

# Property Management Services

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## Request for Proposal

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*September 2019*



***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 real estate property management services. In general, the Property Manager selected as a result of this process will provide rent collection, eviction, inspection, maintenance and repair, tenant move in/out, financial services, and work cooperatively with the OCERS’s staff and consultants to manage the property referenced below.

OCERS was established in 1945 under the provisions of the County Employees Retirement Law of 1937, and provides members with retirement, disability, death, and cost-of-living benefits. There are approximately 42,000 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 approximately 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 complete. 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 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 discovers an ambiguity, conflict, discrepancy, omission or other error in this RFP, notice should be provided to [jdoezie@ocers.org](mailto:jdoezie@ocers.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 to find a qualified firm to provide real estate property management services for the OCERS office building located at 2223 East Wellington Avenue, Santa Ana, CA 92701. This three-story building houses OCERS operations on the first two floors. The third floor is office space currently rented to private tenants. The remainder of this RFP provides information about OCERS and establishes the specifications and requirement for submitting a proposal.

The referenced property is an office building of approximately 49,000 square feet on three (3) floors that was built in 1978. It sits on approximately 2.86 acres and includes adjacent exterior parking and two elevators. The building is 100% occupied.

The subject property is currently owned by 2223 Wellington Place Corporation (the Corporation), an entity wholly-owned by OCERS. The agreement that results from this RFP may be either in the name of OCERS or the Corporation, as determined by OCERS at the time of the agreement, and may be assigned from time to time by OCERS, the Corporation, or their wholly-owned affiliates.

## Section 4: Scope of Services / Requirements

The firm selected to provide property management services will be expected to meet the requirements and provide the services set forth below:

1. The selected firm must be a professional firm whose primary line of business includes property management services. Alternatively, the firm must have expertise in property management services if those areas are not their primary line of business.
2. The firm must have been in existence as a business entity performing such services for a minimum of five (5) years. The firm must have experience with performing property management services for similarly-sized properties.
3. The firm must have all necessary permits and licenses to perform the requested service. The selected firm must be bonded where applicable.
4. 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:
  - Commercial General Liability: \$2M per occurrence, \$2M aggregate
  - Automobile Liability: \$1M per occurrence, \$2M aggregate
  - Workers Compensation: \$1M per occurrence, \$1M aggregate
  - Professional Liability (Errors & Omissions): \$2M per occurrence, \$3M aggregate
  - Umbrella Liability: \$8M per occurrence, \$8M aggregate
  - Pollution & Remediation Legal Liability: \$5M per occurrence, \$25M aggregate
5. 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 selected firm shall provide guidance and coordination with OCERS staff to endure effective and economical operation of all facility actives.
6. Core skills include comprehensive knowledge and understanding of relevant property management laws and operations in California, excellent oral and written communication skills, sound judgment, the ability to work well with and maintain the confidence of the OCERS Board and staff, and the ability to deliver services in a timely and cost effective manner.
7. The selected firm shall comply with all Federal, State, and Local laws and follow the most restrictive guidance in cases of conflicting guidance. All work shall be performed in accordance with all applicable laws and codes, manufacturers' recommendations, and accepted industry standards.
8. 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. Contractor will be notified ninety (90) days prior to the expiration or renewal of the contract.
9. In general, normal business hours of operations are from 08:00 to 17:00 Monday through Friday, except for Federal and State holidays.
10. The selected firm shall provide a dispatch function twenty-four (24) hours a day, seven (7) days a week. The firm shall accept work requests from designated OCERS staff and, for rented space, staff designated by tenants. Requests from other sources, except in an emergency, must be approved by designated OCERS staff prior to the start of work.

11. Any disruption of building services requires prior approval. The firm shall coordinate scheduled outages with OCERS staff and affected tenants prior to the commencement of work. Such notification shall be made for disruptions of any services (such as utility outages, road or facility closures, etc.), or disruptions caused by any maintenance or construction work. Notification of affected downtime due to emergency outages or interruptions is expected.
12. Firm personnel shall present a clean, neat, and professional appearance and be easily recognized as the firm's employee(s). At the minimum the firm shall ensure all employees exhibit an identifying badge or patch, which shall include the company name and employee name. Each employee shall wear the badge or patch on the front outer clothing. The badge shall be visible at all times.
13. Adherence to the applicable Occupational Safety and Health Act (OSHA) standards will be mandatory for this contract. The firm shall comply with all Federal, State and Local laws and statues concerning safety. The firm shall manage all work areas to endure the safety of building occupants, employees, and visitors in, or near, the property.
14. The firm shall provide assistance in planning, assignment, and movement of office equipment and furnishings for the facility.
15. **Property Management Details:**
  - Supervise onsite engineering and day porter personnel;
  - Supervise vendor services and contract administration as it pertains to property management.
  - Administer leases and enforce tenants' leasehold obligations.
  - Collect and monitoring proof of insurance for tenants and vendors.
  - Field tenant work order calls, dispatch, and follow up as appropriate.
  - Log all tenant maintenance requests for future reference.
  - Coordinate all scheduled and unscheduled maintenance work.
  - Communicate to OCERS and tenants regarding building issues that will affect them (i.e. work being conducted to elevators, window washing, lobby floor maintenance, etc.).
  - Provide property inspections and tours.
  - Handle tenant relations.
  - Provide monthly comprehensive janitorial and engineering inspections.
  - Coordinate tenant events.
  - From time to time, review existing building rules and regulations and present recommendations to OCERS to modify existing rules and regulations deemed appropriate.
  - Meet with OCERS staff to discuss status of repair items.
  - Coordinate and supervise minor tenant improvement work (i.e. paint, carpet, etc.).
  - Help coordinate annual occupant fire drill where applicable.
  - Implementation of green energy and recycling programs where appropriate.
  - Apply for rebates from utility companies for repairs and equipment that meet criteria.
  - Market available office space for lease.
  - Compile information for auditors and tax preparers on behalf of OCERS.
  - File Federal and State tax forms when applicable.
  - Work with the City of Santa Ana on any ADA/Code compliance issues that may arise
  - Collect monthly operating expense reimbursement.
  - Prepare monthly narrative regarding property operations, financial results, delinquencies, and etc.
  - Provide project management for major tenant improvements and capital items, which will be scheduled and entered into under a separate agreement.

- Identify and address emergency situations immediately upon occurrence and provide follow-up remediation while keeping the OCERS staff informed
- Supervise and arrange the routine maintenance and minor repairs of the property including arrangement of janitorial and landscaping services
- Provide services to ensure that grounds look their very best for VIP visits and special events. Special events may require setup of furniture, moving of furniture, decorations, etc. The OCERS staff will notify the firm as soon as a VIP visit or special event requirements are known.
- Provide property and parking lot security.

#### 16. Accounting / Financial Reporting Details:

- Prepare annual operating budget and a five (5) year capital plan. This includes suggested capital improvements and detailed suggestions for the improved operation of the property with a detailed narrative.
- Calculate operating expense estimates for each tenant.
- Collect monthly operating expense reimbursement.
- Provide accounts receivables duties.
- Approve and input all invoices on a daily basis.
- Review monthly funding requests and modify according to approved projects within the building.
- Calculate quarterly distributions to retain funds required for upcoming projects
- Collect rents.
- Follow-up on accounts receivables – bill late fees as appropriate and approved by OCERS.
- Prepare monthly financial reports including actual versus budget operating statements, accounts receivables/aging report, rent roll, security deposit ledger, and variance reports.
- Prepare and serve 3-day notices upon direction from OCERS; coordinate with owner's attorney
- Log rent checks and other receivables received for financial reporting purposes.
- Gross up of year end operating expenses and billing of triple-net expenses in accordance with tenant's lease.
- Calculate operating escrows to be billed to tenants.
- Perform periodic property valuations/appraisals.
- Procure property insurance.
- Administer bank accounts.
- Report financial information to OCERS upon request.
- Oversee property tax appeals, if appropriate

## 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.

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

**Name:** Jim Doezie

**Title:** Contracts, Risk & Performance Administrator

**Address:** OCERS  
2223 E Wellington Ave., Suite 100  
Santa Ana, CA 92701

**Telephone:** (714) 569-4884

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

**OCERS Website:** [www.OCERS.org](http://www.OCERS.org)

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

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## Section 6: Vendor Response

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 may be submitted electronically in Microsoft Word or Adobe Acrobat PDF format to the email address noted in *Section 5*. Hard copies may also be submitted to the address noted in *Section 5*. If hard copies are submitted, please provide two (2) copies. OCERS will accept electronic, paper, or both types of submissions.

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 property management services.
3. A description of the respondent including:
  - a. Brief history including year the respondent firm was formed.

- b. Ownership structure.
  - c. Office locations.
  - d. Organization chart.
  - e. Number of employees.
  - f. Annual revenues.
  - g. Scope of services offered.
  - h. Respondent's specialties, strengths and limitations.
  - i. The respondent's experience managing commercial office properties.
  - j. Describe the accounting systems used and financial reporting methodologies.
  - k. How soon after period-end (month, quarterly, annual) are the financial results delivered?
  - l. Are the respondent's financial reports independently audited? If so, what is the name of the audit firm?
  - m. Are actual financials compared to pro-forma estimates? Is this reviewed with the owner?
  - n. An example of the respondent's financial reports.
  - o. What is the average retention rate (years of service) of the firm's other clients?
  - p. How will the firm assist OCERS with space planning and construction projects?
  - q. How will the firm ensure the building is adequately maintained?
  - r. A description of the process for routine maintenance. Provide a sample scheduled/preventive maintenance plan.
  - s. A description of the process for emergency service and project specialized work.
  - t. Describe the outside vendor services the firm typically employs.
  - u. How vendors are initially vetted? How is vendor performance monitored?
  - v. How will the firm help OCERS identify and correct potential safety risks or hazards?
  - w. Will the firm assist in investigating accidents or damage to the property? Does the firm have prior experience in this capacity?
4. The names and qualifications of fully trained and qualified staff that will be assigned to OCERS work, including a detailed profile of each person's background and relevant individual experience.
  5. At least three (3) references for which the respondent has provided property management services. Please include for each reference the individual point of contact, a summary of the work performed, and the length of time the respondent provided this service.
  6. Copies of any pertinent licenses required to deliver respondent's product or service. (i.e.: Business License)
  7. A detailed transition plan that explains the transfer from the incumbent to the selected firm.
  8. A copy of respondent's standard professional services contract.
  9. An explanation of the pricing proposal for the scope of work including pricing of fees and costs, billing practices and payment terms that would apply. OCERS does 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.

10. An explanation of all actual or potential conflicts of interest that the respondent may face in the representation of OCERS. Specifically, and without limitation to other actual or potential conflicts.
11. 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 respondent and any of the individuals proposed to provide services to OCERS.
12. 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:

1. Experience and reputation of the respondent.
2. Quality of the team proposed to provide services to OCERS.
3. Information provided by references.
4. Communications skills.
5. Pricing and value.
6. Team work, both internally and with OCERS.
7. Level of investment and commitment to the OCERS relationship.
8. 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](http://www.ocers.org).

## **Section 10: Incomplete Responses**

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 [JDoezie@OCERS.org](mailto:JDoezie@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	September 16 <sup>th</sup>	5:00 pm (PDT)
RFP Questions Deadline	September 20 <sup>th</sup>	5:00 pm (PDT)
RFP Answers Posted	September 27 <sup>th</sup>	5:00 pm (PDT)
Facility Tour	Thursday, October 3 <sup>rd</sup>	9:00 – 11:00 am
RFP Submission Deadline	October 11 <sup>th</sup>	5:00 pm (PDT)
OCERS Review of RFP Submissions	October 14 <sup>th</sup> to October 25 <sup>th</sup>	
Selection of Finalists	October 28 <sup>th</sup>	
Finalists interviews	To be determined	
Service Award	To be determined	

## Section 12: Facility Tour

There will be a non-mandatory tour of the facility and surrounding area to be conducted by RSVP. The tour will be conducted one time only, unless OCERS determines a need for an additional tour. The tour will be held at 2223 E. Wellington Avenue, Suite 100, Santa Ana, CA 92701 as noted above. Bidders must confirm their attendance by 5:00 p.m., the day before the tour via email to [jdoezie@ocers.org](mailto:jdoezie@ocers.org). The tour will begin promptly at the prescribed time. The purpose of the tour will be to familiarize all respondents with the building condition, areas, and location.

## Section 13: 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 14: 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.

## **Section 15: 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 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 (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 16: Engagement Agreement**

OCERS will propose an engagement agreement to the successful respondent, which will contain such terms as OCERS in its sole discretion may require. In addition, the selected firm will agree that this RFP and the firm's response will be incorporated by reference into any resulting Agreement.

## **Section 17: 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 18: 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 respondent 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.

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: **Jim Doezie**, Contracts, Risk and Performance Administrator

2223 E. Wellington Ave., Suite 100

Santa Ana, CA 92701

# Attachment 1 – Consulting Contract



## MASTER AGREEMENT

This Contract Agreement is made and entered into as of [REDACTED] (“**Effective Date**”) by and between **Orange County Employees Retirement System (“OCERS”)**, with a principal place of business at 2223 E. Wellington Avenue, Santa Ana, CA 92701, and [REDACTED] (“**Contractor**”), with a principal place of business at [REDACTED]. OCERS and Contractor are referred to individually as “**Party**” and collectively as the “**Parties.**” This Contract Agreement and all other documents pertaining to this document are collectively referred to as this “**Agreement.**”

1. This Agreement is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Services

Attachment B – Payment/Compensation

2. **Term of Contract:** This Agreement shall commence upon the Effective Date and will continue until all referenced deliverables are submitted to OCERS; which shall be no greater than six months from the effective date, unless otherwise terminated.
3. **Termination:** In addition to any other remedies or rights it may have by law, both Parties have the right to immediately terminate this Agreement without penalty for cause, or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud. Exercise by a party of its right to terminate the Agreement shall relieve OCERS of all further obligations, except those which expressly survive termination.
4. **Termination Transition:** Upon termination, OCERS agrees to pay the Contractor for all undisputed services performed prior to termination which meet the requirements of the Agreement, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Agreement. Upon termination or other expiration of this Agreement, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Agreement.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Agreement shall be a material breach of this Agreement. In such event OCERS may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:

- a) Terminate the Agreement immediately, pursuant to the “Termination” clause;

- b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Agreement within which to cure the breach;
  - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
  - d) Offset against any monies billed by the Contractor but yet unpaid by the OCERS those monies disallowed pursuant to the above.
  - e) Make payment to the Contractor for any monies owed for undisputed services already rendered.
6. **Consent to Breach Not Waiver:** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
7. **Warranty:** Contractor expressly warrants that any goods covered by this Agreement are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold OCERS and its indemnities as identified in paragraph 28 below, and as more fully described in paragraph 28, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by OCERS by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
8. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Agreement or any subsequent amendment of or effort under this Agreement without first obtaining review and written approval of said news releases from the OCERS through the OCERS's Project Manager. In addition, the Contractor agrees it will not use the OCERS' logo, name or branding for any advertisements or endorsements, electronic or otherwise, without the prior written approval of OCERS.
9. **Notices:** Unless otherwise provided in this Agreement, notices under the Agreement must be in writing and delivered by courier, overnight carrier, or by certified mail, return receipt requested, to the persons whose name and business address appear below or to such other address as may hereafter be furnished in writing to the other Party.

**If to OCERS:**

Orange County Employees Retirement System  
2223 E. Wellington Avenue  
Santa Ana, CA 92701  
Attention: Jim Doezie  
e-mail: [jdoezie@ocers.org](mailto:jdoezie@ocers.org)

**If to Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

e-mail: \_\_\_\_\_

10. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. To the extent required by Contractor to demonstrate that OCERS is entitled to an exemption from any taxes, duty, or similar charge, OCERS shall provide to Contractor a valid exemption certificate (in a form reasonably acceptable to Customer). Contractor will give effect to any valid exemption certificate provided in accordance with the foregoing sentence to the extent it applies to any service billed by Contractor to OCERS.
11. **Assignment and Change of Ownership:** The nature and character of Contractor's is material to OCERS decision to enter into this Agreement. Therefore, neither the performance of this Agreement nor any portion thereof may be assigned by Contractor without the express written consent of OCERS, in its sole and absolute discretion, and such consent shall not be unreasonably withheld. Any attempt by Contractor to assign the performance or any portion thereof of this Agreement without the express written consent of OCERS shall be invalid and shall constitute a breach of this Agreement. Upon a permitted assignment, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties.

Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the OCERS agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Agreement and complete them to the satisfaction of the OCERS. OCERS reserves the right to immediately terminate the Agreement in the event the OCERS determines that the assignee is not qualified or is otherwise unacceptable to the OCERS for the provision of services under the Agreement.

12. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, economic or governmentally subsidized status, or military and veteran status of any person of such persons.
13. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of OCERS. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through OCERS.
14. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to OCERS's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor,

supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of OCERS required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

15. **Insurance Requirements:** Contractor will carry insurance coverage for the following types and minimum amounts noted below. Contractor will provide applicable Certificate(s) of Insurance to OCERS prior to the commencement of work and name OCERS, OCER's officers, officials, employees, and volunteers as additional insured.
- Commercial General Liability of no less than \$1 Million per occurrence or claim, with a \$2 Million aggregate.
  - Automobile Liability of no less than \$1 Million per accident for bodily injury and property damage, with a \$2 Million aggregate.
  - Workers' Compensation in the statutorily requirement amounts per accident for bodily injury or disease for \$1M per occurrence, \$2M aggregate.
  - Professional Liability (Errors & Omissions) insurance appropriate to the Contractor's profession, with limit no less than \$2 Million per occurrence or claim, with a \$3 Million aggregate (where required).
  - Pollution & Remediation Legal Liability: \$5M per occurrence, \$25M aggregate
16. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Agreement caused by any act of God, war, civil disorder, nuclear war, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to OCERS within two (2) business days of the start of the delay and Contractor avails himself of any available remedies.
17. **Confidentiality:** Contractor agrees to maintain the confidentiality of all OCERS and OCERS-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

The parties acknowledge and agree that certain information designated by either OCERS or Contractor shall be deemed "Confidential Information." Confidential Information excludes information that: (i) is or becomes generally available to the public through no wrongful act of the recipient; (ii) is received from a third party with the right to supply it; or (iii) is independently developed by the recipient. Upon written request, the recipient will return the Confidential Information to the discloser and shall not retain any copies of such Confidential Information. Confidential Information may be used by the recipient only in connection with its performance under this Agreement. Confidential Information may not be disclosed except to those employees or contractors of the recipient with a need to know and who agree to hold the information in confidence or if a party is legally compelled. If the recipient is legally compelled to disclose Confidential Information, the recipient shall provide the discloser with notice of such requirement prior to disclosure (if permissible) so that the discloser may seek any appropriate remedy.

Contractor understands and agrees that OCERS, as a public pension fund, is subject to the California Public Records Act, Cal. Gov't Code § 6250 *et. seq.* ("CPRA") and may be requested to include Contractor's delivered work product as part of a response to a public records request. This Agreement shall constitute notice that any work product provided to OCERS may be released to the public pursuant



to a CPRA request and shall release OCERS from any liability or damages related to such disclosure. Should Contractor believe that certain work product is protected by trade secret or other applicable laws, Contractor shall designate it as Confidential Information and provide OCERS the applicable exception to disclosure under the CPRA. In the event that any action is taken against OCERS for failure to disclose information deemed by Contractor to be protected, Contractor shall indemnify and defend OCERS, its employees and Board members from all liability arising out of the failure to disclose, including but not limited to, all attorneys' fees OCERS is required to pay for its own defense and any attorneys' fee award to a requesting party who prevails in the action. This indemnity shall supersede any limitation of liability or any other indemnification provision in this Agreement or in any statement of work executed by the parties. Nothing herein shall prejudice Contractor's right to challenge a determination that disclosure is required through appropriate means, including but not limited to a "reverse-CPRA action," *see Marken v. Santa Monica-Malibu Unified School Dist.*, 202 Cal. App. 4th 1250 (2012)

18. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Agreement shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"). Contractor acknowledges that OCERS is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraphs 21-22 below. Contractor agrees that it shall defend, indemnify and hold OCERS and OCERS INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to Contractor's failure to comply with any applicable law.
  
19. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, OCERS is required to file in accordance with subdivision (a) of Section 6041A of the Internal Revenue Code for services received from a "service provider" to whom the OCERS pays \$600 or more or with whom the OCERS enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at [http://www.edd.ca.gov/Employer\\_Services.htm](http://www.edd.ca.gov/Employer_Services.htm)

20. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, the Unruh Civil Rights Act, Cal. Civ. Code § 51; the California Fair

Employment and Housing Act, Cal. Civ. Code §§ 12940 *et seq.*, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, economic or governmentally subsidized status, or military and veteran status.

21. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, economic or governmentally subsidized status, or military and veteran status.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

22. **Entire Agreement:** This Agreement contains the entire Agreement between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on OCERS unless authorized by OCERS in writing.
23. **Precedence:** The Agreement documents consist of this Agreement and its exhibits and attachments. In the event of a conflict between or among the Agreement documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
24. **Amendments:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties, including a signature that is electronically transmitted by the party electronic transmission and acknowledgement from the persons set forth above in Section 10 ("Notice"); no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on OCERS unless authorized by OCERS in writing.

25. **Severability:** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
26. **Governing Law and Venue:** This Agreement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding California Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
27. **Interpretation:** This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
28. **Indemnification:** The parties agrees to indemnify, defend, and hold each other (including its officers, employees, officials, employees, agents, and in the case of OCERS, its Board Members) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by the other party pursuant to this Contract. In the event that defense of an action is tendered to and accepted by Contractor, counsel employed by Contractor for that action shall first be approved by OCERS. If judgment is entered against either party by a court of competent jurisdiction because of the concurrent active negligence of the other party, the parties agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date following their respective signatures.

**ORANGE COUNTY EMPLOYEES  
RETIREMENT SYSTEM**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ORANGE COUNTY EMPLOYEES  
RETIREMENT SYSTEM**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONTRACTOR**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment A to Contract

### Statement of Work

- Provide Property Management Services to OCERS
- Leasing Services to tenants of 2223 E. Wellington Aveune, Santa Ana, Ca 92701

Details to be inserted as appropriate

#### **Additional Scope of Work Conditions:**

- A. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. OCERS reserves the right to refuse any goods or services and to cancel all or any part of the services or deliverables not conforming to applicable specifications, drawings, samples or descriptions or services as prescribed in the statement of work. Acceptance of any part of the services provided or deliverables shall not bind OCERS to accept future services or deliverables. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by OCERS.
  - B. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in this contract, it shall indemnify, defend and hold OCERS and its officers, employees, agents, and Board Members harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
  - C. **Changes:** Contractor shall make no changes in the work or perform any additional work without the OCERS's specific written approval.
  - D. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the OCERS and shall not be changed without the written consent of the OCERS's Project Manager, which consent shall not be unreasonably withheld. The Contractor's Project Manager shall be assigned to this project for the duration of the Agreement and shall diligently pursue all work and services to meet the project time lines. The OCERS's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the OCERS under this Contract. The OCERS's Project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within five (5) business days after written notice by the OCERS's Project Manager. The OCERS's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The OCERS is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.
29. **Data – Title To:** All materials, documents, data or information obtained from the OCERS data files or any OCERS medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the OCERS. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Agreement without the express

written consent of the OCERS. All materials, documents, data or information, including copies, must be returned to the OCERS at the end of this Contract.

Attachment B to Contract  
Payment/Compensation

- Monthly fix cost to OCERS: \$XXXX
- Leasing Services cost: \$XXXX

Details to be inserted as appropriate

1. **Compensation:** This is a firm-fixed fee Agreement between the OCERS and Contractor for as set forth in Attachment A, "Scope of Work. The Contractor agrees to accept the specified compensation as set forth in this Agreement as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **OCERS shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by OCERS in writing. Fees and Charges:** OCERS will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:
2. **Price Increase/Decreases:** No price increases will be permitted during the first period of the price agreement. OCERS requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to OCERS. The OCERS may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
3. **Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the OCERS during the term of this Agreement not otherwise specified and provided for within this Contract.
4. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to OCERS and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse OCERS for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Agreement requirements.

Payments made by OCERS shall not preclude the right of OCERS from thereafter disputing any items or services involved or billed under this Agreement and shall not be construed as acceptance of any part of the goods or services.

5. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the OCERS for payment to ensure compliance with IRS requirements and to expedite payment processing.
  
6. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor’s letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
  - a. Contractor’s name and address
  - b. Contractor’s remittance address, if different from 1 above
  - c. Contractor’s Taxpayer ID Number
  - d. Name of OCERS Agency/Department
  - e. Delivery/service address
  - f. Master Agreement (MA) or Purchase Order (PO) number
  - g. Date of invoice
  - h. Product/service description, quantity, and prices
  - i. Sales tax, if applicable
  - j. Freight/delivery charges, if applicable
  - k. Total

Invoice and support documentation are to be forwarded to:

2223 E. Wellington Avenue  
Santa Ana, CA 92701  
Attention: Accounts Payable  
Email: [Accountspayable@ocers.org](mailto:Accountspayable@ocers.org)