

Tax Counsel Services

Request for Proposal

October, 2017



Orange County Employees Retirement System (OCERS)

2223 E Wellington Avenue Suite 100

Santa Ana, CA 92701 USA

1-(714)-558-6200

<http://www.ocers.org>

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Section 1: Introduction

The Orange County Employees Retirement System (OCERS) is issuing this Request for Proposal (RFP) to solicit proposals from qualified firms to provide tax counsel services.

OCERS was established in 1945 under the provisions of the County Employees Retirement Law of 1937 (CERL), and provides members with retirement, disability, death, and cost-of-living benefits. There are approximately 41,000 members served by OCERS, of which over 15,000 are retirees. The OCERS Board of Retirement (Board) consists of nine members, four of whom are appointed by the County's Board of Supervisors, four are elected by the active members of OCERS, and one, the County Treasurer, who serves as an ex officio member. There is also one elected alternate member. The Board has plenary authority and fiduciary responsibility for the investment of assets of the pension fund and administration of the retirement system. OCERS has 75 employees at one physical location, 2223 E. Wellington Ave., Suite 100, Santa Ana, CA 92701.

Section 2: General Information

All terms, conditions, requirements and procedures included in the RFP must be met for a response to be qualified as responsive. A submission that fails to meet any material term, condition, requirement or procedure of this RFP may be disqualified. OCERS reserves the right to waive or permit cure of non-material errors or omissions. OCERS reserves the right to modify, amend, or cancel the terms of the RFP at any time. All responses must be submitted in accordance with the specific terms of this RFP. The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 120 business days following the deadline for submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

If a firm responding to this RFP (respondent) discovers an ambiguity, conflict, discrepancy, omission or other error in this RFP, notice should be provided to Gina Ratto gratto@ocer.org. OCERS is not responsible for, and has no liability for or obligation to correct any errors or omission in this RFP.

Section 3: Background

OCERS is soliciting proposals from qualified law firms to assist, on an as-needed basis, OCERS General Counsel in providing a wide range of tax counsel services related to a defined benefit public employee retirement plan.

The remainder of this RFP provides information about OCERS and establishes the specifications and requirement for submitting a proposal.

Section 4: Scope of Services/Requirements

Scope of Services

Tax counsel, under the supervision of the General Counsel, will be expected to provide the following range of tax counsel services:

- Advice on tax law compliance and related accounting issues.
- Specific, written recommendations and strategies to maintain the tax qualified status of the Plan, including recommendations for proposed amendments to provisions of OCERS' policies and procedures to ensure compliance with qualification criteria of the Internal Revenue Code and constitutional law.
- Representation of OCERS before the IRS, if needed.
- Sophisticated legal advice on domestic and international tax law matters.
- Assistance in reviewing and analyzing non-standard and foreign tax issues.

- Advice and counsel regarding investment-related tax exposure including, upon request, obtaining necessary opinions, private letter rulings, and other documents from the Internal Revenue Service, or other state, or federal regulatory, or governing bodies.
- Attendance at Board of Retirement and/or other meetings at the request of the General Counsel.
- Such other tax law matters that may be referred by the General Counsel.

Core skills and expertise of the attorneys assigned to OCERS shall include comprehensive knowledge and understanding of relevant tax laws; representing and/or providing tax counsel services for public pension systems and/or institutional investors, excellent oral and written communication skills, sound judgment, the ability to work well with and maintain the confidence of the Board and staff, and the ability to deliver services in a timely and cost effective manner.

At a minimum, the firm should have at least five (5) or more year’s prior experience in representing governmental pension plans; and assigned Lead Counsel shall be licensed to practice law with seven or more years’ experience in the providing advice to governmental pension plans.

Minimum insurance coverage must include the following items and proof of such insurance must be provided to OCERS on an annual basis. OCERS must be listed as an additional insured payee:

1. Commercial General Liability: \$1M per occurrence, \$1M aggregate
2. Automobile Liability: \$1M per occurrence, \$1M aggregate
3. Workers Compensation: \$1M per occurrence, \$1M aggregate
4. Professional Liability (Errors & Omissions): \$1M per occurrence, \$2M aggregate

Other Requirements

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

The initial term of the contract awarded pursuant to this RFP will be for a three (3) year period with OCERS retaining three (3) one-year options to renew. The Firm will be notified ninety (90) days prior to the expiration or renewal of the contract.

Section 5: OCERS’ Point of Contact

From the date of issuance of this RFP until the selection of one or more respondents is completed and announced, respondents are not permitted to communicate with any OCERS staff member or Board Members regarding this procurement, except through the Point of Contact named herein. Respondents violating the communications prohibition may be disqualified at OCERS’ discretion. Respondents having current business with OCERS must limit their communications to the subject of such business.

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

Name:	Gina Ratto
Title:	General Counsel
Address:	Orange County Employees Retirement System 2223 E Wellington Ave., Suite 100 Santa Ana, CA 92701
Telephone:	(714) 558-6221

Email: gratto@ocers.org

OCERS Website: www.ocers.org

Updates / Status: See the OCERS website for status of the RFP and announcements. These may also be found at <http://www.ocers.org/rfp/requestforproposal.htm>

Section 6: Responses to this RFP

It is the responsibility of the respondent to ensure that its' proposal arrives on or before the specified time and date. Failure to comply with this provision will result in disqualification of the RFP response. Proposals must be submitted to OCERS by 5 p.m. (Pacific Time Zone) by the due date stated below in the RFP Calendar. Make sure the point of contact name is included in the address.

Proposals must be submitted electronically in Microsoft Word or Adobe Acrobat PDF format to the email address noted in *Section 5*. A minimum of one (1) hard copy also needs to be submitted to the address noted in *Section 5*.

Note that responses will be subject to disclosure to the public upon written request under the California Public Records Act. See *Section 13: Notice Regarding the California Public Records Act and the Brown Act* later in this document for additional information.

Section 7: Proposal Requirements

Proposals must include the following information:

1. A cover letter providing a statement affirming that the signatory is empowered and authorized to bind the respondent to an engagement agreement with OCERS and represents and warrants that the information stated in the proposal is accurate and may be relied upon by OCERS in considering and potentially accepting the proposal.
2. An executive summary that provides the respondent's background, experience and other qualifications to provide tax counsel services.
3. A description of the respondent including:
 - a. Brief history of the firm including year it was formed
 - b. Ownership structure
 - c. Office locations
 - d. Organization chart
 - e. Number of employees
 - f. Annual revenues
 - g. Areas of practice including firm specialties, strengths and limitations
4. Identity of the Lead Counsel to be assigned to OCERS as well as any other attorneys intended to render legal services under the proposal, and professional background and area(s) of specialization of each.
5. At least three (3) references for which the respondent has provided tax counsel services, with at least one (1) of the references being a public pension system. Please include for each reference the individual point of contact, a summary of the work performed, and the length of time the respondent provided this service.

6. A list engagements where the firm has acted as tax counsel or counsel to a governmental pension plan in the areas of law set out in Section 4.
7. An explanation of the pricing proposal for the scope of work including pricing of fees and costs, billing practices and payment terms, if any, that would apply. In particular, point out where the pricing of fees and costs conflict with the provisions of the pro forma Legal Services Agreement in Attachment 1.

OCERS does not place any limits on the approach to pricing and is open to presentation of more than one pricing alternative for the scope of work, or portions of it. This section of the response should include an explanation as to how the pricing approach(es) will be managed to provide the best value to OCERS. The respondent should represent that the pricing offered to OCERS is, and will remain, equivalent to or better than that provided to other public pension fund and/or institutional investor clients, or should provide an explanation as to why this representation cannot be provided. All pricing proposals should be “best and final,” although OCERS reserves the right to negotiate on pricing.
8. An explanation of all actual or potential conflicts of interest that the respondent may face in the representation of OCERS.
9. A description of all past, pending, or threatened litigation, including but not limited to malpractice claims, and all administrative, state ethics, and disciplinary proceedings and other claims against the respondent firm and any of the individuals proposed to provide services to OCERS.
10. Any other information that the respondent deems relevant to OCERS’ selection process.

Section 8: Review and Evaluation Criteria

Respondents will be evaluated in the discretion of OCERS based upon the following factors:

- Depth of experience and knowledge of the firm and/or individuals with federal, state and local tax issues.
- Level of experience with California public retirement plans, specifically multi-employer defined benefit plans.
- Level of experience with CERL.
- Quality of the team proposed to provide services to OCERS.
- Information provided by references.
- Communications skills.
- Strength, stability and longevity of the firm.
- Pricing and value.
- Team work, both internally and with OCERS.
- Level of investment and commitment to the OCERS relationship.
- The organization, completeness, and quality of the proposal, including cohesiveness, conciseness, and clarity.

The factors will be considered as a whole, without a specific weighting. The balancing of the factors is in OCERS’ sole discretion. Factors other than those listed may be considered by OCERS in making its selection. OCERS reserves the right in its discretion to request additional information from any respondent, although such requests may not be made to all respondents. OCERS reserves the right to require one or more interviews with or personal presentations by finalists to be conducted with staff, Board Members, and/or the entire Board of Retirement.

Section 9: Right to Reject Proposal

By submitting a proposal, respondents acknowledge that they have read this RFP, understand it, and agree to be bound by its requirements unless clearly and specifically noted in the response submitted. OCERS reserves the right without prejudice to reject any and all responses. OCERS reserves the right to modify the terms and requirements of this RFP. Any such changes or corrections will be posted on OCERS' website, available at www.ocers.org.

Section 10: Incomplete Responses; Defects in RFP

If the information in the response is deemed to be insufficient for evaluation, OCERS reserves the right to request additional information or to reject the submittal outright. False, incomplete or unresponsive statements in connection with a submittal may be sufficient for its rejection. The selection of the fulfillment of the requirements will be determined by OCERS and such judgment shall be final.

Section 11: Schedule of Events

Respondents are encouraged to communicate any questions regarding this RFP by the deadline stated below in the RFP Calendar. Questions should be sent in writing via email to gratto@OCERS.org. Questions and answers will be communicated to all respondents by posting a Questions Response Document on the OCERS website by the date stated in the RFP Calendar. OCERS reserves the right to modify this schedule at any time.

RFP CALENDAR

Deliverable	Date	Time
Release of RFP	10/12/2017	5:00 pm (Pacific Time)
RFP Questions Deadline	10/19/2017	5:00 pm (Pacific Time)
RFP Answers Posted to Website	10/26/2017	5:00 pm (Pacific Time)
RFP Submission Deadline	11/10/2017	5:00 pm (Pacific Time)
OCERS Review of RFP Submissions	11/10/2017 – 12/01/2017	
Selection of Finalists	12/01/2017	
Finalists interviews	Week of 12/11/ 2017	
Service Award	01/03/ 2018	

Section 12: Addenda

OCERS may modify the RFP prior to the date fixed for submission by posting, mailing, emailing or faxing an addendum to the respondents known to be interested in submitting a proposal. If any respondent determines that an addendum unnecessarily restricts its ability to bid, it must notify OCERS in writing no later than three days before the deadline for submitting bids. Failure of a respondent to receive or acknowledge receipt of any addendum shall not relieve the respondent of the responsibility for complying with the terms thereof.

Section 13: Notice Regarding the California Public Records Act and the Brown Act

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Proposals will not be returned to the respondent and will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Sections 6250 et. seq., the "Act"). The Act provides generally that all records relating to a public agency's business are open to public inspection and copying, unless specifically exempted under one of several exemptions set forth in the Act.

If a respondent believes that any portion of its proposal is exempt from public disclosure under the Act, such portion must be marked "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY." OCERS will not publicly disclose any portions so designated, provided that such designation is, in OCERS' reasonable discretion, in accordance with applicable law. Proposals marked in their entirety as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" will not be honored, and OCERS will not deny public disclosure of all or any portion of proposals so marked. By submitting a proposal with specifically selected portions marked "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY" respondent represents that it has a good faith belief that such material is exempt from disclosure under the Act, and respondent agrees to reimburse OCERS for, and to indemnify, defend and hold harmless OCERS, its officers, fiduciaries, employees and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to OCERS' non-disclosure of any such designated portions of respondent's proposal; and (b) any and all Claims arising from or relating to OCERS' public disclosure of any such designated portions of respondent's proposal if OCERS reasonably determines disclosure is deemed required by law, or if disclosure is ordered by a court of competent jurisdiction.

In addition to the foregoing, OCERS Board of Retirement and committee meetings are subject to California open meeting requirements set forth in the Ralph M. Brown Act (Gov. Code §§ 54950-54962) (the "Brown Act"). Respondent's proposal and/or contract (if the respondent is selected) may be presented or discussed at a public meeting of the OCERS Board of Retirement (or at a Board committee meeting). Among other things, that means that, regardless of whether respondent marks portions of its proposal as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY," that information may be discussed or presented at a meeting that is open to the public under the Brown Act.

Section 14: Engagement Agreement

The selected proposer will be required to execute a legal services agreement substantially in the form attached hereto as Attachment 1.

Section 15: General Conditions

This RFP is not an offer to contract. Acceptance of a proposal neither commits OCERS to award a contract to any respondent even if all requirements stated in this RFP are met, nor does it limit OCERS' right to negotiate the terms of an engagement agreement in OCERS' best interest, including requirement of terms not mentioned in this RFP. OCERS reserves the right to contract with a respondent for reasons other than lowest price.

Failure to comply with the requirements of this RFP may subject the proposal to disqualification. Publication of this RFP does not limit OCERS' right to negotiate for the services described in this RFP. If deemed by OCERS to be in its best interests, OCERS may negotiate for the services described in this RFP with a party that did not submit a proposal. OCERS reserves the right to choose to not enter into an agreement with any of the respondents to this RFP.

Section 16: Reservations by OCERS

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

1. Cancel this RFP, in whole or in part, at any time.
2. Make such investigation as it deems necessary to determine the respondent's ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.
3. Reject the proposal of any respondent who is not currently in a position to perform the contract, or who has previously failed to perform similar contracts properly, or in a timely manner, or for any other reason in OCERS' sole discretion.
4. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.
5. Award a contract, if at all, to the firm which will provide the best match to the requirements of the RFP and the service needs of OCERS in OCERS' sole discretion, which may not be the proposal offering the lowest fees.
6. Reject any or all proposals submitted in response to this RFP.
7. Determine the extent, without limitation, to which the services of a successful respondent are or are not actually utilized.
8. The information that a respondent submits in response to this RFP become the exclusive property of OCERS. OCERS will not return any proposal or reimburse proposal preparation or submission expenses.

Section 17: Non-Discrimination Requirement

By submitting a proposal, the respondent represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment on the basis of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliations or opinion, age, or medical condition.

OCERS appreciates your time and looks forward to receiving your proposal.

All responses to this RFP must be submitted prior to the RFP Submission Deadline stated in the RFP Calendar to:

Orange County Employees Retirement System

Attention: **Gina Ratto, General Counsel**

2223 E. Wellington Ave., Suite 100

Santa Ana, CA 92701

Attachment 1

Tax Counsel Legal Services Agreement

This Legal Services Agreement ("Agreement") is made and entered as of this _____ day of _____, 201_, by and between the Orange County Employees Retirement System, a public body, corporate and politic, with its principal place at 2223 East Wellington Ave. Suite 100 Santa Ana, CA 92701 ("OCERS") and _____, a _____, with its principal place of business at _____ - ("Special Counsel").

ARTICLE 1. INTRODUCTION

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

ARTICLE 2. SERVICES AND COMPENSATION

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

ARTICLE 3. BILLING REQUIREMENTS

- 3.1 The following billing requirements ("Requirements") are intended to ensure that OCERS meets its fiduciary duty to obtain superior legal services in the most cost-effective manner. Failure to comply with these Requirements is likely to result in the reduction or nonpayment of invoices. By submitting an invoice to OCERS, Special Counsel represents and certifies that its billing practices comply with these Requirements.
- 3.2 Written authorization by General Counsel shall be obtained before Special Counsel commences work on any new matter.
- 3.3 Assignment of Staff

- A. Special Counsel shall obtain the General Counsel's approval before assigning any attorney to work on an OCERS matter ("Key Persons"). All Key Persons and other legal professionals (e.g. paralegals) permitted to bill to a matter shall be identified in writing and approved by General Counsel at the outset of the engagement or initiation of a new matter. Any additions, changes or substitutions of Key Persons during the course of the engagement shall be approved in advance, in writing, by the General Counsel. When feasible, Key Persons shall be part of the budget process.
- B. Special Counsel shall staff matters in the most efficient and cost effective manner. Key Persons assigned shall have the level of skill and experience necessary to perform the assigned tasks.
- C. Unless the General Counsel agrees in advance, the number of Key Persons working on a specific matter shall not exceed the following:
 - 1. Transactional/Advice Matters: No more than two.
 - 2. Litigation Matters: Between one and three, depending on the complexity of the matter.
 - 3. All Other Matters: No more than two.
 - 4. Two or more Key Persons shall not perform the same task on a matter when one would be sufficient. Unless approved in advance by the General Counsel, only one attorney shall bill for attending hearings, trials, arbitrations, mediations, depositions, meetings, conferences, and the like.
 - 5. Special Counsel shall obtain the General Counsel's approval in advance to add or substitute a Key Person due to staff departures, or unforeseen increase in the scope of the work for a matter, or for any other reason. In such instances, Special Counsel shall not bill for the new Key Person to obtain familiarity or fluency on the matter.
 - 6. All firm personnel billing on an OCERS matter shall either be partners/members or firm employees. Special Counsel shall obtain the General Counsel's prior approval to retain contract or temporary personnel to work on an OCERS matter. In such instances, OCERS will not pay more than the firm's cost of such personnel plus a nominal markup for overhead.
 - 7. Clerical, secretarial, and administrative work is part of law office overhead and shall not be billed to OCERS, regardless of who performs it. Paralegals may bill to an OCERS matter only if identified and approved in advance by the General Counsel.
 - 8. On litigation matters, OCERS expects the Lead Counsel to personally perform the following tasks: depose named adverse parties, critical witnesses and experts; prepare critical OCERS' witnesses for deposition and trial; prepare for and attend critical depositions of OCERS representatives, mediations, settlement conferences and arbitrations; confer with the General Counsel on litigation and trial strategy; and fulfill other responsibilities as the General Counsel requests. If a Lead Counsel cannot personally perform these tasks, Special Counsel shall discuss the matter with the General Counsel well in advance of the scheduled date.

3.4 Billing Format

- A. Invoices shall itemize all work performed on a matter in chronological order by individual

task or activity.

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

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

A. Transactional Matters:

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

B. Litigation Matters.

1. Identify the Key Person(s) proposed to work on the matter in addition to Lead Counsel.
2. Identify and describe a litigation strategy including major pre-trial pleadings such as demurrers and motions for summary judgment. The litigation strategy shall also outline a discovery plan anticipating, where possible, significant witnesses, documents or data demands and potential areas for discovery challenges.

3. Describe any anticipated travel and/or out-of-town meetings or hearings and approximate the cost of each.
4. Identify any need for expert witnesses, and other significant out-of-pocket expenses, and approximate the cost.
5. Special Counsel will have the option of submitting a budget either for its complete handling (from assignment through resolution) or for particular temporal periods (e.g., by quarter-year) or significant phases (e.g., through demurrer, through summary judgment).

C. Advice/Opinions

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

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

3.6 Reimbursable Costs and Expenses

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

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

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

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

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

G. Nonbillable and Nonreimbursable Items

1. Services. Absent written agreement to the contrary, the following fees and charges are not permitted:
 - a. Time or services for any activity not expressly authorized by OCERS.
 - b. Time for reviewing or analyzing the firm's conflict of interest issues.
 - c. Time required for a firm's attorneys to become competent in his or her area of expertise.
 - d. Intra-office conferences between firm personnel.
 - e. Time spent to prepare responses to OCERS' external auditors.
 - f. Time billed for more than one attorney or paralegal to perform the same task or duplicate review, analysis, or legal research of or on documents.
 - f. Time for repetitive reviewing of work product caused by case reassignment, training and development, or other inefficiencies.
 - g. Time for more than one attorney attending court appearances, arbitrations, mediations, depositions, meetings, conference calls, and so forth.
 - h. Work performed by summer associates or law clerks who are not licensed to practice law.
 - i. Time for case administration (e.g., reviewing the status of assignments given to firm personnel, preparing or reviewing bills).
 - j. Time and/or expenses incurred due to change or departure of law firm personnel.

- k. Work customarily performed by secretaries and other administrative personnel.
- l. Staff overtime charges.

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

- a. Routine copying charges (day-to-day).
- b. Routine postage.
- c. Office supplies.
- d. Telephone charges.
- e. Word processing time.
- f. Lexis, Westlaw, and other database legal search costs.
- g. Storage costs.
- h. Items traditionally associated with fixed overhead costs such as rent and utilities.
- i. Equipment, books, periodicals, research materials, etc.
- j. Local meals.
- k. Alcoholic beverages.
- l. Local transportation.
- m. Expenses/disbursements without supporting invoices.

3.7 Invoices and Payments

- A. OCERS agrees to pay Special Counsel for authorized services provided in conformance with this Agreement upon OCERS' receipt of Special Counsel's invoices and supporting receipts that comply with these Requirements.
- B. All invoices shall be submitted in arrears for services already performed. No invoice may be rendered, and no payments will be made, for services not yet performed.
- C. Invoices shall be sent, in triplicate, stating the Agreement Number to:

Orange County Employees Retirement System
Attn: General Counsel
2223 East Wellington Ave. Suite 100
Santa Ana, CA 92701

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

ARTICLE 4. GENERAL TERMS

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

4.2 Notices

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

For OCERS:
Orange County Employees Retirement System
Attn: General Counsel
2223 East Wellington Ave. Suite 100
Santa Ana, CA 92701
Telephone No. (____) _____
FAX No. (____) _____
E-mail: _____

For Special Counsel:
Firm Name:
Firm Address:
City/State/Zip Code
Telephone No. (____) _____
FAX No. (____) _____
E-mail: _____

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

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

- A. Commercial General Liability (CGL) of no less than \$1 Million per occurrence.
- B. Automobile Liability of no less than \$1 Million per accident for bodily injury and property damage.
- C. Workers' Compensation at no less than statutory levels per accident for bodily injury or disease.
- D. Legal malpractice insurance coverage of no less than \$1 Million per occurrence, \$2 Million aggregate.

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

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

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

ARTICLE 5. COMPLIANCE AND INTEGRITY PROVISIONS

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

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

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

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

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

5.5 Examination and Audit

- A. Special Counsel (and its subcontractors and any other related parties that have relevant records) shall be subject to examination and audit by OCERS, any authorized agent or representative of OCERS, during the term of this Agreement and for three (3) years after OCERS' final payment to Special Counsel under this Agreement. Any examination or audit shall be limited to the performance of services under this Agreement, including, without limitation, the costs of administering this Agreement. On twenty (20) days prior notice for audits or examinations of a routine nature (and on reasonable shorter notice for non-routine audits or examinations), Special Counsel shall permit OCERS, its authorized agents or representatives during normal business

hours, to inspect audit, and copy all financial statements, books, accounts, and records of Special Counsel and anything else in connection with this Agreement, including Special Counsel's performance against performance standards and the terms of this Agreement. Special Counsel will provide copies of any records or documents requested in connection with an audit or examination within twenty (20) days after request.

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

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

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

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

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

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

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

- A. If any of Special Counsel's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement; or
- B. Of any other material change in Special Counsel's business, partnership or corporate organization. All notices under this provision shall contain sufficient information to permit OCERS to evaluate the changes. Special Counsel agrees to immediately provide OCERS with such additional information as OCERS may request with respect to any such change.

ARTICLE 7. TERMINATION

7.1 Termination at Option of OCERS

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

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

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

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

- B. Special Counsel will return all OCERS records to OCERS or its designee and shall cooperate fully to affect an orderly transfer of services;
- C. Special Counsel shall continue to be bound by the obligations set forth in Sections 5.1 through 5.5 of Article 5 after termination of the Agreement.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 The parties agree that time is of the essence with respect to all obligations under this Agreement.
- 8.2 Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.
- 8.3 This Agreement may be amended by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on either party.
- 8.4 No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- 8.5 If one or more provisions of this Agreement is held by any court to be invalid, void or unenforceable, such provision(s) will be deemed to be restated to effect the original intentions of the parties as nearly as possible in accordance with applicable law. The remaining provisions shall nevertheless remain and continue in full force and effect.
- 8.6 Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.
- 8.7 Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.
- 8.8 This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any state's or federal conflict of laws provisions or principles). Any suit brought hereunder shall be brought in a state or federal court sitting in Orange County, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.
- 8.9 Special Counsel and Special Counsel's personnel shall operate as independent contractors and shall not be considered employees of OCERS.
- 8.10 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

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

8.13 Entire Agreement/Incorporated Documents/Order of Precedence

- A. This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.
- B. This Agreement shall consist of the terms of this Agreement, and all attached documents which are expressly incorporated herein.
- C. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used: (i) applicable laws; (ii) the terms and conditions of this Agreement, including attachments; (iii) any other provisions, terms, or materials incorporated herein.

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

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

Orange County Employees Retirement System

Special Counsel

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attachment A
Scope of Services

Attachment B
Fee Schedule