

# Secondary Sale Advisory Services

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## Request for Proposal

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**August 2023**

**Orange County Employees Retirement System (OCERS)**  
P.O. Box 1229  
Santa Ana, CA 927021-(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 with expertise in secondary sale advisory services in private markets. OCERS intends to establish a pool of pre-qualified secondary sale advisory service providers to utilize on an as-needed basis over a five-year term.

Those who wish to be considered must submit their completed proposal by **5:00 p.m., PST, September 29, 2023**. Specific instructions for proposal submissions are contained in Section 7 of this RFP.

Questions about this RFP must be submitted in writing by **5:00 pm, PST, September 15, 2023** to OCERS’ Investments Team, by email at [investmentsrfp@ocers.org](mailto:investmentsrfp@ocers.org).

### ***Intent to Respond***

*If your firm chooses to respond to this RFP, please submit the “Intent to Respond,” attached as Exhibit “A”, via email to OCERS’ Investments Team, by **5:00 p.m., PT, September 15, 2023**. Failure to submit your Intent to Respond may disqualify your firm from submitting a response to this RFP.*

## 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 51,000 members served by OCERS, of which over 20,000 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 109 employees and the Board appoints a Chief Executive Officer who is responsible for the management of the agency.

The OCERS’ investment portfolio, approximately \$21.5 billion in assets as of June 30, 2023, is diversified globally and across multiple asset classes. Currently OCERS’ contributions from members and employers are largely sufficient to fund the retiree payrolls. OCERS invests in separate accounts, commingled vehicles, funds of one, funds of funds, limited partnerships, and co-investments through external investment managers. The Investment Committee has delegated to the Chief Investment Officer (CIO) the responsibility to manage the investment portfolio subject to Investment Committee approved policies.

For additional information about OCERS’ Investment Portfolio, asset allocation, and Investment Policy Statement, please refer to the OCERS website at [www.ocers.org/investments](http://www.ocers.org/investments).

## Section 3: Scope of Services

OCERS intends to establish a pool of pre-qualified secondary sale advisory service providers to utilize on an as-needed basis over a five-year term.

OCERS is seeking to complete a secondary sale for a number of its private alternative investments. Presently, these investments include private equity, private credit, real estate, infrastructure, agriculture, energy and timber. It is important to note that OCERS is not a forced seller of its assets and instead will consider completing transactions if the received bids are attractive.

The scope of the secondary sale advisory services includes, but not limited to the following:

1. Review and analysis of OCERS' funds for secondary sale.
2. Conduct and provide a detailed analysis of the funds to be sold that would include:
  - a. Fund estimated valuations based on the fundamentals of the fund and secondary market transactions.
  - b. Different structuring options for the purposes of completing the sale and recommendations as to the optimal structure for OCERS.
3. Complete due diligence on the general partner (GP) to facilitate the sales process.
4. Market the funds, including preparation and distribution of transaction marketing materials, and identification of potential buyers.
5. Prepare necessary legal documents such as NDAs.
6. Facilitate communications between buyers and GP, which includes scheduling calls and participating in them.
7. Engage with potential buyers to negotiate and execute legal documents, provide bidding guidance, and answer questions.
8. Review submitted bids, conduct analysis on the different options, and present a recommendation to OCERS.

## **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 and Quiet Period**

A quiet period will be in effect from the date of issuance of this RFP until announcement of the selection of the pre-qualified firms under this RFP. During the quiet period, respondents are not permitted to communicate with any OCERS' Investments Team 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 8:00 AM PT to 5:00 PM PT 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:**

<b>Name:</b>	OCERS' Investments Team
<b>Telephone:</b>	(714) 569-4884
<b>Email:</b>	<a href="mailto:investmentsrfp@ocers.org">investmentsrfp@ocers.org</a>
<b>OCERS Website:</b>	<a href="http://www.OCERS.org">www.OCERS.org</a>
<b>Status:</b>	See the OCERS website for status of the RFP and announcements. These items can also be found here: <a href="https://www.ocers.org/request-proposal">https://www.ocers.org/request-proposal</a>

## Section 6: RFP Schedule

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

<b>Deliverable</b>	<b>Date</b>
<b>Release of RFP</b>	<b>August 29, 2023</b>
<b>Intent to Respond / RFP Questions Deadline</b>	<b>September 15, 2023</b>
<b>RFP Answers Posted</b>	<b>September 21, 2023</b>
<b>RFP Submission Deadline</b>	<b>September 29, 2023</b>
<b>Selection of Finalists</b>	<b>October 30, 2023</b>
<b>Interviews of Finalists (in Person or Zoom)</b>	To be determined
<b>Service Award</b>	No later than January 15, 2024

Proposals must be submitted electronically to the email address included under the Point of Contact identified in [Section 5](#) and delivered by the due date and time stated below in the RFP Schedule. Proposals may be submitted in either Microsoft Word or Adobe Acrobat PDF format.

## Section 7: Proposal Requirements

Proposals must include the following information:

1. The “Proposal Cover Page and Check List,” attached as [Exhibit B](#).
2. The “Minimum Qualifications Certification,” attached as [Exhibit C](#).
3. Response to the “Questionnaire”, attached as [Exhibit D](#).
4. References, attached as [Exhibit D – Part IV](#). At least three (3) references for which the respondent has provided services similar to those included in the Scope of Services.
5. An executive summary that provides the respondent’s background, experience, and other qualifications. The summary should identify respondent’s competitive advantages, specialties, limitations, and the reasons why the firm should be selected.
6. The names and qualifications of fully trained and qualified staff that will be assigned to OCERS work, including a detailed profile of each person’s background and relevant individual experience.
7. Copies of any pertinent licenses required to deliver respondent’s product or service (e.g., business license).
8. A copy of respondent’s standard professional services contract.
9. 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. The degree to which the proposal meets OCERS’ needs in relation to factors such as methodology, work plan and schedule.
2. Experience in successfully executing and structuring secondary transactions for institutional investors.
3. Qualification and expertise of the team in managing secondary sales.
4. Ability to obtain competitive bids and create value for clients.
5. The respondents track record.
6. Information provided by references.
7. The organization, completeness, and quality of the proposal.
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 the Investments Team.

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 negotiate a contract with the successful respondents, the contract will contain such terms as OCERS, in its sole discretion, may require. In addition, the selected pre-qualified firms will agree that this RFP and the firm's proposal will be incorporated by reference into any resulting contract. The final Scope of Services to be included in the contract will be determined at the conclusion of the RFP process.

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.

## **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: Intent to Respond

If you choose to submit a proposal in response to this RFP, please submit this Intent to Respond to OCERS' Investments Team via email no later than **5:00 p.m., PT, September 15, 2023**. Failure to submit your Intent to Respond may disqualify your firm from submitting a proposal.

OCERS' responses to written requests for clarification or additional information will be provided to all firms that have submitted an Intent to Respond.

**From:**

<b>Firm Name</b>	
<b>Contact Name</b>	
<b>Title</b>	
<b>Phone Number</b>	
<b>Email Address</b>	
<b>Date</b>	

**To:** OCERS' Investments Team

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

**Re:** Intent to Respond

Our firm intends to submit a response for OCERS' RFP for **Secondary Sale Advisory Services**

Please forward inquiries to the following contact:

<b>Contact Name</b>	
<b>Title</b>	
<b>Phone Number</b>	
<b>Email Address</b>	
<b>Mailing Address</b>	

### Exhibit B: Proposal Cover Page and Checklist

Firm Name	
Main Address	
Website	
Contact Name	
Title	
Phone Number	
Email 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 structure submitted in response to the RFP accurately reflects the expenses that will be paid by OCERS should your firm is selected to advise on secondary sales.
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. The signatory below is authorized to bind the respondent contractually.

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Authorized Signature

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Name and Title (please print)

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Date

### **Exhibit C: Minimum Qualifications Certification**

All respondents 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.

1. Respondent must be a SEC-registered investment advisor or exempt from registration. If exempt, the Respondent must explain the nature of their exemption from registration.
2. A minimum of five years of experience advising public pension plans or similar institutional investors on secondary sales of private alternative fund investments.
3. A track record of structuring and completing secondary sales of at least \$ 2 billion dollars of private alternative investments.
4. Respondent must warrant that all information and statements in this RFP are complete and true. Any statement or claim found to be incomplete, misleading, or false will be grounds for immediate disqualification or dismissal and may be subject to legal action.

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

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Authorized Signature

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Date

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Name and Title (please print)

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Name of Firm

## **Exhibit D: Questionnaire**

### **Part I: Firm / Organization**

1. Please describe the history of the Firm.
2. Provide brief descriptions (including ownership percentages) and organizational charts of all entities related to the Firm or other entities in which the principals have an ownership interest. Show and describe any ownership, operational or affiliate relationships.
3. Briefly describe the Firm's experience advising public pensions on secondary sales.
4. Identify and discuss potential conflicts of interest that may arise among the various individuals and organizations comprising the Firm or any affiliated entities. Describe process for managing such conflicts of interest.
5. Have any of the key individuals, the Firm or any affiliated entities ever (i) filed for bankruptcy or (ii) had any judgments entered against them? If yes, please describe the circumstances. Also, describe all settlements of legal actions involving the Firm, the individual principals, or any affiliates.
6. Does the Firm or any of its principals or their family members (to the best of the Firm's knowledge) have any ownership in or any right to the economic interests of any firms or individuals providing consulting, legal, fundraising or other advisory services which may be prospectively used by the Firm? If so, please detail these relationships in regards to services offered, governance, practical application in relation to the Firm's interests, and economic relationship (historical and expected).
7. How long has the OCERS' proposed client team been working together providing secondary sale advisory services?
8. Please provide a brief biography of the experience for each professional. Include brief comments on key responsibilities.
9. Describe all additions and departures (including both timing and reasons) of partners and other professionals from the Firm and its affiliates since inception.
10. Please elaborate on any significant outside activities or obligations, with the associated time commitments of the respective OCERS' proposed client team.

11. How many professionals are responsible for leading client engagements and how many transactions are they typically leading at one time?
12. Please provide an organizational chart.
13. What types of insurance coverage does the Firm maintain (e.g. errors and omission insurance, directors and officers insurance, other)? Provide a summary of any material claims made against these policies in the last five years.
14. What does the Firm use as its IT package and/or internally developed software for business functions?
15. Does the Firm have a written policy on the handling and safeguarding of any material, non-public information?
16. Describe the Firm's business continuity and disaster recovery plan to cover major business interruptions such as fire, flood, etc. Have these policies been tested?
17. Provide an assessment of conflicts of interest reviews performed in the last year. Identify any findings and changes or proposed actions to address the findings.
18. Describe the regulatory bodies that have oversight of the Firm, including any broker-dealer registrations. Identify and provide the Firm's policies for remaining compliant with these bodies.
19. Please provide details related to the Firm's cybersecurity policies and procedures. Specifically, identify areas susceptible to cybersecurity risk and ways to mitigate against these risks. Is there a dedicated person or team of professionals responsible for overseeing cybersecurity?
20. Are you willing to serve as a fiduciary on OCERS' secondary sales transactions?
21. Under what conditions do you not serve as a fiduciary when advising institutional clients on secondary sales transactions?
22. Describe a typical fee structure that you utilize when advising institutional clients on secondary sales transactions. The fee structure should reasonably reflect the expenses OCERS can expect to incur if your firm is selected as an advisor on a future secondary sales transaction.

23. Please submit a copy of your firm's standard contract for providing secondary sale advisory services.

## **Part II: Strategy & Process**

1. What differentiates the Firm from other secondary sale advisory groups pursuing similar mandates? Describe competitive advantage(s) and include a discussion as to whom you see as your competition.
2. Describe the markets in which the Firm operates and provide an overview of the current opportunities. Why is the opportunity to sell in this market particularly attractive? How does the current environment compare/differ to that of prior years?
3. Describe the process the Firm uses to source potential secondary buyers and how this has evolved over time. What characteristics do you look for in a potential buyer? How many firms do you contact in a typical sale process?
4. How does the Firm anticipate it will be able to take an active role in the management of the secondary sale process? Discuss the typical methods used by the Firm to create value for its clients.
5. How much time and attention will the client need to allocate to a secondary transaction? What documents are required to facilitate the various stages of the sale process.
6. Please provide an expected timeline for the transaction.
7. Discuss a representative sample transaction for which the Firm completed a high level of work, but ultimately did not transact. Describe the circumstances surrounding the Firm's or client's decision not to proceed.
8. What procedures are used to maximize returns for your clients?
9. Please discuss any experience dealing with restrictive managers and/or Publicly Traded Partnership restrictions.
10. Does the Firm typically facilitate a single round or multiple round process? Will the offers include line by line pricing?

## **Part III: Litigation**

1. Describe any past, current, pending or threatened arbitration or litigation, including, but not limited to, any SEC or other regulatory agencies (including any routine examinations by any regulators), actions or consent decrees that involves any of the key individuals of the Firm, the Firm itself or any affiliated entities (including portfolio companies).

2. If any claims of sexual or general harassment, misconduct, or discrimination have been made against any of the current and/or former Firm employees (while employed by the Firm) within the last 5 years, please provide details for each claim, including the charges, investigative process, and outcome, including disciplinary action.
3. Describe any past, current, pending or threatened arbitration or litigation.
4. If the Firm or its Principals are involved in any litigation, please confirm in writing that:
  - (a) The litigation that exists against the Firm, its affiliates, or related entities and its Principals has arisen in the ordinary course of business; and
  - (b) No past litigation, investigations or proceedings have been material to the Firm, its affiliates, or related entities and its Principals; and
  - (c) The Firm, its affiliates, or related entities, and Principals do not expect any pending litigation to have a material effect on the Firm, affiliates or other related entities, and on its Principals.

#### Part IV: References

1. Provide the name, e-mail address, and phone number of each partner and professional who has left the Firm or any affiliate in the past five years.
2. For each of the current professionals, please provide contact name, e-mail address, and phone number for two former colleagues with whom the professional worked closely.
3. Provide the current contact name, e-mail address, and phone number for at least three of the larger institutional clients.

#### INVESTMENT PROFESSIONALS

Name, Title	Birth Date	Start Date w/ Firm	Years of Secondary Experience	Previous Experience	Education
John Smith Managing Director	1/1/1970	1/1/1990	10	Founding Partner, ABC Partners Sr. VP, XYZ & Co.	MBA, ABC University BA in Economics, University of XYZ




**Exhibit E: Sample OCERS' Agreement for Services**  
**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**  
**AGREEMENT FOR SERVICES<sup>1</sup>**

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

**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 **Secondary Sales Advisory Services** on the terms and conditions set forth in this Agreement and its attached exhibits.

**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.

**2.2 Term.** The term of this Agreement will commence upon the Effective Date and will continue for [...up to seventy-two (72)] 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 [X (x) additional twelve (12) month periods]. In no event shall the total term of the Agreement exceed seventy-two (72) months.

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<sup>1</sup> Sample Agreement for Services is included for information purposes only.

## **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 approved 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, will be compensated at the rates and manner set forth in this Agreement.

## **2.4 Responsibilities of Contractor.**

2.4.1 Independent Contractor. 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. 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. 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 Payment of Subordinates. 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 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.

2.4.4 Conformance to Applicable Requirements. All Services performed by Contractor shall be subject to the approval of OCERS.

2.4.5 Substitution of Key Personnel. Contractor has represented to OCERS that certain key personnel will perform and coordinate the Services under this Agreement ("Key Personnel"). The Key Personnel assigned to this Agreement are identified in the attached **Exhibit "C"** ("Key Personnel"). 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.

2.4.6 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.

2.4.7 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 the 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.

2.4.8 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 the 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.

2.4.9 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.

## **2.5 Representatives of the Parties.**

2.5.1 OCERS' Representative. OCERS hereby designates [name and title of OCERS' rep, or "its Chief Executive Officer, or their designee"], 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 the Contractor for all purposes under this Agreement. The 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.**

To the fullest extent permitted by law, Contractor shall indemnify, immediately defend, and hold OCERS, the members of the OCERS Board of Retirement (each a "Board member"), and OCERS' officials, officers, employees, volunteers, and agents free and harmless from any and all third party claims, demands, causes of action, suits, expenses, liabilities, losses, damages, or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, "Indemnity Claims"), in any manner arising out of, pertaining to, or incident to any negligent act, error or omission, intentional misconduct, or breach of this Agreement by Contractor, its officials, officers, employees, subcontractors, contractors, or agents in connection with the performance of the Services, or this Agreement, including attorneys' fees and costs, including expert witness fees. Contractor's duty to indemnify does not extend to the Indemnity Claims caused by OCERS' sole negligence or willful misconduct.

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 OCERS or its Board members, officials, officers, employees, volunteers, and agents as

part of any Indemnity Claim(s). Contractor shall also reimburse OCERS for the cost of any settlement paid by OCERS or its Board members, officials, officers, employees, agents, or volunteers as part of any Indemnity Claim. Such reimbursement shall include payment for OCERS' attorneys' fees and costs, including expert witness fees. Contractor's obligation to defend and indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by OCERS, its Board, officials, officers, employees, agents, or volunteers.

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 the Contractor.

## **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 the Contractor, its agents, representatives, employees, or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(a)     Commercial General Liability. These policies shall include OCERS, and its board members, officers, agents, and employees, as an additional insured on a blanket basis and be primary and not contributory to any policy maintained by OCERS. Contractor shall maintain limits no less than two million dollars (\$2,000,000) per occurrence, or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury, and property damage.

(b)     Automobile Liability. Business automobile liability insurance insuring all owned, non-owned, and hired automobiles, in the amount of 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. Contractor shall maintain Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance in an amount no 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 OCERS, its Board of Trustees, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(d)     Professional Liability. Contractor shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following the termination or expiration of this Agreement, errors and omissions liability insurance appropriate to their

profession covering Contractor's wrongful acts, negligent actions, errors, or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement. Contractor shall purchase a one-year extended reporting period: i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. Such insurance shall be in an amount not less than two million dollars (\$2,000,000) per claim.

(e) Fidelity Insurance. Contractor shall procure and maintain a comprehensive fidelity insurance policy. Such fidelity insurance coverage shall include employee dishonesty coverage in an amount not less than five million dollars (\$5,000,000) per occurrence and shall contain a deductible no greater than ten thousand dollars (\$10,000). Any such deductible shall be paid solely by Contractor.

(f) Cyber Security Insurance. Contractor shall procure and maintain cyber security/liability insurance with limits of not less than two million dollars (\$2,000,000) for each occurrence and an annual aggregate of five million dollars (\$5,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional or unintentional release of private information, alteration of electronic information, extortion and network security, and network and business interruption.

(g) 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 OCERS (if agreed to in a written contract or agreement) before OCERS'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 OCERS, its Board, officials, officers, employees, agents, and volunteers shall be covered as additional insured. The coverage shall contain no special limitations on the scope of protection afforded to OCERS, its Board, officials, officers, employees, agents, and volunteers.

2.7.3 All Coverages. The general liability and automobile liability policy shall include or be endorsed to state that: (1) OCERS, its Board, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to work by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the OCERS, its directors, officials, officers, employees, agents, and volunteer, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by OCERS, its Board members, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.

(a) The insurance policies required 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 OCERS, its Board members, officers, employees, agents, and volunteers, 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 OCERS under such policies. Contractor shall be solely responsible for deductible and/or self-insured retention and OCERS, at its option, 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 evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on a certificate of insurance signed by an authorized representative of the insurer(s).

(iv) Each policy required in this section shall contain a policy cancellation clause that provides the policy shall not be cancelled or otherwise terminated by the insurer or the 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: \_\_\_\_\_

(v) Insurance required by this Agreement 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 of 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.** 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.

**2.9 Ownership of Materials and Confidentiality.**

**2.9.1 Documents & Data; Licensing of Intellectual Property.** This Agreement creates a non-exclusive and perpetual license for OCERS to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall deliver to OCERS on demand or upon the termination or expiration of this Agreement, all such Documents & Data which shall be and remain the property of the OCERS. If OCERS uses any of the data, reports, and documents furnished or prepared by Contractor for

use in Services other than as shown on Exhibit A, Contractor shall be released from responsibility to third parties concerning the use of the data, reports, and documents. Contractor may retain copies of the materials. OCERS may use or reuse the materials prepared by Contractor without additional compensation to Contractor.

2.9.2 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. The disclosing Party shall identify all confidential data and information at the time it is provided. 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.

2.9.3 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 ("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;
- (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; and
- (h) That the requirements in this Section 2.9.3 shall survive the expiration or termination of this Agreement.

2.9.4 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.

2.9.5 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.

### **2.10 Sub-contracting/Sub-consulting.**

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.

## **3. General Provisions.**

3.1.1 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:**

**Orange County Employees Retirement System**

**PO Box 1229**

**Santa Ana, CA 92701**

**Attention: Jim Doezie**

**e-mail: [jdoezie@ocers.org](mailto:jdoezie@ocers.org)**

**Contractor:**

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.

3.1.2 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.

3.1.3 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.

3.1.4 OCERS' Right to Employ Other Contractors. OCERS reserves the right to employ other contractors in connection with the Services.

3.1.5 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.1.6 Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of OCERS.

3.1.7 Amendment. This Agreement may not be altered or amended except in a writing signed by both Parties.

3.1.8 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.

3.1.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.1.10 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.

3.1.11 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.

3.1.12 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.

3.1.13 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.

3.1.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.1.15 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.

3.1.16 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.

3.1.17 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 3.1.7 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 August, 2023 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:

1. \_\_\_\_*[complete description of services and timetable for performance]*\_\_\_\_\_



**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:
  - *The total compensation shall not exceed **XXX** Dollars (\$XXX.00) without written approval by OCERS.*
  - *[provision for expense reimbursement]*
2. **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.
3. **Payment – Invoicing Instructions:** Contractor will provide an invoice on the 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](mailto:Accountspayable@ocers.org)



**EXHIBIT C**  
**KEY PERSONNEL**



**Exhibit D**  
**Request for Proposal**



**Exhibit E**

**Response to Request for Proposal**