**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**Agreement FOR SERVICES**

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. **Project.**

Contractor desires to perform and assume responsibility for the provision of certain services required by OCERS on the terms and conditions set forth in this Agreement and OCERS desires to engage Contractor to render such services for **Actuarial Auditor Services** as set forth in this Agreement and its attached exhibits.

1. **Terms.**
	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 supply all services provided under 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 it 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. **Term**. The term of this Agreement shall commence upon the Effective Date and will continue for twelve (12) months or the completion of the services, whichever comes first, from the Effective Date (“Initial Term”), unless earlier terminated as provided herein. The Parties may, by mutual written agreement, extend the Initial Term for up to three (3) additional twelve (12) month periods. In no event shall the total term of the Agreement exceed seventy-two (72) months.
	3. **Consideration.**
		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. Invoices and Payment. Contractor shall submit to OCERS monthly itemized invoices as required by Exhibit B, “Fee Schedule.” OCERS shall pay all approved charges within net thirty (30) days of receiving such invoice.
		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 at the execution of this Agreement. 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.
	4. **Responsibilities of Contractor.**
		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. Payment of Subordinates. Contractor will pay all wages, salaries, and other amounts due such 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.
		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.
		4. Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of OCERS.
		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. Should one or more of such Key Personnel become 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 Contractor 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.
		6. Removal of Key Personnel. Contractor agrees to remove any Key Personnel from performing work under this Agreement within twenty-four (24) hours or as soon thereafter as is practicable if reasonably requested to do so by the OCERS.
		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.
		8. Labor Code Provisions.
			1. 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 $200.00 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.
			2. 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.
			3. 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.
		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.
	5. **Representatives of the Parties.**
		1. OCERS’ Representative. OCERS hereby designates 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. 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 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.
	6. **Indemnification**

To the fullest extent permitted by law, Contractor shall immediately indemnify 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 claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury of any kind, in law or equity, to property or persons, including wrongful death in any manner arising out of, pertaining to, or incident to any alleged acts, errors, omissions, or negligence of Contractor, its officials, officers, employees, subcontractors, contractors, or agents in connection with the performance of the Services, or this Agreement, including without limitation the payment of all consequential damages, and attorneys’ fees and costs, including expert witness fees (collectively, “Indemnity Claims”). 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.

* 1. **Insurance**
		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. 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:
			1. Commercial General Liability. Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). 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. If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
			2. Automobile Liability. Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). Contractor shall maintain limits no less than one million dollars ($1,000,000) per accident for bodily injury and property damage. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.
			3. 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.
			4. 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.
			5. 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.
			6. 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 at least as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37. The coverage shall contain no special limitations on the scope of protection afforded to OCERS, its Board, officials, officers, employees, agents, and volunteers.
		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 using as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37; and (2) the insurance coverage shall be primary insurance as respects the OCERS, its directors, officials, officers, employees, agents, and volunteers using as broad a form as CG 20 01 04 13, 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.
			1. The insurance policies required above shall contain or be endorsed to contain the following specific provisions:
				1. 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.
				2. 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.
				3. 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).
				4. 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: Jim Doezie, Contracts Administrator: jdoezie@ocers.org
				5. 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.
				6. 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.
		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. **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.
	3. **Ownership of Materials and Confidentiality.**
		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. 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.
		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:
			1. To maintain Customer Data in confidence;
			2. Not to use Customer Data other than in the course of this Agreement;
			3. Not to disclose or release Customer Data except on a need-to-know only basis;
			4. 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;
			5. To promptly notify OCERS in writing of any unauthorized release of confidential information, including Customer Data;
			6. 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;
			7. 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
			8. That the requirements in this Section 2.9.3 shall survive the expiration or termination of this Agreement.
		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.
		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.
	4. **Subcontracting/Subconsulting.**
		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.
1. General Provisions.
	* 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:

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| --- | --- | --- |
| **OCERS:** **Orange County Employees Retirement System****2223 E. Wellington Avenue****Santa Ana, CA 92701****Attention: Jim Doezie****e-mail:** **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.

* + 1. 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.
		2. 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. OCERS’ Right to Employ Other Contractors. OCERS reserves the right to employ other contractors in connection with the Services.
		4. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.
		5. 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.
		6. Amendment. This Agreement may not be altered or amended except in a writing signed by both Parties.
		7. 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.
		8. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.
		9. 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.
		10. 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.
		11. 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.
		12. 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.
		13. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.
		14. 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.
		15. 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:
			1. Amendments to this Agreement entered into pursuant to Section 3.1.7 herein.
			2. This Agreement.
			3. Exhibit A: Scope of Services, Exhibit B: Fee Schedule, and Exhibit C: Key Personnel.
			4. OCERS Request for Proposal dated March, 2022, attached as Exhibit “D”.
			5. 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:

**OCERS**

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 the Contractor performing actuarial services as follows:

* The audit will determine the accuracy of the December 31, 2021, valuation performed by Segal.
* The audit will assess the actuarial assumptions and funding methodologies used, including a comparison to industry standards. The purpose of the audit is to provide an opinion regarding the reasonableness and accuracy of the actuarial assumptions, actuarial cost methods, valuation results, and contribution rates.
* The audit will be a full replication parallel valuation audit, including a full re-run of the December 31, 2021, actuarial valuation and a review of detailed output on certain select test lives from the valuation group.
* The audit will not include a parallel experience analysis. Rather, the audit will focus on comparing OCERS' assumptions to industry norms as well as reviewing the structure and application of the assumptions based upon the test lives.
* The review of actuarial methods should be based on industry standards as well as the auditing firm's experience with similar retirement systems.
* The full replication parallel valuation, complimented by review of test lives, should allow the auditing firm to determine whether:
1. The current valuation system used by Segal is accurately applying the assumptions as stated and is accurately valuing the appropriate benefits;
2. The current valuation system used by Segal is properly allocating the present value of benefits between normal cost and actuarial accrued liability; and
3. The current valuation system used by Segal is adding together liabilities appropriately for each decrement, for each member, and over the entire population so that there is reasonable assurance that no segment of the population is being ignored and no particular liabilities are being omitted.

**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:
* XXXX
* *The total compensation shall not exceed* ***XXX*** *Dollars ($XXX.00) without written approval by OCERS.*
* *[provision for expense reimbursement]*
1. **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.
2. **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:
3. Contractor’s name and address
4. Contractor’s remittance address, if different from item #1 above
5. Contractor’s Taxpayer ID Number
6. Name of OCERS Agency/Department
7. Delivery/service address
8. Agreement number
9. Agency/Department’s Account Number
10. Date of invoice
11. Description and price of services provided
12. Sales tax, if applicable
13. Freight/delivery charges, if applicable
14. 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**