

## **ATTACHMENT E**

### **AGREEMENT FOR FINANCIAL AUDITING SERVICES**

This Agreement for Financial Auditing Services ("Agreement") is made and entered into as of by and between the Los Angeles County Employees Retirement Association ("LACERA"), and [FINANCIAL AUDITING FIRM] ("AUDITOR") and is effective as of [DATE] ("Effective Date").

#### **RECITALS**

- A. LACERA is a duly established and existing public retirement system created under the County Employees Retirement Law of 1937, California Government Code Section 31450 et seq.; and
- B. Government Code Section 7504 requires LACERA to secure the services of a qualified accounting firm to perform an annual attest audit of LACERA's financial statements; and
- C. LACERA desires to engage an auditor to perform the annual attest audits of LACERA's financial statement, and issued a request for proposals ("RFP") dated [DATE] for such services; and
- D. Auditor submitted a written proposal in response to the RFP dated [DATE], and made oral representations to LACERA as part of the RFP process, and represented to LACERA that it possesses and will employ, in accordance with professional standards, the highest degree of competence and expertise essential to provide such financial auditing services.
- E. Auditor hereby reaffirms the reliability and accuracy of the written proposal and oral representations made to LACERA in the RFP process.
- F. LACERA has determined, based on Auditor's written proposal submitted in response to the RFP and Auditor's oral representations made to LACERA in the RFP process (collectively, the "Auditor's Proposal"), and LACERA's due diligence, that (i) Auditor is qualified and capable of performing the required financial auditing, services, (ii) Auditor's fee for such services is competitive, fair and reasonable, and (iii) engaging Auditor to perform the financial auditing services is in the best interest of the participants and beneficiaries of LACERA.

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

#### **CONTRACT**

1. Services to be Provided.

1.1 Auditor agrees to perform the services ("Services") described in the Statement of Work ("Statement of Work") attached to this Contract as Attachment A.

1.2 Auditor agrees to perform the Services at LACERA's offices, and with LACERA's consent, via telephone or email, and when appropriate, at a location of Auditor's choice.

1.3 All writings prepared or furnished by Consultant to LACERA in the performance of this Contract, in each case that are in final form and intended for delivery to LACERA, shall be the exclusive property of LACERA effective upon Consultant's receipt of all amounts owed in connection with this Contract and may be used by LACERA, as LACERA deems appropriate.

1.4 Auditor's quality of service will be in accordance with applicable professional standards. Auditor will be held to the same standard of care, skill, prudence, and diligence that applies to other experts practicing in a like enterprise.

## 2 Independent Contractor.

2.1 Auditor agrees to perform the Services as an independent contractor and agrees they will be always acting as such. Neither party intends, and this Contract may not to be construed, to create any relationship of agent, servant, employee, partnership, joint venture, or association between Auditor and LACERA. Auditor is not and will not be deemed to be for any purpose (including, without limitation, Workers' Compensation) an employee of Los Angeles County (the "County"). Auditor is not entitled to any rights, benefits, or privileges of County employees. Auditor is not eligible to participate in any insurance, savings, pension or deferred compensation offered by LACERA or the County.

2.2 Auditor has no power or authority to assume or create any obligation or responsibility, express or implied, on behalf of LACERA or the County, or to bind LACERA or the County in any way whatsoever.

2.3 Auditor accepts full and complete responsibility for filing all tax returns and paying all taxes, which may be required, or due for payments received from LACERA under this Contract. LACERA will memorialize payments for Auditor's services on a Form 1099.

2.4 Auditor represents and warrants that it will comply with all applicable federal, state, and local laws, including without limitation, those laws respecting business licenses, withholding, reporting, and payment of taxes. Auditor further represents and warrants that it will report any income accruing to it from this Contract to the appropriate taxing authorities.

## 3. LACERA's Project Director.

LACERA's Project Director, or designee, has responsibility for overseeing the services under this contract. LACERA's Project Director is Richard Bendall.

4. Indemnification and Insurance.

4.1 Auditor shall indemnify and save harmless LACERA, its agents, officers and employees from and against any and all liability, damage, suit, cost of suit, or expense, including defense costs and reasonable attorney's fees, in each case to the extent caused by Auditor's gross negligence or willful misconduct in performing services under this contract.

4.2. Without limiting Auditor's obligations to indemnify LACERA, Auditor will provide and maintain at its own expense during the term of this Contract the programs of insurance programs specified in this Contract. Such insurance will be primary and not contributing with any other insurance of self-insurance programs maintained by LACERA, and Auditor agrees to provide and maintain such insurance at its own cost and expense.

4.2.1 Certificate(s) or other evidence of coverage satisfactory to LACERA shall be delivered to prior to commencing services under this Contract and annually thereafter to:

LACERA  
300 N. Lake Avenue, Suite 650  
Pasadena, CA 91101-4199  
Attn: Richard Bendall, Chief Audit Executive

4.3 Such certificates or other evidence shall:

4.3.1 Specifically identify this Contract.

4.3.2 Clearly evidence all coverage's required in this Contract.

4.3.3. Contain the express condition that LACERA is to be given written notice by mail at least 45 days in advance of cancellation for all policies, or, alternatively, in the event the insurers that otherwise provide satisfactory insurance hereunder do not assume third-party notification provisions, Auditor hereby agrees to notify LACERA promptly after receipt of any notice of any cancellation of any of the policies provided for herein.

4.3.4 Include copies of the additional insured endorsement to the commercial general liability policy, adding that LACERA, its trustees, officers and employees as insureds for all activities arising from this Contract.

4.3.5 Self-Insured Retentions must be declared to and approved by the LACERA. LACERA may require Auditor to purchase coverage with no retention or provide

proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention will be satisfied by the named Auditor.

4.3.6 LACERA reserves the right to modify these requirements upon notice and agreement with Auditor, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

4.4 Insurer Financial Ratings. Insurance is to be provided by an insurance company acceptable to LACERA with an A.M. Best rating of not less than A-, X, unless otherwise approved by LACERA.

4.5 Failure to Maintain Coverage. Auditor's failure to maintain the required insurance, or to provide evidence of insurance coverage acceptable to LACERA, shall constitute a material breach of the contract upon which LACERA may immediately terminate or suspend this Contract.

4.6 Compensation for LACERA Costs. In the event that Auditor fails to comply with the insurance requirements of this Contract after notice from LACERA, and such failure to comply results in added premium cost to LACERA for providing the required insurance coverage limits in Section 4.9, Auditor shall pay full compensation for the added premium costs incurred by LACERA.

4.7 Cooperation Regarding Insurance. LACERA may elect to procure insurance against loss or damage it may sustain in connection with Auditor's performance under this Contract. Auditor will promptly cooperate with any reasonable request for information regarding Auditor which is required to obtain such insurance.

4.8 Survival of Obligations. Auditor's obligations under this Section 4 shall survive expiration or termination of this Contract.

4.9 Commercial General Liability. Auditor shall provide and maintain a Commercial General Liability insurance policy, which names LACERA as additional insured. Such policy shall cover legal liability for bodily injury and property damage arising out of Auditor's business operations and services that Auditor provides pursuant to this Contract. Such policy shall have the following minimum coverages:

Liability Insurance, endorsements for Property Damage, Premises-Operations, Products/Completed Operations, Contractual, and Personal/Advertising Injury with a limit of at least two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of at least four Million Dollars (\$4,000,000).

4.10 Auto Liability. Auditor shall provide and maintain a comprehensive auto liability insurance policy covering "non-owned", and "hired" automobiles, with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident.

4.11 Workers' Compensation. Auditor shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to Auditor's employees for injuries arising from or connected with any services provided to LACERA under this Contract. Auditor shall provide and maintain a program of Workers' Compensation, in an amount and form to meet all applicable statutory requirements. In all cases, worker's compensation insurance also shall include Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000), each accident, and One Million Dollars (\$1,000,000), disease, covering all of Firm's employees.

4.12 Errors and Omissions. Auditor shall provide and maintain insurance covering liability arising from any error, omission, negligent or wrongful act of the Auditor, its officers, employees or Agents, with limits of at least Ten Million Dollars (\$10,000,000) per claim and an annual aggregate of at least Fifteen Million Dollars (\$15,000,000). The coverage also shall provide an extended one-year reporting period commencing upon termination or cancellation of this Contract.

4.13 Cyber Liability Insurance. Without limiting any of the obligations or liabilities of Auditor, Auditor shall carry and maintain, at its own expense including any applicable deductibles or retention, Cyber Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) for each occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000) covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy coverage shall include, but not be limited to:

4.13.1 Privacy Liability Coverage. This coverage shall include LACERA and its members for breaches of their private information in the case of a data breach.

4.13.2 Notification Costs. This coverage shall cover the costs of notifying third parties and LACERA members potentially affected by a data breach.

4.13.3 Crisis Management. This coverage shall include the costs of managing the public relations outfall from most data breach scenarios.

4.13.4 Credit/Identity Monitoring. This coverage shall include coverage for affected members for at least 24 months or the minimum legally required period, whichever is longer.

4.13.5 Theft and Fraud Coverage. This coverage shall include the costs of theft or destruction of the LACERA's data and theft of funds.

4.13.6 Network and Business Interruption. This coverage shall include any expense due to an intentional interruption of the LACERA's computer systems.

4.13.7 Data Loss and Restoration. This coverage shall include the costs of diagnosing and repairing the cause of the loss and restoring all data.

5. Term.

The term of this Contract begins on the Effective Date, and unless terminated for convenience, ends five years after the Start Date. This Contract may be renewed for up to two subsequent and successive one-year periods under the same terms, conditions and compensation, unless either party delivers its written request for changes not less than ninety (90) days prior to the end of the then current term of the Contract. Neither party is required to renew or extend this Contract. The services to be performed for any renewal term of this Agreement will constitute a separate engagement(s).

6. Regarding the County and Employees Associations.

This Contract is not exclusive. Auditor has the right to perform services for others during the term of this Contract, but Auditor agrees that during the term of this Contract, it will not perform any actuarial, audit, consulting, investigation, or valuation services, review, or analysis of any nature whatsoever, for or without compensation, for Los Angeles County that pertains to LACERA or other employee associations such as Los Angeles Superior Court (Superior Court), South Coast Air Quality Management District (SCAQMD), Los Angeles County Office of Education (LACOE), Local Agency Formation Commission for the County of Los Angeles (LAFCO), and Little Lake Cemetery District (LLCD).

7. Compensation.

LACERA agrees to pay Auditor according to the Fee Schedule attached as Attachment B for performing the Services. Auditor's expenses are included in the compensation described in Attachment B and therefore Auditor is not entitled to any separate reimbursement for any expenses incurred by it in discharging its duties under this Contract, unless otherwise agreed by LACERA. Additionally, any added ad-hoc work will use the published rates in accordance with the Fee Schedule.

8. Invoices.

Auditor agrees to submit invoices to LACERA's Project Director, in arrears, by the tenth day of each calendar month for Services performed during the previous calendar month. Each invoice must (a) describe in detail the Services performed and expenses incurred by Auditor during the invoice period, (b) show the cumulative charges year-to-date (based on a fiscal year beginning July 1) for all Services and expenses, and (c) include such other information as LACERA may reasonably request. Each invoice will be payable within thirty days of receipt by LACERA. If LACERA's Project Director disputes any portion of an invoice, however, LACERA will pay the undisputed portion only and notify Auditor in writing of the disputed portion. Auditor and LACERA agree to act in good faith to resolve such disputes.

9. Contract Not Assignable.

Auditor may not assign any of its rights, duties, or obligations under this Contract without the prior written consent of LACERA, which LACERA may grant or withhold in its sole discretion.

10. Confidentiality.

10.1 Confidential Information. Auditor understands that, during the performance of this Contract, LACERA will disclose confidential and proprietary LACERA information, policies and procedures, benefits, business practices, and technology concerning LACERA's operations, as well as sensitive confidential member information and business critical non-member information (collectively, "Confidential Information"). For clarity, Confidential Information includes all information of any and every kind provided to Auditor for the performance of this Contract, regardless of whether it may previously have been disclosed by LACERA in other contexts, in that LACERA needs to know to whom, when, where, and how all of its information has been disseminated and reserves to itself the right to determine to whom, when, where, and how such information is released. Confidential Information further includes all information related in any way to LACERA provided to Auditor for the performance of this Contract. "Confidential Information" does not include information that (i) is publicly available at the time of disclosure or becomes publicly available after disclosure; (ii) is or was already known to Consultant; (iii) is or was disclosed to Consultant by a third party not known to have a confidentiality obligation with respect to that information, or (iii) is or was independently developed by Consultant without using information disclosed by LACERA for the performance of Services under this Contract.

Confidential Information may be provided to Auditor in written, electronic, verbal, and all other forms. Auditor understands and agrees that:

10.1.1 Auditor shall not disclose Confidential Information to any person within its organization except those persons required to perform the services of the Contract.

10.1.2 Auditor shall not disclose Confidential Information to any third party without LACERA's advance written approval.

10.1.3 Auditor's agreement not to disclose Confidential Information includes an agreement not to disclose information even on a no-names basis.

10.1.4 Auditor will use best efforts, including but not limited to the highest level of care Auditor accords to its own most sensitive information and the most sensitive information of its other clients, to secure and maintain the confidential nature of the Confidential Information.

10.1.5 Auditor will not use the Confidential Information for any purpose other than to perform the services required by this Contract. This confidentiality provision will survive the termination of the Contract.

11. Nondiscrimination.

Auditor hereby promises and agrees that it will comply with Subchapter VII of the Civil Rights Act of 1964, 43USC Section 2000e through 2000e (17), to the end that no person shall, on grounds of race, creed, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract, or under any project, program or activity supported by this Contract.

Auditor shall take affirmative action to ensure that applicants and employees are treated in an unbiased manner without regard to their race, color, religion, sex, age, ancestry, or national origin, physical or mental handicap, marital status, or political affiliation. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

12. Compliance with Laws.

Auditor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and duly adopted directives that have the force of law, and all provisions required to be included in this Contract related to the performance of the audit are incorporated by this reference.

13. Conflict of Interest.

No officer or employee of LACERA whose position enables them to influence the award of this Contract or any competing agreement, and no spouse or economic dependent of such officer or employee shall be employed in any capacity or in any way remunerated by Auditor or have any direct or indirect financial interest in this Contract or in Auditor during the term of this Contract and for a period of one year following the expiration of this contract. Such officers and employees are listed by LACERA on EXHIBIT C "*Designated Persons List*" as updated periodically by LACERA.

14. Modifications.

Any modification to this Contract must be in writing, signed by Auditor and LACERA, to be effective.

15. Termination for Default.

This Contract may be terminated in whole or in part by either party by providing the other party a written Notice of Default if that other party fails to perform their



obligations within the time specified in this Contract or any extension approved by the non-breaching party.

The notified party shall have ten (10) calendar days from the date of the Notice of Default in which to cure the Default(s), however, in its sole discretion, the non-breaching party may extend this period or authorize a longer period for cure.

Without limitation of any additional rights or remedies to which it may be entitled, if LACERA terminates all or part of the Contract for Auditor's Default, LACERA, in its sole discretion, may procure replacement services and Auditor shall be liable for all excess costs incurred by LACERA in connection with those replacement services if and to the extent included in and as part of the judgment or final decision rendered by a judge in a court of competent jurisdiction.

If it is determined that notified was not in Default under the provisions of this Contract, or that the Default was excusable, then the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued under Section 16. Termination for Convenience.

16. Termination for Convenience.

Services performed under this Contract may be terminated in whole or in part at any time LACERA or Auditor deems that termination is in its best interest. LACERA or Auditor shall terminate services by delivering a written Termination Notice which specifies the extent to which services are terminated and the effective termination date.

After receiving a Termination Notice under this section, and unless otherwise expressly directed by LACERA, Auditor shall take all necessary steps and shall stop services on the date and to the extent specified in the Termination Notice and shall complete services not so terminated.

17 SOC-2 – Information Technology Assessment

The Auditor shall provide to LACERA the SOC 2 report from a reputable third-party auditor addressing the business processes used by Auditor. If the Auditor does not have a SOC 2, the Auditor shall provide LACERA written responses to security controls assessment questionnaires provided by LACERA on an annual basis. The questionnaires shall focus on security as it applies to the technologies impacting the LACERA project.

18. Disaster Recovery & Business Continuity

Auditor will implement and maintain disaster recovery and business continuity procedures that are reasonably designed to recover data processing systems, data communications facilities, information, data and other business-related functions that may materially and adversely impact the performance of Services under this Contract in a manner and time frame consistent with legal, regulatory and business requirements applicable to Auditor.

## 19. Data Breach Verification

19.1 Auditor shall provide an annual written, signed attestation that to the best of its knowledge, no data breach, hacking, or incidental divulging of any data has occurred, and that no data has been compromised ("Incident"). The attestation shall verify that adequate internal policies and procedures exist to prevent data theft and unauthorized access.

19.2 Auditor shall perform annual system penetration testing and shall provide an annual written, signed statement of the results of the annual system penetration test to LACERA.

19.3 Auditor shall comply with California Civil Code §1798.29(e) and California Civ. Code §1798.82(f), if, and to the extent, applicable to Auditor in connection with the Services to be performed under this Contract. In the event of a security breach in connection with Auditor's services to be performed under this Contract of more than 500 records, the Auditor shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General.

19.4 Auditor shall, at its own cost, notify any California resident whose unencrypted personal information, as defined, was acquired, or reasonably believed to have been acquired, by an unauthorized person as a result of or connection to services provided by Auditor as required by California Civil Code §1798.29(a) and California Civ. Code §1798.82(a), if, and to the extent, applicable to Auditor in connection with the Services to be performed under this Contract.

19.5 Notwithstanding the legal notification requirements in the preceding paragraphs, Auditor will immediately, which means no more than 48 hours after discovery, notify LACERA upon its discovery of any Incident whether such Incident includes LACERA data or not. Such notice shall include the nature and extent of the breach, the type of data compromised, and a summary of mitigation taken.

## 20. Entire Contract and Severability.

This document including all Attachments and Exhibits constitutes the final, complete, and exclusive statement of the terms of the Contract between LACERA and Auditor for the services to be performed and supersedes all prior and contemporaneous understandings or Contracts of the parties. The provisions of this Contract are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or parts thereof shall nevertheless be binding and enforceable and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision which comes closest to the intent of the parties.

## 21. Governing Law and Venue.

21.1 This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to principles of conflicts of laws.

21.2 Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract or the transactions it contemplates (whether in contract, tort, equity, or otherwise), shall bring the legal action or proceeding in either the United States District Court or in any court of the State of California sitting in Los Angeles County.

21.3 Each party to this Contract consents to the exclusive personal and subject matter jurisdiction of any United States District Court sitting in the County of Los Angeles and any court of the State of California sitting in the County of Los Angeles, and their appellate courts for the purpose of all legal actions and proceedings arising out of or relating to this Contract or the transactions it contemplates, including all claims of any nature or type, whether in contract, tort, statutory, equitable, legal, or otherwise.

22. Attorney's Fees.

In the event of litigation between the parties concerning this Contract, the prevailing party shall be entitled to recover reasonable costs and expenses incurred therein, including without limitation attorney's fees. These expenses shall be in addition to any other relief to which the prevailing party may be entitled and shall be included in and as part of the judgment or decision rendered in such proceedings.

23. Interpretation.

Auditor acknowledges they have been given the opportunity to have counsel of their own choosing to participate fully and equally in the review and negotiation of this Contract. The language in all parts of this Contract shall be construed in all cases according to its fair meaning, and not strictly for or against any party hereto. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.

24. Waiver.

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, or preceding or subsequent, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

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IN WITNESS WHEREOF, Auditor has signed this Contract, and the Chief Executive Officer of LACERA has signed this Contract, effective as of the date indicated in Section 5.

LACERA:

Auditor:

LOS ANGELES COUNTY EMPLOYEES  
RETIREMENT ASSOCIATION

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

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Approved as to form for LACERA:

Approved as to form for Auditor:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: [NAME]

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

Title: [TITLE]

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

Company: LACERA Legal Department

Company: \_\_\_\_\_

## EXHIBITS TO FINANCIAL AUDITING SERVICES AGREEMENT

### A. Scope of Services – Assurance & Attestation

*\*Refer to the RFP Materials document – “Attachment F – Proposed Statements of Work” for details.*

### B. Scope of Services – Consulting

*\*Refer to the RFP Materials document – “Attachment F – Proposed Statements of Work” for details.*

### C. Fee Schedule

*\*Refer to the RFP Materials document – “Attachment G – Fee Schedule” for details.*