
- iv. Telephone charges.
- v. Word processing time.
- vi. Lexis, Westlaw, and other database legal search costs.
- vii. Storage costs.
- viii. Items traditionally associated with fixed overhead costs such as rent and utilities.
- ix. Equipment, books, periodicals, research materials, etc.
- x. Local meals.
- xi. Alcoholic beverages.
- xii. Local transportation.
- xiii. Expenses/disbursements without supporting invoices.

### 3.7 Invoices and Payments

A. OCERS agrees to pay Special Counsel for authorized services provided in conformance with this Agreement upon OCERS' receipt of Special Counsel's invoices and supporting receipts that comply with these Requirements.

B. All invoices shall be submitted in arrears for services already performed. No invoice may be rendered, and no payments will be made, for services not yet performed.

B. Invoices shall be sent, in triplicate, stating the Agreement Number to:

Orange County Employees Retirement System

Attn: General Counsel

2223 East Wellington Ave. Suite 100

Santa Ana, CA 92701

D. OCERS will pay Special Counsel for services provided under this Agreement as promptly as fiscal procedures permit. In the ordinary course, payment will be due forty five (45) days from the date Special Counsel submits an undisputed invoice that complies with the OCERS' Outside Counsel Billing Requirements.

#### ARTICLE 4. GENERAL TERMS

4.1 The term of this Agreement shall commence on \_\_\_\_\_, or upon execution of the Agreement by all parties, whichever date is later, and end on \_\_\_\_\_, unless terminated earlier or extended in accordance with this Agreement.

#### 4.2 Notices

A. Both parties to this Agreement will designate a specific staff representative for the purpose of communications between the parties. Any notice or other written communication pursuant to this Agreement will be deemed effective immediately upon personal delivery, or if mailed, three (3) days after the date of mailing, or if delivered by express mail, e-mail, or facsimile, immediately upon the date of confirmed receipt, to the following representatives:

For OCERS:

Orange County Employees Retirement System

Attn: General Counsel

2223 East Wellington Ave. Suite 100

Santa Ana, CA 92701

Telephone No. (\_\_\_\_) \_\_\_\_\_

FAX No. (\_\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

For Special Counsel:

Firm Name:

Firm Address:

City/State/Zip Code

Telephone No. (\_\_\_\_) \_\_\_\_\_

FAX No. (\_\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

B. Either party to this Agreement may, from time to time by notice in writing served upon the other, designate a different mailing address to which, or a different person to whom, all such notices thereafter are to be addressed.

4.3 Throughout the term of this Agreement, Special Counsel shall carry insurance coverage for the types and minimum amounts as follows:

A. Commercial General Liability (CGL) of no less than \$1 Million per occurrence.

C. Automobile Liability of no less than \$1 Million per accident for bodily injury and property damage.

D. Workers' Compensation at no less than statutory levels per accident for bodily injury or disease.

E. Legal malpractice insurance coverage of no less than \$1 Million per occurrence, \$2 Million aggregate.

Prior to beginning any work under this Agreement, Special Counsel shall provide to OCERS Certificate(s) of Insurance for all required coverage. Additionally, Special Counsel shall provide additional insured endorsements naming OCERS, their officers, officials and employees, as additional insured in the case of Commercial General and Automotive Liability.

4.4 This Agreement is subject to the availability of funds to pay Special Counsel. If this Agreement overlaps OCERS' fiscal years, OCERS' monetary obligation under this Agreement in fiscal years subsequent to the one in which this Agreement is executed is subject to and contingent upon the availability of funds budgeted for the purpose of this Agreement.



4.5 In any litigation between the parties arising from or related to this Agreement, the non-prevailing party will pay the prevailing party's expenses incurred from such litigation, including reasonable attorneys' fees, allocated costs for services of in-house counsel, and court costs. These expenses shall be in addition to any other relief to which the prevailing party may be entitled.

#### ARTICLE 5. COMPLIANCE AND INTEGRITY PROVISIONS

5.1 All OCERS matters shall be treated as confidential. Unless the General Counsel expressly directs otherwise, Special Counsel shall not address the media about OCERS matters. If Special Counsel is contacted by the media or otherwise becomes aware that the matter the firm is handling has attracted or will attract media attention, Special Counsel shall immediately notify the General Counsel.

5.2 Special Counsel shall maintain the highest ethical and professional standards when working on OCERS matters. This includes establishing and maintaining cordial and professional working relationships with opposing counsel, the judiciary, third parties, and anyone else with whom Special Counsel interacts.

5.3 Special Counsel, in the course of its duties, may have access to or come into possession of investment, financial, accounting, statistical, personal, technical and other data and information relating to OCERS and its members. All such information is confidential, and unless authorized by OCERS in writing, Special Counsel shall not disclose such information, directly or indirectly, or use it in any way, either during the term of this Agreement or any time thereafter, except as required to perform its duties under this Agreement. Any disclosure of information contrary to this provision is a material breach of this Agreement. Special Counsel warrants that only those who are authorized and required to use such materials and information will have access to them. Special Counsel's violation of this provision may subject it to liability to third parties, in addition to any liability it may have to OCERS.

Special Counsel shall notify OCERS in writing of any unauthorized disclosure, modification or destruction of confidential information by Special Counsel, its officers, directors, employees, contractors, agents or third parties. Special Counsel shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in no event more than five (5) days after becoming aware of it. After such notification, Special Counsel shall cooperate with OCERS at Special Counsel's expense to remediate and/or limit such disclosure and its effects. The provisions of this section survive the expiration or termination, for any reason, of this Agreement.

5.4 Special Counsel shall keep accurate books and records in connection with its performance of this Agreement. Special Counsel shall ensure that books and records of subcontractors, suppliers, and other providers are also accurately maintained. Such books and records shall be kept in a secure location at the Special Counsel's office(s) and shall be available for inspection and copying by OCERS and its representatives at any time.

## 5.5 Examination and Audit

A. Special Counsel (and its subcontractors and any other related parties that have relevant records) shall be subject to examination and audit by OCERS, any authorized agent or representative of OCERS, during the term of this Agreement and for three (3) years after OCERS' final payment to Special Counsel under this Agreement. Any examination or audit shall be limited to the performance of services under this Agreement, including, without limitation, the costs of administering this Agreement. On twenty (20) days prior notice for audits or examinations of a routine nature (and on reasonable shorter notice for non-routine audits or examinations), Special Counsel shall permit OCERS, its authorized agents or representatives during normal business hours, to inspect audit, and copy all financial statements, books, accounts, and records of Special Counsel and anything else in connection with this Agreement, including Special Counsel's performance against performance standards and the terms of this Agreement. Special Counsel will provide copies of any records or documents requested in connection with an audit or examination within twenty (20) days after request.

B. Special Counsel will cooperate fully in the development of any corrective action plans that OCERS determines to be necessary as a result of an audit or examination. Special Counsel will research any discrepancies identified by OCERS' auditors and report the results of this research to OCERS within fifteen (15) days of the identification of the discrepancies. Any necessary adjustments, payments, or reimbursements shall be made promptly by the appropriate party.

5.6 Special Counsel and OCERS agree to execute such additional documents and perform such further acts as may be reasonable and necessary to carry out the provisions of this Agreement.

5.7 Special Counsel shall carry out its duties and responsibilities under this Agreement in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules and regulations affecting services under this Agreement. Special Counsel shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.

5.8 During the performance of this Agreement, Special Counsel shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, and use of family and medical care leave pursuant to federal law.

5.9 Special Counsel shall not directly or indirectly receive any benefit from recommendations made to OCERS and shall disclose to OCERS any personal investment or economic interest of Special Counsel which may be enhanced by the recommendations made to OCERS. Special Counsel acknowledges that OCERS is subject to the provisions of the Fair Political Practices laws of California (Government Code section 81000 et seq. and all regulations adopted thereunder, including, but not limited to, California Code of Regulations section 18700 et seq.) and Special Counsel shall comply promptly with any requirements thereunder. If required by law, Special Counsel shall require attorneys designated as Lead Counsel to file Statements of

Economic Interests in compliance with OCERS' Conflict of Interest Code. All such reports shall be filed directly with OCERS.

5.10 Special Counsel will promptly notify OCERS in writing of any investigation, examination, or other proceeding involving Special Counsel, or member or employee of the firm, commenced by any regulatory agency. This reporting obligation applies to any criminal, civil, regulatory, or administrative investigation, examination, or proceeding.

#### ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1 Special Counsel represents and warrants that neither the execution of this Agreement nor the acts contemplated hereby nor compliance by Special Counsel with any provisions hereof will:

A. Violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Special Counsel; or

B. Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Special Counsel may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities or condition (financial or otherwise) of Special Counsel.

6.2 Special Counsel represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the State of its incorporation or organization.

6.3 Special Counsel represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by Special Counsel and no other proceeding on the part of Special Counsel is necessary to authorize this Agreement.

6.4 The person signing this Agreement on behalf of Special Counsel hereby warrants that he or she is an agent of Special Counsel and is duly authorized to enter into this Agreement on behalf of Special Counsel.

6.6 Special Counsel shall promptly, and in any case within five (5) calendar days, notify OCERS in writing:

A. If any of Special Counsel's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; or

B. Of any other material change in Special Counsel's business, partnership or corporate organization.

All notices under this provision shall contain sufficient information to permit OCERS to evaluate the changes. Special Counsel agrees to immediately provide OCERS with such additional information as OCERS may request with respect to any such change.

## ARTICLE 7. TERMINATION

### 7.1 Termination at Option of OCERS

A. OCERS, in its sole discretion and for any reason or no reason, may terminate this Agreement at any time upon written notice to Special Counsel. In the event OCERS terminates this Agreement, OCERS will within a reasonable time thereafter pay Special Counsel for the reasonable value of satisfactory services performed in accordance with this Agreement prior to the termination at the rates specified in this Agreement, but not in excess of the maximum amount authorized under this Agreement.

B. Upon receipt of any notice terminating this Agreement, Special Counsel shall immediately discontinue all services for OCERS unless the notice directs otherwise.

7.2 Special Counsel shall notify OCERS immediately in writing in the event that Special Counsel files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Special Counsel, Special Counsel is adjudged bankrupt, or a receiver is appointed. Should any such event occur, OCERS may, pursuant to Section 7.1, terminate this Agreement.

7.3 Except as otherwise specifically provided in this Agreement, all duties and obligations of both OCERS and Special Counsel shall cease upon termination or expiration of this Agreement, except that:

A. Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination or expiration;

B. Special Counsel will return all OCERS records to OCERS or its designee and shall cooperate fully to affect an orderly transfer of services;

C. Special Counsel shall continue to be bound by the obligations set forth in Sections 5.1 through 5.5 of Article 5 after termination of the Agreement.

## ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 The parties agree that time is of the essence with respect to all obligations under this Agreement.

8.2 Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

8.3 This Agreement may be amended by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on either party.

8.4 No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

8.5 If one or more provisions of this Agreement is held by any court to be invalid, void or unenforceable, such provision(s) will be deemed to be restated to effect the original intentions of the parties as nearly as possible in accordance with applicable law. The remaining provisions shall nevertheless remain and continue in full force and effect.

8.6 Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

8.7 Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

8.8 This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any state's or federal conflict of laws provisions or principles). Any suit brought hereunder shall be brought in a state or federal court sitting in Orange County, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

8.9 Special Counsel and Special Counsel's personnel shall operate as independent contractors and shall not be considered employees of OCERS.

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

8.11 This Agreement, any instrument or Agreement executed pursuant to this Agreement, and the rights covenants, conditions and obligations of Special Counsel and OCERS contained herein and therein, shall be binding upon the parties and their successors, assigns and legal representatives.

8.12 This Agreement having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Agreement.

8.13 Entire Agreement/Incorporated Documents/Order of Precedence

A. This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.

B. This Agreement shall consist of the terms of this Agreement, and all attached documents which are expressly incorporated herein.

C. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; (iii) any other provisions, terms, or materials incorporated herein.

8.14 The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

8.15 Notwithstanding any other obligations imposed by law, Special Counsel shall maintain all files in its possession relating to the legal services performed pursuant to this Agreement for three (3) years after the closure of any matter. Special Counsel agrees to make all records held by Special Counsel available immediately upon receipt of written request from OCERS.

Orange County Employees Retirement System

Special Counsel

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Orange County Employees Retirement System

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment A  
Scope of Services



Attachment B  
Fee Schedule