



REQUEST FOR PROPOSAL

San Joaquin County Employees' Retirement Association
6 S. El Dorado Street, Suite 400
Stockton, California 95202
Phone: (209) 468-2163
www.sjcera.org

Request for Proposal No. 2021-04

INVESTMENT COUNSEL SERVICES

Proposals must be received no later than 4:00 p.m.
Friday, November 19, 2021

KEY DATES

Request for Proposals (RFP) issued:	October 8, 2021
Letter of Intent and Written Questions Due	October 22, 2021, 4 p.m. PT
Responses to Questions Posted on Website	No later than October 29, 2021
Due date for submission of proposals:	November 19, 2021, 4 p.m. PT
Possible Interview(s) of Finalists:	December 6 – 10, 2021
Estimated Contract Execution:	December 17, 2021

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I. INVITATION

The San Joaquin County Employees' Retirement Association (SJCERA) is issuing this RFP to solicit proposals from qualified firms to provide, on an as-needed basis, investment counsel services.

II. GENERAL INFORMATION

A. Background Information

SJCERA is a tax qualified, contributory defined benefit pension plan established by the San Joaquin County Board of Supervisors effective June 28, 1946. SJCERA provides retirement, disability and survivors' benefits to eligible General and Safety members employed by the County of San Joaquin and nine other public employers:

- Lathrop-Manteca Rural Fire Protection District
- Mountain House Community Services District
- San Joaquin County Historical Society and Museum
- San Joaquin County Law Library
- San Joaquin County Mosquito and Vector Control District
- San Joaquin County Superior Court
- San Joaquin Local Agency Formation Commission
- Tracy Public Cemetery District
- Waterloo-Morada Rural Fire Protection District

SJCERA's nine-member Board of Retirement has exclusive control and fiduciary responsibility for administering the benefits and managing the investment of plan assets. The Board oversees the Chief Executive Officer and staff in the performance of their duties in accordance with the County Employees' Retirement Law (CERL), the Internal Revenue Code (IRC), the Public Employees' Pension Reform Act of 2013 (PEPRA) as adopted by the Board of Supervisors and Board of Retirement, and the bylaws, policies, and procedures adopted by the Board. The San Joaquin County Counsel's Office acts as general counsel to the Board and provides oversight of all specially retained outside counsel.

The nine-member Board of Retirement includes the County Treasurer-Tax Collector, four trustees appointed by the County Board of Supervisors and four trustees elected by SJCERA members (two general, one safety, one retired), plus one alternate retired member and one alternate safety member (currently vacant).

As of December 31, 2020, SJCERA's membership included over 8,000 active and inactive members and 6,000 retired members. Net assets totaled approximately \$3.5 billion as of December 31, 2020.

B. Written Questions Related to the RFP

Written questions will be accepted only via e-mail at InvestmentCounselRFP@sjcera.org. All questions must identify the RFP section and page number to which the question refers. Written questions to the above e-mail address will be accepted until 4:00 p.m. on Friday, October 22, 2021. Questions and responses thereto will be posted on SJCERA's website (www.sjcera.org) no later than October 29, 2021.

C. Notice of Intent

Each interested party must send a Letter of Intent to Propose to this RFP via e-mail to InvestmentCounselRFP@sjcera.org on or before Friday, October 22, 2021. The Letter must include the title of the RFP, the single point of contact at your firm responsible for the RFP response and the telephone and e-mail information for this individual.

D. No Contact

No contact with SJCERA board members and SJCERA staff regarding the contents of this RFP will be allowed during the pendency of this RFP, with the exception of the submitted written questions.

E. No Reimbursement for RFP Expenses

SJCERA will not provide reimbursement for any fees, expenses, or other costs incurred in connection with this RFP, including the costs of preparing the response, providing any additional information or attending an interview(s). All material submitted in response to this RFP will become the sole property of SJCERA. SJCERA expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal patent or proprietary rights.

F. Interviews

Interviews may be conducted at SJCERA's discretion. Proposers selected for interview will be notified of the interview date(s) at least one week in advance.

G. Confidentiality

All responses to this RFP become the property of SJCERA and will be kept confidential until such time as a recommendation for award of a contract has been announced. Submittals are subject to public inspection and disclosure under the California Public Records Act. If a Proposer believes that any portion of its submittal is exempt from public disclosure, such portion must be marked "Confidential." SJCERA will use reasonable and legally permissible means to ensure that such confidential information is safeguarded to the extent that SJCERA, in its independent judgment, concludes that the information is in fact exempt from disclosure, but SJCERA will not be liable for inadvertent disclosure of such materials, data and information. If proposals are marked "Confidential" in their entirety, SJCERA will not deny public disclosure of all or any portion of submittals so marked.

By submitting information with portions marked "Confidential", the proposer represents it has good faith belief that such material is exempt from disclosure under the California Public Records Act and agrees to reimburse SJCERA for, and to indemnify, defend and hold harmless SJCERA, its officers, fiduciaries, employees and agents from and against: 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 SJCERA's non-disclosure of any such designated portions of a proposal if disclosure is deemed required by law or court order.

III. SCOPE OF WORK

A. Introduction

SJCERA is seeking a qualified Proposer with extensive experience advising and representing public pension funds and/or institutional investors with respect to a variety of investment strategies both traditional and alternative. Investment counsel will be expected to provide, at a minimum, the following range of investment counsel services, including but not limited to:

- Review, draft and/or negotiate investment contracts (e.g., subscription agreements, limited partnership agreements, side letters) and other investment-related documents
- Advice and counsel on investment advisory agreements, supplemental or secondary agreements and letter or side agreements
- Advice and counsel on the legal structure of investments in funds, Fund of Funds, limited partnerships and on-shore and off-shore investments

- Advice and counsel regarding SEC, CFTC and other domestic, state, international and foreign laws, rules and regulations applicable to SJCERA's investment activities and holdings, including representation in any disputes or litigation that might arise out of investment issues in these areas
- Advice and counsel on investment-related tax issues
- Advice and counsel regarding securities litigation issues inside and outside of the United States, including monitoring of actions that may affect SJCERA
- Attendance at Board meetings, via telephone or virtually, when necessary

Proposer will work with SJCERA's investment consultant, executive staff and County Counsel to ensure appropriate legal review of all investments.

B. Term of Engagement

SJCERA anticipates contracting with the successful proposer for an initial term of five (5) years, subject to a mutual termination clause of reasonable duration. The contract may be extended for up to five (5) additional years by mutual agreement of the parties by written amendment, subject to satisfactory negotiation of terms.

IV. MINIMUM QUALIFICATIONS

The Proposer should have at least five (5) years' experience in representing governmental pension plans. The assigned Lead Counsel shall be a member of the State Bar of California, admitted and licensed to practice law in all Federal and State Courts in the State of California, with at least seven (7) years' experience in providing advice to institutional investors or investment managers.

V. PROPOSAL REQUIREMENTS

A. Proposal Requirement

Proposers must submit one (1) USB flash drive of their proposal in a sealed package **no later than 4 p.m. PT on Friday, November 19, 2021**. Proposals must be sent to:

Greg Frank
RFP Coordinator
San Joaquin County Employees' Retirement Association
6 S. El Dorado Street, Suite 400
Stockton, CA 95202

B. Proposal Form

Proposals must be prepared in a simple, economical manner, with the sections tabbed to match those in the RFP, and with all the pages numbered within in each section. The proposal shall be prepared succinctly, providing a straight forward, concise description of the Proposer's ability to meet the requirements of the RFP.

Proposal and billing rates shall be valid and binding for 180 days following the proposal due date and will become part of the contract that is negotiated with SJCERA.

Failure to complete any question or request for information, in whole or in part, or any deliberate attempt by the Proposer to mislead SJCERA, may disqualify the Proposer.

C. Proposal Content

A complete Proposal must include the following information:

Section 1: Cover Letter. A cover letter providing a statement affirming that the signatory is empowered to bind the respondent to an engagement agreement with SJCERA and representing and warranting that the information stated in the proposal is accurate and may be relied upon by SJCERA in considering and potentially accepting the proposal.

Section 2: Executive Summary. An executive summary that provides the Proposer's background, experience and other qualifications to provide investment counsel services.

Section 3: Description of Proposer. A description of the Proposer including:

- i. A brief history of the firm including year it was formed
- ii. Ownership structure
- iii. Office locations
- iv. Organizational chart
- v. Number of employees
- vi. Number of employees dedicated to investment counsel services
- vii. Annual revenue
- viii. Areas of practice including firm specialties, strengths and limitations

Section 4: Lead Counsel. Identify the Lead Counsel to be assigned to SJCERA as well as any other attorneys intended to render legal services

under the proposal. Include resumes, professional background, area(s) of specialization, and office location(s).

Section 5: Qualifications. Narrative of the qualifications of the attorney(s) proposed to work with SJCERA, including but not limited to:

- i. Legal training, years of practice, area(s) of specialization (include date of admittance to the California Bar)
- ii. Years of public and private sector investment law practice
- iii. Litigation and arbitration experience and demonstration of a satisfactory track record
- iv. Professional affiliations
- v. Experience and expertise in investment matters, including but not limited to Institutional Limited Partners Association (ILPA) and the Scope of Work mentioned above

Section 6: References. Provide three (3) references for which the Lead Counsel has provided investment counsel services, with at least one (1) of the references being a public defined benefit retirement system. Please include for each reference the name of the organization, individual point of contact, their email and phone number, a summary of the work performed, and the length of time Lead Counsel provided this service.

Section 7: List of Engagements. A list of engagements where the Lead Counsel has acted as investment counsel to an institutional investor.

Section 8: Billing Rate. State the hourly billing rate for the attorneys listed in Section 4. SJCERA expects to receive the lowest rate charged by your firm for its governmental and/or non-profit clients. If for any reason your firm is not prepared to do so, please indicate your reasons.

Please note that SJCERA expects not to pay for travel time unless substantive work takes place during the travel time.

In addition, Proposer may provide any alternative fee structure deemed appropriate.

Section 9: Conflicts of Interest. An explanation of all actual or potential conflicts of interest that the Proposer may face in the representation of SJCERA.

Section 10: Discipline or Suspension. State whether the firm, its officers, partners, principals, agents, or employees that are expected to perform services under this RFP, have been disciplined, admonished, warned, or had any license, registration, charter, certification, or any similar authorization to engage in the legal profession suspended or revoked for any reason.

Section 11: Prior Disqualification or Termination. Has the Proposer been disqualified or terminated by any public agency. If so, please explain under what circumstances this disqualification or termination occurred.

Section 12: Litigation. Identify any past, pending or threatened litigation or administrative or state ethics board or similar body proceedings to which you, your firm or any of your attorneys are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFP is issued or, of decided in and adverse manner, materially adversely affect the financial condition of Proposer.

Section 13: Contract Template. A sample of the type of contract contemplated is attached as Exhibit A. In submitting a proposal, the Proposer will be deemed to have agreed to each clause unless the proposal identifies an objection, sets forth the basis for the objection, and provides substitute language to make the clause acceptable to the Proposer.

Section 14: Miscellaneous. Any other information that the Proposer deems relevant to SJCERA's selection process.

VI. PROPOSAL SELECTION AND EVALUATION

A. Scoring and Evaluation Criteria

Proposers will be evaluated in the discretion of SJCERA based upon the following factors:

- Qualifications, reputation and experience of the firm and the attorney(s) to provide legal services
- Level of experience with public defined benefit retirement plans
- Information provided by references and any current or former clients
- Ability to effectively communicate technical/legal issues
- Cost of legal services, including such factors as hourly rates, discounts, and any alternative fee arrangements
- Interviews, if conducted
- The organization, completeness, and quality of the proposal, including cohesiveness, conciseness, and clarity

The factors will be considered as a whole, without specific weighting. The balancing of the factors is within SJCERA's sole discretion. Factors other than those listed may be considered by SJCERA in making its selection. SJCERA reserves the right in its discretion to request additional information from any proposer, although such requests may not be made to all proposers.

B. Right to Reject Proposal

SJCERA reserves the right to reject any or all proposals and is not liable for any costs the Proposer incurs while preparing the proposal. All proposals will become part of the public file, without obligation to SJCERA. Upon the completion of the evaluations, SJCERA intends to negotiate a final contract with the Proposer whose proposal is deemed to be most advantageous to SJCERA.

C. Presentations

Proposers may be selected to give an oral presentation. Such presentation shall provide an opportunity for Proposers to clarify their proposal to ensure there is a mutual thorough understanding. SJCERA staff may interview selected Proposers and ask additional questions related to the proposal and the scope of work prior to any oral presentation. Interviews and oral presentations are conducted at SJCERA's discretion. Proposers selected for an interview or oral presentation will be notified of the date at least one week in advance. Proposers invited to an interview or oral presentation will be responsible for making and paying for their own travel arrangements.

VII. CONTRACT REQUIREMENTS

A. Contract Award

The award of a contract is accomplished by executing a contract with a written agreement that incorporates the entire RFP. The successful Proposers must agree to provide SJCERA with audit access on request during the term of the contract and for seven (7) years thereafter.

If a satisfactory contract cannot be negotiated, SJCERA may, in its sole discretion, begin contract negotiations with one or more than one of the remaining Proposers. SJCERA may contract with more than one Proposer if SJCERA determines, in its sole judgment, that more than one Proposer is preferred to provide the specified services.

B. Contract Requirements

Contract requirements are outlined in the template agreement referenced in Section V(C)(13) and attached to this RFP as Exhibit A.

C. Contract Approval

SJCERA's selection of a successful Proposer shall not be binding until it has been approved by SJCERA.

D. Reservations

This RFP does not commit SJCERA to award a contract. SJCERA reserves the right, in sole discretion to negotiate with any or all firms considered or to cancel the RFP in whole or in part.

EXHIBIT A SAMPLE CONTRACT FOLLOWS

**SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
AGREEMENT WITH _____ FOR INVESTMENT COUNSEL SERVICES**

This Agreement is made and entered into by and between the San Joaquin County Employees' Retirement Association ("SJCERA"), a public retirement system created under the County Employees Retirement Law of 1937, with offices located at 6 El Dorado Street, Suite 400, Stockton, California 95202, and _____ ("Consultant"). The parties to this Agreement may be referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, following issuance of a request for proposals for investment counsel services and consideration of the responses received, SJCERA desires to enter into an agreement with Consultant; and

WHEREAS, the Agreement shall consist of this document, Attachment A – Scope of Work/Fees, Attachment B – SJCERA Request for Proposal No. 2021-__, and Attachment C – Consultant's Response to SJCERA Request for Proposal No. 2021-__, all of which are attached hereto and incorporated by reference herein. Any conflict in the definition or interpretation of any work, responsibility, services, schedule or contents of a deliverable product between the body of this Agreement and the Attachments shall be resolved by giving precedence first to the body of this Agreement, then to Attachment B, then to Attachment A, then to Attachment C.

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

1. Term

This Agreement shall be effective as of _____ ("Effective Date"), and shall continue in force until _____ ("Expiration Date"), unless otherwise terminated in accordance with Section 6 of this Agreement. The term of this Agreement may be extended beyond the Expiration Date by an amendment in writing executed by both Parties that shall, at a minimum, set the fee schedule for the period of the extension.

2. Consultant Responsibilities

2.1 Work to be Performed. Consultant agrees to perform and deliver professional services in the manner and form as described in the body of this Agreement and in the Attachments.

2.2 Quality of Services. Consultant agrees to discharge its duties under this Agreement and its Attachments with the same standard of care, skill, prudence, and diligence that applies to other professionals practicing in a like enterprise.

2.2.1 Consultant shall use reasonable efforts to correct any errors or omissions in the performance or delivery of its services, at no additional cost or expense to SJCERA, within ten (10) business days after receipt of a written request by SJCERA.

2.2.2 Such opportunity to correct errors or omissions will not affect SJCERA's right to terminate this Agreement in accordance with the terms set forth in Section 6.

3. Contract Administration

3.1 The Parties have identified the following individuals to serve as Primary Consultant, Back-Up Consultant, and Contract Manager:

<p>Consultant Primary Consultant</p> <p>Back-Up Consultant</p>	<p>SJCERA Contract Manager Greg Frank Management Analyst III gregf@sjcera.org</p>
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3.1.1 The Primary Consultant shall have full authority to act on behalf of Consultant and will act as liaison to SJCERA on all matters related to this Agreement.

3.1.2 The Contract Manager shall provide management and coordination of this Agreement and will act as liaison for SJCERA on all matters related to this Agreement, including receipt and delivery of notices.

3.2 Consultant shall not remove or replace Primary Consultant or Back-Up Consultant without the prior written consent of SJCERA, and any replacement shall be a full-time partner or employee of Consultant.

3.3 Any notice required or permitted by the terms of this Agreement shall be given in writing by first class mail and e-mail and properly addressed as follows:

To SJCERA:
Greg Frank
Management Analyst III
San Joaquin County Employees' Retirement Association
6 S. El Dorado Street, Suite 400
Stockton, California 95202
gregf@sjcera.org

To Consultant:

4. Compensation

- 4.1 Consultant shall be compensated for services in accordance with the fees identified in Attachment A.
- 4.2 Consultant shall submit invoices in arrears to SJCERA no more frequently than monthly. Payment is due within forty-five (45) days of receipt and approval by SJCERA of an accurate, complete invoice and satisfactory receipt of deliverables.
- 4.3 Payments provided for in this Section constitute the entire compensation to which Consultant is entitled for performing the services described in the Attachments, and Consultant shall not be entitled to additional compensation in the event that the cost to Consultant of providing such services exceeds the compensation payable under this Section.
- 4.4 With respect to any special or additional consulting projects or services identified in Attachment A, Consultant will bill such requests either on a fixed-fee basis negotiated in advance or based on Consultant's then-current hourly billing rates, as agreed upon by the Parties.

5. Amendments

This Agreement and its Attachments may be amended only by written amendment executed by both Parties.

6. Termination

- 6.1 Termination for Default. In the event that Consultant, in the judgment of SJCERA, fails to perform in a timely and proper manner any of the services specified in this Agreement, SJCERA may terminate this Agreement by giving Consultant notice in writing of that fact, the reason therefore, and the date of such termination. If the Agreement is so terminated, Consultant shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination. In the event of termination under this Section, all finished or unfinished documents and other materials prepared by Consultant under this Agreement shall become the sole and exclusive property of SJCERA.
- 6.2 Termination for Convenience. SJCERA may terminate this Agreement for any reason by providing thirty (30) days advance written notice to Consultant. If the Agreement is so terminated, Consultant shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination.
- 6.3 Return of Information. Upon termination, Consultant shall transfer all requested information related to SJCERA to such persons or organizations as SJCERA designates in writing.

7. Indemnification

- 7.1 Consultant shall indemnify, defend, and hold harmless SJCERA, its Board, officers, agents, and employees from and against any and all third party claims, liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, liens, expenses (including defense costs and reasonable attorneys' fees as awarded by the San Joaquin Superior Court) and claims for damages, for bodily injury, death, personal injury, or tangible property damage (including any workers' compensation suits, liability, or expense or any damage to Consultant's property) to the extent resulting from Consultant's negligence or intentional misconduct under this Agreement.
- 7.2 SJCERA shall give Consultant prompt notice of any claim for which SJCERA is entitled to indemnification.
- 7.3 The terms of this section shall survive the termination of this Agreement.

8. Insurance

Prior to execution of the Agreement, Consultant shall obtain at its own cost and expense, and maintain in force and effect during the term of this Agreement, including all extensions, professional liability insurance in an aggregate amount of \$5 million, general liability insurance (including bodily injury, property damage and automobile liability) in an aggregate amount of \$2 million, cyber liability in an aggregate amount of \$2 million, and Workers' Compensation/Employer's Liability insurance according to California law.

9. Confidentiality and Proprietary Rights

- 9.1 SJCERA's Confidential Information. For purposes of this Agreement, SJCERA's confidential information includes member records and member lists, both of which are protected from public disclosure by law, as well as unpublished business plans and strategies, processes, proposals, knowledge of selection of a Consultant in advance of official announcement, personnel, employee and employment records, financial information, proprietary computer programs including source code and object code, technical or other proprietary manuals, and all other forms of intellectual property, but does not include information that: (i) at the time of the disclosure is, or thereafter becomes, through no fault of Consultant, part of public domain; or (ii) is required to be disclosed by applicable law or regulation, including the California Public Records Act, subpoenas, court orders, and investigations by a governmental authority.
- 9.2 Consultant's Confidential Information. For purposes of this Agreement, Consultant's confidential information includes Consultant's research, know-how, development, software, trade secrets, and business affairs, but does not include information that: (i) can be shown by documentation to have been in SJCERA's possession prior to its disclosure by Consultant; (ii) at the time of the disclosure is, or thereafter becomes, through no fault of SJCERA, part of public domain; (iii) is furnished to SJCERA by a third party without the breach of any duty to Consultant; or (iv) is required to be disclosed by applicable law or regulation, including subpoenas, court orders, and investigations by a governmental authority.

9.3 SJCERA's Proprietary Rights. All completed deliverables, which may include materials, documents, data, reports, and other information developed under this Agreement specifically and exclusively for SJCERA, delivered to SJCERA, excluding items described in Section 9.4 or embodied therein, become the sole property of SJCERA upon payment therefor.

9.3.1 Upon the expiration or earlier termination of this Agreement, Consultant shall promptly deliver to SJCERA all deliverables prepared by Consultant under this Agreement; however, Consultant may retain possession of working papers prepared by Consultant only to the extent such working papers contain confidential information or proprietary rights of Consultant. SJCERA shall have the right during and subsequent to the term of this Agreement to inspect any and all such working papers upon reasonable prior notice and during normal business hours.

9.4 Consultant's Proprietary Rights. Consultant shall retain the exclusive rights to its working papers and the intellectual capital (including, without limitation, methodologies, know-how, models, general skills, expertise, ideas, trade secrets, concepts, techniques, processes, software, materials, tools, other intellectual property or information and any graphic or digitized representation of any of these) developed or possessed by Consultant prior to, or acquired during, the performance of this Agreement and the foregoing shall not be deemed deliverables and Consultant shall not be restricted in any way with respect thereto.

9.5 Protection of Confidential Information and Proprietary Rights.

9.5.1 Both Parties shall maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential.

9.5.2 Both Parties shall use reasonable security measures to protect all material, data, and information received or produced under this Agreement from loss or damage by any cause, including, but not limited to, fire and theft.

9.5.3 Both Parties shall not use or disclose Confidential Information beyond the uses specified in this Agreement and its Attachments.

9.5.4 Consultant shall report to SJCERA any unauthorized access to member lists or member data immediately upon discovery of such access.

9.6 Consultant acknowledges that SJCERA is required to disclose certain records pursuant to the California Public Records Act.

10. Record Retention

10.1 Notwithstanding any other provision of this Agreement, Consultant may retain the data, documentation, and instructions created or received in relation to the services provided in this Agreement ("Data") in electronic format.

- 10.2 Consultant may store Data received in written form (including but not limited to forms, letters, legal documents and other written correspondence) from SJCERA, members, or other third parties, through a process of electronic imaging without retaining the original paper copy of such documents.
- 10.3 Subject to Consultant's right to retain copies of records and data pursuant to the Agreement, Consultant shall provide to SJCERA or its designee a copy of any and all Data provided by SJCERA and retained by Consultant as of the termination or expiration of this Agreement in Consultant's then standard format, and thereafter will have no obligation to maintain such Data.
- 10.4 Consultant may retain SJCERA's information in paper or imaged format and may destroy paper copies if Consultant retains digital images thereof. Notwithstanding the foregoing, or anything to the contrary in this Agreement, Consultant shall be permitted to retain Data to the extent incorporated into Consultant's working papers.

11. Records and Audits

- 11.1 Consultant shall maintain accurate and complete books, records, documents, and other evidence, and accounting procedures and practices sufficient to support all claims for payment made by Consultant to SJCERA, including but not limited to any pertinent transaction, activity, dates, and time spent providing services under this Agreement, invoices billed to SJCERA, and any other records related thereto and created by Consultant in connection with this Agreement. In performing this Agreement, Consultant shall document all work efforts related to the development of any materials prepared specifically and exclusively for SJCERA hereunder.
- 11.2 All such material described in 11.1 above, including, but not limited to, all financial records, work documents, and information in whatever format, electronic or otherwise directly related to this Agreement (collectively, the "Work Records"), shall be kept and maintained by Consultant and information regarding the fees and expenses charged to SJCERA shall be made available to SJCERA during the term of this Agreement and any extension thereof and for a period of seven (7) fiscal years thereafter. Consultant shall work with SJCERA to address any request to extend the retention period. All such material shall be maintained by Consultant at Consultant's expense.
- 11.3 Record Review. Consultant agrees that SJCERA, or any duly authorized representative of SJCERA, including any successor consultant designated by SJCERA, will have the right to request information regarding any Work Records at any time during the term of this Agreement, or at any time for up to seven (7) years after the termination of this Agreement. Any such third party representative or successor shall be subject to reasonable confidentiality restrictions requested by Consultant.
- 11.3.1 SJCERA agrees that any such information request will be conducted in a manner to minimize interference with Consultant's normal business activities and shall be conducted no more than one (1) time during any twelve (12) month period.

11.3.2 Upon reasonable advance notice to Consultant (which in no event be less than ten business days), Consultant shall make information regarding Work Records available for review during normal business hours. Consultant shall make the persons responsible for creating and maintaining the Work Records available to SJCERA during such review for the purpose of responding to SJCERA's reasonable inquiries. SJCERA shall pay all costs associated with such review, other than any costs incurred by Consultant to make personnel available as required by the preceding sentence.

11.4 Audit Settlement. If representatives of SJCERA conduct a review of Consultant regarding the work performed under this Agreement, and if such review finds that SJCERA's dollar liability for such work is less than the payment made by SJCERA, then the difference will be either repaid by Consultant to SJCERA by cash payment upon demand or, at the option of SJCERA, deducted from any amounts otherwise due to Consultant from SJCERA. If such review finds that SJCERA's dollar liability for such work is more than the payments made by SJCERA, then the difference will be paid to Consultant by SJCERA; however, the total payments shall not exceed the maximum amount payable by SJCERA for work performed through the period covered by the audit.

12. Compliance with Laws and Regulations

12.1 In performing under this Agreement, Consultant shall comply with all applicable legal requirements, including all federal, State, and local laws, statutes, ordinances, and regulations applicable to civil rights, non-discrimination in employment, wages, hours of employment, occupational safety, professional licensing and/or certifications, facility management, fire safety, health, sanitation, conflict of interest, and privacy.

12.2 At its own expense, Consultant shall acquire and maintain in force for the duration of this Agreement any and all permits, licenses, certifications and other documentation required for it and its employees to comply with any and all legal requirements applicable to its performance under this Agreement.

13. General Provisions

13.1 Independent Contractor. Consultant's status under this Agreement is that of an independent contractor. Services provided by Consultant pursuant to this Agreement shall be subject to the supervision of the Consultant. In providing such services, neither Consultant nor Consultant's employees or agents shall act as officers, employees, or agents of SJCERA. No partnership, joint venture, or other joint relationship is created hereby.

13.2 Governing Law, Venue. This Agreement shall be governed by the laws of the State of California, and any action brought to enforce the terms of this Agreement shall be filed in San Joaquin County Superior Court.

13.3 Uncontrollable Circumstances ("Force Majeure"). Consultant and SJCERA will be excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any

circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance (collectively, “Force Majeure”), provided that (i) the excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure, and (ii) the non-performing Party uses its best efforts to remedy its inability to perform.

- 13.4 Waiver. The failure of SJCERA or Consultant to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant, or condition.
- 13.5 Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.
- 13.6 Entire Agreement. This Agreement is the entire agreement between the Parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, understandings, and agreements of the Parties relating to the subject matter hereof.
- 13.7 Assignment. This Agreement may not be assigned without the prior written consent of the other Party, and it shall terminate automatically on the occurrence of such assignment without consent. If the Agreement is so terminated, Consultant shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination.
- 13.8 Survival. The rights, effects, and obligations under Sections 6.3, 7, 9, 11, and 13 shall survive the termination of this Agreement.
- 13.9 Third Parties. This Agreement is not intended to benefit any third party and does not confer any rights on any entity or person not a Party hereto.
- 13.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereby agree to all of the above terms and have executed this Agreement as of the Effective Date.

Consultant Name

Dated: _____

By: _____
Name
Title

San Joaquin County Employees' Retirement Association

Dated: _____

By: _____
Jason R. Morrish
Deputy County Counsel
General Counsel, SJCERA