

Information Technology Audit & Consulting Services

Request for Proposal

October, 2024

Orange County Employees Retirement System (OCERS)
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Santa Ana, CA 92701 USA
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<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 Information Technology Audit & Consulting services.

Questions about this RFP must be submitted in writing by **5:00 pm, PT, November 1, 2024** to Jim Doezie, Contracts, Risk & Performance Administrator, by email at jdoezie@ocers.org.

Those who wish to be considered must submit their completed proposal by **5:00 p.m., PT, November 22, 2024**. Specific instructions for proposal submissions are contained in Section 7 of this RFP.

Section 2: Background

OCERS was established in 1945 under the County Employees Retirement Law of 1937, providing members with retirement, disability, death, and cost-of-living benefits. There are approximately 50,000 members served by OCERS, of which over 19,000 are retirees. OCERS is governed by a nine-member Board of Retirement (“Board”), which has plenary authority and fiduciary responsibility for the investment of moneys and administration of the retirement system. OCERS has over one hundred employees, and the Board appoints a Chief Executive Officer responsible for the agency’s management. For additional information about OCERS, please refer to the OCERS website at ocers.org.

Section 3: Scope of Services

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 Information Technology Audit & Consulting services.:

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: \$1M per occurrence, \$2M aggregate
 - Automobile Liability: \$1M per occurrence
 - Workers Compensation: \$1M per occurrence
 - Umbrella/Excess Liability: \$5M per occurrence, \$5M aggregate
 - Professional Liability: \$1M per occurrence, \$2M 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 three years (36 monthly periods), with OCERS retaining the option to renew the contract, on an annual basis, for up to an additional three years. The total term of the contract will not exceed six 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.
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 the 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 before 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. However, 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 calendar days unless otherwise specified.

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Therefore, 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 candidate(s) selected. 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. In addition, respondents having current business with OCERS must limit their communications to the subject of such business.

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

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

Name:	Jim Doezie
Title:	Contracts, Risk & Performance Administrator
Physical Address:	OCERS 2223 E Wellington Ave., Suite 100 Santa Ana, CA 92701
Mailing Address:	OCERS P.O. Box 1229 Santa Ana, CA 92701
Telephone:	(714) 569-4884
Email:	jdoezie@ocers.org
OCERS Website:	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 submissions only. Proposals may be submitted electronically in Microsoft Word or Adobe Acrobat PDF format to the email address noted in [Section 5](#). Submission may also be submitted to the PlanetBids site using this link: [PlanetBids Link](#)

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	Tuesday, 10/15/2024	
Submission of RFP Questions to OCERS	Friday, November 1	5:00 p.m. PT
RFP Answers Posted	Friday, November 8	5:00 p.m. PT

RFP Submission Deadline	Friday, November 22	5:00 p.m. PT
OCERS Review of RFP Submissions	November 25 to December 16	
Selection of Finalists	December 20, 2024	
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,” attached as Exhibit “B.”
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. Scope of services offered.
 - h. Respondent’s specialties, strengths, and limitations.
5. The names and qualifications of the staff that will be assigned to OCERS work, including a detailed profile of each person’s background and relevant individual experience.
6. At least three (3) references for which the respondent has provided services similar to those included in the Scope of Services. 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. Copies of any pertinent licenses required to deliver respondent’s product or service (e.g., business license).
8. An explanation of the pricing proposal for the scope of work, including pricing of fees and costs, billing practices, and payment terms that would apply. OCERS does limit the pricing approach to pricing and will consider alternative pricing methods for the scope of work, or portions of it. This section of the response should include an explanation as to how the pricing approach(es) will be managed to provide the best value to OCERS. 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 explain why this representation cannot be provided. All pricing proposals should be “best and final,” although OCERS reserves the right to negotiate on pricing.

9. An explanation of all actual or potential conflicts of interest that the respondent may have in contracting with OCERS.
10. A description of all past, pending, or threatened litigation, including malpractice claims, administrative, state ethics, disciplinary proceedings, and other claims against respondent and/or any of the individuals proposed to provide services to OCERS.
11. 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 or members of the Board of Retirement.

If the proposal’s information is deemed to be insufficient for evaluation, OCERS may request additional information or reject the proposal outright at OCERS’ sole discretion. In addition, 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 based on 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

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 that all records relating to a public agency's business are open to public inspection and copying unless exempted explicitly under one of several exemptions set forth in the Act. If a respondent believes any portion of its proposal is exempt from public disclosure 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 OCERS should not disclose such material 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 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 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, or c) for default.

The general form of the contract OCERS intends to use is included as Exhibit "E" ("OCERS Services Agreement"). OCERS reserves the right to make changes to the 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 OCERS Services Agreement, respondent will be deemed to have agreed to each term in the OCERS Services Agreement, and to not seek any modifications to it. If respondent objects to any term in the OCERS Services Agreement or wishes to modify or add terms to the OCERS 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 services, or who has previously failed to perform similar services 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

A consultant, under the supervision of OCERS Director of Internal Audit, will be expected to provide the following range of IT audit/consulting services to OCERS regarding (1) IT General Controls (ITGC) and (2) Cybersecurity. The consultant will also provide (3) a high-level review to support Internal Audit IT risk assessment, with the goal of assisting in the development of the IT internal audit plan for the next 1-3 years. The consultant will help build a multi-year IT audit program for OCERS Internal Audit Department based on an IT risk assessment using a format that is consistent with the format used by OCERS' Internal Audit Department.

The frequency and/or rotation of the audits in the audit plan will be tailored and customized based on OCERS' budget constraints and risk appetite. Future IT audits are subject matter specific audits that address specific IT risks and will also be identified in the multi-year audit program. The multi-year audit plan should include only audits typical for organizations the size of OCERS and for common IT risks that such an organization may face. Due to general security concerns, details such as number of servers, types of platforms, number of key applications, databases, data centers and locations, use of outsourced IT functions, Cybersecurity controls, etc. will only be disclosed to the selected vendor.

IT General Controls (ITGC)

- For IT General Controls, build and develop an overall audit policy and audit procedures for in collaboration with OCERS Internal Audit, OCERS management and OCERS external auditor. In addition, develop a risk controls matrix to identify controls that mitigate the corresponding ITGC risks. Build an audit program that tests the design and operating effectiveness of those controls. Key areas for audit may include governance, access controls, change management, backup and recovery, logical and physical security, IT operations, vendor and third-party management, log management, asset management, etc. The consultant will also provide observations and recommendations and inquire with management for their assistance with future remediation.

Cybersecurity

For Cybersecurity, build and develop an overall audit policy and audit procedures in collaboration with OCERS Internal Audit and OCERS management. In addition, develop a risk controls matrix to identify controls that mitigate the corresponding Cybersecurity risks. Build an audit program that tests the design and operating effectiveness of those controls. Key areas for audit may include governance, identity and access management, data protection, data privacy, threat intelligence, vulnerability management, network security, endpoint security, application security, cloud security, incident response, security operations, third-party risk management, etc. The consultant will also provide observations and recommendations, and inquire with management for their assistance with future remediation.

Internal Audit IT Risk Assessment/Audit Program

- Assist in the development of the Internal Audit IT audit plan for the next 1 to 3 years by performing a high-level review in support of the Internal Audit risk assessment. A multi-year IT audit plan with ITGC and Cybersecurity audits would be identified as a result of the IT risk assessment.

In addition to the foregoing, core skills and expertise of the consultant 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.

The selected consultants shall be able to provide all personnel, equipment, tools, materials, vehicles, supervision, and other items and services necessary to perform all services, tasks, and functions as defined in this RFP.

Proposals must include the following information:

1. A current Curriculum Vitae of the lead consultant(s) must be included in the proposal.
2. The candidate shall submit writing samples for review that demonstrate the candidate's ability to create an adequate IT Risk Assessment, IT audit plan, and Cybersecurity audit plan.
3. The candidate shall provide as much information as possible about past experience as an IT Auditor/Consultant with direct experience relevant to the scope of work identified.
4. The candidate shall provide an affirmative statement that if he/she is selected to serve as a consultant, he/she will be independent of OCERS and not related in any way to OCERS' business operations. The candidate should also provide an affirmative statement that he/she is not currently in litigation with OCERS or any of OCERS plan sponsor agencies.
5. The candidate shall provide an affirmative statement that he/she has not given a gift or political campaign contribution to any officer, Board member, or employee of OCERS within the past twenty-four (24) months.
6. The candidate shall detail any work performed for other retirement systems or pension plans.
7. Any other information that the respondent deems relevant to OCERS' selection process.

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. The auditor should have professional certifications such as CISA, CIA, CISSP, CRISC, or similar.
2. Minimum 7+ years of IT Audit experience: The auditor should have substantial experience in conducting both ITGC and Cybersecurity audits.
3. Experience in conducting risk-based ITGC audits: The auditor should use a risk-based approach in their audit methodology, focusing on areas with higher risks to the organization.
4. Experience conducting risk-based Cybersecurity audits: The auditor should adopt a risk-based approach, focusing on high-risk areas, critical assets, and potential vulnerabilities.
5. Familiarity with recognized security frameworks: The auditor should be proficient in assessing against the NIST Cybersecurity Framework and CIS Controls.
6. Ability to develop control matrices and test plans: Experience in designing and implementing IT control matrices and audit test plans for IT audits.
7. Proven track record in delivering audit reports: Ability to write clear, concise, and actionable audit reports suitable for presentation to senior management and audit committees.

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 IN FIRM'S LETTERHEAD)

Respondent Name:

Respondent Signature:

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 technical 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 above is authorized to bind the respondent contractually.

Exhibit D

SERVICES AGREEMENT TEMPLATE

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

AGREEMENT FOR SERVICES

This Agreement for Services (“Agreement”) is entered into this [redacted] day of [redacted], 20[redacted] (the “Effective Date”) by and between the Orange County Employees Retirement System, (“OCERS”) and [redacted] (“Contractor”). OCERS and Contractor are sometimes individually referred to as “Party” and collectively as “Parties.” The Parties hereby agree as follows:

ARTICLE 1

PURPOSE

- 1.1 **Project.** Contractor desires to perform and assume responsibility for the provision of, and OCERS desires to engage Contractor to render, services for **IT Audit & Consulting services** on the terms and conditions set forth in this Agreement and its attached exhibits.

ARTICLE 2

TERMS

- 2.1 **Scope of Services.** Contractor promises and agrees to furnish to OCERS all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform all services contemplated by this Agreement (“Services”), as more particularly described in the attached **Exhibit “A”** (“Scope of Services”). All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. Contractor represents and warrants to OCERS that Contractor will perform the Services in a professional and workmanlike manner, in accordance with best industry standards and practices used in well-managed operations performing services similar to the Services. To the extent necessary to facilitate performance of the Services, OCERS may, in its discretion, make certain of its facilities, assets, and resources available on an “as is, where is” basis to Contractor at Contractor’s request. While on OCERS’ premises, Contractor agrees to comply with OCERS’ access rules and procedures, including those related to safety, security, and confidentiality.
- 2.2 **Term.** The term of this Agreement will commence upon the Effective Date and will continue for thirty-six months from the Effective Date (“Term”), unless earlier

terminated as provided herein. The Parties may, by mutual written agreement, extend the Term for up to thirty-six additional twelve (36) month periods. In no event shall the total term of the Agreement exceed seventy-two (72) months.

2.3 **Consideration.**

2.3.1 **Compensation.** Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement as set forth in Exhibit "B" ("Fee Schedule").

2.3.2 **Invoices and Payment.** Contractor shall submit to OCERS monthly itemized invoices as required by the Fee Schedule. OCERS shall pay all undisputed charges within net thirty (30) days of receiving such invoice.

2.3.3 **Extra Work.** At any time during the term of this Agreement, OCERS may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by OCERS to be necessary for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary as of the Effective Date. Contractor shall not perform, nor be compensated for, Extra Work without written authorization by OCERS. Extra Work, if authorized by OCERS, will be compensated at the rates and manner set forth in this Agreement.

2.4 **Responsibilities of Contractor.**

2.4.1 **Independent Contractor.** Contractor's relationship with OCERS is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture, or employment relationship between OCERS and any of Contractor's employees or agents. Contractor is not authorized to make any representation, contract, or commitment on behalf of OCERS. Except as OCERS may agree in writing, Contractor shall have no authority, expressed or implied, to act on behalf of OCERS in any capacity whatsoever as an agent of OCERS. The Services shall be performed by Contractor or by Contractor's employees under Contractor's supervision. Contractor will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Contractor is an independent contractor and not an employee of OCERS. Any additional personnel performing the Services under this Agreement on behalf of Contractor will also not be employees of OCERS and will at all times be under Contractor's exclusive direction and control.

2.4.2 **No Benefits and Payment of Subordinates.** Contractor (if Contractor is an individual) and Contractor's personnel will not be entitled to any of the benefits that OCERS may make available to its employees, including, but not limited to, group health insurance, life insurance, or retirement benefits. Contractor will pay all wages, salaries, and other amounts due its personnel in connection with their

performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Contractor will bear the sole responsibility and liability for furnishing Workers' Compensation benefits to all such personnel for injuries arising from or connected with the Services.

- 2.4.3 Tax. Because Contractor is an independent contractor, OCERS will not withhold or make payments for social security, make unemployment insurance, or disability insurance contributions, or obtain workers' compensation insurance on behalf of Contractor. Contractor is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state, or local tax authority with respect to the performance of Services and receipt of fees under this Agreement. Contractor is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing Services under this Agreement. No part of Contractor's compensation will be subject to withholding by OCERS for the payment of any social security, federal, state or any other employee payroll taxes.
- 2.4.4 Licensing. Contractor represents that it, its employees, and subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.
- 2.4.5 Conformance to Applicable Requirements. All Services performed by Contractor shall be subject to the approval of OCERS.
- 2.4.6 Substitution of Key Personnel. Contractor has represented to OCERS that certain key personnel, listed in the attached **Exhibit "C"** ("Key Personnel"), will perform and coordinate the Services under this Agreement. Key Personnel will be available to perform Services under the terms and conditions of this Agreement immediately upon commencement of the term of this Agreement. If one or more of such Key Personnel becomes unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of OCERS. Contractor shall provide OCERS written notification detailing the circumstances of the unavailability of the Key Personnel and designating replacement personnel prior to the effective date of the unavailability of such Key Personnel, to the maximum extent feasible, but no later than five (5) business days after the date of the Key Personnel's unavailability. OCERS will have the right to approve or disapprove the reassignment or substitution of Key Personnel for any reason at OCERS' sole discretion. In the event that OCERS and Contractor cannot agree as to the substitution of Key Personnel, OCERS will be entitled to terminate this Agreement for cause.

2.4.7 Removal of Key Personnel. Contractor agrees to remove any Key Personnel from performing Services under this Agreement within twenty-four (24) hours or as soon thereafter as is practicable if reasonably requested to do so by the OCERS.

2.4.8 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules, and regulations, Contractor shall be solely responsible for all costs arising therefrom.

2.4.9 Labor Code Provisions.

A. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall comply with all prevailing wage requirements under the California Labor Code and Contractor shall forfeit as penalty to OCERS a sum of not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates. This penalty shall be in addition to any shortfall in wages paid. OCERS has obtained the general prevailing rate of wages, as determined by the Director of the Department of Industrial Relations (“DIR”), a copy of which is on file in OCERS’s office and shall be made available for viewing to any interested party upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request and shall post copies at Contractor’s principal place of business and at the site where Services are performed.

B. Registration and Labor Compliance. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then, in addition to the foregoing, pursuant to Labor Code sections 1725.5 and 1771.1, Contractor and all subcontractors must be registered with the DIR. Contractor shall maintain registration for the duration of this Agreement and require the same of any subcontractors. The Services may also be subject to compliance monitoring and enforcement by the

DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

- C. Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

2.4.10 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of OCERS during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement. Pursuant to California Government Code Section 8546.7, the parties acknowledge that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the California State Auditor.

2.4.11 Business Continuity Plan. Contractor warrants that it has and will maintain throughout the term of this Agreement a written business continuity plan ("BCP") to enable it to recover and resume the Services provided by it to OCERS within one (1) Business Day in the event of any disruptive event. Contractor further represents and warrants that it has tested its BCP and will continue to conduct sufficient ongoing verification testing for the recovery and resumption of services provided to OCERS and will update its BCP at least annually. Contractor will notify OCERS within thirty (30) days of any material alterations to its BCP that would impair its ability to recover and resume any interrupted Services it provides to OCERS. Upon request by OCERS, Contractor will provide to OCERS a description of its BCP procedures as they relate to the recovery and resumption of the Services accompanied by a written certification that the BCP has undergone review and testing to account for any changes to such Services. Contractor shall promptly notify OCERS of any actual, threatened, or anticipated event that does or may disrupt or impact the Services provided by Contractor and will cooperate fully with OCERS to minimize any such disruption and promptly restore and recover the Services.

2.4.12 Inducement. Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor or any agent or representative of Contractor, to any officer or employee of OCERS with a view

toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

2.4.13 **No Conflict.** Contractor will refrain from any activity, and will not enter into any agreement or make any commitment, that is inconsistent or incompatible with Contractor's obligations under this Agreement, including Contractor's ability to perform the Services. Contractor represents and warrants that Contractor is not subject to any contract or duty that would be breached by Contractor's entering or performing Contractor's obligations under this Agreement or that is otherwise inconsistent with this Agreement.

2.5 **Representatives of the Parties.**

2.5.1 **OCERS' Representative.** OCERS hereby designates **Mark Adviento**, to act as its representative for the performance of this Agreement ("OCERS' Representative"). Contractor shall not accept direction or orders from any person other than the OCERS' Representative.

2.5.2 **Contractor's Representative.** Contractor hereby designates [name or title], or their designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct performance of the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.6 **Indemnification.**

2.6.1 **Indemnity by Contractor.** To the fullest extent permitted by law, Contractor shall indemnify, immediately defend, and hold OCERS, the members of the OCERS Board of Retirement, and OCERS' officials, officers, employees, volunteers, and agents (collectively, "OCERS Indemnitees") free and harmless from and against all Losses (as defined in Section 2.6.4 below) that any OCERS Indemnitee shall suffer, sustain or become subject to in any manner arising out of, pertaining to, or incident to any (i) negligent act, error or omission, or intentional misconduct by Contractor, its officials, officers, employees, subcontractors, contractors, or agents in connection with the performance of the Services or (ii) breach or alleged breach of this Agreement by Contractor. Contractor's duty to indemnify does not extend to the Indemnity Claims caused by OCERS' sole negligence or willful misconduct.

2.6.2 **Third-Party Claims.** Contractor shall immediately defend, with legal counsel reasonably agreed to by OCERS and at Contractor's own cost, expense, and risk, any Indemnity Claims; excluding, however, such claims arising from OCERS' sole negligence or willful misconduct. Contractor shall control the defense or settlement

of any such action, except that Contractor will not have the right to settle or compromise the claim without the consent of OCERS. Contractor shall pay and satisfy any judgment, award, or decree that may be rendered against any OCERS Indemnitee as part of any Indemnity Claim(s). Contractor shall also reimburse OCERS for the cost of any settlement paid by any OCERS Indemnitee as part of any Indemnity Claim. Such reimbursement shall include payment for OCERS' attorneys' fees and costs, including expert witness fees.

2.6.3 Civil Code Section 2782.8. Notwithstanding the foregoing, to the extent the Services are subject to Civil Code Section 2782.8, the above indemnity and duty to defend shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor.

2.6.4 Definition of Losses. As used in this Agreement, "Losses" mean all damages, dues, penalties, fines, amounts paid in settlement, taxes, costs, obligations, losses, expenses, and fees (including court costs and reasonable attorneys' and expert witness fees and expenses), including, as the context may require, any of the foregoing that arise out of or in connection with any actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, or rulings.

2.7 Insurance.

2.7.1 Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to OCERS that it has secured all insurance required under this Section 2.7. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has provided evidence satisfactory to OCERS that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the OCERS to terminate this Agreement for cause.

2.7.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Contractor, its agents, representatives, employees, or subcontractors. Contractor shall also require all its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet the following requirements:

- A. Commercial General Liability. Commercial general liability insurance, including bodily injury, personal injury, property damage and productions/completed operations coverage, in the amount not less than one million dollars (\$1,000,000) per occurrence, \$2 million (\$2,000,000) aggregate.

- B. **Automobile Liability.** Business automobile liability insurance insuring all owned, non-owned, and hired automobiles, in the amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- C. **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance in an amount not less than one million dollars (\$1,000,000) per accident for bodily injury or disease. The insurer shall agree to waive all rights of subrogation against the OCERS Indemnitees for losses paid under the terms of the insurance policy which arise from work performed by Contractor.
- D. **Professional Liability.** Errors and omissions liability insurance appropriate to their profession covering Contractor's wrongful acts, negligent actions, errors, or omissions in the amount not less than one million dollars (\$1,000,000) per claim, two million (\$2,000,000) aggregate, and covering the period from the effective date of this Agreement until five (5) years following the termination or expiration of this Agreement.
- E. **Excess Liability.** The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess coverage shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the OCERS Indemnitees (if agreed to in a written contract or agreement) before any OCERS Indemnitee's own primary or self-insurance shall be called upon to protect it as a named insured. The policy shall be endorsed to state that the OCERS Indemnitees shall be covered as additional insured. The coverage shall contain no special limitations on the scope of protection afforded to the OCERS Indemnitees. The coverage shall be in the amount not less than five million dollars (\$5,000,000) per claim and aggregate.

2.7.3 **All Coverages; No Contribution.** All insurance which Contractor is obligated to procure and maintain shall include or be endorsed to state that: (1) the OCERS Indemnitees shall be covered as additional insured with respect to work by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance with respect to the OCERS Indemnitees, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by any OCERS Indemnitee shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

- A. The insurance policies required by Section 2.7.2 above shall contain or be endorsed to contain the following specific provisions:
- I. The policies shall contain a waiver of transfer rights of recovery (“waiver of subrogation”) against the OCERS Indemnitees, for any claims arising out of the work of Contractor.
 - II. Policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the OCERS Indemnitees under such policies. Contractor shall be solely responsible for deductible and/or self-insured retention and OCERS, at its sole discretion, may require Contractor to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of OCERS.
 - III. Prior to start of work under this Agreement, Contractor shall file with OCERS certificate(s) of insurance signed by an authorized representative of the insurer(s) evidencing and certifying to the insurance coverage required by Section 2.7.2.
 - IV. Each insurance policy required by Section 2.7.2 shall contain a cancellation clause that provides such policy shall not be cancelled or otherwise terminated by the insurer or Contractor or reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to OCERS, Attention: Jim Doezie
 - V. Insurance required by Section 2.7.2 shall be placed with insurers licensed by the State of California to transact insurance business of the types required herein. Each insurer shall have a current Best Insurance Guide rating of not less than A: VII unless prior approval is secured from OCERS as to the use of such insurer.
 - VI. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

2.7.4 Reporting of Claims. Contractor shall report to OCERS, in addition to Contractor’s insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

2.8 Termination of Agreement.

- 2.8.1 Termination. OCERS may, by written notice to Contractor, terminate the whole or any part of this Agreement without liability to OCERS if Contractor fails to perform or breaches any of the terms contained herein. In addition, either Party may terminate this Agreement for any reason or for no reason on thirty (30) days' written notice to the other Party. Upon termination, Contractor shall be compensated only for those Services that have been performed and delivered to OCERS' satisfaction, and Contractor shall be entitled to no further compensation.
- 2.8.2 Survival. The rights and obligations contained in Section 2.4 (Responsibilities of Contractor), Section 2.6 (Indemnification), and Section 2.9 (Ownership of Work Product and Confidentiality) will survive any termination or expiration of this Agreement.

2.9 Ownership of Work Product and Confidentiality.

- 2.9.1 Ownership of Work Product; Licensing of Intellectual Property. Contractor hereby irrevocably assigns to OCERS all right, title and interest worldwide in and to any and all discoveries, developments, formulae, information, materials, improvements, designs, artwork, content, software programs, other works of authorship, and any other work product created, conceived, or developed by Contractor (whether alone or jointly with others) for OCERS during or before the term of this Agreement, including all copyrights, patents, trademarks, trade secrets, and other intellectual property rights therein (including all rights to priority and rights to file patent applications and/or registered designs) ("Work Product"). Contractor retains no rights to use the Work Product and agrees not to challenge the validity of OCERS' ownership of, or intellectual property rights in, the Work Product. Contractor agrees to execute, at OCERS' request and expense, all documents and other instruments necessary or desirable to confirm such assignment, including without limitation, any copyright assignment or patent assignment provided by OCERS. Contractor hereby irrevocably appoints OCERS as Contractor's attorney-in-fact for the purpose of executing such documents on Contractor's behalf, which appointment is coupled with an interest. At OCERS' request, Contractor will promptly record any such patent assignment with the United States Patent and Trademark Office. OCERS will reimburse Contractor for any reasonable out-of-pocket expenses actually incurred by Contractor in fulfilling its obligations under this section. Contractor will deliver each item of Work Product specified in **Exhibit "A"** and disclose promptly in writing to OCERS all other Work Product.
- 2.9.2 Other Rights. If Contractor has any rights, including without limitation "artist's rights" or "moral rights," in the Work Product that cannot be assigned, Contractor hereby unconditionally and irrevocably grants to OCERS an exclusive (even as to Contractor), worldwide, fully paid and royalty-free, irrevocable, perpetual license, with rights to sublicense through multiple tiers of sublicensees, to use, reproduce,

distribute, create derivative works of, publicly perform and publicly display the Work Product in any medium or format, whether now known or later developed. In the event that Contractor has any rights in the Work Product that cannot be assigned or licensed, Contractor unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against OCERS and its affiliates.

- 2.9.3 License to Preexisting IP. Contractor agrees not to use or incorporate into Work Product any intellectual property developed by any third party or by Contractor other than in the course of performing Services for OCERS (“Preexisting IP”) unless the Preexisting IP has been specifically identified and described in **Exhibit “A”**. In the event Contractor uses or incorporates Preexisting IP into Work Product, Contractor hereby grants to OCERS a non-exclusive, worldwide, fully-paid and royalty-free, irrevocable, perpetual license, with the right to sublicense through multiple tiers of sublicensees, to use, reproduce, distribute, digitally transmit, create derivative works of, publicly perform, and publicly display in any medium or format, whether now known or later developed, such Preexisting IP incorporated or used in Work Product.
- 2.9.4 Confidential Information. Any financial, statistical, personal, technical, and other data and information relating to a Party’s operations which are made available to the other Party in order to carry out this Agreement shall be reasonably protected by such other Party from unauthorized use, except to the extent that disclosure thereof is required to comply with applicable law, including the California Public Records Act. Confidentiality does not apply to information which is known to a receiving Party from other sources, which is otherwise publicly available, or which is required to be disclosed pursuant to an order or requirements of a regulatory body or a court.
- 2.9.5 Customer Data. Contractor acknowledges that it may receive confidential information from OCERS or otherwise in connection with this Agreement or the performance of the Services, including personally identifiable information of OCERS’ customers and members (“Customer Data”). Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of OCERS or through the fault of OCERS, Contractor agrees:
- A. To maintain Customer Data in confidence;
 - B. Not to use Customer Data other than in the course of this Agreement;
 - C. Not to disclose or release Customer Data except on a need-to-know only basis;

- D. Not to disclose or release Customer Data to any third person without the prior written consent of OCERS, except for authorized employees or agents of Contractor;
- E. To promptly notify OCERS in writing of any unauthorized release of confidential information, including Customer Data;
- F. To take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Contractor, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any confidential information, including Customer Data, without first obtaining the written consent of OCERS; and
- G. Upon request by OCERS and upon the termination or expiration of this Agreement for any reason, Contractor shall promptly return to OCERS all copies, whether in written, electronic, or other form or media, of Customer Data in its possession or in the possession of its employees or agents, or securely dispose of all such copies, and certify in writing to OCERS that such Customer Data has been returned to OCERS or disposed of securely.

2.9.6 Disclosure. Except as may be required by applicable law, neither Party shall make any disclosure of any designated confidential information related to this Agreement without the specific prior written approval from the other of the content to be disclosed and the form in which it is disclosed, except for such disclosures to the Parties' financing sources, other secured parties, creditors, beneficiaries, partners, members, officers, employees, agents, consultants, attorneys, accountants, and exchange facilitators as may be necessary to permit each Party to perform its obligations hereunder and as required to comply with applicable laws or rules of any exchange upon which a Party's shares may be traded. Notwithstanding the foregoing, nothing contained herein shall be deemed to restrict or prohibit OCERS from complying with applicable law regarding disclosure of information, including the California Public Records Act and Contractor hereby agrees to release OCERS from any and all Losses related to any such disclosure.

2.9.7 Publicity. Contractor shall not use OCERS' name or insignia, photographs of OCERS property, or any publicity pertaining to the Services in any advertisement, magazine, trade paper, newspaper, television, or radio production, or other similar medium without the prior written consent of OCERS.

2.9.8 Non-Infringement. Contractor represents, warrants, and covenants that it will perform its responsibilities under this Agreement in a manner that does not

infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret, or other proprietary rights of any third-party.

2.10 Subcontracting/Subconsulting.

2.10.1 Prior Approval Required. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of OCERS. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Contractor will be solely responsible for the payment of all subcontractors and other third parties engaged by or through Contractor to provide, perform, or assist in the provision and delivery of the Services.

ARTICLE 3
GENERAL PROVISIONS

3.1 Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

OCERS:

CONTRACTOR:

Orange County Employees Retirement System

2223 E. Wellington Avenue

Santa Ana, CA 92701

Attention: Jim Doezie

e-mail: jdoezie@ocers.org

Such notice shall be deemed made when personally delivered or when mailed, upon deposit in the U.S. Mail, first class postage prepaid and registered or certified addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee, or applicant

for employment because 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. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

- 3.3 Time of Essence. Time is of the essence for each and every provision of this Agreement. The acceptance of late performance shall not waive the right to claim damages for such breach nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.
- 3.4 OCERS' Right to Employ Other Contractors. OCERS reserves the right to employ other contractors in connection with the Services.
- 3.5 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
- 3.6 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or indirectly (including by operation of law), this Agreement or any interest herein without the prior written consent of OCERS.
- 3.7 Amendment. This Agreement may not be altered or amended except in a writing signed by both Parties.
- 3.8 Waiver. All waivers under this Agreement must be in writing to be effective. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition.
- 3.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.
- 3.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 3.11 Governing Law; Venue. This Agreement shall be governed by the laws of the State of California. The exclusive venue for any dispute arising out of or relating to this Agreement shall be in Orange County, California.
- 3.12 Injunctive Relief for Breach. Contractor's obligations under this Agreement are of a unique character that gives them particular value; breach of any of such obligations will result in irreparable and continuing damage to OCERS for which there will be no adequate remedy at law; and, in the event of such breach, OCERS will be entitled to injunctive relief and/or a decree for specific performance, and such other and further relief as may be proper (including monetary damages if appropriate).

- 3.13 Attorneys' Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.
- 3.14 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.
- 3.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.16 Integration. This Agreement represents the entire understanding of OCERS and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. Neither Party shall be deemed to be the drafter of this Agreement and no presumption for or against the drafter shall be applicable in interpreting or enforcing this Agreement.
- 3.17 Interpretation. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters dealt with in this Agreement. Each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including, without limitation, California's Civil Code Section 1654) or legal decisions that would require interpretation of any ambiguities in this Agreement against the party that has drafted it shall not be applicable and are hereby waived. The provisions of the Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the Parties and this Agreement.
- 3.18 Headings. 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.
- 3.19 Precedence. In the event of any conflict, inconsistency, or ambiguity between the terms and conditions in the main body of this Agreement and the terms and conditions in any exhibit, the main body of this Agreement shall control. This Agreement and all attached exhibits will be construed to be consistent, insofar as reasonably possible. When interpreting this Agreement, precedence shall be given to its respective parts and amendments in the following descending order:
- A. Amendments to this Agreement entered into pursuant to Section 3.7 herein.
 - B. This Agreement.
 - C. Exhibit A: Scope of Services, Exhibit B: Fee Schedule, and Exhibit C: Key Personnel.

D. OCERS Request for Proposal dated October, 2024 attached as Exhibit "D".

E. Contractor's Response to OCERS Request for Proposal, attached as Exhibit "E".

IN WITNESS WHEREOF, the Parties hereby have caused this Agreement to be executed on the Effective Date:

APPROVED:

APPROVED:

OCERS

[CONTRACTOR]

By:

By:

Name:

Name:

Title:

Title:

By:

Name:

Title:

EXHIBIT A

Scope of Services

Starting on the Effective Date, and continuing during the Term, Contractor will perform the Services in accordance with the terms of the Agreement. The Services consist of:

A consultant, under the supervision of OCERS Director of Internal Audit, will be expected to provide the following range of IT consulting/audit services to OCERS in regards to (1) IT General Controls (ITGC) and (2) Cybersecurity. The consultant will also provide (3) a high level review to support Internal Audit IT risk assessment, with the goal of assisting in the development of the IT internal audit plan for the next 1-3 years. The consultant will help build a multi-year IT audit program for OCERS Internal Audit Department based on an IT risk assessment using a format that is consistent with the format used by OCERS' Internal Audit Department.

The frequency and/or rotation of the audits in the audit plan will be tailored and customized based on OCERS' budget constraints and risk appetite. Future operational IT audits are subject matter specific audits that address operational IT risks and will also be identified in the multi-year audit program. The multi-year audit plan should include only audits typical for organizations the size of OCERS and for common operational IT risks that such an organization may face.

IT General Controls (ITGC)

- For the IT General Controls audit, build and develop an overall audit policy and audit procedures for IT general controls in collaboration with OCERS Internal Audit, OCERS management and OCERS external auditor. In addition, develop a risk controls matrix to identify controls that mitigate the corresponding ITGC risks. Build an audit program that tests the design and operating effectiveness of those controls, focusing on logical and physical security, IT operations, and software development and change management.

Cybersecurity

- For Cybersecurity, OCERS Director of Cybersecurity is early in the process of incorporating the NIST Cybersecurity Framework and the CIS Controls within OCERS. The consultant would act only in a review and advisory capacity to determine whether the controls established to date or in the near future are sufficiently designed to meet the control criteria and objectives. The consultant will provide observations and recommendations, and inquire with management for their assistance with future remediation.

Internal Audit IT Risk Assessment/Audit Program

- Assist in the development of the Internal Audit IT audit plan for the next 1 to 3 years by performing a high-level review in support of the Internal Audit risk assessment. A multi-year IT audit plan with operational IT audits would be identified as a result of the IT risk assessment.

EXHIBIT B

Fee Schedule*

1. **Fees and Expenses.** Contractor agrees to accept the compensation set forth in this Exhibit B as full payment for performing all Services, including all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the Services, for risks connected with the Services, and for performance by Contractor of all its duties and obligations under the Agreement. OCERS will pay the following fees in accordance with the provisions of this Agreement:
2. *The total compensation shall not exceed XXX Dollars (\$XXX.00) without written approval by OCERS.*
3. *[provision for expense reimbursement]*
4. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to OCERS unless otherwise directed in this Agreement. Payment by OCERS will be net thirty (30) days after receipt and approval of an invoice in a format acceptable to OCERS.
5. **Payment – Invoicing Instructions:** Contractor will provide an invoice on Contractor's letterhead for services rendered under this Agreement. Each invoice will have a number and will include the following information:
 - a. Contractor's name and address
 - b. Contractor's remittance address, if different from item #1 above
 - c. Contractor's Taxpayer ID Number
 - d. Name of OCERS Agency/Department
 - e. Delivery/service address
 - f. Agreement number
 - g. Agency/Department's Account Number
 - h. Date of invoice
 - i. Description and price of services provided
 - j. Sales tax, if applicable
 - k. Freight/delivery charges, if applicable
 - l. Total

Invoice and support documentation are to be forwarded to:

Orange County Employees Retirement System
2223 E. Wellington Avenue
Santa Ana, CA 92701
Attention: Accounts Payable
Email: Accountspayable@ocers.org

EXHIBIT C
Key Personnel

EXHIBIT D
Request for Proposal

EXHIBIT E

Response to Request for Proposal