

**EXHIBIT B**

**THIS IS THE GENERAL FORM AND CONTENT OF THE CONTRACT LACERA INTENDS TO USE. IN SUBMITTING A PROPOSAL WITHOUT COMMENT ON THE CONTRACT, THE BIDDER WILL BE DEEMED TO HAVE AGREED TO EACH CLAUSE IN THE AGREEMENT BELOW (AND TO NOT SEEK ANY MODIFICATIONS TO THE AGREEMENT), UNLESS BIDDER'S PROPOSAL IDENTIFIES AN OBJECTION OR INCLUSION, SETS FORTH THE BASIS FOR THE OBJECTION OR INCLUSION, AND PROVIDES SUBSTITUTE LANGUAGE TO MAKE THE CLAUSE ACCEPTABLE TO BIDDER OR TO ADDRESS AN ISSUE BIDDER FEELS IS NOT ADDRESSED BY THE AGREEMENT. LACERA RESERVES THE RIGHT TO MAKE CHANGES TO THE CONTRACT PRIOR TO EXECUTION.**

**AGREEMENT**

**FOR**

**RETIREE HEALTH CARE BENEFITS CONSULTING SERVICES**

**BETWEEN**

**AND**

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**JULY 1, 2010**

**Prepared by:  
LACERA Legal Office**

**AGREEMENT  
FOR  
RETIREE HEALTH CARE BENEFITS CONSULTING SERVICES**

This Agreement for Retiree Health Care Benefits Consulting Services ("Agreement") is made and entered into as of July 1, 2010 ("Agreement Date"), at Pasadena, California, by and between the Los Angeles County Employees Retirement Association ("LACERA"), and \_\_\_\_\_ ("Consultant"), for the performance of the health care benefits consulting services described herein.

**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. LACERA administers a Retiree Health Care Benefits Program established by the County of Los Angeles, California ("County") for eligible retired members of LACERA (the "Program"), which Program includes medical, dental, and vision; and

C. All premiums for the insurance obtained under the Program are paid entirely by, and the entire cost of the administration of the Program is borne entirely by, the participants in the Program and the County.

D. LACERA desires to engage a consultant to provide the comprehensive benefit consulting services related to all aspects of the Program, and such other services as may be mutually agreed upon from time to time; and

E. LACERA has issued a request for proposal dated August 14, 2009 ("RFP") for such services; and

F. Consultant submitted a proposal dated \_\_\_\_\_ ("Consultant's Proposal") in response to the RFP, and has represented to LACERA that it is qualified to perform the desired consulting services, and it is ready, willing and able to perform the duties and responsibilities entrusted to it under this Agreement; and

G. LACERA has determined, based on Consultant's Proposal and LACERA's due diligence, that Consultant is qualified to perform the desired consulting services and desires to retain Consultant to provide such services.

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

## **AGREEMENT**

1. Definitions. For purposes of this Agreement, capitalized terms shall have the meanings set forth in this Section 1.

"Agents" means any principals, employees, agents, consultants, or representatives of Consultant acting in connection with this Agreement.

"Agreement" means this Agreement for Health Care Benefits Consulting Services entered into by and between LACERA and Consultant.

"Agreement Date" means the date shown in the preamble of this Agreement.

"Authorized Persons" is defined in Section 4.D

"Consultant" means \_\_\_\_\_, a \_\_\_\_\_.

"Consultant's Proposal" means the proposal dated \_\_\_\_\_ submitted by Consultant in response to the RFP, and all attachments thereto.

"Consultant's Proprietary Materials" is defined in Section 13.A.(1).

"County" means the County of Los Angeles, California.

"Covered Persons" means LACERA, its trustees, officers, employees, contractors, agents, and representatives, but does not include Consultant.

"Effective Termination Date" means the date on which work under this Agreement will formally cease, as specified in any Notice of Termination delivered by one party to the other.

"Force Majeure" means any cause, circumstance, or event beyond the reasonable control and without the fault or negligence of Consultant or its Agents which causes Consultant to fail to perform its obligations hereunder. Such causes, circumstances or events may include, but are not restricted to, acts of God or of the public enemy, acts of any foreign, international, federal or state government (including all subdivisions thereof) in such government's sovereign capacity, fires, floods and earthquakes; but in every case the failure to perform must be beyond the control and without the fault or negligence of Consultant.

"LACERA" means the Los Angeles County Employees Retirement Association, an independent public pension fund established under the authority of the County Employees Retirement Law of 1937 (California Government Code Sections 31450 et seq.).

“LACERA’s Project Director” means Lita Payne, Director, Retiree Health Care Division, or her delegate.

"Legal Requirements" means all federal, state, county and local laws, rules, regulations, ordinances, registrations, filings, approvals, authorizations, consents and examinations, presently existing or enacted or promulgated during the term of this Agreement, which may apply from time to time to Consultant or LACERA in relation to their performance under this Agreement, including the Health Insurance Portability and Accountability Act of 1996.

“Member Records” means any records relating to LACERA’s members or beneficiaries to which Consultant or its Agents may be exposed when performing under this Agreement.

"Notice of Termination for Convenience" means a written notice delivered by LACERA when LACERA desires to terminate this Agreement (or a portion of the work to be performed by Consultant) for its convenience, or for any other reason other than Consultant’s default.

"Notice of Termination for Default" means a written notice delivered by LACERA to Consultant when LACERA desires to terminate this Agreement (or a portion of the work to be performed by Consultant) due to a default by Consultant.

“Program” means the Retiree Health Care Benefits Program administered by LACERA for the County of Los Angeles, California.

“RFP” means the Request for Proposals for Retiree Health Care Benefits Consulting Services issued by LACERA dated August 14, 2009.

“Work Records” is defined in Section 12.A.(2).

“Work Product” is defined in Section 13.A.(1).

## 2. Performance Requirements.

A. Work to be Performed. Consultant agrees to perform and deliver the comprehensive benefit consulting services related to the Program in the manner and form as described in the body of this Agreement and in Exhibit “A”. (Statement of Work) attached hereto and incorporated herein by reference Consultant agrees that up to two (2) LACERA staff may accompany and observe Consultant during Consultant’s on-site audits and examinations of carriers’ records and procedures that are described in the Statement of Work. Consultant further agrees to cause carriers to permit LACERA staff to accompany and observe Consultant on those audits and examinations.

B. Quality of Services. Consultant agrees to discharge its duties under this Agreement with the same standard of care, skill, prudence and diligence that applies to other experts practicing in a like enterprise. If the quality of service provided by Consultant to other clients it serves in the same capacity exceeds the requirements of the preceding sentence, the quality of service provided by Consultant hereunder shall be at least equivalent to that higher quality of service. All services which Consultant provides hereunder shall meet the requirements and standards set forth in this Agreement. Consultant shall promptly correct any errors or omissions in the performance or delivery of its services, at no cost or expense to LACERA, within three (3) business days after request by LACERA's Project Director, but such opportunity to correct errors or omissions will not affect LACERA's right to terminate this Agreement for default set forth in Section 8.C.

C. Resolution of Conflicting Provisions. This Agreement, and the term "Agreement" as used herein, includes exhibits, which are incorporated herein as a part of this Agreement. In the event of any conflict or inconsistency between this Agreement, the exhibits incorporated herein and any amendments thereto, said conflict or inconsistency shall be resolved by giving precedence in the following order:

- (1) Each amendment in descending order by date of execution
- (2) Agreement
- (3) Exhibits

3. Project Responsibility - Consultant.

A. Consultant's Project Manager. (Name and title) and Lead Health Care Consultant for Consultant, shall act as Consultant's Project Manager. Consultant's Project Manager shall:

- (1) be a full time employee of Consultant having full authority to act for Consultant on all matters relating to the daily operation of this Agreement;
- (2) be reasonably available during LACERA's normal working hours for telephone contact and in-person meetings with LACERA personnel designated to discuss Consultant's performance; and
- (3) attend all meetings of the LACERA Board of Retirement Insurance, Benefits, and Legislative Committee.

B. Alternate Project Manager. Consultant shall inform LACERA in writing of the person appointed, if any, as its alternate Project Manager, which

appointment shall be subject to LACERA's approval. The alternate Project Manager shall act in the Project Manager's absence or unavailability and shall assume the same responsibilities as the Project Manager.

C. Consultant's Designated Agents.

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have been designated by Consultant to perform the services described in the Statement of Work attached to this Agreement. Consultant shall not remove said individual(s) or Consultant's Project Manager from the work without the prior written consent of LACERA's Project Director, provided however, such restriction shall not apply to instances of employment termination, serious illness, death, or other cause beyond Consultant's reasonable control.

D. Change in Consultant's Designated Agents. Upon request by LACERA's Project Director, Consultant shall replace any of Consultant's Agents assigned to perform services under this Agreement, who are in LACERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

E. Conduct on LACERA's Premises. Consultant's Agents shall comply with all applicable rules and regulations of LACERA's premises while on LACERA's premises, including security requirements.

4. Project Responsibility - LACERA.

A. LACERA's Project Director. LACERA's Project Director shall be Lita Payne, Director, Retiree Health Care Division, who shall be responsible for:

(1) providing overall management and coordination of this Agreement, acting as liaison for LACERA;

(2) insuring that the provisions and objectives of this Agreement are met;

(3) providing overall direction to Consultant in all matters relating to policy information, information requirements, and procedural requirements.

B. Delegation by LACERA's Project Director. LACERA's Project Director may delegate all or some of her authority from time to time.

C. Limit on Authority. LACERA's Project Director is not authorized to make any changes in the terms and conditions of this Agreement and is not authorized to obligate LACERA in any way whatsoever, beyond those

duties and responsibilities delegated to the LACERA Project Director in this Agreement.

D. List of Authorized Persons. Upon execution of this Agreement, LACERA's Director of Retiree Health Care Division shall provide Consultant with a list of authorized LACERA personnel ("Authorized Persons") who will be permitted to contact Consultant. The list of Authorized Persons and any changes to such list shall be made in writing to Consultant and signed by LACERA's Chief Executive Officer or his or her delegate.

E. No Personal Liability. In no event shall LACERA's Project Director or any Authorized Person have any personal liability to Consultant for any action taken or not taken by such individual while acting or purporting to act as LACERA's Project Director or as an Authorized Person.

5. Independent Contractor Status. In performing under this Agreement, Consultant is at all times acting in the capacity of an independent contractor. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between LACERA and Consultant. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever. Nothing in this Agreement shall cause LACERA to be responsible for any action, omission, or inaction of Consultant. Consultant shall be solely liable and responsible for providing all compensation and benefits to, or on behalf of, all persons furnishing services to LACERA pursuant to this Agreement. LACERA shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Consultant. For all purposes, Consultant understands and agrees that all persons furnishing services to LACERA pursuant to this Agreement are, for purposes of workers' compensation liability deemed employees solely of Consultant and not employees of LACERA.

6. Compensation and Payment.

A. Compensation to Consultant. Consultant shall be compensated for services rendered under this Agreement in the manner described in this Section 6.A.

(1) For services performed in accordance with the Statement of Work attached as Exhibit "A", Consultant shall be compensated as described in Exhibit "B", Fee Schedule, attached to and made a part of this Agreement; and

(2) LACERA may from time to time request that Consultant perform work not included in the Statement of Work. Consultant shall

not commence such work until a full estimate of the cost has been submitted by Consultant and approved by LACERA in writing. Consultant shall be paid for such work on a project by project basis, under a separate fee arrangement prepared by Consultant and approved in writing by LACERA prior to the commencement of such work. The hourly rates for such work will fall within the ranges shown on Exhibit B, with the actual hourly rate to be negotiated by the parties in good faith based upon the experience and expertise of Consultant's personnel performing such work.

(3) LACERA, and not any third party, will compensate Consultant for its services rendered under this Agreement. Consultant will not accept any compensation of any type whatsoever, including without limitation any fee, commission, percentage, gift and other consideration, from any third party for performing the services and delivering the deliverables contemplated by this Agreement, including audits of carriers.

B. Expenses. Consultant shall not be entitled to reimbursement for any expenses incurred by it in discharging its duties under this Agreement, unless specifically provided otherwise in the Statement of Work.

C. Invoices and Payment. Consultant shall be paid in arrears for services rendered. Consultant shall submit invoices for services rendered not earlier than the tenth day of the second full calendar month following the period for which payment is requested. (For example, Consultant shall deliver an invoice not earlier than August 10 for services rendered through the period ending June 30.) The invoice shall include a summary of the services rendered in such detail as may be reasonably required by LACERA. Subject to the provisions of Section 8, LACERA shall pay undisputed invoices within twenty days of receipt. The payments provided for in this Section 6.C. constitute the entire compensation to which Consultant is entitled for performing the services described in the Statement of Work, and Consultant shall not be entitled to additional compensation in the event that the cost to Consultant of providing such services exceeds the compensation payable under this Section 6.C. Invoices shall be mailed to:

Los Angeles County Employees Retirement Association  
300 North Lake Avenue, Suite 300  
Pasadena, CA 91101-4199  
Attention: Lita Payne, Director  
Retiree Health Care Division

D. Non-Compensable Services. Consultant agrees that should work be performed outside the scope of the Statement of Work described in Exhibit A hereto, without the prior written consent of LACERA in accordance with Section 18.A (Changes and Amendments), such work shall be deemed to be a gratuitous effort on the part of Consultant, and Consultant shall have no claim

against LACERA for such work, and LACERA shall have no obligation to pay for such work.

E. Compensation Payable upon Termination by LACERA. If LACERA terminates this Agreement for convenience as permitted by Section 8.B., Consultant shall be paid for work performed prior to the Effective Termination Date in the manner set forth in Section 8.G.(3).

7. Liability for Consultant's Failure to Perform. Unless otherwise specified in Exhibit "A" (Statement of Work), Consultant acknowledges that it shall be liable to LACERA for any actual loss incurred by LACERA as a result of Consultant's failure to perform under the terms of this Agreement.

8. Term and Termination.

A. General Term. Subject to the termination provisions set forth in Sections 8.B. through 8.E., the term of this Agreement shall commence as of July 1, 2010 and continue until 11:59:59 PM Los Angeles time on June 30, 2015.

B. Termination by LACERA for Convenience.

(1) LACERA may terminate this Agreement (or any portion of Consultant's work) without cause at any time by delivering to Consultant a written Notice of Termination for Convenience specifying the extent to which Consultant's services are terminated and the Effective Termination Date. The Effective Termination Date shall be no earlier than ten (10) calendar days after such Notice of Termination for Convenience is delivered to Consultant; provided however, in the event a shorter/longer notice is required pursuant to the applicable provisions of the Statement of Work, such shorter/longer notice shall be given. In no event shall LACERA's termination of this Agreement under this Section 8.B be deemed a waiver of LACERA's right to make a claim against Consultant for damages resulting from any default by Consultant which occurred prior to the Effective Termination Date.

C. Termination by LACERA for Default. LACERA may immediately terminate this Agreement (or any portion of Consultant's work) by delivering to Consultant a written Notice of Termination for Default which specifies the Effective Termination Date, under any of the following circumstances:

(1) With notice and opportunity to cure if:

(a) Consultant fails to perform any portion of the work specified in the Statement of Work within the time specified or any extension thereof approved by LACERA; or

(b) Consultant fails to perform any other provision of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms; and, as determined by LACERA in its sole and reasonable discretion, in either (a) or (b) Consultant fails to cure such default within three (3) business days (or such longer period as LACERA may authorize in writing) after receipt of written notice from LACERA specifying such default;

(2) Upon notice but without opportunity to cure if:

(a) Consultant repeatedly fails to perform according to this Agreement following notice and failure to cure pursuant to Section 8.C.(1);

(b) Consultant (i) materially breaches any of the warranties, representations and covenants made in Section 10 (Consultant's Representations, Warranties and Covenants); (ii) breaches its obligations under Section 17 (Ethical Wall, Conflicts Management, Disqualification); (iii) fails to maintain the insurance it is required to maintain under Section 9; or (iv) fails to comply with Section 11.A (Compliance with Legal Requirements);

(c) Consultant is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; or

(d) Consultant attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, in violation of Section 18.J.

D. Termination by LACERA for Insolvency. LACERA may immediately terminate this Agreement (or any portion of the services to be rendered by Consultant) by delivering to Consultant a written Notice of Termination for Default which specifies the Effective Termination Date, under any one of the following circumstances:

(1) Consultant has become insolvent, meaning that it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has committed an act of bankruptcy or not, and whether or not it is insolvent within the meaning of the United States Bankruptcy Code (11 U.S. Code § 101 et seq.);

(2) Consultant has filed a voluntary petition under any bankruptcy, reorganization or insolvency law and relief from the automatic stay is obtained by LACERA;

(3) Consultant has applied for or consented to appointment of a trustee or receiver to take possession of all or substantially all its assets;

(4) Consultant has consented to, or filed an answer admitting the jurisdiction of the court and the material allegations of, an involuntary petition filed under any bankruptcy, reorganization or insolvency law; or

(5) An involuntary proceeding of bankruptcy, reorganization or insolvency has been commenced against Consultant and not dismissed within thirty (30) days after commencement.

E. Termination by LACERA for Non-Appropriation of Funds. Notwithstanding anything contained in this Agreement to the contrary, services rendered by Consultant in a fiscal year are payable by LACERA only from the funds appropriated for such services as a separate line item entry in LACERA's approved budget for such fiscal year. In the event this Agreement extends into succeeding fiscal years beyond the fiscal year of the Agreement Date and LACERA does not appropriate funds for Consultant's services under this Agreement as a specific line item entry in the approved budget for any succeeding fiscal year, this Agreement shall terminate automatically in accordance with the provisions of Section 8.B (Termination by LACERA for Convenience), as of the end of the then current fiscal year. LACERA shall make a good faith effort to notify Consultant in writing of such non-appropriation as soon as practicable.

F. Force Majeure. Consultant shall not be terminated for default, pursuant to Sections 8.C. or 8.D., if Consultant's failure to perform under this Agreement arises solely from causes of Force Majeure.

G. Rights, Remedies and Responsibilities upon Termination. In the event of any termination of this Agreement, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions shall also apply to any termination of this Agreement.

(1) Post-Termination Responsibilities. If LACERA terminates this Agreement, and unless otherwise expressly directed by LACERA, Consultant shall: (i) take all necessary steps to stop providing services under this Agreement on the Effective Termination Date, or sooner, as provided in the Notice of Termination; and (ii) continue to perform those services, if any, which have not been terminated.

(2) Recovery of Reasonable Damages Upon Default. If LACERA terminates this Agreement in whole or in part for default pursuant to

Sections 8.C or 8.D, LACERA shall be entitled to recover from Consultant all reasonable damages resulting from such default. By way of example and not limitation, LACERA may procure, upon such terms and in such manner as LACERA may deem appropriate, services similar to those terminated, and Consultant shall be liable to LACERA for any excess cost of such similar services.

(3) Payment When Terminated for Other than Default. If LACERA or Consultant terminates this Agreement for any reason other than Consultant's default, LACERA shall pay Consultant for the actual cost of the work performed through the Effective Termination Date but for which Consultant has not been compensated; in no event, however, will Consultant be entitled to receive more than the amount otherwise payable through the Effective Termination Date under Section 6.C, with the maximum monthly fee payable for the month in which the Effective Termination Date occurs being prorated based upon a 30 day month. Consultant shall submit to LACERA, in the form and with the certifications as may be prescribed by LACERA, its termination claim and invoice. Such claim and invoice shall be submitted promptly, but not later than ninety (90) days from the Effective Termination Date. If Consultant fails to submit its termination claim and invoice within the time allowed, LACERA may determine on the basis of information reasonably available to LACERA, the amount, if any, due to Consultant in respect of such termination and such determination shall be final. After such determination is made, LACERA shall pay the amount so determined. No payment will be made by LACERA under this Section 8.G.(3) if Consultant is in breach of any of its obligations under Section 8.G.(6).

(4) Payment Withheld for Default. LACERA shall not authorize and shall withhold payment for services rendered if LACERA terminates this Agreement for default pursuant to Sections 8.C or 8.D above.

(5) Excusable Default. If, after LACERA issues a Notice of Termination for Default pursuant to Sections 8.C or 8.D, it is determined for any reason that Consultant was not in default, or that such default was excusable, then the rights and obligations of the parties shall be the same as if LACERA had issued a Notice of Termination for Convenience pursuant to Section 8.B.

(6) Good Faith Transfer. Upon any termination of this Agreement by LACERA, and to the extent directed by LACERA, Consultant shall reasonably cooperate with LACERA in good faith to effect a smooth and orderly transfer of such services and all applicable records to a successor designated by LACERA. Upon termination of this Agreement, Consultant shall retain all Work Records according to the record retention provisions set forth in Section 12, unless LACERA requests in writing that the Work Records or Work Product be delivered to LACERA or to a third party, in which case Consultant will promptly comply with LACERA's request at LACERA's expense.

(7) Cumulative Nature of Rights and Remedies. The rights and remedies provided by this Section 8 are not exclusive, but cumulative and in addition to any other rights and remedies provided by law, in equity or under any other provisions of this Agreement. The running of any grace period for cure of a default pursuant to Sections 8.C or 8.D shall not limit LACERA's right to terminate this Agreement for convenience at any time, pursuant to Section 8.B.

9. Indemnification and Insurance.

A. Indemnification of LACERA.

(1) Consultant agrees to indemnify, defend, save, and hold harmless the Covered Persons from and against any and all liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, expenses (including defense costs, expert witness fees and reasonable attorneys' fees) claims, demands, recoveries, settlements, or damages, including loss of funds, bodily injury, death, personal injury, or property damage (including any workers' compensation suits, liability or expense arising from or connected with work performed by or on behalf of Consultant by any person pursuant to this Agreement, or any damage to Consultant's property), whether based on contract, tort, negligence, strict liability in tort, or by statute or otherwise (collectively, "Claim"), including:

(a) any bad faith, negligence, willful misconduct, fraud, improper or unethical practice by Consultant or its Agents;

(b) any breach of any representation or warranty made by Consultant in this Agreement;

(c) the breach of any covenant, agreement or obligation of Consultant contained in this Agreement or any other instrument contemplated by this Agreement, including, breach of trust, breach of confidentiality, or violation of any Legal Requirement;

(d) any actual or alleged infringement of intellectual property rights, including infringement of any patent, trade secret, service mark, copyright; and

(e) any misrepresentation contained in any statement or certificate furnished by or on behalf of Consultant pursuant to this Agreement.

Consultant's obligation to indemnify survives the termination of this Agreement.

(2) Covered Persons shall give Consultant prompt notice of any Claim for which Covered Persons are entitled to indemnification pursuant to this Section 9.A, and Consultant shall control the defense or settlement thereof; provided, no such settlement or compromise shall be entered into unless, as part of such settlement or compromise, the third party executes a full and complete release of Covered Persons without recourse to any Covered Persons for any amount, claim or other obligation whatsoever respecting such Claim. Consultant shall have no right to settle or compromise any such Claim without the consent of Covered Persons, which consent can be withheld or delayed for any reason or no reason if such settlement or compromise involves the issuance of injunctive or other non-monetary relief binding upon Covered Persons or a plea of guilty or *nolo contendere* on the part of Covered Persons in any criminal or quasi-criminal proceeding, or which involves any admission of liability or culpability on the part of Covered Persons, or which has any collateral estoppel effect on Covered Persons. Consultant's obligation to defend the Covered Persons at Consultant's expense is in addition to, and separate from, Consultant's obligation to indemnify under this Section 9.A.

B. Insurance.

(1) General Insurance Requirements. Without limiting Consultant's obligations under Section 9.A. hereof and during the term of this Agreement, Consultant will provide and maintain, and will require all of its subcontractors to maintain, the following programs of insurance specified in this Agreement. Such insurance will be primary and not contributing with any other insurance or self-insurance program maintained by LACERA, and such coverage shall be provided and maintained at Consultant's own expense.

(2) Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to LACERA shall be delivered to:

Lita Payne  
Director, Retiree Health Care Division  
LACERA  
300 N. Lake Avenue, Suite 3300  
Pasadena, CA 91101-4199

prior to commencing services under this Agreement and annually thereafter.

Such certificates or other evidence shall:

- (a) Specifically identify this Agreement.
- (b) Clearly evidence all coverages required in this Agreement.
- (c) Contain the express condition that LACERA is to be given written notice by mail at least forty-five (45) days in advance of

cancellation for all policies.

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

(3) 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) Failure to Maintain Coverage: Failure by Consultant 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 Agreement. LACERA, at its sole option, may obtain damages from Consultant resulting from said breach.

(5) Compensation for LACERA Costs: In the event that Consultant fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to LACERA, Consultant shall pay full compensation for all costs incurred by LACERA.

(6) Cooperation Regarding Insurance. LACERA may elect to procure, at its own expense, insurance against loss or damage it may sustain in connection with Consultant's performance under this Agreement. Consultant will promptly cooperate with any reasonable request for information regarding Consultant which is required to obtain such insurance.

(7) Effect of Policy Limits. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverages; nor shall it preclude LACERA from taking such other actions as are available to it under any other provisions of this Agreement or otherwise at law or in equity.

(8) Survival of Obligations. Consultant's obligations under this Section 9.B. shall survive expiration or termination of this Agreement.

(a) General Commercial Liability. Consultant 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 Consultant's business operations and services that Consultant provides pursuant to this Agreement. Such policy shall include, without limitation, endorsements for Property Damage, Premises-Operations, Products/Completed Operations, Contractual, Independent Contractors, and Personal/Advertising Injury with a limit of at least Three Million

Dollars (\$3,000,000) per occurrence and an annual aggregate of at least Six Million Dollars (\$6,000,000). If such insurance is written on a Claims Made Form, such insurance shall be endorsed providing an extended reporting period of not less than five (5) years following termination or expiration of this Agreement.

(b) Auto Liability. Consultant shall provide and maintain a comprehensive auto liability insurance policy endorsed for all "owned", "non-owned", and "hired" vehicles, or coverage for any "auto", with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident.

(c) Workers' Compensation. Consultant shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to Consultant's employees for injuries arising from or connected with any services provided to LACERA under this Agreement. Consultant shall provide and maintain a program of Workers' Compensation, in an amount and form to meet all applicable statutory requirements. In all cases, workers 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 Consultant's employees.

(d) Crime Insurance.

(1) Consultant shall provide and maintain throughout the term of this Agreement a fidelity or financial institution bond policy with at least the following insuring agreements:

(a) Employee Dishonesty Coverage, Two Million Dollars per occurrence.

(b) Computer Theft Coverage - Two Million Dollars

(2) Such policy shall provide protection to LACERA against loss by reason of fraud or dishonesty on the part of Consultant, and shall be in an amount meeting the bonding requirements of Section 412(a) of the Employee Retirement Income Security Act, as amended from time to time, if such amounts are from time to time greater than those specified in this paragraph 9.B.e.

(f) Professional Liability. Consultant shall provide and maintain insurance covering liability arising from any error, omission, negligent or wrongful act of the Consultant, 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 Twenty Million Dollars (\$20,000,000). The coverage also shall provide an extended one-year reporting period commencing upon termination or cancellation of this Agreement.

10. Consultant's Representations, Warranties and Covenants.

Consultant makes the following representations, warranties, covenants and agreements set forth in this Section 10 with the understanding that LACERA has relied upon them in determining to enter into this Agreement, and that they constitute a material inducement to LACERA to enter into this Agreement. The representations, warranties, covenants and agreements contained in this Section 10 shall survive the expiration or termination of this Agreement.

A. Authorization.

(1) Consultant is duly organized, validly existing, and in good standing under the laws of the state of its organization and is qualified to do business in California, and has full corporate power and authority to carry on its business as it has been and is conducted.

(2) The execution and delivery of this Agreement and the provision and delivery of services contemplated by this Agreement are within the power of the Consultant and have been duly authorized by all necessary corporate and other action. Consultant has duly authorized, executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding agreements and obligations of Consultant, enforceable against Consultant in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity.

(3) Consultant is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any agreement, that would be breached or violated by Consultant's execution, delivery or performance of this Agreement.

(4) Consultant has completed, obtained, and performed all registrations, filings, approvals, licenses, authorizations, consents, or examinations required by any government or governmental authority for entry into this Agreement and performance of its acts contemplated by this Agreement, and Consultant shall maintain such proper authorizations while this Agreement is in force.

B. Contingent Fees. Neither Consultant nor any of its affiliates has paid or agreed to pay any fee or commission, percentage, brokerage, or contingent fee, consulting fees, or similar fees, to any entity or person in connection with the negotiation or execution of the Agreement by LACERA, except for bona fide employees of Consultant. In the event of any breach or violation of this warranty, LACERA shall have the right to immediately terminate this Agreement and, in LACERA's sole discretion, to deduct from Consultant's compensation under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

C. Gratuities. No gratuities in the form of gifts, entertainment or otherwise, were offered or given by Consultant, or any agent or representative of Consultant, to any officer, fiduciary, or employee of LACERA or the County with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. Consultant covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance, continuation, and/or amendment of this Agreement. If it is found that such gratuities have been offered or given by Consultant, LACERA may terminate this Agreement upon one (1) calendar day's written notice; *provided, however*, that the facts upon which LACERA bases such findings shall be at issue and may be reviewed in any competent court. In the event of such termination, LACERA shall be entitled to pursue the same remedies against Consultant as it could pursue in the event of default by Consultant.

D. Conflicts of Interest With Persons Related to LACERA. Consultant does not and shall not knowingly employ in any capacity: (1) any LACERA or County employee or fiduciary who either could influence the award of this Agreement or any competing agreement, or who does or will have any direct or indirect financial interest in this Agreement ("Interested Person") and (2) any spouse or economic dependent of any Interested Person.

E. Recruiting. During the term of this Agreement and for one (1) calendar year thereafter, Consultant shall not intentionally induce or persuade any employee of or independent consultant to LACERA to join Consultant.

F. Intellectual Property. No program, process, composition, writing, equipment, appliance or device, or any trademark, service mark, logo, idea, or any other work or invention of any nature or any other tangible or intangible assets whatsoever developed, provided or used by Consultant in connection with its performance under this Agreement, in the form so developed, provided, or used, infringes or will infringe on any patent, copyright, or trademark of any other person or entity, or is or will be a trade secret of any other person or entity, or is or will constitute the wrongful use or appropriation of the proprietary rights of any other person or entity. If any claim of infringement of any intellectual property right is made against LACERA, Consultant shall indemnify, defend and hold harmless all LACERA Covered Persons as provided in Section 9 above.

G. Consultant's Agents. The Agents of Consultant who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any consent decree with respect to any matter involving infringement of intellectual property rights, breach of fiduciary duty, breach of good faith, or fraud.

H. Employment Eligibility Verification. Consultant fully complies with all Federal statutes and regulations regarding employment eligibility of aliens and others and all its employees performing services under this Agreement are eligible for employment in the United States. Consultant has secured and retained all required documents verifying employment eligibility of its personnel, and shall secure and retain verification of employment eligibility from any new personnel in accordance with the applicable provisions of law as they currently exist and as they may be hereafter amended. Consultant shall indemnify, defend and hold harmless all LACERA Covered Persons from and against any alleged employer sanctions and other liability which may be assessed against LACERA in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any employees of Consultant performing work under this Agreement.

I. Licensed Personnel. Consultant and all persons performing services on behalf of Consultant under this Agreement presently hold, and at all times during this Agreement shall hold and maintain in good standing, such licenses, if any, as may be required by the State of California for persons and entities to perform the types of services Consultant agrees to perform under this Agreement.

J. Nondiscrimination. All persons employed by Consultant, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status or political affiliation, and in compliance with all applicable Federal and State anti-discrimination laws and regulations.

K. Certification Concerning Financial Contacts and Solicitations. Consultant will comply with the terms of Exhibit "C" (Certification of Contractors Concerning Financial Contacts and Solicitations) attached hereto and made a part hereof.

L. Changes. Consultant shall notify LACERA in writing within three (3) business days of any of the following changes: (i) Consultant becomes aware that any of its representations, warranties and covenants set forth herein has been breached or ceases to be true at any time during the term of this Agreement; (ii) there is a change in Consultant's personnel assigned to perform services under this Agreement or (iii) there is any change in control of Consultant.

M. Investigations and Complaints. To the extent permitted by applicable law, Consultant shall promptly advise LACERA in writing of any civil or criminal investigation, examination, complaint, disciplinary action or other proceeding relating to or affecting Consultant's ability to perform its duties under this Agreement or involving any personnel employed by Consultant who has performed any service with respect to LACERA's account in the twenty-four (24) preceding months, which is commenced by any federal, state, local or other

regulatory agency. Except as otherwise required by law, LACERA shall maintain the confidentiality of all such information until the investigating entity makes the information public.

N. Consultant's Agents. The Agents of Consultant who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any felony, found liable in a civil or administrative proceeding, pleaded no contest, or agreed to any consent decree with respect to any matter involving breach of trust, breach of fiduciary duty, fraud, or bankruptcy law violations.

11. Governmental Provisions.

A. Compliance with Legal Requirements. In performing under this Agreement, Consultant and LACERA agree to comply with all Legal Requirements, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference.

B. Assurance of Compliance with Civil Rights Laws. Consultant shall comply with all applicable Federal and State statutes to the end that no person shall, on the grounds of race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

C. Nondiscrimination in Employment. Consultant shall take all necessary action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to race, religion, ancestry, national origin, sex, age, condition of physical handicap, marital status, or political affiliation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

D. Compliance with Wage and Hour Laws. Consultant shall indemnify, defend and hold harmless LACERA and Covered Persons from any and all liability including but not limited to, wages overtime pay, liquidated damages, penalties, court costs, and reasonable attorneys' fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by Consultant's employees for which LACERA may be found jointly or solely liable.

12. Records and Audits.

A. Record Keeping.

(1) Consultant shall maintain accurate and complete books, records, documents and other evidence, and accounting procedures and practices sufficient to support all claims for payment made by Consultant to LACERA, including but not limited to any pertinent transaction, activity, dates and time spent providing services under this Agreement, invoices billed to LACERA, proprietary data, and any other records created by Consultant or its Agents in connection with this Agreement, including those created in performing its work under this Agreement. In performing this Agreement, Consultant shall fully document all work efforts including the development of any materials prepared for LACERA in connection with each task. Such documentation shall include, but not be limited to, the source of data, and schedules, narratives, and other work product supporting the conclusions reached and resultant recommendations. Consultant shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.

(2) All such material described in (1) above, including, but not limited to, all financial records, work documents, employment records, and proprietary data and information in whatever format, electronic or otherwise (collectively, the "Work Records"), shall be kept and maintained by Consultant and shall be made available to LACERA during the term of this Agreement and any extension thereof and for a period of seven (7) fiscal years thereafter unless Consultant is notified in writing by LACERA of the need to extend the retention period or unless written permission is given by LACERA to dispose of any such material prior to such time. All such material shall be maintained by Consultant at Consultant's Los Angeles office at Consultant's expense.

(3) Upon termination or expiration of this Agreement, LACERA may direct Consultant to deliver the Work Records to LACERA or to such third party as designated by LACERA, at LACERA's expense pursuant to Section 8.G.(6).

B. Record Review and Audit. Consultant agrees that LACERA, or any duly authorized representative of LACERA, including any successor consultant designated by LACERA, will have access to and the right to examine, audit, excerpt, copy or transcribe any Work Records at any time during the term of this Agreement, or at any time for up to seven (7) years after the termination of this Agreement. LACERA agrees that any such review and audit will be conducted in a manner to minimize interference with Consultant's normal business activities. Upon reasonable advance notice to Consultant (which in no event shall be more than three business days), Consultant will make the Work Records available for review and audit during normal business hours. Consultant will make the persons responsible for creating and maintaining the Work Records available to LACERA during such review and audit for the purpose of responding to LACERA's reasonable inquiries. LACERA will pay all costs associated with

such audit, other than any costs incurred by Consultant to make personnel available as required by the preceding sentence; however, if the audit reveals that Consultant has materially violated any of the provisions of this Agreement, Consultant will pay all costs associated with such audit

C. Audit Settlement. If representatives of LACERA conduct an audit of Consultant regarding the work performed under this Agreement, and if such audit finds that LACERA's dollar liability for such work is less than payment made by LACERA, then the difference will be either repaid by Consultant to LACERA by cash payment upon demand or, at the option of LACERA, deducted from any amounts otherwise due to Consultant from LACERA. If such audit finds that LACERA's dollar liability for such work is more than the payments made by LACERA, then the difference will be paid to Consultant by LACERA; however, the total payments shall not exceed the maximum amount payable by LACERA under Section 6 for work performed through the period covered by the audit.

13. Confidentiality; Proprietary Rights.

A. LACERA's Confidential and Proprietary Materials.

(1) LACERA's Proprietary Rights. All materials, documents, data, reports, and other information developed by Consultant for LACERA under this Agreement become the sole property of LACERA when developed and are deemed to be "Work Product", and upon the expiration or earlier termination of this Agreement, Consultant will promptly deliver to LACERA the Work Product, including all finished or unfinished materials, documents, data, reports and other information prepared by Consultant under this Agreement; however, Consultant may retain possession of all working papers so prepared by Consultant, and LACERA shall have the right during and subsequent to the term of this Agreement to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein. Both parties hereto acknowledge that Consultant retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as Consultant protects LACERA's interests in all of its confidential records and property.

(2) Member Records. Consultant acknowledges that when performing under this Agreement, Consultant may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. Consultant will maintain the confidentiality of all Member Records according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality, including California Government Code section 31532 and the Health Insurance Portability and Accountability Act of 1996, enacted by the U.S. Congress as Public Law 104-191, and the regulations promulgated with respect thereto.

(3) LACERA's Asset Policies, Procedures and Strategies.

Consultant will protect the security of and keep confidential all materials, data, and other information received by Consultant regarding LACERA's assets and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.

(4) Protection of Confidential and Proprietary Rights.

(a) Consultant shall protect the security of and keep confidential all material, data and information received or produced under this Agreement. Further, Consultant shall use whatever security measures are necessary to protect all such material, data and information from loss or damage by any cause, including, but not limited to, fire and theft.

(b) Consultant shall not disclose to any party any information identifying, characterizing or relating to any risk, threat, vulnerability, weakness or problem regarding data security in LACERA's computer systems, or to any safeguard, countermeasure, contingency plan, policy or procedure for data security contemplated or implemented by LACERA, without LACERA's prior written consent.

(5) Duty to Inform Agents. Consultant will inform all of its Agents of the confidentiality provisions of this Agreement.

B. Consultant's Proprietary Materials.

(1) Absent Consultant's written consent authorizing disclosure, LACERA will use reasonable means to protect and maintain the confidentiality of any of Consultant's materials which Consultant considers to be proprietary, so long as:

(a) Consultant clearly and prominently marks all such material "confidential" or "proprietary"; and

(b) public disclosure of such material is not required by law, including the California Public Records Act (Cal. Government Code Section 6250 et seq., the "Act"), or by order of any tribunal having jurisdiction

(2) If an action is commenced against LACERA under the Act or otherwise that challenges LACERA's refusal to disclose Consultant's proprietary material, Consultant will defend LACERA in the action, and will pay any judgment for damages or attorneys' fees that may be entered as a result of LACERA's refusal to disclose Consultant's confidential material.

(3) LACERA's obligations under Section 13.B.(1) do not apply to:

(a) any confidential information that LACERA can demonstrate has become public information through no breach of this Agreement by LACERA; and

(b) the Work Product.

C. Delivery of Work Product. If so directed by LACERA after termination or expiration of this Agreement, Consultant will deliver the Work Product to LACERA or to such third party as designated by LACERA, at LACERA's expense.

14. Seminars and Training Programs. In the event Consultant conducts seminars, training sessions or similar events which are generally made available to Consultant's clients, LACERA shall be invited to attend upon comparable terms and conditions as such other clients. If Consultant offers to pay the cost of such events and/or the travel or lodging expenses incurred by its clients in connection with attending such events and if LACERA is willing to accept reimbursement, Consultant shall reimburse LACERA for such expenses on a comparable basis as Consultant reimburses the expenses of its other clients.

15. Publicity.

A. Non-Disclosure of Details. Consultant shall not disclose any details in connection with this Agreement to any person or entity except as may be otherwise provided in this Section 15 or required by law.

B. Publicizing the Relationship. In recognizing Consultant's need to identify its services and related clients to sustain itself, LACERA shall not inhibit Consultant from publishing its role under this Agreement within the following conditions:

(1) Consultant shall develop all publicity material in a professional manner;

(2) Consultant shall not publish or disseminate commercial advertisements, press releases, or feature articles using the name of LACERA without the prior consent of LACERA's Project Director. LACERA shall not unreasonably withhold consent, and approval by LACERA may be assumed in the event no adverse comments are received in writing within two weeks after submission of written request for consent.

C. Consultant's Proposals and Sales Materials. Consultant may, without the prior written consent of LACERA, indicate in its proposals and sales materials that it has been awarded this Agreement with Los Angeles County Employees Retirement Association, provided that the requirements of this Section 15 shall apply.

16. Ethical Wall, Conflicts Management, and Disqualification.

A. Consultant's Obligations. [Note – this section is intended to protect LACERA against conflicts of interest Consultant may have. The contract language will depend on the circumstances of the Consultant.]

B. Material Inducement to LACERA. Consultant acknowledges that its agreement to establish \_\_\_\_\_ as required in this Section 16 constitutes a material inducement to LACERA to enter into this Agreement and the breach by Consultant of its obligations under this Section 16 constitutes a material breach upon which LACERA may immediately terminate or suspend this Agreement (or any services to be provided by Consultant) for default, pursuant to Section 8.C.(2) above.

17. Surviving Provisions. The parties agree that the provisions and obligations with respect to Section 8 (Term and Termination), Section 9 (Indemnification and Insurance), Section 10 (Consultant's Representations, Warranties and Covenants), Section 12 (Records and Audits), Section 13 (Confidentiality), Section 15 (Publicity) and Section 16 (Ethical Wall, Conflicts Management, and Disqualification) and other provisions which by their nature are intended to survive expiration or termination of the Agreement will survive any expiration or termination of this Agreement.

18. General Provisions.

A. Changes and Amendments.

(1) This Agreement may be amended or modified only by a written instrument executed by both parties hereto and making specific reference to this Agreement and the intent of the parties that it be modified or amended by such writing.

(2) The parties shall meet and confer in good faith on any modification of this Agreement that may become necessary to make its provisions consistent with any investment policy of LACERA, or any federal, state, county or local statute, rule, regulation or ordinance which governs any aspect of this Agreement.

B. Notices. All notices, requests, demands or other communications required or desired to be given hereunder or under any law now

or hereafter in effect shall be in writing, addressed as provided below. Such notices, if properly addressed, shall be deemed received (i) on the day delivered, if hand delivered to the recipient; (ii) on the business day transmitted, if transmitted by facsimile to the number shown below (but on the next business day after transmittal if transmitted on a non-business day or after 5:00 p.m. recipient's time); (iii) one business day after delivery to a reputable overnight courier, with delivery charges for next business day delivery paid by or charged to the sending party; or (iv) five calendar days after deposit in the U.S. Mail, first class registered or certified mail, postage prepaid:

To LACERA:

Lita Payne, Director  
Retiree Health Care Division  
LACERA  
300 N. Lake Ave., Ste. 300  
Pasadena, CA 91101-2601  
Fax No. (626) 236-4342  
Email: [lpayne@lacera.com](mailto:lpayne@lacera.com)

To Consultant:

\_\_\_\_\_  
Health Care Consultant

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

Either party may notify the other of its change in address in the manner provided above. Notwithstanding the prescribed method of delivery set forth above, actual receipt of written notice by the natural person designated above shall constitute notice given in accordance with this Agreement on the date received, unless deemed earlier given pursuant to the foregoing paragraph.

Notwithstanding this Section 18.B, Consultant's invoices shall be addressed as provided in Section 6.C.

C. Compliance with LACERA Communication Policy.

Consultant agrees to comply with the following communication policy adopted by the Board:

All formal notices required to be given to LACERA by a service provider pursuant to the service provider's contract with LACERA shall be addressed and delivered in accordance with the terms and conditions of the contract.

A service provider, or person or entity related to a service provider, shall provide to LACERA's Director of Retiree Health Care Division a copy of all written communications to LACERA (other than purely personal or social correspondence, routine announcements, generally-distributed newsletters, and the like) related to LACERA's business. If the communication relates to an actual or potential contract dispute, a copy shall also be provided to LACERA's Chief Counsel.

The addresses for LACERA's Director of Retiree Health Care and Chief Counsel are:

Lita Payne, Director  
Retiree Health Care Division  
LACERA  
300 N. Lake Ave., Ste. 300  
Pasadena, CA 91101

Robert Van Der Volgen  
Chief Counsel  
LACERA  
300 N. Lake Ave., Ste. 620  
Pasadena, CA 91101

D. Dispute Resolution; Attorneys' Fees. In any proceeding which arises out of this Agreement (whether in contract, tort or both), the prevailing party shall be awarded reasonable attorneys fees, together with all reasonable costs and expenses incurred by the prevailing party, including without limitation, court costs, expert witness fees and costs, travel time and associated costs, copy costs, deposition costs, exhibit costs, costs on appeal, fees and costs associated with execution upon any judgment or order, special transcript costs, and the appointment of a Special Master or discovery referee, to resolve the dispute and enforce the final judgment or decision. 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 proceeding.

E. Section Headings; Interpretation. Caption and section headings used in this Agreement are for convenience and reference only and shall not affect in any way the meaning, construction or interpretation of this Agreement. Each party hereto and its counsel have participated fully and equally in the review and negotiation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in all parts of this Agreement shall in all cases be construed according to its fair meaning, and not strictly for or against any party hereto. Section and exhibit references are references to sections of and exhibits to this Agreement, unless otherwise noted.

F. Entire Agreement. This Agreement, including all exhibits and attachments hereto contains the entire and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all previous oral and written agreements or understandings, and all contemporaneous oral and written negotiations, commitments, understandings and communications between the parties, relating to the subject matter of this Agreement. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement.

G. Severability. If any provision of this Agreement is held by any court to be illegal, invalid, or unenforceable, in whole or in part, the other

provisions shall remain unaffected and shall continue in full force and effect unless an essential purposes of this Agreement would be defeated by the loss of the illegal, invalid, or unenforceable provision.

H. Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement 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.

I. Governing Law and Venue. This Agreement will 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. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement 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 sitting in the County of Los Angeles, California or in any court of the State of California sitting in the County of Los Angeles, California. Each party to this Agreement consents to the exclusive jurisdiction of any United States District Court sitting in the County of Los Angeles, California and any court of the State of California sitting in the County of Los Angeles, California, and their appellate courts for the purpose of all legal actions and proceeding arising out of or relating to this Agreement or the services it contemplates.

J. Assignment, Delegation and Subcontracts. Consultant may not assign any of its rights or delegate or subcontract any of its duties hereunder without LACERA's prior written consent, which consent may be granted or withheld in LACERA's sole discretion. Any attempted assignment or delegation in violation of this provision is void and entitles LACERA to terminate this Agreement. Despite LACERA's consent, no assignment releases Consultant of any of its obligations or alters any of its primary obligations to be performed under this Agreement. Payments to any assignee under this Agreement shall be subject to set-off, recoupment, or other reduction for any claim that LACERA may have against Consultant. If Consultant is a partnership, this Agreement inures to the benefit of the surviving or remaining partners of such partnership.

K. Execution in Counterparts. The parties may execute this Agreement in any number of duplicate originals, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The parties may execute this Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitutes only one agreement. Any party delivering an executed counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to do

so does not affect the validity, enforceability or binding effect of this Agreement.

L. Notice of Delays. Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within five (5) days, give notice thereof, including all relevant information with respect thereto, to the other party.

M. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

N. Joint and Several Liability. If Consultant consists of more than one person or entity, the liability of each such person or entity signing this Agreement as Consultant shall be joint and several.

O. Word Usage. Unless the context clearly requires otherwise, (i) the plural and singular number shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "or" is not exclusive; (iv) "includes" and "including" are not limiting; and (v) "hereof," "herein," and other variants of "here" refer to this Agreement as a whole; and (vi) "default" and "breach" are used interchangeably.

P. Recitals Incorporated. The Recitals set forth following the preamble are incorporated by reference herein and made a part of this Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the Los Angeles County Employees Retirement Association has caused this Agreement to be subscribed on its behalf by its duly authorized officer, and \_\_\_\_\_ has caused this Agreement to be subscribed on their behalf by their duly authorized officer(s), as of the day, month, and year first written above.

LACERA:

Consultant:

Los Angeles County Employees  
Retirement Association

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

LACERA Legal Office

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**TO AGREEMENT FOR**  
**RETIREE HEALTH CARE BENEFITS PROGRAM CONSULTING SERVICES**

**STATEMENT OF WORK**

The consultant will be responsible for providing the following services:

**A. Strategic Planning**

The consultant will assist LACERA in the development of a long range plan to accomplish the Association's goals to provide retirees and beneficiaries with a comprehensive health care benefits program of the highest quality and to aggressively control costs associated with the program.

The consultant will provide LACERA with information related to identifying, analyzing, and forecasting the following:

- Cost trends in health care
- Trends in delivery systems
- State and national legislative issues
- Medicare and Medicaid issues; including Retiree Drug Subsidy (RDS)
- Trends in quality of care issues
- Trends in Long Term Care benefits
- Risk management
- Pharmacy benefit management

**B. Annual Program Evaluation**

Each year, the consultant will evaluate the effectiveness of the existing health care benefits program. This evaluation will include an analysis of claims data (utilization studies), a review of our reserves and retention, the preparation of experience studies, and a projection

of premiums for future years. This evaluation will also include a critique of each carrier providing information on carrier efficiency, carrier responsiveness, member satisfaction, carrier audits (annual or bi-annual), and adherence to contract provisions.

The results of the annual evaluations will be used by the consultant to determine whether any program changes are recommended.

In recommending changes, the consultant will identify the most efficient and effective approaches to benefit delivery. Consideration will be given to alternate plan designs, benefit enhancements, new carriers, different approaches to cost management, and strategies to maximize coordination of benefit savings and most effective integration with Medicare. Any recommendation will include an estimate of the actuarial cost of benefit changes. The recommendations must also include a forecast of financial impact of the proposed changes upon the entire health care benefits program.

If changes are adopted, the consultant will assist LACERA in the selection of carriers or vendors. The consultant may also be required to prepare the Request for Proposals (RFP's) for new carriers or vendors, analyze the responses to the RFP's, and assist in the finalization of any contract that may result from the RFP process.

This work will require the consultant to become familiar with all aspects of LACERA's Retiree Health Care Benefits Program plan design, governing documents, and vendor contracts.

The evaluation, analysis, and any recommendations will be provided to LACERA in a written report format. The annual timing of this report will be determined at the beginning of the contract period and remain constant throughout.

### **C. Annual Medicare Part B Premium Reimbursement Program Analysis and Report**

The Board of Supervisors of the County of Los Angeles annually reviews the Medicare Part B Premium Reimbursement Program. Under this annually-renewed program, eligible retired members receive a monthly reimbursement of their standard-rate Part B premium. The consultant will be responsible for performing a cost analysis of the program, based on the following year's published Medicare Premium rates and LACERA's Medicare plans and enrolled retirees, that will be forwarded to the Board of Supervisors for their

consideration. The timing of this report is triggered by Medicare's publishing of the Medicare premium rates for the following year.

#### **D. Annual Renewal Process**

The consultant will have primary responsibility for the annual premium contract negotiations with our carriers. The consultant will be responsible for preparing and presenting the renewal analysis and the updating of member contribution rates based on benefit structure.

#### **E. Audits**

1. The Consultant will conduct, as needed, up to two claims audits per year; one each on Anthem Blue Cross of California, Plans I, II and III, and the CIGNA HealthCare Dental PPO. The audits must be statistically valid, and must determine, at the least, 1) the timeliness of claims processing; 2) the rate of incorrect claims payments; and 3) the rate of non-payment claims errors.

2. The Consultant will assist LACERA in the development of an Audit Program that will analyze the effectiveness, accuracy, and quality of our carriers and of the Retiree Health Care Benefits Program internal operational practices. The product of this assignment will be a comprehensive audit program that will meet the short- and long-term needs of the LACERA Retiree Health Care Program in the areas of benefit maximization, cost-savings, and industry best practices. LACERA is seeking guidance in this currently unexplored area.

#### **F. Ongoing Program Administration and Maintenance**

The consultant will assist LACERA in the overall day-to-day administration and maintenance of the retiree health care benefits program. The consultant must have the resources available to assist LACERA in evaluating current administrative practices and developing recommendations to enhance the effectiveness of procedures. The various services that may be required are:

- Serving as administrative liaison with carriers
- Assisting in reviewing, evaluating and negotiating contracts
- Assisting in interpreting, addressing and resolving legislative, legal, contract and compliance issues

- Monitoring the carriers' production of monthly claim service reports
- Producing monthly claim service reports for the Insurance, Benefits & Legislative Committee
- Reviewing year-end accounting for LACERA participating arrangement contracts for reasonableness and accuracy
- Monitoring carrier compliance with contractual provisions
- Responding to ad hoc information requests from LACERA
- Providing and interpreting legislation affecting or otherwise relating to the LACERA Retiree Health Care Benefits Program, including without limitation Medicare rules and laws, including RDS
- Monitoring and reporting on the development of Medicare changes and its effect on LACERA's Retiree Health Care Benefits Program, including RDS
- Reporting on changes to the COBRA program
- General due diligence

## **G. Communications**

Benefit programs must be supported by effective communications programs if they are to be understood and appreciated by plan participants. The consultant must have qualified benefit communications personnel who have prior experience developing and implementing strategic communication plans for groups with LACERA's population. As necessary, the consultant will design, write and produce and/or review announcements, brochures, enrollment kits, plan summaries, decision guides, rate charts, Medicare summaries, and other media, such as:

- Enrollment Forms and Brochures
- Rate Booklets
- Vendor Booklets
- Outgoing and Return Envelopes

- Letters and Other Information to Retirees
- Carrier/Vendor Informational Material
- Medicare Charts
- Special Mailings
- Wellness Program Handouts and Mailings

LACERA will pay all postage costs incurred for above communication pieces, if mailed.

The consultant will also provide the following services as a part of the overall responsibilities for the communication program:

- Maintaining carrier contributions to wellness program efforts and providing LACERA with a monthly accounting of these funds
- Researching vendor sources and obtaining quotes to achieve the best prices and quality for printed material
- Coordinating carrier mailings to LACERA members, such as announcement materials, identification cards and certificates of coverage
- Reviewing for accuracy and content, the communication materials furnished by carriers, such as certificates of coverage, summary brochures, enrollment forms, claim forms, letters and announcements to LACERA members
- Collating monthly supplies of LACERA's enrollment packet contents for new retirees and maintaining inventories of carrier materials and other LACERA media; this includes the responsibilities of shipping, and providing messenger mail delivery services to maintain availability of these resources at LACERA
- Writing and producing printed copies of letters advising members of benefit changes, rate increases, and other plan information
- Designing, writing and producing media campaigns for special projects, including theme logos, identification buttons and mailings to members

## **H. Training and Education**

In the area of training and education the consultant will be responsible for but is not limited to the following:

- Training of LACERA's staff on benefit issues and programs. In addition to any education programs available to all clients of consultant, training will be provided on a quarterly basis on either topics of current interest, or general, relevant education. Topics will be recommended to LACERA, and LACERA will choose the topic to be discussed. Training will take place at the LACERA offices in Pasadena.
- Making monthly informational presentations to the Insurance, Benefits and Legislative Committee on current and ongoing health care issues
- Explaining new insurance industry products
- Providing updates on benefits legislation at the state and federal levels

## **I. Special Projects**

Consultant will be responsible for but is not limited to working with LACERA on special projects such as:

- Planning, coordinating and operating the semi-annual wellness program/health education workshops for LACERA members
- Implementing and coordinating Medicare programs with carriers, including, but not limited to, RDS and Medicare Advantage programs



**EXHIBIT C**  
**TO AGREEMENT FOR**  
**HEALTH CARE BENEFITS CONSULTING SERVICES**  
**CERTIFICATION REGARDING FINANCIAL CONTACTS AND**  
**SOLICITATIONS**

\_\_\_\_\_ (“Consultant”) acknowledges that the Los Angeles County Employees Retirement Association (LACERA) is responsible for the administration of the retirement trust fund for the employees of Los Angeles County, California. The members of LACERA’s Board of Retirement and the Board of Investments (hereinafter referred to as the “Boards”) are the sole and exclusive trustees and fiduciaries of this statutory trust.

Consultant agrees to assist the Boards in discharging their mutual fiduciary obligations and to affirmatively assist in identifying potential conflicts of interests. Consultant hereby acknowledges that the Boards are directing Consultant to file an annual certification regarding contacts that may represent potential conflicts of interest and further agrees to furnish the annual certification.

In the event any person described below (a “Designated Person”) contacts Consultant with respect to a financial transaction or solicitation which is not solely on behalf of LACERA’s business with Consultant, Consultant shall promptly report by telephone and in writing such contact to the Chairman of the Boards and the Chief Executive Officer. For purposes of reporting contacts, a “solicitation” includes, as an example and without limitation, a request for contribution to any campaign for any elected seat on either Board, or for a seat on the Board of Supervisors of Los Angeles County, made by or on behalf of a Designated Person. A Designated Person is:

- Any member of either Board;
- Any candidate for an elected seat on either Board;
- Any member of the Board of Supervisors of Los Angeles County;
- Any candidate for a seat on the Board of Supervisors of Los Angeles County;
- Any of the LACERA Executive Staff designated on Attachment No. 1 hereto; and
- Any person claiming to represent or to have influence with any person described above.

LACERA has the right from time to time to amend Attachment No. 1 to this Certification Regarding Financial Contacts and Solicitations by written notice to Consultant.

Consultant further agrees to furnish an annual certification, attested to by a responsible officer of Consultant. The certification shall describe each contact reportable under the foregoing paragraph, listing the date(s) of such contact, the person making the contact and the subject matter of the contact. The certification shall state that except as specifically described in the certification, Consultant has not been contacted by or on behalf of a Designated Person with respect to a financial transaction or solicitation which is not solely on behalf of LACERA's business with Consultant. Such certification shall be filed annually by January 31 of each year for the preceding calendar year.

**ATTACHMENT NO. 1**  
**DESIGNATED PERSONS LIST 2010**  
(Revised \_\_\_\_\_, 2010 Page 1 of 2)

**BOARD OF RETIREMENT**

1. Mark J. Saladino  
Treasurer and Tax Collector
2. Yves Chery, Secretary
3. Simon S. Russin, Vice Chair
- \*4. Les Robbins
5. Sadonya Antebi
6. Edward L. Blecksmith
7. William Pryor
8. William de la Garza, Chair
9. (Vacant as of 7/2009)
10. James P. Harris, Alternate Member
11. Ed C. Morris, Alternate Retired Member

**Contact Person**

Elizabeth Duran, Secretary  
300 North Lake Avenue, Suite 820  
Pasadena, CA 91101

**BOARD OF INVESTMENTS**

1. Mark J. Saladino  
Treasurer and Tax Collector
2. Simon S. Russin
3. Herman B. Santos, Vice Chair
4. William Pryor, Chair
5. Leonard Unger
6. Michael Schneider
7. Paul C. Hudson
8. Diane Sandoval, Secretary
9. John Barger

**Contact Person**

Alicia Loza, Secretary  
300 North Lake Avenue, Suite 820  
Pasadena, CA 91101

**\*A new appointee has not yet been named by the Board of Supervisors, therefore, Mr. Robbins continues to serve on the Board of Retirement.**

**EXECUTIVE STAFF**

Gregg Rademacher  
Chief Executive Officer

Janice Golden  
Assistant Executive Officer

Robert R. Hill  
Assistant Executive Officer

Robert Van Der Volgen  
Chief Counsel

(continued on next page)

**ATTACHMENT NO. 1**  
**DESIGNATED PERSONS LIST 2009**

(Page 2 of 2)

Lita Payne, Director  
Retiree Health Care Benefits Division

Leilani Ignacio, Administrative Services Officer  
Retiree Health Care Benefits Division

Cassandra Smith, Administrative Services Officer  
Retiree Health Care Benefits Division

Terri Moore  
Secretary

Earl W. Buehner  
Senior Staff Counsel

Fern M. Billingsy  
Senior Staff Counsel

Michael D. Herrera  
Staff Counsel

Christine Roseland  
Staff Counsel

Beulah S. Canevari, Manager  
Manager, Financial and Accounting  
Services

Nai-len Ishikawa, Asst.  
Asst. Manager, Financial  
and Accounting Services

Lisa Mazzocco  
Chief Investment Officer

Vache Mahseredjian  
Principal Investment  
Officer

Juan M. Almaguer  
Principal Investment Officer

Robert Z. Santos  
Investment Officer

**AGREEMENT  
FOR  
CONSULTING SERVICES**

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EXHIBIT A - STATEMENT OF WORK

EXHIBIT B - FEE SCHEDULE(S)

EXHIBIT C - CERTIFICATION CONCERNING FINANCIAL CONTACTS AND SOLICITATIONS

ATTACHMENT NO. 1 - DESIGNATED PERSONS LIST 2010