



Contract Between

County of Orange

And

Mercer Investments LLC

For

Investment Consulting Services

CONTENTS

Table of Contents2
Recitals.....4

ARTICLES

1. Scope of Work4
2. Compensation.....4
3. Term of Contract.....4
4. Entire Agreement4
5. Amendments5
6. Governing Law and Venue5
7. Contingency of Funds5
8. Taxes5
9. Delivery.....5
10. Independent Contractor5
11. Assignment or Sub-contracting.....5
12. Non-Discrimination.....6
13. Performance6
14. Errors and Omissions6
15. Warranty.....6
16. Patent/Copyright Material/Propriety Infringement7
17. Compliance with Laws7
18. Indemnification7
19. Insurance Provisions7
20. Emergency/Declared Disaster Requirements..... 10
21. Confidentiality 10
22. Contractor Personnel..... 10
23. Contractor’s Account Manager and Key Personnel 11
24. Program Manager..... 11
25. Reports/Meetings 11
26. Ownership of Documents..... 11
27. Title to Data 11
28. Records..... 12
29. Audit/Inspections 12
30. Publication 12
31. Conflict of Interest - Contractor’s Personnel 12
32. Termination..... 13
33. Breach of Contract 13
34. Disputes..... 13
35. Orderly Termination..... 13
36. Force Majeure 14
37. Consent to Breach Not Waiver 14
38. Remedies Not Exclusive 14
39. Notices 14
40. County of Orange Child Support Enforcement Certification Requirements..... 14
41. Change of Ownership/Name, Litigation Status, Conflicts with County Interests..... 15
42. Precedence 15
43. Headings..... 15

44. Severability..... 15
 45. Calendar Days..... 15
 46. Attorney Fees..... 16
 47. Interpretation..... 16
 48. Authority..... 16
 49. Survival..... 16
 50. Employee Eligibility Verification..... 16
 51. Bills and Liens..... 16
 52. Changes..... 16
 53. Terms and Conditions..... 16
 54. Incorporation..... 16
 55. Civil Rights..... 17
 56. Lobbying..... 17
 57. Debarment..... 17
 58. Discretion..... 17
 59. Deliverables..... 17
 60. Provision of Information and Assistance..... 17
 61. Advice on Legal Matters..... 17
 62. No Third Party Beneficiaries..... 17
 63. Form ADV, Part 2..... 18
 64. Arbitration..... 18
 65. Commodity Trading Advice..... 18

CONTRACT SIGNATURE PAGE.....20

ATTACHMENTS

Attachment A Scope of Work..... 21
 Attachment B Compensation..... 24
 Attachment C Performance Guarantees..... 26
 Attachment D Account Management Report Card..... 27

EXHIBITS

Exhibit 1 EDD Independent Contractor Reporting Requirements..... 28

**CONTRACT FOR
INVESTMENT CONSULTING SERVICES
FOR THE
COUNTY OF ORANGE**

THIS AGREEMENT for Investment Consulting Services, hereinafter referred to as (“Contract”) is effective November 19, 2019 by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” and Mercer Investments LLC, dba Mercer Investment Advisers LLC, with a place of business at ~~1301 Fifth Avenue, Seattle, WA 98101~~ 21875 Network Place, Chicago, IL 60673, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

RECITALS

WHEREAS, Contractor responded to a Request for Proposal (“RFP”) to provide Investment Consulting Services; and

WHEREAS, the Contractor responded and represents that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

WHEREAS, the County’s Board of Supervisors has authorized the Purchasing Agent or authorized Deputy Purchasing Agent to enter into this Contract with Contractor to provide Investment Consulting Services;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Work:** This Contract, including any Attachments and Exhibits, specifies the contractual terms and conditions by which the County will procure Investment Consulting Services (“Services”) from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as “Attachment A”.
2. **Compensation:** The Contractor agrees to accept the compensation as set forth in “Attachment B”, Cost/Compensation, identified and incorporated herein by this reference, as full remuneration for (a) performing all Services and furnishing all staffing and materials required, (b) any reasonably unforeseen difficulties which may arise or be encountered in the performance of the Services until acceptance, (c) risks connected with the Services, and (d) performance by the Contractor of all its duties and obligations required herein.
3. **Term of Contract:** The initial term of this Contract is for three (3) years, effective on the date execution is completed by the Parties, or November 19, 2019, whichever date is later in time, and continuing for three (3) years from that date, unless earlier terminated by the County, Contractor, or otherwise renewed as provided herein. The Contract Term may be renewed for two (2) additional consecutive one (1) year terms, upon the mutual written agreement of the Parties. Renewal of the Contract may require approval by the County Board of Supervisors. Permitted renewals of the Contract provided in this paragraph 3 shall not result in any change in any other term, condition or provision of this Contract except by mutual agreement of the Parties.
4. **Entire Agreement:** This Contract, including its Attachments A, B, C, and D, and Exhibit 1 , as they now exist or may hereafter be changed, modified, or amended, and which are attached hereto and incorporated herein by this reference, constitutes the entire Contract between the Parties with respect

to the matters herein. There are no restrictions, promises, warranties or undertakings other than those set forth or referred to herein. No exceptions, alternatives, substitutes, understandings, agreements or revisions, whether oral or written, are valid or binding on the County or Contractor unless mutually agreed upon by both the County and Contractor in writing. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on the County unless accepted in writing by the County's Purchasing Agent or his authorized designee. In the event of a conflict between or among the Contract 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), and then the attachments and then the exhibits.

5. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; 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 the County or Contractor unless mutually agreed upon by the County and Contractor in writing.
6. **Governing Law and Venue:** This Contract 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, without reference to conflict of laws provisions. 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 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 trial to another venue.
7. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
8. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
9. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the services that do not conform to the prescribed Scope of Work.
10. **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 County. Neither Contractor, its employees nor anyone working under Contractor, shall qualify for workers' compensation or other fringe benefits of any kind through County.
11. **Assignment or Sub-contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned (including within the meaning of the U.S. Investment Advisers Act of 1940, as amended) or sub-contracted by Contractor without the express written consent of County Project Manager, as identified below. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County Project Manager shall be invalid and shall constitute a breach of this Contract. Irrespective of any assignment of subcontracting with respect to any portion of this Contract, Contractor shall remain fully responsible and liable for the performance of all Services required herein.

Notwithstanding the preceding provisions of this paragraph, (i) Services to be performed for County under this Contract may be performed by personnel of Contractor or of any other entity that is controlling, controlled by, or under common control with, Contractor and (ii) Contractor may assign this Contract and all rights, duties and obligations hereunder to any other entity that is controlling, controlled by, or under common control with the Contractor that succeeds to the business of Contractor providing the services under this Contract. Notwithstanding this paragraph or any other terms or provisions set forth in this Contract or its attachments, none of the work done for the County, its employees, agents, directors, elected officials or their dependents as relates participant interaction may be performed outside the United States of America, with the exception of core Account Team Members, consisting of Ms. Marina Batliwalla, Mr. Andrew Ness, Mr. Taylor Hallock, and Ms. Katie Hockenmaier, or otherwise approved by County, on an as needed basis. In no case may participant specific data be sent to locations outside the United States of America. To the extent that non-core account team members, special project teams and the like are required to do work for the County outside the United States of America, data will not include participant data that will allow for personal identification either as a standalone data element or in combination, for example, social security number, date of birth, personal health information, and home addresses. In instances where previously identified core Account Team Members are required to access participant specific data, as approved by the County, on an as needed basis while outside the United States of America, data will be accessed and viewed only, and will not be stored, changed, or updated in any fashion.

12. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of anti-discrimination laws or regulations including but not limited to Section 1741 of the California Labor Code.
13. **Performance:** Contractor shall perform all Services under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services performed by the Contractor under this Contract. Contractor shall perform all Services diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the Services; and, if permitted to sub-contract, shall be fully responsible for all work performed by sub-contractors.
14. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Account Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction at no charge to County.
15. **Warranty:** Contractor expressly warrants that the services covered by this Contract: 1) will be performed in a timely, competent and professional manner, in accordance with the prevailing industry standards applicable to the Services then in effect, by duly qualified and experienced Contractor

personnel possessing all relevant certifications, licenses and permits; 2) will conform to the specifications set forth herein and 3) are fit for the particular purpose intended. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees, as identified in paragraph 18 below and as more fully described in paragraph 18, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, regulations, 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.

- 16. 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 paragraph 18 below, it shall indemnify, defend and hold County and County Indemnitees 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, but not limited to, attorney's fees, costs and expenses.
- 17. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph 18 below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- 18. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, which approval shall not be unreasonably withheld or delayed, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability, including but not limited to personal injury or property damage, incurred by the County Indemnitees in connection with a third-party claim only to the extent directly arising from or related to Contractor's negligent acts or omissions or bad faith conduct in connection with Contractor's performance of its obligation pursuant to this Contract. Notwithstanding the foregoing, Contractor will not be liable for any (i) losses or expenses incurred as a result of any act or omission by any investment manager, custodian or other third party unaffiliated with the Contractor, (ii) any inaccuracy or incompleteness of the data to be provided by the County or its agents and representatives, including any investment managers, custodian, recordkeeper and other service providers, (iii) act taken, or omission or recommendation made, or for any error in judgment, in the absence of negligence or willful misconduct or (iv) indirect, special, punitive, consequential or incidental damages including, without limitation, loss of profits; provided that nothing contained herein will in any way constitute a waiver or limitation of any rights the County may have under applicable Federal and State laws. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.
- 19. Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with.

Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire Term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor’s insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County’s Risk Manager, or designee, upon review of Contractor’s current audited financial report. If Contractor’s SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to the indemnification obligations set forth in Section 18 of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors, which approval shall not be unreasonably withheld or delayed against same; and
- 2) Contractor’s duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor’s SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full Term of this Contract, the County may terminate this Contract.

Qualified Insurers

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the State of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage

Minimum Limits

Commercial General Liability

\$1,000,000 per occurrence
\$2,000,000 aggregate

Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence and aggregate

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.
- 2) A primary non-contributing endorsement using ISO CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, agents and employees*** or provide blanket coverage, which will state "As Required by Written Contract".

The Commercial General Liability insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Professional Liability policy is a "Claims-Made" policy, Contractor shall agree to maintain professional liability coverage for two (2) years following completion of the Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract subject to review and approval of Contractor's Risk Management Department. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- 20. Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
- 21. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-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. Notwithstanding the foregoing, Contractor may disclose information which (i) Contractor must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of Contractor, (iii) is available to Contractor from a third party who is not under any non-disclosure obligation to the County, or (iv) is independently developed by Contractor without reference to any confidential information of the County. The County agrees that Contractor will be entitled to disclosure information relating to the services or the County to regulators having jurisdiction over Contractor and otherwise as required by law. To the extent legally permissible, Contractor agrees to notify the County at least thirty (30) days, or as soon as possible, before disclosing such information to permit the County to take legal action if necessary to prevent such disclosure.
- 22. Contractor Personnel:** Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Contractor personnel removed from performing services under this Contract to the County. Contractor shall effectuate the removal of the specified Contractor personnel from providing any services to the County under this Contract within one business day of notification by County. County shall submit the request in writing to the Contractor's Account

Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor personnel be removed from performing services under this Contract.

- 23. Contractor's Account Manager and Key Personnel:** Contractor shall appoint an Account Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Account Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Program Manager, which consent shall not be unreasonably withheld.

The Contractor's Account Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Account Manager.

- 24. Program Manager:** The County shall appoint a Program Manager to act as liaison between the County and the Contractor during the Term of this Contract. The County's Program Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Program Manager shall have the right to require the removal and replacement of the Contractor's Account Manager from providing services to County under this Contract. The County's Program Manager shall notify the Contractor in writing of such request for removal of Contractor's Account Manager. The Contractor shall accomplish the removal within three (3) day after written notice by the County's Program Manager. The County's Program Manager shall review and approve the appointment of the replacement for the Contractor's Account Manager. The County is not required to provide any additional information, reason or rationale for the request for removal of Contractor's Account Manager from providing further services under this Contract.

- 25. Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Program Manager and the Contractor's Account Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Account Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

- 26. Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor specifically and exclusively for the County. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole properties of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials produced under this Contract by Contractor specifically and exclusively for the County may be used by the Contractor without the express written consent of the County. Notwithstanding the foregoing or anything to the contrary set forth herein, Contractor is the exclusive owner or rightful licensee of all copyright and other intellectual property rights in the systems, software, methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience, and any graphic or digitized representations of any of these and other materials created, owned or licensed and used by Contractor or its service providers before the commencement of, or acquired by Contractor during or after, the performance of the services pursuant to this Contract, including without limitation, all patent rights, copyrights, trade secrets, trademarks, and other proprietary rights therein and the foregoing shall not be deemed to be the property of the County and Contractor shall not be restricted in any way with respect thereto.

- 27. Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect

use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract. Notwithstanding anything to the contrary in this Contract, but subject to the terms and conditions of Paragraph 21 and any other confidentiality requirements in this Contract, Contractor may (i) retain copies of such materials, documents, data or information to the extent required to be retained by law or regulation, (ii) retain copies of its work product that contain such materials, documents, data or information for archival purposes or to defend its work product, and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in an archival format (e.g., tape backups), which may not be returned.

- 28. Records:** The Contractor shall keep an accurate record of time expended by Contractor and the sub-contractors working for Contractor in the performance of this Contract. Such record shall be available for periodic inspection by the County at reasonable times upon reasonable prior notice.
- 29. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation and accounts payable/receivable records specifically related to the County, but excluding payroll records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Program Manager.

- 30. Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
- 31. Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and subcontractors associated with accomplishing the Services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.

- 32. Termination:** In addition to any other remedies or rights it may have by law, either Party has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of this Contract or any misrepresentation or fraud on the part of a Party. Exercise by a Party of its right to terminate the Contract shall relieve that Party of all further obligations except any obligations to pay for services rendered up to and including the effective date of such termination; provided, however, this provision does not affect the County's right under paragraph 23.
- 33. Breach of Contract:** The failure of the Contractor to comply with any of the terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford the Contractor written notice of the breach and thirty (30) calendar days within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - c. If Contractor is unable to cure the breach within the time period set forth above, the County may terminate this Contract immediately, without penalty to the County.
- 34. Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Account Manager and the County's Program Manager, such matter shall be brought to the attention of the Purchasing Agent by way of the following process:
- a. The Contractor shall submit to the Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to this Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the amount for which the Contractor believes the County is liable.
 - c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.

- 35. Orderly Termination:** Upon ending of the Term, termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract, provided that Contractor shall be permitted to retain copies of such materials as set forth in Paragraph 27. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously

paid compensation shall not exceed the total compensation set forth in the Contract.

- 36. Force Majeure:** Contractor shall not be in breach of this Contract during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to the County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- 37. Consent to Breach Not Waiver:** No term or provision of this Contract 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.
- 38. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
- 39. Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given herein shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the County's Program Manager and Contractor's Account Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Program Manager, ~~Duane Bankey~~ Susie Kim
 Human Resource Services/Employee Benefits
~~333 W. Santa Ana Blvd., 1st Floor, Room 137~~
400 W. Civic Center Drive, 1st Floor, Room 111
 Santa Ana, CA 92701

cc: Human Resource Services/Employee Benefits
 Attn: ~~Kim Derriek~~ Melvin Chua
~~333 W. Santa Ana Blvd., 1st Floor, Room 137~~
400 W. Civic Center Drive, 1st Floor, Room 111
 Santa Ana, ~~Ca~~ CA 92701

Contractor: Mercer Investments LLC
~~Andrew Ness, Principal~~
 Marina Batliwalla, Principal
~~1301 Fifth Avenue, Suite 1900~~
~~Seattle, WA 98101~~
21875 Network Place
Chicago, IL 60673

- 40. County of Orange Child Support Enforcement Certification Requirements:** In order to comply with the child support enforcement requirements of the County of Orange, within ten days of

notification of selection of award of contract, the selected Contractor agrees to furnish to the Contract Administrator, County Purchasing Agent or the agency/department Deputy Purchasing Agent:

A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply. Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

41. **Change Of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of Services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

42. **Precedence:** The Contract documents herein consist of this Contract and its attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the attachments and exhibits.
43. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
44. **Severability:** It is the intent of the Parties that the provisions of the Contract shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Contract or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such as manner so as to afford

the Party for whose benefit it was intended the fullest benefit commensurate with making this Contract as modified, enforceable and the balance of this Contract shall not be affected thereby, the balance being construed as severable and independent.

45. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
46. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.
47. **Interpretation:** This Contract 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 has 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 Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
48. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
49. **Survival:** Notwithstanding any provision to the contrary herein, the provisions of paragraphs 15, 16, 17, 18 and 19 shall survive the termination of this Contract.
50. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
51. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph 18 above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
52. **Changes:** Contractor shall make no changes in the work or perform any additional work without County’s specific written approval.

- 53. Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- 54. Incorporation:** This Contract and its Attachments A through D and Exhibit 1 are attached hereto and incorporated herein by this reference and made a part of this Contract.
- 55. 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, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
- 56. Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.
- 57. Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with the bid/proposal. Debarment pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department of agency may result in the bid/proposal being deemed non-responsible.
- 58. Discretion:** County will retain all decision-making authority with respect to the management and administration of the Plans, including appointment and termination of investment managers and final decisions regarding investment policy. Contractor's responsibility does not include discretionary control of any Plan or the assets contained therein. Contractor shall have no responsibility for the actions or advice of any other investment advisors or service providers to County or its Plans.
- 59. Deliverables:** Any reports or other deliverables that Contractor provides to County, as plan sponsor to its Plans, are intended solely for County's internal use as plan fiduciary, and are not intended for, and may not be distributed, to the plan participants of such Plans.
- 60. Provision of Information and Assistance:** County will provide all necessary and reasonably requested information, direction and cooperation to enable Contractor to provide the services, and any direction (whether verbal or written) shall be effective if received (whether verbally or in writing) from a person known to Contractor or reasonably believed by Contractor to be authorized to act on County's behalf. County agrees that Contractor shall use all information and data supplied by County or on County's behalf without independently verifying the accuracy, completeness or timeliness of it. Contractor will not be responsible for any delays or liability arising from missing, delayed, incomplete, inaccurate or outdated information and data, or if Contractor does not provide adequate access to its employees, agents or other representatives necessary for Contractor to perform the services. Contractor will be entitled to charge County in respect of any additional work carried out as a result.
- 61. Advice on Legal Matters:** Contractor is not engaged in the practice of law and the services provided hereunder, which may include commenting on legal issues or drafting documents, do not constitute and are not a substitute for legal advice. Accordingly, Contractor recommends that County secure the advice of competent legal counsel with respect to any legal matters related to the services or otherwise.

- 62. No Third Party Beneficiaries:** Neither this Contract nor the provision of the services is intended to confer any right or benefit on any third party except with respect to affiliates of the Parties as specifically set forth in this Contract and with respect to the Plans sponsored by the County, the fiduciaries of such Plans and the County as a plan sponsor of such Plans. This paragraph does not limit any right of any affiliate of the County, any of the County's officers, directors, supervisors or employees, or those of its affiliates and any third party (including any benefit plan, its fiduciaries or any plan sponsor) to recover damages for Losses resulting from the services provided by Contractor, to the extent permitted by the terms of the Contract.
- 63. Form ADV, Part 2:** County acknowledges receipt of the Form ADV, Parts 2A and 2B of Contractor. County also agrees that future offers to provide, or the provision of, Form ADV, Parts 2A and 2B or other information required by applicable regulation may be sent to County electronically, at the email address provided to Contractor by County prior to such time. Client hereby represents and warrants that in connection with its selection of Mercer to perform the Services under this SOW that (i) it has read and understood the disclosures contained in Mercer's Form ADV, Part 2A, which discloses Mercer's actual and potential conflicts of interest; and (ii) it has not relied upon any advice or recommendation from any Affiliate of Mercer to make such selection.
- 64. Arbitration:** Notwithstanding any reference to a "final" or other decision that is reached or deemed to have been reached pursuant to any dispute resolution process set forth in the Contract, including but not limited to Paragraph 34, such decision shall not be binding, shall have no legal effect on either Party, and shall be without prejudice to either Party, in each case, unless agreed to in writing, and after such non-binding "final" decision is reached or deemed to have been reached, the following terms shall apply. Each Party to this Contract, on behalf of itself and its affiliates, agrees that any dispute, claim or controversy arising out of or relating to this Contract or the provision of services by any Contractor Party (a "Claim") shall be resolved by binding arbitration pursuant to the Commercial Arbitration Rules ("Rules") of the American Arbitration Association ("AAA") then in effect. The arbitration shall be conducted by a panel of three arbitrators, with each Party selecting an arbitrator and the two arbitrators selecting the third arbitrator. If the two arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA. Each of the arbitrators shall have at least fifteen years of relevant industry experience. The arbitrator(s) shall render a reasoned award, and neither Party shall object to the other Party's request for such an award. The arbitrators shall have no authority to award loss of profit, incidental, consequential, special, indirect, punitive or similar damages or any damages not measured by the prevailing Party's actual direct damages, and may not make any ruling, finding or award that does not conform to the terms and conditions of this Contract including, without limitation, the terms and conditions relating to the exclusion or limitation of damages. All fees and expenses of the arbitration shall be borne by the parties equally; except that each Party shall bear the expense of its own counsel, experts, witnesses and preparation and presentation of the arbitration matter. Judgment upon any award rendered by the arbitrators may be entered in any court of competent jurisdiction; provided, however, neither Party shall seek to enforce any judgment which does not conform to the terms and conditions relating to the exclusion or limitation of damages. No demand for arbitration may be made on any date on or after which the institution of legal or equitable proceedings based on the applicable claim would be barred by the applicable statute of limitations or by any provision of this Contract. Notwithstanding the foregoing, nothing in this Paragraph 64 prohibits either Party from seeking equitable relief from a court of competent jurisdiction to the extent that irreparable harm may occur and damages would not be a sufficient remedy. The Arbitrators shall not amend, modify, mollify, ignore or add to the provisions of this Contract and in the event the arbitrators do so or attempt to do so, such act by the arbitrators shall be null and void and have no effect, and either Party may seek to enforce this sentence and the immediately preceding sentence in a court of competent jurisdiction notwithstanding this Paragraph 64.
- 65. Commodity Trading Advice:**
- a. To the extent Contractor provides commodity trading advice to the County, the County represents

that the County is excluded from the definition of “commodity pool operator” under Commodity Futures Trading Commission (“CFTC”) Regulation 4.5, and the County has filed the notice of eligibility, if any, required under such regulation, and will annually reaffirm reliance on such exclusion as required by law. The County agrees to furnish Contractor with such information as Contractor may reasonably request to confirm the County’s status under CFTC Regulation 4.5.

- b. Contractor hereby acknowledges that it is a commodity trading advisor (“CTA”) with respect to the County and that Contractor represents and warrants to the County that Contractor is exempt from the registration as a CTA under CFTC Regulation 4.14(a)(8) with respect to the County, and has filed the notice required under CFTC Regulation 4.14(a)(8).
- c. Contractor represents and warrants to the County that, although Contractor is registered as a CTA, Contractor intends to provide commodity interest trading advice to the County as if Contractor were exempt from registration as a CTA under CFTC Regulation 4.14(a)(8). Contractor will reaffirm its eligibility to rely on the exemption in CFTC Regulation 4.14(a)(8) as required by law.
- d. The County represents and warrants to Contractor that the County is currently, and will continue to be, an “eligible contract participant” within the meaning of Section 1a(18) of the Commodity Exchange Act (“CEA”).

CONTRACT SIGNATURE PAGE TO FOLLOW

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

MERCER INVESTMENTS LLC, dba MERCER INVESTMENT ADVISERS LLC:

Print Name Title

Signature Date

Print Name Title

Signature Date

**If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.*

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

COUNTY of ORANGE

A political subdivision of the State of California

Print Name Title

Signature Date

Approved by the Board of Supervisors on: _____

APPROVED AS TO FORM:

Deputy, Office of County Counsel
Orange County, California

Attachment A

Investment Consulting Services

Scope of Work

Contractor shall provide the following services to the County:

A. On-going Performance Monitoring – Defined Contribution and Health Reimbursement Arrangement Plans

1. Conduct on-going performance monitoring. Performance measurement must have specific reference to each fund's objectives, selected comparison indices and peer group universes. Measurement periods should be at least 1, 3, 5 and 10 years.
2. At least annually, the advisor must provide an investment environment overview and identify and analyze changes in firm organization, fund management style and personnel, including changes in fund investment guidelines, as well as detailed attribution for fund performance results and make recommendations for de-selection or selection of a product for the Plan.
3. Make any recommended revisions to the Plan investment guidelines.
4. Provide a quarterly review.
5. Present performance report(s) to the Defined Contribution Advisory Committee at its regular quarterly meetings, but no less often than annually.
6. Provide a written and verbal quarterly report and make a presentation to County staff and the committee on the performance of the current investment options relative to their appropriate benchmarks and peer groups.
7. Assist County staff and the committee in identifying under-performing investments and develop and review a list of appropriate alternatives for the committee to review as appropriate.
8. Assist County staff and the committee with the process of selecting any new funds needed as the result of fund evaluations.
9. Attend Advisory Committee meetings to present information and advice as requested.
10. Review and make recommendations to the written investment policy guidelines for the Plan.

B. General Consulting Services

1. Assist County staff and the committee, using the Consultant's knowledge of "best practices," in the preparation of procedures, policies, manuals, forms, charters, bylaws, ordinances, Plan documents and other important documentation for the County and committee consideration and approval, if appropriate. Ongoing updates of these documents will also be expected to be prepared in reaction to legal and economic changes.
2. Consult with County staff and the committees on actions necessary to be in compliance with current and proposed changes in laws, regulations, ordinances, etc. and the impact of those changes to the Plans.
3. Provide peer review of the Plans versus plans of similar size and diversity.

4. Assist County staff and the committee in developing and evaluating surveys that the County may want for Plan participant input on its Record Keeper.
5. Assist County staff and the committees in analyzing and identifying the need for new or enhanced services including the development of Request for Proposals (RFPs).
6. Review education and participant training materials and the delivery systems utilized for the training materials currently available to Plan participants. Recommend changes to ensure that materials are complete and accurate.
7. Review account statement, newsletters and participant communications, including the Plan's web site. Recommend changes to ensure that materials are complete and accurate.
8. Monitor performance of the Record Keeper services and adherence to the terms and conditions of the contract, including but not limited to: any changes in senior personnel; company ownership; record keeping services; field representatives and their ability to service the Plan and assist participants.
9. Make recommendations to County staff and the committees regarding areas needing improvement and any monetary penalties to be imposed against the Record Keeper.

C. Extra Help Employee 1992 Defined Benefit Plan

1. Provide recommendations to County staff regarding the investment vehicle(s) for assets.
2. Assist County staff in the revisions of the Plan document.
3. Provide coordination of service transition with the Record Keeper, if required, which may include, but not be limited to development and issuance of a Request for Proposal, evaluation of responses and selection of a replacement service provider.
4. Finalization of legal documentation and participant communications.

D. Ad-Hoc Consulting

1. Provide requested ad-hoc consulting services.
2. Provide the committees and County staff with informational sessions on topical investment issues affecting defined contribution plans.
3. Assist County staff and the committees in analyzing a brokerage account structure for the Plans, if requested.
4. Assist County staff and the committees in analyzing advice and retirement planning information for the Plans, if requested.
5. Assist County staff and the committees in maintaining and/or modifying the structure of the Deferred Compensation Advisory committee including but not limited to providing recommendation on the formal structure of the committee, and development of the by-laws, etc.
6. Provide consulting services for the HRA, 1.62 Defined Contribution plans, and 1992 Defined Benefit Plan as requested by the County.

E. Administrative Services for Request for Proposals

As required:

1. RFP development and Review of Responses – Develop all required materials, including contract language, for Request for Proposals for the 457(b), 401(a), 3121, 1.62 457(b), 1.62 401(a) Defined Contribution Plans, 1992 Defined Benefit Plan, and the HRA Plan for the evaluation committee’s consideration. The selected Offeror will be required to review responses to those proposals and generate recommendations to the evaluation committee. The Offeror must be prepared to provide expert assistance in defining rating factors and review criteria, as well as creating a review methodology, which can evaluate and rank proposals based on factors such as investment performance, fees, management criteria, etc.
2. Plan Design Issues - Provide input and advice with respect to Plan Design issues. The selected Offeror will review and present advantages and disadvantages between bundled and unbundled 457(b) plan structures. This may include input and advice regarding provisions of investment advice and education to Plan participants; providing advice with respect to refinement of the investment options for the 457(b), 401(a) plans, 1.62 457(b), 1.62 401(a) and HRA Plan; and any and all related matters regarding the structure and the delivery of services/products under the plans.
3. Develop and present to the evaluation committee a timeline for the Request for Proposal process. The timeline shall include the transition period for a new Record Keeper, if one is selected.
4. Develop a transition strategy (including communications materials intended for Plan participants) to successfully migrate current investment options, education services, and record keeping services to a new Record Keeper, if one is selected.
5. Review education and participant training materials developed by the Record Keeper for completeness and accuracy. Recommend changes with respect to education and participant training materials to assure materials are complete and accurate.
6. Assist in contract negotiations, including advising the County on appropriate fees for service.
7. As requested, as needed, assist in making changes to funds and/or removing an investment option. If a change is in the best interest of the plan and the participants, bring the recommendation to the County’s attention. Operational and administrative considerations, as well as cost and market impact would also be discussed.
8. Assistance in fund searches. Conducting a fund search process that will include: determining eligible funds with the administrator; establishing appropriate selection criteria that will identify the characteristics of suitable candidates for the role to be filled; screen criteria against both the Contractor’s proprietary information and outside databases; and prepare a thorough and comprehensive report providing comparative data for each manager candidate; and advise on the selection of finalist candidates and assist with the implementation of the new fund.

Attachment B

Cost/Compensation for Contractor Services

This is a fixed fee Contract between the County and Contractor for services provided in Attachment A, Scope of Work.

In accordance with the provisions of Article 2 of the General Terms and Conditions, the Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work.

A. Payment/Invoicing Instructions:

Invoices are to be sent to: County of Orange Human Resource Services, Employee Benefits
 Attn: ~~Duane R. Bankey~~ Susie Kim, ~~Senior~~ Program Manager
~~333 W. Santa Ana Blvd., 1st Floor, Room 137~~
400 W. Civic Center Drive, 1st Floor, Room 111
 Santa Ana, CA 92701

Acceptable invoicing format:

The Contractor will provide an invoice in arrears for services rendered, not more frequently than monthly. Each invoice will have a unique invoice number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address
3. County Contract number
4. Contractor's Federal I. D. number
5. Name of staff performing services
6. Classification of staff performing services
7. Number of labor hours by classification
8. Hourly rate by classification
9. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Payment will be made monthly in arrears and within 45 (forty-five) calendar days upon the Auditor-Controller's receipt of an approved invoice submitted in accordance with the terms set forth herein. The invoice must be verified and approved by the County's Program Manager and is subject to routine processing requirements of the County.

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

B. Compensation/Cost

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing. The cost/compensation proposed shall include all charges that your firm intends to charge the County for providing all consulting services specified in the Scope of Work.

The Total Contract amount for years 1 through 3 of the contract will be \$684,000. There is an option to extend the contract for two additional years at a total of \$544,500.

List below the rates for performing services specified in the Scope of Work and all other charges your firm intends to

charge the County.

On-going Performance Measurement (Includes annual allocations as follows:	\$180,000/annual
<ul style="list-style-type: none"> • 457 and 401(a) \$80,000 • 1.62% Plans \$40,000 • HRA Plan \$60,000) 	
General Consulting Services	\$385.00/per hour
Ad-Hoc Consulting	\$385.00/per hour
Administrative Services	\$55,000/per RFP Four of fewer responses
	\$65,000/per RFP Five of more responses
Fund Searches	\$8,000/per Index Fund
	\$10,000/per multiple concurrent Fund
	\$12,000/per active Mutual Fund
	\$14,000/per separately Managed Account
Other Charges:	N/A

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

ATTACHMENT C

Performance Guarantees

Performance Standard Description	County Specific Performance Standard	Financial Amount at Risk
Timely response to verbal inquiries from County	County to receive verbal responses within two (2) County business days of verbal inquiry	2%
Timely responses to written inquiries from County	County to receive written response within two (2) County business days of receipt of inquiry	2%
Projects completed by predetermined deadlines	Consultant shall meet all mutually agreed upon deadlines. If the service is delayed by the County or external vendor, the number of days the project or projected phase is delayed will be added to the original due date	2%
Account Management Satisfaction	An account management satisfaction score of “3” or better on a “1-5” scoring system	2%
Consulting Team Continuity	<p>If a key personnel is no longer employed by the Consultant, Consultant shall notify the County within 24 hours of the person leaving and shall promptly replace such person with an acceptable replacement. County shall have the option to interview up to 3 employees of the Consultant before selecting a replacement. The replacement shall be assigned to the County within one week of either the notification date if no interviews are conducted or one week from the County selecting from interviewed employees.</p> <p>A County “key personnel transition” satisfaction score of “3” or better on a 1-5 scoring system</p>	2%
Total Financial Liability per Plan Year Not to Exceed		10% of total cost of services per plan year
<p>Assessment will be performed each quarter and within 60 days of the end of the quarter. Penalties will be applied on a quarterly basis to total billed invoices for the respective quarter.</p>		

Attachment D

ACCOUNT MANAGEMENT REPORT CARD

Rating Methodology:

- 5 = Completely Satisfied
- 4 = Very Satisfied
- 3 = Satisfied
- 2 = Somewhat Satisfied
- 1 = Dissatisfied

Client/Company Name: County of Orange
 Completed By (please print): _____
 Client Signature _____
 Date completed: _____
 Telephone #: _____

County will complete the box with the score that most closely reflects the level of satisfaction with the local account management team with respect to the following service categories. A separate quarterly report card will be completed, signed and dated each quarter.

Measurable Need	1 st Q	2 nd Q	3 rd Q	4 th Q	Composite to be completed by PG Unit
1. Provides client with timely notification of issues impacting Plan and/or Participants.					
2. Responds to Participant issues & questions in a timely, comprehensive manner.					
3. Develops, follows through on action plans; effective coordination to resolve open issues.					
4. Is accessible and attends scheduled meetings.					
5. Delivers agreed upon reports and communication of Contractor results on time.					
Account Management Composite Score (All Categories)	N/A	N/A	N/A	N/A	

Fill in for each quarterly period:

Date Sent to Client: _/_/_ _/_/_ _/_/_ _/_/_
 Date Returned by Client: _/_/_ _/_/_ _/_/_ _/_/_

At the end of each quarterly period, Contractor forward Account Management Report Card to County for completion.

Following the end of the Term and receipt of the fourth (4th) quarterly survey from the County, Contractor will calculate the Composite Score in each performance assessment category by averaging the scores for the four (4) quarters of the Term. The assessments of each of the performance assessment categories will be weighted equally. The Account Management Commitment will be deemed as fulfilled if the average of the Composite Scores in each category (“Account Management Composite Score”) is equal to or greater than the Account Management Composite Score indicated on Attachment C.

EXHIBIT I**EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS**

Effective January 1, 2001, the County of Orange 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 County pays \$600 or more or with whom the County 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.

To comply with the reporting requirements, County procedures for contracting with independent Offerors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

First name, middle initial and last name
 Social Security Number
 Address
 Start and expiration dates of contract
 Amount of contract

First Name	Middle Initial	Last Name
SSN _____		
Contract Number	Dollar value of contract	_____
Start Date	Expiration Date	_____