



REQUEST FOR PROPOSAL

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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Benefits Consultant

February 6, 2017

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BENEFITS CONSULTANT

REQUEST FOR PROPOSAL

I. INTRODUCTION

The Alameda County Employees' Retirement Association (ACERA) is the retirement pension plan for public employees in Alameda County, California who work for some of the county's public employers. ACERA was established in 1948 by the Alameda County Board of Supervisors to provide retirement, disability, and death benefits to Alameda County and member district employees.

The ACERA retirement plan provides lifetime benefits to members of the retirement system who meet the minimum age and length-of-service requirements or are eligible for disability retirement. The plan is a significant and fundamental part of the comprehensive benefits package that participating employers offer to eligible employees.

ACERA was established by the Alameda County Board of Supervisors under Ordinance No. 446, dated October 21, 1947. ACERA is a separate public entity governed by the provisions of the County Employees Retirement Law of 1937, Title 3, Division 4, Chapter 3, commencing with Section 31450 of the California Government Code and case law applicable to public employee pension plans. On January 1, 1948, ACERA became operative to provide retirement, disability, and death benefits to the General and Safety members employed by Alameda County.

Over the years, ACERA has expanded its member services to include employees of the Alameda County-based Superior Court of California and the five special districts of the County, as well as to administer retiree health care, dental care, vision care, and supplemental cost-of-living benefits.

ACERA's plan is a defined benefit pension plan, qualified under Section 401(a) of the Internal Revenue Code. Funding of a defined benefit pension plan is based on a cost sharing principle through employee and employer contributions rates, which are determined annually upon recommendation by the plan's actuary. Therefore, retirement benefits are determined by a formula and not on an individual's account balance.

ACERA's mission is to provide ACERA members and employers with flexible, cost-effective, participant-oriented benefits through prudent investment management and superior member services.

ACERA sponsors and administers group and individual medical, dental and vision plans to retirees, beneficiaries and dependents. Alameda County negotiates the current contracts for two group plans for non-Medicare eligible retirees; Kaiser Permanente and UnitedHealthcare, allowing the retirees to be blended with the active employees. In addition, ACERA provides group coverage Kaiser Senior Advantage to Medicare

eligible retirees. This is part of the contract with the County. Individual plans for retirees are available through the Health Exchange for non-Medicare eligible retirees living outside the group plan service areas and Medicare Exchange individual plan coverage is available to all Medicare eligible retirees. ACERA contracts with Willis Towers Watson for exchange coverage. Group coverage for vision and dental plans is available to retirees through Delta Dental and Vision Service Plan. ACERA holds the contracts with these vendors.

Subsidies for medical, dental and vision coverage are provided to eligible retirees through ACERA's Supplemental Retiree Benefit Reserve. This reserve is made up of funds required by statute to be set aside from investment earnings to provide supplemental benefits to retirees. This fund was established in 1985 upon adoption of Article 5.5 of the Government Code by the Board of Supervisors of Alameda County. Subsidies are provided to retirees with ten or more years of service or who are receiving service connected disability benefits. In addition to medical, dental and vision plan subsidies, the fund provides Medicare Part B reimbursement, Supplemental COLA benefits and a lump sum retiree death benefit.

The Board of Retirement (Board) delegates the administration of all plan benefits to staff. Staff uses a benefits consulting firm to assist with review, analysis and negotiations of these plans. Reports regarding utilization, cost, and experience are presented to the Board on a regular basis.

ACERA is seeking proposals from qualified benefit consulting firms to provide knowledge and expertise in handling retiree medical, dental and vision benefits.

II. CURRENT PROGRAM

Currently, there is a combined enrollment of 7,963 retired members/beneficiaries in the two dental plans and 7,913 retired members/beneficiaries enrolled in the two vision plans. The current plans available are:

Dental Plans

- Delta Dental Preferred Provider Option (PPO)
- DeltaCare USA

Vision Plan

- Vision Service Plan
- Vision Service Plan – Premium Plan

As of December 31, 2016, there are a total of 4,974 retired members/beneficiaries enrolled in the group medical plans. The current group plans available to retirees and their eligible dependents are Kaiser Permanente and UnitedHealthcare. The Medicare plans offered have a bundled Medicare Part D plan.

There are a total of 1,389 Medicare eligible and 150 early (non-Medicare) members/beneficiaries enrolled in individual medical plans through the exchanges. The

current contract for individual medical plans through the Medicare Exchange and Health Exchange is with Willis Towers Watson.

ACERA has a Medicare Part B Reimbursement program for retired members who have 10 or more years of service and are enrolled in Medicare Part B. The reimbursement level for 2017 is \$109.00 per member per month. There are approximately 5,549 retirees currently receiving this benefit.

The below chart shows the subsidies for retirees enrolled in the group medical plans and early (non-Medicare) retirees living outside of our HMO service area who are enrolled in individual medical plans through the Health Exchange.

| Number of Years of Service | Percentage of Premium Subsidized | Monthly Medical Allowance (MMA) |
|----------------------------|----------------------------------|---------------------------------|
| 1 - 9 years | 0% | \$0.00 |
| 10 - 14 years | 50% | \$270.22 |
| 15 - 19 years | 75% | \$405.33 |
| 20+ years | 100% | \$540.44 |

The below chart shows the subsidies for Medicare eligible retirees enrolled in individual medical plans through the Medicare Exchange.

| Number of Years of Service | Percentage of Premium Subsidized | Monthly Medical Allowance (MMA) |
|----------------------------|----------------------------------|---------------------------------|
| 1 - 9 years | 0% | \$0.00 |
| 10 - 14 years | 50% | \$207.00 |
| 15 - 19 years | 75% | \$310.50 |
| 20+ years | 100% | \$414.00 |

III. SERVICES PROVIDED

The services to be provided by the Benefits Consultant include, but are not limited to, the following:

Monthly:

1. Attend monthly ACERA Retirees Committee meetings and debrief meetings afterward.
2. Attend conference call to discuss deliverables/Committee meeting planning.
3. Provide accurate, monthly deliverables from Retirees Committee Work Plan on specified dates to ACERA.
4. As notices become available, provide information and assess impact of any legislative updates concerning health care plan policies and procedures, including Medicare plans.

5. Track benefit plans design ideas for future discussion with carriers and renewal letters.

Quarterly:

1. Participate in ACERA's quarterly meetings with Kaiser Permanente to review quarterly utilization, and discuss the wellness program and other topics as necessary.

Semi-Annually:

1. Create a PowerPoint presentation on Health Care Reform; including but not limited to: Medicare, Affordable Care Act, Covered California, Multi-State Exchanges, California Legislation, and Federal Legislation; and present it at the Retirees Committee meetings.
2. Review and analyze Delta Dental and Vision Service Plan member utilization and claims experience.
3. Work with ACERA and the County of Alameda to gain access to medical carriers' claim information to review and calculate the reimbursement to employers for the adverse experience (Implicit Subsidy) cost of retirees. Provide a written report concerning the Implicit Subsidy for past plan year amount for medical plans and the estimated Implicit Subsidy amount for current year.

Annually:

1. Create a 6-12 page PowerPoint document to present at the annual retiree association health care planning meeting. Subject matter for presentation to be determined a month in advance of the meeting, normally held in the month of March.
2. Review, within a week of receipt, ACERA's draft of the annual medical plans renewal letter to the County of Alameda. Add specific plan impact questions on regulation changes such as CMS Mandates or Affordable Care Act as well as adding specific pricing requests, new carrier Disease Management/Wellness initiatives, and plan design changes adding benefit/cost savings to retiree plans. Letters should include discussion points over the plan year, which may have been addressed at Retirees Committee meetings as well as monthly Benefits Consultant/ACERA meetings.
3. Provide written annual reports with observations and recommendations related to Delta Dental and Vision Service Plan member utilization and claims experience. Draft separate Request for Information (renewal) letters for both Delta Dental and for Vision Services Plan each year by April 1st. Letters should include discussion points over the plan year, which may have been addressed at Retirees Committee meetings as well as monthly Benefits Consultant/ACERA meetings.
4. Work with ACERA and the County of Alameda to enhance ACERA's current wellness program.

5. Review and negotiate provider renewal rates/contracts, plan design, funding arrangements (*i.e.*, fully insured or self funded) and performance guarantees with Delta Dental and Vision Service Plan carriers. Provide written reports explaining the analysis and recommendations.
6. Attend the annual medical plan renewal meeting between the County of Alameda and ACERA.
7. Provide a written report on the annual health care trend information including pre-65 and post-65 medical, dental (both plans), and vision plans to assist ACERA in funding recommendations.
8. Provide in a written report, the Social Security Administration Cost of Living Adjustment amount and the impact this may or may not have on the Medicare Part B monthly premiums. The written report should state what the standard Medicare Part B monthly premium is for the current year and the new premiums for the next year.
9. Provide actuarial valuation for the equivalency of ACERA's prescription drug plan comparative to Medicare Part D prescription drug plan.
10. Provide the CMS Part D Annual Notice of Creditable Coverage two weeks after its release by CMS; the required date the notice must be received by all of ACERA's members; and a written report on the Part D Standard Benefit changes for the next year, which includes a side by side comparison of the current benefits and the new ones. The report should also include the drug manufacturer's percentage coverage of cost for brand-name drugs, as well as the Part D Income Related Monthly Adjustment amounts.
11. Use the Benefits Consultant Medicare Part D "Client" Checklist to determine ACERA's compliance.
12. Provide ongoing enrollment, reporting, and escalation of customer service issues support related to Willis Towers Watson's OneExchange Access.

IV. MINIMUM QUALIFICATIONS

The proposer must meet the minimum qualifications to be given further consideration. The proposer must provide detailed documentation and information of how each minimum qualification is met by completing the *Minimum Qualifications Certification, Attachment A*, signed by an authorized member of the proposing firm.

V. PROPOSAL REQUIREMENTS

Submitted proposals must delineate the proposer's qualifications and expertise in the format outlined in the RFP. A proposal under this RFP will not be considered complete unless it contains all of the items described herein. A proposal that is not submitted in

complete form to ACERA by **4:00 p.m. PST on March 6, 2017**, will be rejected. However, during the preliminary review stage only, ACERA, in the exercise of its exclusive discretion, may permit the proposer to correct any error or omission.

Cover Letter

A cover letter, which will be considered an integral part of the proposal, must be signed by the individual(s) who is/are authorized to bind the proposer contractually. This cover letter must indicate the signer is so authorized and must indicate the title or position the signer holds in the proposer's firm. An unsigned cover letter shall cause the proposal to be rejected. The letter must contain the following:

1. The proposer's name of firm, address, telephone number and email address.
2. The proposer's type of business entity (e.g., sole proprietorship, partnership, corporation, etc.).
3. The proposer's Federal Employer Identification Number and Corporate Identification Number, if applicable.
4. The name, title or position, telephone number and email address of the individual signing the cover letter.
5. A statement indicating the signer is authorized to bind the proposer contractually.
6. The name, title or position, telephone number and email address of the primary contact and/or account administrator, if different from the individual signing the cover letter.
7. A statement to the effect that the proposal is a firm and irrevocable offer good for one year from the final filing date for proposals.
8. A statement expressing the proposer's willingness to perform the services as described in this RFP.
9. A statement expressing the proposer's availability of staff and other required resources for performing all services and providing all deliverables as described in this RFP.

Minimum Qualifications Certification (Attachment A)

Proposers must complete and return the *Minimum Qualifications Certification, Attachment A*, certifying that the proposer satisfies all minimum qualifications and requirements. The Certification must be signed by the same individual who signed the cover letter.

Proposal Questionnaire (Attachment B)

Proposers must complete and return the *Proposal Questionnaire, Attachment B*. The information requested must be provided in the prescribed format; all questions must be

repeated in their entirety before the answers are given. Responses that deviate materially from the prescribed format may result in the rejection of the proposal.

Fee Proposal (Attachment C)

Proposers must submit their fee for the contract services in the format prescribed in the *Fee Proposal, Attachment C*, which must be signed by the individual authorized to bind the proposer contractually.

VI. SUBMISSION OF PROPOSALS

A. Required Copies and Format

Submit six (6) copies of your proposal as follows:

1. A cover letter and all other attachments, exhibits, and documents.
2. One (1) copy of the proposal **unbound**, (i.e., no binder covers, comb bindings, etc.) containing original signatures and marked as “**Master Copy**”.
3. Five (5) remaining copies must be **bound** and organized in a manner to facilitate ease of review by evaluators.
4. An electronic copy of the competed proposals in PDF read-only format.

B. Packaging and Marking Proposal

All six (6) copies of the proposal must be submitted in a sealed package and clearly marked with “**RESPONSE TO REQUEST FOR PROPOSAL—BENEFITS CONSULTANT**”.

C. Final Filing Date and Time

The proposal package must be received no later than **4:00 p.m. PST on March 6, 2017**, by ACERA at the following address:

Kathy Foster, Assistant Chief Executive Officer
Alameda County Employees’ Retirement Association
475 14th Street, Suite 1000
Oakland, CA 94612

Email the PDF copy to: kfoster@acera.org and ehardy@acera.org

PROPOSALS RECEIVED AFTER THE FINAL FILING DATE AND TIME WILL BE REJECTED. LATE PROPOSALS WILL NOT BE ACCEPTED FOR ANY REASON.

D. Clarification of Contents

Proposers may be requested to clarify contents of their proposal package. Other than information requested by ACERA, no proposer will be allowed to alter the proposal or add new information after the final filing date.

E. Right to Reject Proposals and Reservation of Rights

It is the policy of ACERA to solicit proposals with a bona fide intention to award a contract. However, ACERA reserves the right to reject any or all proposals, to waive defects, to alter or modify the requirements of this RFP, and to award no contract.

VII. STANDARDS FOR EVALUATING PROPOSALS

A. Preliminary Review

1. Each proposal package will be dated and time-stamped when received. **PROPOSALS RECEIVED AFTER THE FINAL FILING DATE AND TIME WILL BE REJECTED.**
2. The proposal will be reviewed to determine satisfaction of the minimum qualifications and proposal requirements described in Sections IV, V and VI (see *Pre-Evaluation Review Sheet, Exhibit 1*). ACERA may reject any or all proposals that fail to meet these qualifications and requirements.
3. ACERA may, in its exclusive discretion, permit any proposer to correct an error or omission in the proposal. Alternatively, ACERA may waive such deviation or defect.

B. Proposal Evaluation

Proposals that pass the preliminary review will be evaluated and scored as follows:

1. Proposal Questionnaire Evaluation

The responses to the *Proposal Questionnaire* and related information will be evaluated by a team of reviewers. This Evaluation Committee will review, evaluate, and score the proposers' responses to the *Proposal Questionnaire, Attachment B*, and any other relevant information submitted in the written proposal based on the categories specified in the *Proposal Evaluation Sheet (Exhibit 2)*.

The Evaluation Committee members' scores will be combined to determine a total score for each proposal, with a maximum of 340 points. A proposal must receive a minimum score of 140 points on the *Proposal Questionnaire* evaluation to be given further consideration.

2. Fee Proposal Evaluation

Points for fees will be computed for all proposals that obtain a minimum score of 140 points on the *Proposal Questionnaire* evaluation. The proposal with the lowest total *Fee Proposal* for the proposed contract will receive the maximum score of 40 points (*Proposal Evaluation Sheet, Exhibit 2*). All other fee proposals will be rated proportionately as follows:

$$\frac{\text{Lowest Fee}}{\text{Proposer's Fee}} \times 40 = \text{Proposer's Fee Proposal Score}$$

3. Selection of Finalists

Each proposer's *Proposal Questionnaire* score will be combined with the *Fee Proposal* score. The proposals will be ranked from highest scoring to lowest scoring, with a maximum of 340 points. The top three highest scoring proposal(s), as determined by ACERA, will be considered finalists.

C. Finalists Interviews and Selection

Each of the three finalist proposer eligible for further consideration will be required to appear for an oral interview before the Evaluation Committee on April 5, 2017, at ACERA's office in Oakland, California. The interview shall include participation by all key professionals under the contract. The interview will provide an opportunity for additional consideration of the proposer's organization, staff background and experience, range and quality of services and capabilities, and other specific areas of the proposal where clarification is necessary.

ACERA will award points to the finalist proposers after completion of the interview process under Section C. Finalist Interview on the *Proposal Evaluation Sheet, Exhibit 2*. A numeric score will be assigned to each finalist to reflect this action with the maximum score of 100 points for the finalist interview.

A ranking of the finalist proposers will be provided to the Board with a recommendation from staff. The Board by motion and vote of the majority will award the Benefits Consultant contract, contingent upon the results of the on-site visit, if conducted, to the proposer.

D. Award of Contract

Contract award will be made to the proposer based on the final score, committee interview and recommendation by staff, subject to final negotiations and satisfaction of all requirements.

VIII. GENERAL CONDITIONS

A. **Errors and Omissions**

If a proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, the proposer should immediately notify ACERA of such error in writing and request clarification or modification of the document. This notification must be submitted pursuant to the procedures described in Section VIII, B., titled "Questions Regarding the RFP".

Modifications will be made by addenda issued pursuant to Section VIII, C., titled "Addenda". Such clarifications will be given by written notice to all parties who have expressed an interest in submitting a proposal in response to this RFP, without divulging the source of the request. If a proposer fails to notify ACERA of a known error prior to the final filing date for submission of proposals, or an error that reasonably should have been known, the proposer will assume the risk of proposing. If awarded the contract, the proposer will not be entitled to additional compensation or time by reason of the error or its later correction.

B. **Questions Regarding the RFP**

Proposers requiring clarification of the intent and content of this RFP, or the competitive proposal process, may request clarification only by submitting written questions via e-mail to:

Kathy Foster, Assistant Chief Executive Officer
ACERA
475 14th Street, Suite 1000
Oakland, CA 94612
E-mail: kfoster@acera.org
E-mail: ehardy@acera.org

To ensure a response, questions must be received by Monday, February 20, 2017. Questions received by this date will be answered in writing without identifying the source of the query and distributed on or before February 27, 2017, to all parties who have expressed an interest in submitting a proposal in response to this RFP. The answers will also be posted to ACERA's website.

C. **Addenda**

ACERA may modify any part of the RFP, prior to the date proposals are due, by issuance of an addendum to all recipients of the RFP. Any addenda will be posted to ACERA's website.

D. **Proposer's Costs**

All costs for developing proposals, attending interviews, and complying with all the requirements of this RFP are entirely the responsibility of the proposer and shall not be chargeable to ACERA.

E. Proprietary Information and Public Records Act Requests

Ownership of Proposal:

All rights to information developed, disclosed, or provided in a proposal and its attendant submissions are the property of ACERA, unless the proposer makes specific reference to data that is considered proprietary. To the extent that a proposer claims any copyright, patent, or other intellectual property right in any portion of its RFP, submission of an RFP constitutes the proposer's express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive royalty-free license to ACERA for all such portions, and (b) agreement that ACERA may use any such intellectual property without charge for any lawful purpose in connection with other ACERA projects, including without limitation the creation of derivative works and issuance of sublicenses.

Public Records Act:

i. ACERA is a public agency and, as such, subject to laws regarding disclosure. Per the California Public Records Act (CA Gov. Code 6250 *et seq.*), ACERA will make available to the public the submitted proposal and all correspondence and written questions submitted during the RFP process. However, such disclosure may not be made prior to the date on which ACERA publishes a final Board agenda report recommending award of the contract. Except as otherwise required by law, ACERA will not disclose trade secrets or proprietary financial information submitted in response to the RFP. Any such trade secrets or proprietary financial information, which a proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

ii. Upon a request for records regarding a submitted proposal, ACERA will notify the proposer involved of a specific time for when the records will be made available for inspection. If the proposer, in a timely manner, identifies any "proprietary, trade secret, or confidential commercial or financial" information which the proposer determines is not subject to public disclosure, the proposer will be required fully to intervene, justify such exemption, and secure appropriate injunctive orders for exempting such records from disclosure. ACERA reserves the right to independently determine whether any document is subject to disclosure and to make such information available to the extent required by applicable law, without any restriction.

F. Exceptions to ACERA's Standard Benefits Consultant Services Agreement

Submission of a proposal will confirm that the proposer fully understands the provisions of the *Sample Benefits Consultant Services Agreement* included in this RFP as Attachment D.

To the extent that the proposer takes exception to any part of the *Sample Benefit Consultant Services Agreement*, all such objections shall be stated in the proposal, specifically identifying the objectionable section(s), and including any of the proposer's proposed amendments.

G. Conflicts of Interest

By submitting a proposal, the proposer represents that it is familiar with Section 1090 and Section 87100 *et seq.* of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Proposer represents that its proposal has completely disclosed to ACERA all facts bearing upon any possible interests, direct or indirect, which proposer believes any member of ACERA, or other officer, agent or employee of ACERA or any department presently has, or will have, in a potential agreement, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute grounds for rejection of the proposal or termination of any agreement by ACERA for cause. Proposer agrees that if it enters into a contract with ACERA, it will comply with all applicable conflict of interest codes and policies adopted by ACERA and its reporting requirements.

EXHIBIT 1

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BENEFITS CONSULTANT

PRE-EVALUATION REVIEW SHEET

(Completed by ACERA)

Name of Proposer: _____

A. Minimum Qualifications

- | | | |
|--|---|---|
| 1. Completed and signed <i>Minimum Qualifications Certification</i> (<u>Attachment A</u>)? | Y | N |
| 2. Proposer satisfies all minimum qualifications? | Y | N |

If not, explain: _____

B. Proposal Requirements

The proposal package includes the following:

- | | | |
|---|---|---|
| 1. Required number of six (6) copies and PDF copy of proposal submitted? | Y | N |
| 2. Cover letter signed by the individual(s) authorized to bind the proposer contractually provided? | Y | N |
| 3. Cover letter contains all the required information? | Y | N |

If not, explain: _____

- | | | |
|--|---|---|
| 4. Completed <i>Proposal Questionnaire</i> (<u>Attachment B</u>), including: | | |
| a. Sample materials (e.g., sample reports and presentation)? | Y | N |
| b. Sample service agreement? | Y | N |
| c. Required references (3 current public sector clients and 2 terminated)? | Y | N |
| d. Number of current clients providing benefits consulting services to? | Y | N |
| 5. Completed <i>Fee Proposal</i> (<u>Attachment C</u>) signed by the individual authorized to bind the proposer contractually? | Y | N |

Proposer meets all minimum qualifications and proposal requirements? Y N

Reviewer's Signature

Date

EXHIBIT 2

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BENEFITS CONSULTANT

PROPOSAL EVALUATION SHEET

(Completed by ACERA)

Name of Proposer: _____

| | | Earned Points | Maximum Points |
|---|--|------------------|-------------------|
| A. <u>Proposal Questionnaire Response</u> | | | |
| 1. Organizational Background | | | 25 |
| 2. Benefits Consultant Experience | | | 40 |
| 3. Expertise in Retiree Benefit Plans | | | 40 |
| 4. Client Services and Administration | | | 35 |
| 5. Sample Materials | | | 20 |
| 6. Reporting | | | 20 |
| 7. References and Client List | | | 20 |
| Subtotal: | | | 200* |
| *Must receive a minimum score of 140 to be given further consideration. | | | |
| B. <u>Fee Proposal</u> | | | 40 |
| Subtotal: | | | 240* |
| *The highest scoring proposers after the fee proposal evaluation will be considered finalist proposers as determine by ACERA. | | | |
| C. <u>Finalist Interview</u> | | | 100 |
| D. <u>Total Possible Points</u> | | | 340 |

ATTACHMENT A

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BENEFITS CONSULTANT

MINIMUM QUALIFICATIONS CERTIFICATION

(Completed by proposer)

Name of Proposer: _____

All proposers are required to complete and sign this Attachment, and provide written evidence to substantiate how each qualification is met. If the relevant information is contained in the proposer's response to the *Proposal Questionnaire (Attachment B)*, please cite the specific reference applicable to the following certifications.

I certify the following:

1. The proposer must be a viable business operation in existence in the United States for at least one year as of December 31, 2015.
2. The proposer must have experience in performing analysis of dental, vision and medical plan utilization, rate setting, and gathering relevant trend information for retirees under the age of 65, Medicare eligible and disabled.
3. The proposer must have experience working with public sector employer plans. Retiree experience is a must.
4. The proposer must have experience in meeting strict timelines and deadlines.
5. The proposer must have experience in performing analysis of benefit funding.
6. The proposer must have experience with analyzing and or developing educational materials for distribution to the user group.
7. The proposer must submit sample reports/presentation explaining the results of the analysis, including recommendations of plan design changes and or plan termination, to client and/or client stakeholders.

The business entity offered to satisfy these requirements must be identical to the proposer.

(Signature Page to Follow)

Authorized Signature 1

Title

Printed Name

Date

Authorized Signature 2

Title

Printed Name

Date

ATTACHMENT B

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BENEFITS CONSULTANT

PROPOSAL QUESTIONNAIRE

(Completed by proposer)

Name of Proposer: _____

Address: _____

RFP Contact: _____

Contact Title: _____

Telephone: _____ Email: _____

Authorized Signature 1

Title

Printed Name

Date

Authorized Signature 2

Title

Printed Name

Date

A. ORGANIZATIONAL BACKGROUND

1. Please provide a brief history on your organization (*name*, year founded, ownership, organizational structure, lines of business, whether yours is a “for profit” or “not for profit” enterprise, business license and date first issued, etc.)
2. Please list the headquarters and regional office locations, if any, of your organization (if different than above) and identify the number and type of staff at each location.
3. How many years has your organization been providing benefits consulting services?
4. Within the past three years, have there been any significant developments in your organization (changes in ownership, personnel reorganization, etc.)? If so, please describe.
5. Do you anticipate any significant changes in your firm in the near-term? If so, please explain.

B. EXPERIENCE AND EXPERTISE

1. Please describe your experience in the following areas:
 - a. Performing analysis of dental, medical and vision utilization, rate setting, and trends.
 - b. Working with the public sector, including retiree plans.
 - c. Performing analysis of benefit funding, including establishing funds from which benefits are paid.
 - d. Establishing implicit subsidy amounts.
 - e. Validating prescription drug plans for actuarially equivalency to Medicare Part D prescription drug plans.
 - f. Creating RFPs for dental, vision medical, HRA/HSA.
 - g. Providing examples of experience and successes working with Disease Management and Wellness initiatives, as offered by the medical plans and elsewhere.
 - h. Creating and obtaining Performance Guarantees and achievable measurement standards for health care contracts.
 - i. Analyzing, developing, and presenting educational materials for distribution to the user group.
2. How many public, corporate, and non-profit clients are you providing benefits consulting services to?
3. Which benefit (dental, vision, medical, Medicare Parts A, B, C, & D, HRA/HSA) plans have you worked with for other clients?

4. What is the total number of Benefits Consultants you have employed?
5. What qualifications and experience do you require of your consultants?
6. What has your staff turnover rate been in the past twelve months?
7. Please provide the following information for each staff member that would be assigned to the account for the Alameda County Employees' Retirement Association contract:
 - Name and Title
 - Years of relevant public sector, retiree, Medicare experience with your firm, prior to joining your firm, and total years
 - Qualifications, particular emphasis or expertise, education, etc.
 - Average number of clients per Consultant

C. CLIENT SERVICES AND ADMINISTRATION

1. Program Features
 - a. Please describe your Benefits Consultant program and the scope of services you propose for this assignment.
 - b. Please provide three (3) cases of Benefits Consulting examples illustrating your services.
 - c. How do your consultants gain access to account-specific benefit information?
 - d. What is your policy and procedures for compliance with HIPAA privacy rules?

D. REPORTING

1. What kind of data do you capture?
2. Please describe your reporting capabilities concerning utilization statistics.
3. Please describe your capabilities in reporting performance statistics.
4. Please provide samples of client reports and presentation.

E. IMPLEMENTATION/PERFORMANCE GUARANTEES/INSURANCE

1. Please include a timeline, indicating recommended tasks, timeframes and responsibilities.
2. Please describe your performance standards and guarantees, if any, you would offer ACERA if awarded the contract.
3. Please describe the professional and/or general liability insurance carried by your firm. Include the type of insurance, acts or liabilities covered, limits per occurrence, and total policy limits. If awarded a contract, you will be required to provide proof of coverage as described in your response to this questionnaire.
4. Please provide a sample service agreement as an Appendix to this Questionnaire.

F. REFERENCES AND CLIENT LIST

1. List your three largest public sector pension fund and/or retiree clients where your firm manages retiree benefits who may be contacted as references. For each reference listed, include client name; address; name, title, and telephone number of contact person; number of members; and length of time as your client.
2. List two clients that have terminated services within the last two years and the reasons for the terminations. For each client listed, include client name; address; name, title, and telephone number of contact person; number of members; and length of time as your client.
3. Provide the number of clients that you are currently providing Benefits Consulting services to, and the average number of clients per consulting team.

ATTACHMENT C

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BENEFITS CONSULTANT

FEE PROPOSAL

(Completed by proposer)

Name of Proposer: _____

Proposers are required to submit their fees as prescribed below. Fees, as submitted, must include all costs associated with the consulting services, including reporting, communications, travel, etc. If awarded a contract as a result of this RFP, the successful proposer's fees as proposed shall be **guaranteed** for the term of the contract.

PROPOSED ANNUAL FEE FOR ACERA ACCOUNT:

Authorized Signature 1

Title

Printed Name

Date

Authorized Signature 2

Title

Printed Name

Date

Federal I.D. Number: _____

ATTACHMENT D

Sample Benefits Consultant
Services Agreement

CONSULTANT SERVICES AGREEMENT
BETWEEN
ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
AND
CONSULTANT COMPANY NAME

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- Exhibit B- Responsible Persons List (Consultant)
- Exhibit C - Authorized Persons List (ACERA)
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- Exhibit E - ACERA Conflicts of Interest Code

This BENEFITS CONSULTING SERVICES AGREEMENT (“Agreement”) is entered into and effective as of _____, 2017 by and between the ALAMEDA COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION (“ACERA”) and _____ (hereinafter referred to as “CONSULTANT”).

RECITALS

WHEREAS, ACERA is a duly established and existing public retirement system created under the County Employees Retirement Law of 1937, California Government Code section 31450 et seq.; and

WHEREAS, in 2017 the ACERA Board of Retirement desired to engage a benefits consultant to provide benefits consulting services relative to the ACERA-sponsored Medical, Dental and Vision plans for retired members, beneficiaries and dependents in order to enhance the value of the Medical, Dental and Vision benefits offered to our retirees and to substantiate the premiums being paid; and

WHEREAS, on or about February 6, 2017, ACERA issued a Request for Proposal (“RFP”) for such services which is incorporated herein by this reference; and

WHEREAS, on or about March 6, 2017, CONSULTANT submitted a proposal in response to the RFP and expressed its desire to perform the benefits consulting services, and represented to ACERA that it was qualified to perform the aforesaid services; and

WHEREAS, ACERA determined, based upon CONSULTANT’s proposal submitted in response to the RFP and ACERA’s due diligence that CONSULTANT was qualified to perform the consulting services regarding ACERA’s Medical, Dental and Vision benefit plans.

WHEREAS, ACERA now desires to receive the benefits and communications consulting services described in **Exhibit A** [“Statement of Services”]

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

1. **Definitions; Gender and Number.** For purposes of this Agreement, capitalized terms shall have the meanings set forth in this **Section 1**. In this Agreement, unless the context otherwise requires, the masculine, feminine and neutral genders and the singular and plural include one another.

“ACERA” means the Alameda County Employees’ Retirement Association, an independent public pension fund established under the authority of the County Employees’ Retirement Law of 1937 (California Government Code sections 31450 et seq.).

“ACERA Records” has the meaning set forth in Section 24 herein.

“Add Services” means services approved by ACERA pursuant to Section 3 that are not included within the scope of **Exhibit A**.

“Agents” means any of CONSULTANT’s employees, agents, or representatives providing services in connection with this Agreement.

“Agreement” means this Consultant Services Agreement entered into by and between ACERA and CONSULTANT.

“Authorized Persons” has the meaning set forth in Section 7 herein.

“Board” means the nine-member Board of Retirement, which controls and directs the benefits managed by ACERA.

“Claims” shall have the meaning set forth in Section 6 herein.

“Confidential Information” has the meaning set forth in Section 26 herein.

“CONSULTANT” means _____.

“Consulting Services” means those services listed in Exhibit A, Statement of Services.

“Deliverable” means any tangible product (other than software) written, developed or prepared in whole or in part by CONSULTANT for ACERA under the terms of this Agreement and/or the Statement of Services attached as **Exhibit A**.

“Effective Termination Date” means the date on which work under this Agreement will formally cease, as specified in any Notice of Termination delivered by one party to the other.

“Event of Default by ACERA” has the meaning set forth in Section 12 herein.

“Indemnitee” has the meaning set forth in Section 16 herein.

“Indemnitor” has the meaning set forth in Section 16 herein.

“Legal Requirements” means all foreign, international, federal, state, county and local laws, regulations, ordinances, registrations, filings, approvals, authorizations, consents and examinations which may apply to CONSULTANT or ACERA in relation to their performance under this Agreement.

“Notice of Claim” has the meaning set forth in Section 16 herein.

“Notice of Termination for Convenience” means a notice delivered by one party to the other when the notifying party wishes to terminate this Agreement for its convenience.

“Notice of Termination for Default” means a notice delivered by one party to the other when the notifying party wishes to terminate this Agreement due to a default by the other party.

"Member Records" means any records relating to ACERA's members, beneficiaries, or investments to which CONSULTANT or its Agents may be exposed when performing under this Agreement, including Protected Health Information (as defined in Section 26.D.(i).)

“Responsible Persons” means those persons listed on **Exhibit B**, the Responsible Persons list, and any other person or persons who replace or are in addition to such persons and who have been approved in writing by ACERA.

“Standard of Care” has the meaning set forth in Section 4 herein.

“Statement of Services” means the document, which describes the manner and form of the consulting services, which CONSULTANT will provide to ACERA pursuant to this Agreement, a copy of which is attached hereto as **Exhibit A**.

“Term” has the meaning set forth in Section 10 herein.

“Termination Invoice” means the final invoice itemizing CONSULTANT’s prorated fees for the relevant billing period, which CONSULTANT shall submit to ACERA no later than thirty (30) calendar days following the Effective Termination Date.

“Transition Period” means a period of up to ninety (90) calendar days following the Effective Termination Date during which period, at the election of ACERA, CONSULTANT

continues to perform the Consulting Services required under this Agreement in order to facilitate an orderly transition of the consulting services to a successor.

2. Appointment as Consultant. Subject to the terms, conditions and covenants of this Agreement, ACERA hereby appoints CONSULTANT to provide the consulting services as described in this Agreement and in **Exhibit A** to this Agreement. CONSULTANT hereby accepts such appointment and agrees to execute its duties according to the terms, conditions and standards set forth in this Agreement.

3. Description of Services

Benefits CONSULTANT shall provide to ACERA the consulting services described in the Statement of Services, attached hereto as **Exhibit A**, according to the terms, conditions and standards set forth herein. CONSULTANT agrees that ACERA may direct it to perform work outside the scope of the Consulting Services ("Add Services"). However, in no event shall CONSULTANT commence such Add Services absent ACERA's express written approval including the scope, schedule and cost of such added services. In the absence of such written express approval, such work shall be deemed a gratuitous effort by CONSULTANT and CONSULTANT shall have no claim against ACERA for any compensation for such work.

A. In performance hereunder, CONSULTANT shall render the Services and deliver the required reports and other deliverables ("Deliverables") in accordance with the terms and conditions set forth in the Statement of Services. CONSULTANT shall also prepare and submit such further reports of its performance and its progress as ACERA may reasonably request from time to time.

B. Acceptance/Rejection of Deliverables. ACERA shall have the right to inspect, accept or reject, at its sole discretion, any and all Deliverables submitted hereunder. ACERA agrees to and shall specify the nature and scope of the deficiencies in such Deliverable within sixty (60) calendar days of receipt of each Deliverable submitted to ACERA. CONSULTANT shall, upon receipt of such rejection, act to correct any identified deficiencies. The failure of ACERA to provide such a notice of rejection of a Deliverable within the prescribed period shall constitute acceptance by ACERA of such Deliverable.

4. **Standard of Care.** CONSULTANT acknowledges that it will have access to ACERA's Confidential Information and strategic goals and is appointed to a position of utmost trust and confidence and therefore is a fiduciary under this Agreement and is bound by all of the obligations of a fiduciary. As such, CONSULTANT shall discharge each of its duties and exercise each of its powers under this Agreement with the care, skill, prudence and diligence prevailing in the consulting industry and which a prudent person acting in a like capacity and familiar with consulting for benefits would use in the conduct of a like enterprise with like aims, in conformance with the California Constitution, Article 16, Section 17 and California Government Code section 31595 ("Standard of Care"). CONSULTANT shall cause any and all of its Agents, including but not limited to the Responsible Persons, to exercise the same Standard of Care.

5. **Limitations on Authority.** Neither the CONSULTANT nor its Agents and Responsible Persons shall enter into any agreement or incur any obligations on ACERA's behalf, or commit ACERA in any manner without ACERA's prior written consent.

6. **Performance of Consulting Services.**

A. **Independent Contractor Status.** In performing under this Agreement, CONSULTANT shall at all times act in the capacity of an independent contractor. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between CONSULTANT and ACERA. Nothing in this Agreement shall cause ACERA to be responsible for any action, omission or inaction of CONSULTANT. It is understood by the parties that no duty on the part of ACERA shall arise to pay any sums on behalf of or for the benefit of CONSULTANT relating to withholding taxes, unemployment compensation insurance, disability insurance, Social Security contributions or any other similar amounts or contributions customarily payable by virtue of an employment relationship. CONSULTANT shall be responsible for all such obligations described in the preceding sentence, and shall be responsible for making any required reports or disclosures to federal, state or local taxing authorities regarding CONSULTANT's income and

expenses. CONSULTANT shall defend, indemnify and hold harmless ACERA, its directors, officers, agents, employees, and assigns from any and all liabilities, costs, damages, losses, claims, penalties, actions, proceedings, suits, investigations, demands, assessments, judgments and expenses (including, without limitation, all attorney's fees and costs) (collectively, "Claims") arising from CONSULTANT's failure to make such payments and reports in a timely and proper fashion.

B. Responsible Persons. CONSULTANT acknowledges and agrees that in entering into this Agreement ACERA has relied upon CONSULTANT's representations and promises to assign those persons designated herein as the Responsible Persons to the performance of the Consulting Services. These Responsible Persons are listed at **Exhibit B**. CONSULTANT shall not change the Responsible Persons ("Change of Responsible Person") without the prior written consent of ACERA. For purposes of this **Section 6.B.**, any material decrease in the availability, duties, responsibilities or services performed by a Responsible Person shall constitute a Change of Responsible Person.

7. Authorized ACERA Personnel. Attached as **Exhibit C** is a list of authorized persons who are permitted to advise, inform and direct CONSULTANT on ACERA's behalf ("Authorized Persons"). Except as authorized in writing in advance by ACERA's *Assistant Benefits Manager, Assistant Chief Executive Officer, or Chief Executive Officer*, CONSULTANT shall not furnish any information related to the services it provides under this Agreement to any ACERA employee, representative or other person not specifically named on the then current list of Authorized Persons. Any changes to the list of Authorized Persons shall be made in writing to CONSULTANT and signed by ACERA's Chief Executive Officer or designee and shall be incorporated into the Agreement as an amendment to **Exhibit C**. Until notified of any such change, CONSULTANT may rely on and act upon instructions and notices received from an Authorized Person identified on the then current list furnished by ACERA. If CONSULTANT receives instructions or notices from a source other than an Authorized Person, CONSULTANT shall not comply with them and shall immediately notify ACERA's *Assistant Chief Executive Officer* in writing of such unauthorized instructions or notices.

8. Compensation for Services.

A. Service Fee. ACERA shall pay CONSULTANT the Service Fee for the Consulting Services performed under this Agreement pursuant to **Exhibit A**, Statement of Services. The Service Fee shall include any and all direct expenses and any and all overhead or indirect expenses incurred by CONSULTANT in performing these services, including, but not limited to, travel expenses, costs of production of reports, telephone and fax expenses.

B. Invoices. The agreed monthly payment referenced in **Exhibit A** to the Agreement shall be invoiced on or before the 7th of each month. The monthly invoice shall reflect the number of hours and work performed by CONSULTANT during the invoice period. In the event that ACERA approves the furnishing of Add Services pursuant to **Section 3**, CONSULTANT shall list in its monthly invoice an itemized breakdown of Add Services charged. CONSULTANT shall not be entitled to be paid compensation for Add Services in advance of such services rendered.

C. No Placement Fees. CONSULTANT confirms that no placement fees have been paid by CONSULTANT in connection with ACERA's hiring of CONSULTANT.

D. Remunerations to CONSULTANT. Consultant represents and warrants that, to its actual knowledge, neither it nor any of its affiliates, officers, employees, agents or representatives received or will receive any remuneration or thing of value directly or indirectly from benefits vendors in connection with the CONSULTANT's recommendations to ACERA or otherwise, including a finder's fee, cash solicitation fee, or a fee for consulting, lobbying or otherwise, except as disclosed in writing to ACERA.

9. Seminars and Training Programs. In the event CONSULTANT conducts seminars, training sessions or similar events, which are generally made available to all of CONSULTANT's clients, ACERA shall be invited to attend upon the same terms and conditions as such other clients. At ACERA's election, all Authorized Persons and members of ACERA's Board of Retirement shall be permitted to attend such seminars, training sessions or similar events.

10. Term. Notwithstanding any delay in execution of this Agreement, the term of this Agreement shall commence on the date first set forth above and continue for a period of one (1)

year. It is the parties' intent that all terms and conditions of this Agreement shall be deemed fully applicable to all services furnished within the contract term and have retroactive effect to the effective date.

11. Termination for ACERA's Convenience. ACERA may terminate this Agreement without cause and for any reason whatsoever, at any time by delivering to CONSULTANT a written Notice of Termination for Convenience specifying the Effective Termination Date. The Effective Termination Date shall be no earlier than thirty (30) calendar days after such Notice of Termination for Convenience is delivered to CONSULTANT. In no event shall ACERA's termination of this Agreement under this **Section 11** be deemed a waiver of ACERA's rights or remedies against CONSULTANT for damages resulting from any default by CONSULTANT, which occurred prior to the Effective Termination Date.

12. Termination by ACERA for Default. Upon the occurrence of an Event of Default (as defined below) by CONSULTANT, ACERA may immediately terminate this Agreement by delivering to CONSULTANT a written Notice of Termination for Default, which specifies the Effective Termination Date. For purposes of this **Section 12**, an "Event of Default by CONSULTANT" shall mean any one, or more, of the following:

A. If CONSULTANT fails to perform or cause to be performed the Consulting Services and subsequently fails to cure such default within ten (10) calendar days (or such longer period as ACERA may authorize in writing) after receiving notice from ACERA of such default;

B. If CONSULTANT defaults, breaches or violates any provision of this Agreement, other than as set forth in **Section 12(A)** above, and fails to cure such default, breach or violation, at CONSULTANT's sole expense, within five (5) calendar days (or such longer period as ACERA may authorize in writing) after receipt of written notice from ACERA of such default, breach or violation;

C. If there is a willful Change of Responsible Persons which has not been authorized by ACERA (*i.e.*, involuntary termination) and CONSULTANT fails to cure such default within five (5) calendar days of receipt of notice from ACERA of such default;

D. Without notice or opportunity to cure, if CONSULTANT fails to perform according to this Agreement following receipt of more than two (2) prior notices and failure to cure pursuant to paragraphs (A), (B) or (C) of this **Section 12**; or Without notice or opportunity to cure if CONSULTANT (i) breaches any of the warranties, representations or covenants contained in **Section 18** below; (ii) files any petition or action for relief under any bankruptcy, moratorium, receivership, insolvency, reorganization, or other similar debtor relief law from time to time in effect affecting the rights of creditors generally; (iii) there is a petition for bankruptcy filed against the CONSULTANT by any of the CONSULTANT's creditors; (iv) has appointed a custodian, receiver, trustee (or other similar official) to take possession, custody or control of any material part of the properties or assets of CONSULTANT, or CONSULTANT makes a general assignment for the benefit of creditors or any material portion of CONSULTANT's assets is attached, executed upon or judicially seized in any manner; (v) is indicted or criminally charged, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, theft, securities law violations, bankruptcy law violations or any act or omission involving moral turpitude; or (vi) attempts or purports to assign this Agreement or any portion hereof, or any of its rights or obligations hereunder, without obtaining ACERA's prior written consent; (vii) loses any license or permit required by any Legal Requirement; or (viii) fails to procure or maintain the insurance policies described in **Section 17** below.

If ACERA terminates this Agreement for default pursuant to this **Section 12**, ACERA shall be entitled to recover from CONSULTANT all damages resulting from such default subject to proof. Nothing contained in this **Section 12** shall limit or affect ACERA's right to terminate this Agreement for convenience at any time, pursuant to **Section 11** above, or limit its rights and remedies for such default and breach.

13. Force Majeure. CONSULTANT shall not be terminated for default, pursuant to **Section 12** above, if CONSULTANT's failure to perform under this Agreement arises solely from causes beyond the reasonable control of the other party, the effects of which could not be reasonably anticipated or diminished with reasonable prudence and without the fault or negligence of such

party. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of any foreign, international, federal or state government (including all subdivisions thereof) in such government's sovereign capacity, fires, floods and earthquakes.

14. Rights, Remedies and Responsibilities upon Termination. In the event of any termination of this Agreement, all of the terms and conditions herein shall continue to apply through the Effective Termination Date and through any Transition Period. The following provisions shall also apply to any termination of this Agreement:

A. Post-Termination Responsibilities. If either party terminates this Agreement, and unless otherwise expressly directed by ACERA, CONSULTANT shall, subject to any Transition Period and CONSULTANT's obligations under paragraph (D) of this **Section 14**, take all necessary steps to stop services under this Agreement on the Effective Termination Date.

B. Termination Invoice. Within thirty (30) calendar days after the Effective Termination Date of this Agreement, CONSULTANT shall submit to ACERA, in the form and with any reasonable certifications as may be prescribed by ACERA, CONSULTANT's Termination Invoice. The Termination Invoice shall be based upon CONSULTANT's hourly rate for work actually performed but for which CONSULTANT has not been compensated up to the Effective Termination Date.

C. Termination Date. However, in no event shall CONSULTANT's invoice request payment in an amount greater than the agreed monthly payment, even if CONSULTANT has performed services in excess of the amount of the monthly payment. Upon CONSULTANT's failure to submit its Termination Invoice within the time allowed, ACERA may determine, on the basis of information available to it, the amount, if any, due to CONSULTANT and such determination shall be deemed final. Subject to the provisions of paragraph (D) below, after ACERA has made such determination, or after CONSULTANT has submitted its Termination Invoice, ACERA shall authorize payment to CONSULTANT. In the event of a dispute over the Service Fee due CONSULTANT, ACERA's good faith determination shall be final and binding on the parties hereto.

D. Payment Withheld for Default. Payment for Consulting Services, which ACERA received prior to any default, breach or violation, will be determined according to the provisions of paragraph (B) above. Payment for Consulting Services provided during any cure period shall only be due and owing if and after CONSULTANT has timely cured the default, breach or violation, to the satisfaction of ACERA. No payment for Consulting Services provided during any cure period shall be due and owing if CONSULTANT has failed to timely cure the default, breach or violation, to the satisfaction of ACERA.

E. Good Faith Transfer. Upon any termination of this Agreement by either party and to the extent determined in writing by ACERA in its sole discretion, CONSULTANT shall continue to serve as CONSULTANT hereunder for a period not to exceed ninety (90) calendar days and shall be paid a Service Fee in the amount then in effect until the services provided hereunder are transferred or until otherwise terminated by ACERA. CONSULTANT shall cooperate with ACERA to effect a smooth and orderly transition of the Consulting Services and shall transfer all applicable ACERA Records within thirty (30) calendar days after any Effective Termination Date of this Agreement. Upon termination of this Agreement, CONSULTANT shall retain all copies of ACERA Records (as that term is defined in **Section 24** below) according to the record retention provisions set forth in **Section 24** below or as otherwise directed in writing by ACERA.

F. Cumulative Nature of Rights and Remedies. The rights and remedies of the parties provided by this **Section 14** are not exclusive, but cumulative and in addition to any other rights and remedies provided by law, in equity or under any of the provisions of this Agreement.

15. Indemnification.

A. Indemnification of ACERA. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless ACERA, its directors, officers, affiliates, fiduciaries (excluding CONSULTANT), employees, representatives, assigns, and agents, from and against any and all Claims, arising from, incurred, in connection with or relating to any negligent act, omission or willful misconduct in the performance of its duties, or a violation of this Agreement, by CONSULTANT or any of its Agents.

B. Indemnification of CONSULTANT. To the fullest extent permitted by law, ACERA shall indemnify, defend and hold harmless CONSULTANT, its officers, affiliates, fiduciaries (excluding ACERA), employees, representatives and agents, from and against any and all Claims, arising from, incurred, in connection with or relating to any negligent act, omission, willful misconduct, or breach, default or violation of this Agreement by ACERA or any of its Agents, but excluding any Claims arising from, incurred in connection with, or relating to the willful misconduct or negligence of CONSULTANT.

C. Survival. This **Section 15** shall survive any termination of this Agreement.

16. Mechanics of Indemnity.

A. The party seeking indemnification (the “Indemnitee”) shall promptly, and in any event within sixty (60) calendar days after acquiring knowledge of any Claim, give written notice to the proposed indemnifier (the “Indemnitor”) of the relevant Claim (“Notice of Claim”). The Indemnitor shall, at its own expense, promptly defend, contest or otherwise protect the Indemnitee against any Claims.

B. In the event that any Indemnitor shall undertake to compromise or defend any Claim, the Indemnitor shall notify the Indemnified Party promptly, and in any event within thirty (30) calendar days after the receipt of the Notice of Claim, of its intention to do so. If the Indemnitor undertakes the defense of such Claim, the Indemnitee shall have the right to participate in the defense of the Claim at its sole expense. The Indemnitor shall not enter into a settlement that may affect the Indemnitee’s rights or interest without the Indemnitee’s prior written approval. The Indemnitor shall have the right to control the defense of any such Claim unless it is relieved of its liability hereunder with respect to such defense by the Indemnitee. The Indemnitee shall cooperate in said defense, including without limitation, the services of employees of such Indemnitee who are familiar with the transactions out of which any such Claim may have arisen.

C. In the event that an Indemnitor, after receiving a timely Notice of Claim, fails to take timely action to defend the same, the Indemnitee shall have the right to defend such Claim by counsel of its own choosing but at the cost and expense of the Indemnitor. In the event that

the Indemnitee defends a Claim, it shall not compromise or settle any such Claim without the written consent of the Indemnitor, such consent not to be unreasonably withheld or delayed.

17. Insurance. Without limiting CONSULTANT's indemnity obligations under **Sections 15** and **16** above, for the duration of this Agreement, CONSULTANT shall maintain at its own expense the insurance policies described in this **Section 17** to cover CONSULTANT's business activities. Such insurance shall be provided by insurer(s) rated A-X, Class XII or better by A.M. Best & Company, or otherwise approved in writing by ACERA. On or before the commencement date of this Agreement, evidence of such insurance shall be provided to ACERA's Chief Counsel in the form of a Certificate of Insurance. Such certificate shall describe the nature, amount and term of the insurance provided. CONSULTANT shall notify ACERA as soon as possible, but no later than thirty (30) calendar days after CONSULTANT first becomes aware of any proposed or actual termination, cancellation, or a significant change in the terms of its insurance coverage. Failure by CONSULTANT to procure or maintain the insurance described in this **Section 17** shall constitute a material breach upon which ACERA may immediately terminate this Agreement for default without opportunity to cure, pursuant to **Section 12** above.

A. Commercial General Liability. CONSULTANT shall provide and maintain a Commercial General Liability insurance policy, which names ACERA as an additional insured. Such policy shall cover liability for bodily injury and property damage arising out of CONSULTANT's business activities and shall include, without limitation, endorsements for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage and Personal Injury coverages with a limit of at least Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of at least Five Million Dollars (\$5,000,000).

B. Workers' Compensation. CONSULTANT shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to CONSULTANT's employees for injuries arising from or related to any services provided to ACERA under this Agreement. CONSULTANT shall provide and maintain a program of Workers' Compensation and Employer's

Liability insurance, in an amount and form to meet all applicable statutory requirements, to cover all of CONSULTANT's employees.

C. Errors and Omissions. CONSULTANT shall provide and maintain an Errors and Omissions Policy covering liability arising from or relating to any error or omission by CONSULTANT or its Agents in performing under this Agreement with a per occurrence limit of at least Two Million Dollars (\$2,000,000) and an annual aggregate of at least Two Million Dollars (\$2,000,000).

18. CONSULTANT's Representations, Warranties and Covenants. CONSULTANT acknowledges, represents, warrants, covenants and agrees that:

A. Authorization. CONSULTANT has completed, obtained and performed all registrations, authorizations, licenses, consents or examinations required by any government or government agency regarding any Consulting Services to be performed by CONSULTANT pursuant to this Agreement. This Agreement has been duly authorized, validly executed and delivered by CONSULTANT and constitutes the legal, valid and binding agreements and obligations of CONSULTANT, enforceable against CONSULTANT in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity. CONSULTANT is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any agreement, that would be breached or violated by CONSULTANT's execution, delivery or performance of this Agreement.

B. Quality of Services. The Consulting Services, which CONSULTANT provides or is required to provide in all respects hereunder, shall meet the requirements and standards set forth in the body of this Agreement including the Standard of Care. CONSULTANT shall promptly correct any errors or omissions in providing such Consulting Services, all at its own expense. Nothing contained herein shall limit or prevent ACERA from proceeding pursuant to **Sections 11 or 12** above.

With respect to the Deliverables, CONSULTANT warrants that at the time of its receipt by ACERA, each Deliverable will substantially conform to the specifications for it in the

Agreement. CONSULTANT shall correct any and all work that does not comply with the Statement of Services prior to Completion. After completion of work, if ACERA finds that there has been defective workmanship, ACERA shall notify CONSULTANT within fifteen (15) calendar days of discovery of the defective workmanship. In the event of discovery by ACERA of a non-conforming Deliverable, ACERA will allow CONSULTANT five (5) calendar days to cure the defect. If CONSULTANT is unable to cure the non-conformity within a reasonable time, ACERA may return the Deliverable and receive a refund of the amount paid for the Deliverable.

Each Deliverable shall be deemed accepted by ACERA, unless written notice of non-conformity is received by CONSULTANT within fifteen (15) calendar days of receipt of the Deliverable.

C. Contingent Fees. No person or selling agency has been employed or retained to solicit or secure this Agreement under any agreement or understanding for compensation, whether as a commission, percentage, brokerage, or contingent fee, or otherwise except bona fide employees of CONSULTANT or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. In the event of any breach or violation of this warranty, ACERA shall have the right to immediately terminate this Agreement for default and, in ACERA's sole discretion, to deduct from CONSULTANT's compensation under this Agreement, or otherwise recover, the full amount of such compensation, commission, percentage, brokerage or contingent fee.

D. Gratuities. No gratuities in the form of gifts, entertainment or otherwise, were offered or given by CONSULTANT to any officer, fiduciary, agent or employee of ACERA or the County of Alameda. CONSULTANT covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the acquisition, performance and/or continuation of this Agreement.

E. Conflicts of Interest With Persons Related to ACERA. No ACERA employee or fiduciary whose position with ACERA enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person, is or will be employed or compensated in any capacity by CONSULTANT, or does or will

have any direct or indirect financial interest in this Agreement. CONSULTANT shall immediately advise ACERA if any member of the ACERA Board or key staff or any elected or appointed official of Alameda County, or any person claiming to represent or have influence with the Board or with any member of the Board contacts CONSULTANT with respect to a financial transaction or solicitation which is not solely on behalf of ACERA's business with CONSULTANT, and shall deliver to ACERA on or before March 30th of each year, the Fair Political Policies Commission Form 700. CONSULTANT hereby acknowledges receipt of and hereby agrees to ACERA's Conflicts of Interest Policy and Code attached hereto as **Exhibit D** and **Exhibit E** and shall not cause or contribute to a breach or violation of such policy or code.

F. Conflicts of Interest Arising From Other Business Activities. CONSULTANT represents and warrants that it has implemented appropriate procedures necessary to assure that no actual conflict of interest arises during the term of this Agreement, and that CONSULTANT shall at all times properly discharge its duty of loyalty owed to ACERA as a result of CONSULTANT acting as a fiduciary for ACERA in accordance with the terms of this Agreement. CONSULTANT shall inform ACERA in writing of any change in these procedures within five (5) calendar days after the change is effective.

G. Changes. CONSULTANT shall notify ACERA in writing within ten (10) business days of any of the following changes: (1) CONSULTANT becomes aware that any of its representations, warranties and covenants set forth in this Agreement cease to be true at any time during the term of this Agreement; (2) there is any Change in Control of CONSULTANT; or (3) CONSULTANT becomes aware of any other material change in CONSULTANT's business organization, including without limitation, the filing for bankruptcy relief.

H. CONSULTANT's Agents. The Responsible Persons or the Agents of CONSULTANT who will be responsible for performing under this Agreement are individuals who are duly qualified to perform the Consulting Services and experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any

consent decree with respect to any matter involving breach of trust, breach of fiduciary duty, fraud, theft, securities law violations, bankruptcy law violations or any act or omission involving moral turpitude.

19. ACERA's Representations, Warranties and Covenants. ACERA represents, warrants, and covenants that this Agreement has been duly authorized, validly executed and delivered by ACERA and constitutes the legal, valid and binding agreements and obligations of ACERA enforceable against ACERA in accordance with its terms. ACERA is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any agreement that would be breached or violated by the execution, delivery or performance of this Agreement by ACERA. ACERA understands that CONSULTANT has relied upon the foregoing acknowledgment, representations, warranties, covenants and agreements and that the same constitutes a material inducement to CONSULTANT's decision to enter into this Agreement.

20. Compliance with Legal Requirements. In performing under this Agreement, CONSULTANT and ACERA agree to comply with all Legal Requirements, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference.

21. Assurance of Compliance with Civil Rights Laws. CONSULTANT hereby assures ACERA that at all times during the term of this Agreement CONSULTANT shall comply with Subchapter VI of the Civil Rights Act of 1964 (42 U.S. Code Sections 2000(e) through 2000(e)(17)), to the end that no person shall, on grounds of race, creed, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity undertaken pursuant to this Agreement.

22. Nondiscrimination in Employment. CONSULTANT shall take all necessary action to ensure that its job applicants are employed, and that its employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, sexual orientation, disability, medical condition, ancestry or national origin. For purposes of this **Section 22**, the term "employment" shall include, but not be limited to the following:

employment, upgrading, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

23. Replacement of CONSULTANT's Agents. Upon request by ACERA, CONSULTANT shall replace any Responsible Person or Agent assigned to perform services under this Agreement who ACERA determines in its sole discretion, is unable to effectively perform the Consulting Services as required by this Agreement.

24. Record Retention and Inspection.

A. Record Maintenance. CONSULTANT shall keep and maintain all records related to ACERA, including but not limited to any pertinent transaction, activity, time sheets, cost, billing, accounting and financial records, proprietary data, electronic recordings, and any other records created in connection with this Agreement or the performance of the Consulting Services ("ACERA Records"). CONSULTANT shall keep and maintain ACERA Records for no less than seven (7) years following the termination of this Agreement at which time they will become subject to CONSULTANT's normal retention policy.

B. Record Review and Audit. CONSULTANT agrees that ACERA or any duly authorized representative of ACERA shall have access to and the right to examine, audit, excerpt, copy or transcribe any ACERA Records at any time during the term of this Agreement, or for as long as the records are retained pursuant to CONSULTANT's normal retention policy. At ACERA's request, and on reasonable notice, CONSULTANT shall make such records available for review during normal business hours at CONSULTANT's closest business office to ACERA. CONSULTANT shall make the persons responsible for creating and maintaining ACERA Records available to ACERA during such review for the purpose of responding to ACERA's inquiries provided they are still employed.

25. Use of ACERA Property.

CONSULTANT shall not use ACERA's premises, property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

26. Confidentiality.

A. Confidential Information. CONSULTANT shall treat, and cause its accountants, attorneys, employees, Agents and other representatives to treat, as confidential all documents and information relating to ACERA ("Confidential Information") furnished by ACERA in connection with the transactions contemplated hereby and shall not release any such Confidential Information from its immediate control without the prior written consent of ACERA.

However, if such Confidential Information (i) becomes generally available to the public other than as a result of a disclosure by CONSULTANT, (ii) becomes lawfully available to CONSULTANT on a non-confidential basis from a third party which is not under an obligation of confidentiality with respect thereto, or (iii) consists of information independently developed by CONSULTANT, it shall not be Confidential Information. In the event CONSULTANT, Responsible Persons or any of representatives or Agents of CONSULTANT is requested or required by any federal, state, local or foreign governmental or regulatory entity (or any department, agency, authority or political subdivision thereof) to disclose any Confidential Information supplied to it in the course of its dealings hereunder, CONSULTANT will provide ACERA with prompt notice of any such request or requirement so that ACERA may seek an appropriate protective order from a court of competent jurisdiction. If no such protective order has been obtained and CONSULTANT or any of its agents is, in the reasonable opinion of its counsel, compelled to disclose any Confidential Information, CONSULTANT may disclose such Confidential Information, provided that notice of such intended disclosure first be given to ACERA.

B. Third-Parties. Nothing in this Agreement shall be construed as prohibiting CONSULTANT from disclosing Confidential Information to third-parties engaged by CONSULTANT to assist CONSULTANT in its obligations under this Agreement, provided ACERA approves of the third-party engagement (which approval shall not be unreasonably withheld), and such third party agrees in writing to be bound by the terms of this **Section 26** for the benefit of ACERA.

C. Other Confidential Data. CONSULTANT shall maintain the confidentiality of all ACERA Records. CONSULTANT shall indemnify, defend and hold harmless ACERA and its

directors, members, employees, officers, representatives, assigns and agents from and against any Claims arising from or relating to the unauthorized disclosure of any ACERA records by CONSULTANT or its Responsible Persons or Agents.

D. Member Records. CONSULTANT acknowledges that when performing under this Agreement, CONSULTANT may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. CONSULTANT will maintain the confidentiality of all Member Records according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality. If ACERA determines that CONSULTANT is a “business associate” as defined in section 160.103 of the Final Privacy Rules issued by the Department of Health and Human Services (“HHS”) in accordance with the Health Insurance Portability and Accountability Act of 1996, as amended, it shall notify CONSULTANT. CONSULTANT agrees to enter into a “business associate contract” with ACERA which Contract will, at a minimum:

- (i)** Describe the permitted and required uses and disclosure of protected health information (as defined in 45 CFR 164.501, “PHI”) by CONSULTANT;
- (ii)** Prohibit CONSULTANT from disclosing PHI beyond the permitted use and disclosures;
- (iii)** Require CONSULTANT to implement safeguards to prevent the improper use and disclosure of PHI;
- (iv)** Require CONSULTANT to report to ACERA any improper use or disclosure of PHI;
- (v)** Require CONSULTANT make PHI available in compliance with member’s rights to access, amend, and receive an accounting related to such information;
- (vi)** Require CONSULTANT to return or destroy PHI upon termination of ACERA’s business relationship with CONSULTANT;
- (vii)** Require CONSULTANT to make its books and records available to the

HHS for purposes of determining ACERA's compliance with HIPAA;

- (viii) Impose the above standards on any and all of CONSULTANT's subcontractors; and
- (ix) Authorize ACERA to terminate its contract with CONSULTANT for cause if CONSULTANT violates a material term of the business associate contract.

E. Survival. This **Section 26** shall survive the termination of this Agreement.

27. No Third-Party Beneficiary. Subject to **Section 26(B)** above, all of the understandings, agreements, representations and warranties contained herein are solely for the benefit of ACERA and CONSULTANT and there are no other parties who are intended to be benefited, in any way whatsoever by this Agreement.

28. Dispute Resolution. Disputes arising out of or relating to this Agreement, other agreements between the parties, or any other relationship involving CONSULTANT and ACERA shall be resolved by good faith negotiations between representatives of the parties with decision-making authority. If either party determines that the dispute cannot be resolved through informal negotiation then the dispute shall be submitted to non-binding mediation. The site of the mediation and the selection of a mediator shall be determined by mutual agreement of the parties. If the dispute is not resolved through mediation within sixty (60) calendar days following the dispute.

The parties may also agree to resolve disputes arising out of or relating to this contract through binding arbitration, if the parties agree in writing. If the parties agree upon binding arbitration, the site for the arbitration shall be Alameda County, California, under the Commercial Arbitration Rules of the American Arbitration Association then existing or another such arbitration procedure that the parties agree to in writing. Judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. The arbitrator shall be selected by the parties and shall be a person experienced with benefits consulting. In the event the parties cannot agree on an arbitrator, each of the parties shall select one (1) arbitrator and the two (2) arbitrators shall select the arbitrator. The parties agree

that the prevailing party to any binding arbitration shall be entitled to its reasonable attorneys' fees and related legal costs. Both parties hereto agree that, the existence of a dispute notwithstanding, each will continue without delay to carry out all responsibilities under this Agreement, which are not affected by the dispute.

29. Notices. All notices, requests, demands or other communications required or desired to be given hereunder or under any law now or hereafter in effect shall be in writing. Such notices shall be deemed to have been given if delivered by facsimile with telephone confirmation of receipt, or by overnight courier, or if mailed by first class registered or certified mail, postage prepaid, and addressed as follows (or to such other address as either party from time to time may specify in writing to the other party in accordance with this notice provision):

If to ACERA:

David H. Nelsen
Chief Executive Officer
ACERA
475 14th Street, Suite 1000
Oakland, CA 94612
Telephone: (510) 628-3000

If to CONSULTANT:

Name
Title
Address
Telephone

With a copy to:

Kathy Foster
Assistant Chief Executive Officer

Either party may notify the other of its change in address in the manner provided above. Notwithstanding the prescribed method of delivery set forth above, actual receipt of written notice by the natural person designated above shall constitute notice given in accordance with this Agreement on the date received, unless deemed earlier given pursuant to the foregoing paragraph.

30. Attorneys' Fees. Subject to the dispute resolution provisions of **Section 28** above, if either or both of the parties initiate any litigation or alternative dispute resolution process to enforce or interpret any of the provisions of this Agreement, then the non-prevailing party shall pay to the prevailing party all reasonable costs and expenses incurred therein by the prevailing party, including, without limitation, reasonable attorneys' fees and court costs. These expenses

shall be in addition to any other relief to which the successful party may be entitled and shall be included in and as part of the judgment or decision rendered in such litigation or alternative dispute resolution process.

31. Section Headings: Interpretation. Caption and paragraph headings used in this Agreement are for convenience and reference only and shall not affect in any way the meaning, construction or interpretation of this Agreement. Each party hereto and its counsel have participated fully and equally in the review and negotiation of this Agreement. Each party hereto agrees that neither party, nor its counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any party hereto.

32. Entire Agreement: Exhibits, Schedules and Appendices. This Agreement, together with any and all Exhibits, Schedules and Appendices attached hereto, contains the entire and exclusive Agreement between the parties hereto and supersedes all previous oral and written agreements or understandings, and all contemporaneous oral and written negotiations, commitments, understandings and communications between the parties, relating to the subject matter of this Agreement. The Exhibits, Schedules and Appendices attached hereto are incorporated in and made a part of this Agreement by reference.

If any conflicts, inconsistencies or ambiguities should arise between or among this Agreement and the incorporated documents, the following precedence shall be used to interpret the requirements of this Agreement:

1. The terms of this Agreement;
2. The terms of the Exhibits according to the order in which they appear.

33. Severability. If any provision of this Agreement is held by any court to be invalid, void or unenforceable, in whole or in part, the other provisions shall remain unaffected and shall continue in full force and effect.

34. Waiver. The waiver of any breach of any provision of this Agreement by either party shall not constitute a waiver of any preceding or subsequent breach of such provision or of any other provision of this Agreement. The failure or delay of either party to exercise any right given to the party under this Agreement shall not constitute a waiver of such right, nor shall any partial exercise of any right given hereunder preclude further exercise of such right.

35. Amendments in Writing. At any time prior to the termination of this Agreement, but only by mutual written agreement executed by the ACERA Chief Executive Officer and a duly authorized officer of CONSULTANT, the parties hereto may: (a) extend the time for performing any of the conditions, covenants, rights, obligations or other acts of the parties required herein; (b) waive the performance of any of the conditions, covenants, rights, obligations or other acts of the parties required herein; or (c) amend or supplement any of the provisions of this Agreement. The parties shall meet and confer in good faith on any modification of this Agreement that may become necessary to make its provisions consistent with any policy of ACERA, or any foreign, international, federal, state, county or local statute, rule, regulation or ordinance which governs any aspect of this Agreement.

36. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to principles of conflicts of laws. Should either party initiate a lawsuit or other dispute resolution proceeding over any matter relating to or arising out of this Agreement, such lawsuit or other proceeding shall be filed and conducted in the County of Alameda, State of California.

37. Assignment and Delegation. CONSULTANT or ACERA may not assign any of its rights or delegate any of its duties hereunder without the other party's prior written consent, which consent may be granted or withheld in such other party's sole discretion. Any assignment of rights or delegation of duties under this Agreement, to which the parties hereto agree in writing, shall bind and inure to the benefit of the successors in interest of ACERA and CONSULTANT.

38. Execution in Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall

constitute one and the same instrument.

IN WITNESS WHEREOF, the Board of Retirement of ACERA has caused this Agreement to be executed on behalf of ACERA and CONSULTANT has caused this Agreement to be executed by its duly authorized officer as of the date first above written.

**ALAMEDA COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION**

CONSULTANT FIRM _____

By: _____
David H. Nelsen
Chief Executive Officer

By: _____
Name
Title

EXHIBIT A
to
ATTACHMENT D



**EXHIBIT A TO CONSULTANT SERVICES AGREEMENT
BETWEEN ACERA AND BENEFIT CONSULTANT
FOR BENEFITS CONSULTING SERVICES**

Statement of Services -- Consulting Services

The Benefit Consultant agrees to provide the following Benefits Consulting Services:

GENERAL BENEFITS CONSULTANT SERVICES

MONTHLY:

- a) Attend monthly ACERA Retirees Committee meetings and debrief meetings afterward.
- b) Attend conference call to discuss deliverables/Committee meeting planning.
- c) Provide accurate, monthly deliverables from Retirees Committee Work Plan on specified dates to ACERA.
- d) As notices become available, provide information and assess impact of any legislative updates concerning health care plan policies and procedures, including Medicare plans.
- e) Track benefit plans design ideas for future discussion with carriers and renewal letters.

QUARTERLY:

- a) Participate in ACERA's quarterly meetings with Kaiser Permanente to review quarterly utilization, and discuss the wellness program and other topics as necessary.

SEMI-ANNUALLY:

- a) Create a PowerPoint presentation on Health Care Reform; including but not limited to: Medicare, Affordable Care Act, Covered California, Multi-State Exchanges, California Legislation, and Federal Legislation; and present it at the Retirees Committee meetings.
- b) Review and analyze Delta Dental and Vision Service Plan member utilization and claims experience.
- c) Work with ACERA and the County of Alameda to gain access to medical carriers' claim information to review and calculate the reimbursement to employers for the adverse experience (Implicit Subsidy) cost of retirees. Provide a written report concerning the Implicit Subsidy for past plan year amount for medical plans and the estimated Implicit Subsidy amount for current year.

ANNUALLY:

- a) Create a 6-12 page PowerPoint document to present at the annual retiree association health care planning meeting. Subject matter for presentation to be determined a month in advance of the meeting, normally held in the month of March.
- b) Review, within a week of receipt, ACERA's draft of the annual medical plans renewal letter to the County of Alameda. Add specific plan impact questions on regulation changes such as CMS Mandates or Affordable Care Act as well as adding specific pricing requests, new carrier Disease Management/Wellness initiatives, and plan design changes adding benefit/cost savings to retiree plans. Letters should include discussion points over the plan year, which may have been addressed at Retirees Committee meetings as well as monthly Benefits Consultant/ACERA meetings.
- c) Provide written annual reports with observations and recommendations related to Delta Dental and Vision Service Plan member utilization and claims experience. Draft separate Request for Information (renewal) letters for both Delta Dental and for Vision Services Plan each year by April 1st. Letters should include discussion points over the plan year, which may have been addressed at Retirees Committee meetings as well as monthly Benefits Consultant/ACERA meetings.
- d) Work with ACERA and the County of Alameda to enhance ACERA's current wellness program.
- e) Review and negotiate provider renewal rates/contracts, plan design, funding arrangements (*i.e.*, fully insured or self funded) and performance guarantees with Delta Dental and Vision Service Plan carriers. Provide written reports explaining the analysis and recommendations.
- f) Attend the annual medical plan renewal meeting between the County of Alameda and ACERA.
- g) Provide a written report on the annual health care trend information including pre-65 and post-65 medical, dental (both plans), and vision plans to assist ACERA in funding recommendations.
- h) Provide in a written report, the Social Security Administration Cost of Living Adjustment amount and the impact this may or may not have on the Medicare Part B monthly premiums. The written report should state what the standard Medicare Part B monthly premium is for the current year and the new premiums for the next year.
- i) Provide actuarial valuation for the equivalency of ACERA's prescription drug plan comparative to Medicare Part D prescription drug plan.
- j) Provide the CMS Part D Annual Notice of Creditable Coverage two weeks after its release by CMS; the required date the notice must be received by all of ACERA's members; and a written report on the Part D Standard Benefit changes for the next year, which includes a side by side comparison of the current benefits and the new ones. The report should also include the drug manufacturer's percentage coverage of cost for brand-name drugs, as well as the Part D Income Related Monthly Adjustment amounts.
- k) Use the Benefits Consultant Medicare Part D "Client" Checklist to determine ACERA's compliance.
- l) Provide ongoing enrollment, reporting, and escalation of customer service issues support related to Willis Towers Watson's OneExchange Access.

EXHIBIT B
to
ATTACHMENT D



**EXHIBIT B TO CONSULTANT SERVICES AGREEMENT
BETWEEN ACERA AND _____ CONSULTANT FIRM _____
FOR BENEFITS CONSULTING SERVICES**

RESPONSIBLE PERSONS LIST (CONSULTANT)

Name of Staff/Consultant, Title

Name of Staff/Consultant, Title

Name of Staff/Consultant, Title

Name of Staff/Consultant, Title

EXHIBIT C
to
ATTACHMENT D



**EXHIBIT C TO CONSULTANT SERVICES AGREEMENT
BETWEEN ACERA AND CONSULTANT FIRM
FOR BENEFITS CONSULTING SERVICES**

AUTHORIZED PERSONS LIST (ACERA)

David Nelsen, Chief Executive Officer

Kathy Foster, Assistant Chief Executive Officer

Sandra Dueñas-Cuevas, Benefits Manager

Ishmael Piña, Retirement Assistant Benefits Manager

Eva Hardy, Administrative Specialist II

EXHIBIT D
to
ATTACHMENT D

**CONFLICT OF INTEREST POLICY****I. PURPOSE**

The purpose of the ACERA *Conflict of Interest Policy* is to provide ACERA Trustees and Staff with guidelines for carrying out their fiduciary duties and mitigating the risk of an actual or perceived conflict of interest arising. At a minimum, a conflict of interest for purposes of this policy is defined as any matter that reasonably could be expected to interfere or be perceived to be interfering with a Trustee's or Staff's obligation to discharge their duties with respect to the system solely in the interest of, and for the exclusive purpose of providing benefits to, participants and their beneficiaries. The Board hereby incorporates by reference the terms of Section 18730, Title 2, Division 6, of the California Code of Regulations.

II. DEFINITIONS

- A.** The definitions contained in the Political Reform Act of 1974 (Act), regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. §§18100 et seq.), and any amendments to the Act or regulations are incorporated by reference into this conflict of interest policy.
- B.** **Officials Who Manage Public Investments.** The persons holding the positions listed below manage public investments and will file a statement of economic interests pursuant to Government Code Section 87200:
1. Each ACERA Trustee and Alternate Trustee
 2. Chief Executive Officer
 3. Chief Investment Officer
- C.** **Designated Employees.** Pursuant to Government Code Section 82019, the persons holding the following positions are Designated Employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests:
1. Assistant Chief Executive Officers
 2. Fiscal Services Officer
 3. Chief Counsel

4. Benefits Manager
 5. Associate Counsel
 6. Human Resources Officer
 7. Project & Information Services Manager
 8. Chief of Internal Audit
 9. Senior Investment Officer
 10. Investment Officer
 11. Consultants
- D.** Disclosure Categories. Designated employees are required to make full disclosure meaning they are required to disclose all investments, interests in real property, sources of income and business positions.
- E.** Consultants. Only those consultants who perform one or more of the following functions shall be required to complete and file Conflict of Interest/Form 700 Statement of Economic Interests with the Legal Department:
1. Making a governmental decision;
 2. Serve in Staff capacity and participate in making a governmental decision; or
 3. Serve in Staff capacity and perform the same or substantially all the same duties that would otherwise be performed by an individual holding a designated position in the agency's *Conflict of Interest Code*.

A more detailed description of the functions listed above can be found in 2 California Code of Regulations Sections 18701(a)(2)(A) and 18702.2.

III. ASSUMPTIONS

- A.** With respect to ACERA activities, the duty of an ACERA Trustee or Staff member to ACERA's participants and beneficiaries shall take precedence over any other duty.
- B.** An issue that may be perceived to create a conflict of interest poses as great a risk to ACERA as an actual conflict of interest. Accordingly, perceived conflicts should be treated as actual conflicts of interest under this policy.
- C.** Safeguarding the trust of plan beneficiaries is paramount. Conflicts of interest, bribes, gifts, or favors that subordinate Trustees or Staff to private gains are unacceptable.

- D. It is not possible to identify and address in a policy all of the methods by which Trustees or Staff may manage beneficiaries' assets in ways that benefit them or third parties rather than beneficiaries. A policy therefore should consist of general guidelines and principles that will provide Trustees and Staff with direction in most situations that may arise.
- E. In situations where the law or policy is not clear, the best interests of beneficiaries must be served. Trustees and Staff should err on the side of good judgment.
- F. When interacting with existing or potential service providers, there is a need for Trustees and Staff to establish and maintain an independent relationship to ensure that Trustees and Staff can remain objective when conducting the affairs of ACERA.

IV. POLICY GUIDELINES

- A. A member of the Board of Trustees or Staff of ACERA shall not:
 - 1. Accept or solicit any gift, favor, or service, except as provided herein, that may reasonably tend to influence or be perceived to influence the individual in the discharge of his/her official duties or that the individual knows, or should know, is being offered with the intent to influence the individual's official conduct. In such situations, however, Trustees and Staff must conduct themselves in accordance with applicable legislation regarding disclosure, gift value limits, etc.
 - 2. Accept other employment or engage in a business or professional activity that the individual might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position;
 - 3. Accept other employment or compensation that could reasonably be expected to impair the individual's independence of judgment in the performance of their official duties. Additionally, attorneys employed in the ACERA legal department shall not personally engage in the private practice of law or be interested directly or indirectly therein; provided that they may, without compensation, act as attorney for themselves, for members of their families;

and nonprofit organizations, including pro bono activities. In all such cases, the representation shall be approved by the Chief Counsel (or the CEO in the case of the Chief Counsel), ACERA resources shall not be used to provide such services, and the representation does not constitute an incompatible activity by the ACERA attorney under State law or County ordinances. Any exception to this policy must be expressly approved in writing by the ACERA Chief Counsel and ACERA Chief Executive Officer, or if the exception is requested by the Chief Counsel, then by the ACERA Chief Executive Officer and the Board of Retirement;

4. Make personal investments that could reasonably be expected to create a substantial conflict between the individual's private interests and the interests of the plan participants and the beneficiaries of the Plan;
5. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the individual's official powers or for having performed their official duties in favor of another;
6. Transact any business in the individual's official capacity with any entity or person in which he/she has an economic interest;
7. Appear before the Board while acting as an advocate for himself/herself or any other person, group, or entity, without fully disclosing his/her relationship and excusing himself or herself from the Board deliberations and voting procedure;
8. Represent any business entity before the Board or senior management in return for any form of compensation;
9. Represent, directly or indirectly, any business entity in any action or proceeding against the interests of ACERA, or in any litigation in which the Plan is a party;
10. Use one's official position to secure a special privilege or exemption for oneself or others that would not reasonably have been anticipated and found acceptable by the Board in approving its conflict of interest policy;

- 11. Use one's official position to secure confidential ACERA information for any purpose other than the exercise of official duties; and
 - 12. Intentionally or knowingly disclose any confidential information gained by one's position concerning the property, operations, policies, or affairs of ACERA, or use confidential information for pecuniary gain.
- B. When the ACERA Board is in, or about to enter into, the process of selecting a vendor, the Board, Staff and individual Trustees shall not accept social invitations, gifts, favors or services from vendors where it is reasonably foreseeable that the vendor is, or may reasonably be expected to be, a candidate in the selection process.
 - C. When a real or perceived conflict of interest exists, as defined herein, Trustees and Staff shall fully disclose said conflict and abstain from participating in Board deliberations concerning the matter and abstain from voting on the matter, except to the extent their participation is legally required for the decision to be made as allowed by 2 Cal. Code of Regulations Section 18730 (i.e., rule of necessity).
 - D. In order to facilitate compliance with the provisions of this policy, Trustees and Staff, when interacting with existing or potential service providers, may pay for their own meals, beverages, or entertainment, and in turn shall be reimbursed for said expenditures by ACERA. Receipts shall be obtained when ordinarily given and claims shall be submitted to the Chief Executive Officer for reimbursement.
 - E. In order to facilitate compliance with the provisions of this Policy, the ACERA Legal Department will maintain and deliver to Board Trustees a quarterly report, and make available upon request, a report of the individuals and entities with whom ACERA is contracting with for services, so as to assist the Trustees and Staff with disclosure and/or recusal obligations relating to their own economic interests, including those of their immediate family members.

V. CONFLICT OF INTEREST/FORM 700 STATEMENT OF ECONOMIC INTERESTS

- A. Designated employees shall complete and file Conflict of Interest/Form 700 Statement of Economic Interests with the Legal Department as follows:

1. **Initial Statements.** Each person already in a position when it is designated by an amendment to the *Conflict of Interest Code* for ACERA shall file an initial statement within 30 days after the effective date of the amendment.
2. **Assuming Office Statements.** All persons assuming designated positions after the effective date of the *Conflict of Interest Code* for ACERA shall file statements within 30 days after assuming the designated positions.
3. **Annual Statements.** All officials who manage public investments shall file statements no later than March 1. All Designated Employees shall file statements no later than April 1.
4. **Leaving Office Statements.** All persons who leave designated positions shall file statements within 30 days after leaving office.

B. Contents of and Period Covered by Statements of Economic Interests.

1. **Contents of Initial Statements.** Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the *Conflict of Interest Code* for ACERA and income received during the 12 months prior to the effective date of the *Conflict of Interest Code* for ACERA.
2. **Contents of Assuming Office Statements.** Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.
3. **Contents of Annual Statements.** Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the *Conflict of Interest Code* for ACERA or the date of assuming office whichever is later.
4. **Contents of Leaving Office Statements.** Leaving office statements shall disclose reportable investments, interests in real property, income and

business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

VI. BIENNIAL ETHICS TRAINING

Under Government Code Sections 53234 et seq., all local agency officials, including ACERA Trustees, must receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years. Each Trustee shall attend ethics training at least once every two (2) years as required by Government Code Section 53235.1. New Trustees shall attend ethics training no later than one year from the first day of service with ACERA. The ACERA Legal Department will maintain records indicating the date ethics training was completed and the entity that provided the training.

VII. POLICY REVIEW

The Governance Committee shall review this policy at least every two (2) years to ensure that it remains relevant and appropriate.

VIII. POLICY HISTORY

- A.** The Board adopted this policy on November 18, 1999.
- B.** The Board reviewed and adopted this policy, with revisions, on August 15, 2002.
- C.** The Board reviewed and adopted this policy, with revisions, on August 16, 2007.
- D.** The Board reviewed and adopted this policy, without revisions, on August 20, 2009.
- E.** The Board reviewed and adopted this policy, with revisions, on June 17, 2010.
- F.** The Board reviewed and adopted this policy, without revisions, on April 19, 2012.
- G.** The Board reviewed and adopted this policy, with revisions, on September 19, 2013.
- H.** The Board reviewed and adopted this policy, with revisions, on June 18, 2015.

EXHIBIT E
to
ATTACHMENT D



**CONFLICT OF INTEREST CODE FOR THE
ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

The Conflict of Interest Code is promulgated under the authority of the Political Reform Act, Government Code, sections 81000, et seq., which requires all state and local government agencies to adopt and promulgate conflict of interest codes. Title 2, California Code of Regulations, section 18730, as adopted by the Fair Political Practices Commission contains the terms of a standard conflict of interest code; which may be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearing to conform to amendments in the Political Reform Act.

Therefore, the terms of 2 Cal. Code of Regs., sec. 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference and, along with the attached Appendix A and B in which employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the Alameda County Employees' Retirement Association.

Designated employees shall file their statements of economic interests with the Filing Officer for ACERA. The ACERA Compliance Officer shall serve as the Filing Officer for ACERA and shall carry out the duties of the Filing Officer as set out in Political Reform Act and Fair Political Practices Commission Regulations. If there is no incumbent in the position of Compliance Officer, the Chief Counsel of ACERA shall serve as Filing Officer. As part of the requirements set out in the Political Reform Act, the Filing Officer will make the statements available for public inspection and reproduction (Gov. Code, sec. 81008).

APPENDIX A
DISCLOSURE CATEGORIES

1. Persons in this category must disclose all investments and business positions in business entities, sources of income and interests in real property.
2. Persons in this category must disclose investments and business positions in business entities, sources of income and interests in real property which provide or directly support or in the future may likely provide or directly support, the provisions of services, supplies, materials, machinery, or equipment to ACERA.

APPENDIX B

DESIGNATED POSITIONS, OFFICIALS AND CONSULTANTS

I DESIGNATED POSITIONS

| <u>Position</u> | <u>Disclosure Category</u> |
|--|----------------------------|
| Assistant Chief Executive Officers | 1 and 2 |
| Fiscal Services Officer | 1 and 2 |
| Chief Counsel | 1 and 2 |
| Benefits Manager | 1 and 2 |
| Associate Counsel | 1 and 2 |
| Project & Information Services Manager | 1 and 2 |
| Human Resources Officer | 1 and 2 |
| Chief of Internal Audit | 1 and 2 |
| Senior Investment Officer | 1 and 2 |
| Investment Officer | 1 and 2 |
| Consultants* | (Reference note below.) |

II. OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

It has been determined that the positions listed below manage public investments and will file a statement of economic interests pursuant to Gov. Code, sec. 87200:

Each ACERA Trustee
 Chief Executive Officer
 Chief Investment Officer

III. CONSULTANTS

* Only those consultants who perform one or more of the following functions shall be required to complete and file Conflict of Interest/Form 700 Statement of Economic Interests with the Legal Department:

- A. Making a governmental decision;
- B. Serve in staff capacity and participate in making a governmental decision; or
- C. Serve in staff capacity and perform the same or substantially all the same duties that would otherwise be performed by an individual holding a designated position in the agency's Conflict of Interest Code.

Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category, which is category 1, in the Code subject to the following limitation:

The Chief Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in the section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.