



## **San Diego City Employees' Retirement System Request for Proposals for Investment Counsel Legal Services**

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The San Diego City Employees' Retirement System ("SDCERS") invites proposals from experienced attorneys and law firms in response to this Request for Proposals ("RFP") to provide investment legal services.

### **I. SCOPE OF SERVICES**

SDCERS is seeking qualified law firms with substantial public fund experience to provide legal and tax services for its investment program. The selected law firm(s) will work extensively with investment and legal staff on a variety of investment related issues and lead contract negotiation efforts. Responses can encompass the entire scope of services or only a portion as outlined below:

#### Public Markets

Provide public markets advice for all asset classes, which include U.S. and non-U.S. equities, global equities, emerging market equities, emerging market debt, and U.S. and non-U.S. fixed income. Advice will consist of questions that arise in the normal course of business as well as negotiating agreements with new public market managers.

#### Private Markets

Provide private markets advice encompassing real estate, private equity, private debt, and infrastructure. Advice will consist of questions that arise in the normal course of business as well as contract negotiations with real estate, private equity, and private debt firms on new fund investments, and with SDCERS' existing private equity and infrastructure advisors for new series commitments.

#### Other Vendor Contracts

Provide advice on general investment related issues and negotiate contracts with vendors such as the custodial bank, proxy voting contractor, and providers of investment software.

Currently, SDCERS employs two legal firms: one for Public Markets and Other Vendors, and one for Private Markets and prefers to continue doing so. However, SDCERS is willing to consider one law firm for the entire scope of services.

## II. CALENDAR OF EVENTS

|                                       |                             |
|---------------------------------------|-----------------------------|
| <b>Issuance of RFP</b>                | July 10, 2026               |
| <b>Applicant Questions Due</b>        | July 17, 2026               |
| <b>Answers to Questions Published</b> | July 24, 2026               |
| <b>Proposal Due Date</b>              | August 7, 2026              |
| <b>Interview Period</b>               | August 10 – August 21, 2026 |
| <b>Expected Decision</b>              | September 11, 2026          |

## III. BACKGROUND

SDCERS is a tax-qualified, charter-created public retirement system for the employees of the City of San Diego (“City”), the San Diego Unified Port District (“UPD”), and the San Diego County Regional Airport Authority (“Airport”). It is a contributory system; the contributions to fund the System are paid by the City, the UPD and the Airport, and their respective employees. All System funds are segregated from plan sponsor funds and placed in a separate trust fund under the Board’s exclusive control. These trust funds may be used only for retirement system purposes. SDCERS’ Board of Administration (“Board”) is currently responsible for managing \$13 billion in trust fund assets.

SDCERS’ Investment Policy can be found at <https://www.sdcers.org/financials-investments/objectives-goals-beliefs>. The policy explains SDCERS’ investment philosophy, goals, governance, asset allocation policy, rebalancing policy, monitoring of investments, and identifies the roles and responsibilities of the Board, investment staff and others.

## IV. PROPOSAL REQUIREMENTS

In setting forth its qualifications, you must provide the information described below. SDCERS may deem a proposal non-responsive and reject the proposal if it does not include all requested information.

### **A. Proposal Submission**

Proposals must include a cover letter indicating the mailing address of the office submitting the proposal, the name of the individual who will represent the firm as the primary contact person for the proposal, and the telephone, fax and e-mail information of the primary contact person.

The proposal cover letter must state that the proposal is irrevocable for 180 days and be signed by an authorized person.

Your proposal must be in PDF format and emailed by **5:00 p.m.** PT on the due date listed above. All proposals must be emailed to:

San Diego City Employees' Retirement System  
Attention: Johnny Tran, General Counsel  
johnnyt@sdcers.gov  
401 West A Street, Suite 800  
San Diego, CA 92101

SDCERS will not consider proposals received after this deadline.

**B. General Minimum Requirements**

SDCERS will accept proposals from firms that meet the minimum requirements listed below:

1. The law firm must have provided legal services for at least five (5) years as of December 31, 2025 comparable to the duties herein to at least three (3) defined benefit public retirement systems, each of which must have had at least \$5 billion in assets.
2. The law firm must agree to disclose all current conflicts of interest and conflicts of interest as they might occur.
3. The individuals assigned to SDCERS as the primary contact must be licensed to practice law in California and have a minimum of ten years of experience in the public defined benefit pension fund investment area.
4. The law firm must not have a material conflict of interest, which includes, but not limited to: SDCERS' Board Members, staff, actuary, auditor, investment managers, or consultants.
5. The law firm must carry \$15 million in malpractice insurance coverage.
6. The law firm must have its principal place of business and be subject to service of process in the United States.
7. The law firm must agree to act as a fiduciary on behalf of SDCERS.

**C. Additional Minimum Requirements for Private Markets Legal Services**

Due to the specialized nature of real estate, infrastructure, private debt, and private equity investments, SDCERS has identified additional minimum requirements. SDCERS will accept proposals for the private markets business from firms that meet the additional minimum requirements listed below:

1. The law firm must have actively represented at least three (3) defined benefit public pension plans (each with at least \$5 billion in assets) for at least five (5) years as of December 31, 2025 for real estate, infrastructure, private debt, and private equity legal services. Actively represented means that the responding legal firm will have worked with the public pension plan on a minimum of five (5) investments over the course of three (3) years.

2. The law firm must have the majority of their private market business as representing limited partners, not general partners.
3. In the last three (3) years, the main contact at the law firm must devote at least eighty-five percent (85%) of their time on real estate, infrastructure, private debt, and/or private equity investments.

**D. Questions To Be Answered**

1. Please indicate if the law firm is proposing on:
  - a. The entire scope of services;
  - b. The public markets services and other vendor contracts; or
  - c. The private markets services.
2. Please provide a brief history of the firm including the year organized, the year the firm began providing legal services to U.S. tax-exempt clients, and the nature of the firm’s ownership (including any changes in the last five years) with specific details with regard to any affiliated companies or joint ventures.
3. Please list the total number of firm professionals, broken down by areas of expertise – attorneys, paralegals, staff, etc.
4. Please provide the location of your firm’s offices and the total number of professionals employed at the firm.
5. Please indicate the names and location of the team members who would be assigned to this account and their contact information. Attach as **Exhibit A** biographies for these team members.
6. Complete the following table as it pertains to the team who would be assigned to this account:

| Name | Title | Number of years of legal experience | Number of years with your firm in the investment practice group |
|------|-------|-------------------------------------|---|
|      |       |                                     |   |
|      |       |                                     |   |

7. Will your firm acknowledge fiduciary status and accept fiduciary responsibility for recommendations to SDCERS?

8. Complete the following table regarding legal staff who left or joined your firm's relevant practice group(s) within the last three (3) years. Include anticipated personnel changes for the next year.

| Name | Title | Date Hired by the Firm | Anticipated Change? (Explain) |
|------|-------|------------------------|-------------------------------|
|      |       |                        |                               |
|      |       |                        |                               |

9. Briefly describe your firm's compensation system for principal staff, and indicate what specific incentives are used to ensure key professionals do not leave the firm either as a group or individually. How does the firm tie client performance and satisfaction to an attorney's performance?

10. Provide three client references relating to engagements similar to the ones you are proposing to provide. In providing this information, you consent to and release your references and SDCERS from liability regarding contacting your references and communicating with them about your prior engagements and their opinions regarding your work performed. Please include: Name of firm, address, email, telephone number, and contact person.

11. Does the law firm represent sponsors/general partners of real estate, infrastructure, private debt, and/or private equity funds? If so, please describe the type of work done, the current list of those clients, and the percentage of your practice groups' business as between your representation of sponsors/general partners to limited partners of real estate, infrastructure, private debt, and/or private equity funds.

12. List the public pension plans the law firm currently represents.

13. Describe the type of work you have done for public pension plans.

14. Explain your law firm's experience working on real estate, infrastructure, private debt, and/or private equity investments.

15. Identify any potential or actual conflict of interest you have in providing services to SDCERS. Also, state whether you have ever represented SDCERS, the City of San Diego, the San Diego Unified Port District, the San Diego County Regional Airport Authority, or any employee group related to these entities. If so, state the name of each such client, contact information, and the nature and time frame of your representation. In providing this information, you consent to and release SDCERS from liability regarding contacting the client(s) and communicating with them about your current or prior engagement(s) and conflict(s). Also, please describe how you intend to resolve any actual or potential conflict of interest.

16. Identify any past, pending or threatened litigation (e.g., malpractice) or administrative, ethics board, regulatory, or similar body proceedings to which you, your firm or any of the attorneys listed above are a party related to performing legal services.

17. Identify all public sector clients who have terminated their working relationship with you in the past five years and a brief statement of the reasons for doing so. Provide each client's counsel's contact information. In providing this information, you consent to and release SDCERS and your past clients from liability regarding contacting your past clients and communicating with them about their opinions regarding your work performed and reason for termination.

18. Attached is SDCERS' draft contract. Please state whether you will agree to the terms in the draft contract. If you do not agree to a specific term or terms, please provide an explanation.

#### **E. Billing**

Proposals must contain the following:

1. State the rates at which the services of partners, associates, and non-attorney law clerks, paralegals, or other para-professionals would be provided to SDCERS for the next five years.<sup>1</sup> Include:

a. For each attorney please list the normal hourly rate for this provider and the hourly rate you propose to charge SDCERS.

b. For each applicable category of billable non-attorney personnel, including law clerk, paralegal, or other para-professional, please list the normal hourly rate for this provider and the hourly rate you propose to charge SDCERS.

c. State any additional fees that could be charged to SDCERS for administrative expenses, pass-through fees, etc.

2. State any special considerations with respect to billing or payment of fees and expenses that you offer and that you believe would differentiate you from other applicants and make your services more cost effective to SDCERS.

3. SDCERS expects to receive the lowest rate charged by you for your governmental and non-profit clients. If for any reason you are not prepared to do so, please indicate your reasons.

### **V. EVALUATION AND SELECTION**

#### **A. Evaluation Criteria**

The Board and/or staff will evaluate the proposals based upon the following factors:

1. Experience counseling public pension systems regarding investment matters.

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<sup>1</sup> Note that billing rates are fixed for five years.

2. Quality and depth of your expertise in investment matters, especially with California public pension systems.
3. Anticipated cost of services, including hourly rates, discounts and cost-effectiveness.<sup>2</sup>
4. Commitment of time and resources to SDCERS.
5. Information provided by references.
6. Communication skills.
7. Overall organization, completeness, and quality of proposal, including cohesiveness, conciseness, and clarity of response.

## **B. Selection Process**

Staff will review all proposals to determine timeliness and completeness. Any proposal that does not address all requested requirements or is untimely may be rejected, at SDCERS' sole discretion. Staff will evaluate all proposals based on the criteria stated above.

Staff may interview applicants it believes are qualified to perform the services requested, based upon the criteria listed in this RFP. Applicants selected for interviews will be notified in advance of the proposed interview date. All applicants will be notified in writing once one or more applicants have been selected.

## **VI. PROPOSAL LIMITATIONS AND CONDITIONS**

### **A. Limitations**

This RFP does not commit SDCERS to award an agreement, pay any costs incurred in the preparation of a response, or procure services of any kind whatsoever. SDCERS reserves the right, in its sole discretion, to negotiate with any or all applicants considered, or to postpone, delay or cancel this RFP in whole or in part. SDCERS may terminate negotiations, at its sole discretion. SDCERS reserves the right to award an agreement or agreements based upon proposals received; you should not rely upon the opportunity to alter your proposal (e.g., services, fees, etc.) during negotiations.

SDCERS may request an applicant to clarify the contents of its proposal. Other than to provide such information requested by SDCERS, no applicant will be allowed to alter its proposal after the RFP due date.

All material submitted in response to this RFP is the sole property of SDCERS. SDCERS reserves the right to use any and all ideas submitted in the proposals received.

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<sup>2</sup> Although proposed fees will be given weight in the selection process, SDCERS reserves the right to negotiate with any applicant selected lower fees or a different fee structure than proposed.

SDCERS may waive informalities or irregularities in a proposal, at SDCERS' sole discretion.

**B. Errors and Omissions**

If you discover an ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify Johnny Tran at [johnnyt@sdcers.gov](mailto:johnnyt@sdcers.gov) and request clarification or modification of the document.

If it deems necessary, SDCERS may modify this RFP. Notice of any modification will be given by written notice to all applicants who have furnished a proposal or notice of intent to propose.

If an applicant fails to notify SDCERS of a known error or an error that reasonably should have been known before the final filing date for submission, the applicant assumes the risk. If awarded an agreement, the applicant will not be entitled to additional compensation or time by reason of the error or its late correction.

**VII. AGREEMENT APPROVAL**

SDCERS' selection of one or more successful applicants will not be binding until it has been approved by authorized staff, committee or the Board. Any direction by SDCERS staff, committee or the Board to enter into a contract subject to negotiations is not to be considered a binding contract unless negotiations result in agreement by all parties.

**VIII. GENERAL INFORMATION**

**A. No Contact**

No contact with SDCERS' Board, staff or consultants relating to the RFP is allowed while this RFP is pending, except as expressly allowed herein. Any contact relating to the RFP with said persons is grounds for disqualification. Notwithstanding, you may submit written questions via e-mail to Johnny Tran, General Counsel, at [johnnyt@sdcers.gov](mailto:johnnyt@sdcers.gov) on or before the date listed above next to "Applicant Questions Due." Staff will publish answers to any questions received on its website ([www.sdcers.gov](http://www.sdcers.gov)) on the date listed above next to "Answers to Questions Published."

**B. No Reimbursement For RFP Expenses**

SDCERS will not reimburse any expenses incurred in responding to this RFP including the costs of preparing the response, providing any additional information or attending an interview or interviews.

**C. Notice Regarding The California Public Records Act And Open Meetings Laws**

The proposal you submit in response to this RFP will be subject to the California Public Records Act (Cal. Gov. Code §6250 et. seq., the "Act"). The Act provides that all records relating to a public agency's business are open to public inspection and copying, unless an exception applies. If SDCERS chooses to hire or recommend your firm for hiring, your firm's proposal may appear

in a publicly posted agenda packet for a public meeting in accordance with the Ralph M. Brown Act (Cal. Gov. Code §54950 et seq.). **If it is included in the agenda packet, your firm's proposal will not be exempt from public disclosure.** Whether or not you are selected, if a request is made pursuant to the Act for materials you have submitted, SDCERS will produce all materials provided in response to this RFP. **Accordingly, do not provide confidential or proprietary information in response to the RFP.**

Notwithstanding, if a request is made pursuant to the Act for materials your firm has submitted, SDCERS will notify your firm. If you elect to seek a protective order or some other remedy, you must do so at your own cost or expense. By submitting your proposal, you agree to reimburse SDCERS for, and to indemnify, defend, save and hold harmless SDCERS, its officers, board members, fiduciaries, employees, and agents from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to the disclosure or non-disclosure of your material. Additionally, you agree to indemnify, save, and hold SDCERS harmless from and against any and all Claims arising from or relating to SDCERS' public disclosure of your firm's proposal.

#### **IX. AGREEMENT PERIOD**

Either Party may, in its sole discretion, terminate the agreement at any time, subject to California law, including ethical obligations to protect SDCERS' interests in the process of withdrawing.



## AGREEMENT FOR SERVICES

This Agreement for Services ("Agreement") is made and entered into as of DATE ("Agreement Date"), at San Diego, California, by and between the San Diego City Employees' Retirement System ("SDCERS"), a public entity based in San Diego, California, and [Vendor], xxx , based in xxx.

### RECITALS

WHEREAS, SDCERS was created by ordinance pursuant to Section 141 of the San Diego City Charter ("Charter"); and

WHEREAS, VENDOR is qualified to be a (TYPE OF WORK VENDOR DOES) and is qualified to perform (WORK COVERED BY AGREEMENT) (and any specific vendor-related guidelines); and

WHEREAS, the BOARD has determined that it would be in the best interest of SDCERS if VENDOR were to be retained to provide the (specific vendor work) services set forth herein below and, accordingly, has voted to approve this Agreement;

BASED ON THE ABOVE, SDCERS and [Vendor] intend to xxx, and as stated herein.

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

#### 1. [Vendor]'s Representations, Services, and Obligations

- 1.1 [Vendor] represents that it is a xxxx company duly organized, validly existing and in good standing under the laws of the State of California, it has the corporate power to enter into this Agreement and consummate the actions contemplated herein, and the execution, delivery and performance of this Agreement by [Vendor] has been duly authorized by all necessary action by [Vendor].
- 1.2 [Vendor] warrants that it is able to perform the services [or provide the materials] requested by SDCERS and holds all licenses or other requirements necessary to perform such services. [Vendor] agrees to provide a fiduciary standard of care in performing its services for SDCERS.
- 1.3 [Vendor] warrants that the work performed hereunder shall be completed in a manner

consistent with professional standards among other vendors in [Vendor's] profession, doing the same or similar work, under the same or similar circumstances.

- 1.4 [Vendor] shall make itself readily available and respond to SDCERS' communications and requests in a reasonably timely manner. [Vendor] shall provide contact information for all staff assigned to provide the services described herein.
- 1.5 SDCERS may request [Vendor] remove from assignment to SDCERS any employee it deems unfit to perform the services described herein and [Vendor] shall comply with all such requests. [Vendor] shall then assign other competent staff to perform the services described herein.
- 1.6 VENDOR warrants that VENDOR shall inform SDCERS immediately of any of the following:
  - (1) change to management or ownership;
  - (2) government or regulatory investigation or claim of wrongdoing;
  - (3) lawsuit related to providing the services contemplated in this Agreement;
  - (4) bankruptcy of vendor;
  - (5) criminal charges against any person working on SDCERS' account; and
  - (6) negative news concerning Vendor or persons working on SDCERS' account.
- 1.7 VENDOR warrants that VENDOR has a compliance program which effectively detects, and deters illegal and unethical behavior.

## **2. Compensation, Invoices, and Payments**

- 2.1 For rendering the services described herein, SDCERS agrees to pay [Vendor] xxxx. All other expenses or costs incurred by [Vendor] shall be [Vendor]'s responsibility.
- 2.2 [Vendor] shall invoice SDCERS for the preceding month's services and SDCERS agrees to pay any undisputed invoice within 60 days of receipt.
- 2.3 Invoices must be on vendor's stationary with vendor's name, address, and remittance address if different. Vendor's invoice must have a date, an invoice number, and a summary of the services rendered. SDCERS reserves the right to request additional supporting documentation to substantiate costs at any time.
- 2.4 SDCERS shall not pay late charges incurred when delays in payment of invoices are due to [Vendor's] lack of adherence to aforementioned invoice specifications.

## **3. SDCERS' Representations and Obligations**

- 3.1 SDCERS represents that it is a public entity, duly organized, validly existing and in good standing under the laws of the State of California. SDCERS has the authority to enter

into this Agreement and consummate the actions contemplated herein and the execution, delivery and performance of this Agreement.

- 3.2 For services rendered by [Vendor], SDCERS agrees to pay invoices received from [Vendor]. If an invoice is in dispute, SDCERS agrees to pay any portion of the invoice not in dispute.

#### **4. Proprietary Rights**

- 4.1 SDCERS acknowledges that some of the information provided under this Agreement is proprietary to [Vendor]. All applicable copyrights, trade secrets, utilization reports, trademarks, and other intellectual property rights remain the sole and exclusive property of [Vendor], as applicable. SDCERS agrees to notify [Vendor] of any known or suspected breach of the proprietary rights of [Vendor] and agrees to cooperate in any action to investigate and remedy such breach. SDCERS agrees that it shall not use [Vendor]'s name or any [Vendor] logo or trademark without first obtaining [Vendor]'s written consent for each use.

#### **5. Confidentiality, Privacy, Security, Destruction of Data, and Data Incident/Breach**

- 5.1 Confidential Information. Confidential Information is information obtained or created by SDCERS which is restricted as to access, disclosure, or use. It may be found in any medium, whether oral, written, or electronic. It includes personally identifiable information, which is any non-public information that is identifiable to an individual (i.e., social security number, an individual's address, phone number, or email address); health information (i.e., medical history); or information that is private or intimate in nature (i.e., a Member's designated beneficiary). Confidential Information may also include, but is not limited to, information provided by a Member to the Board or SDCERS staff (e.g., SDCERS employees, provisional employees, embedded contractors, and volunteers), banking information, confidential or proprietary business records, attorney-client privileged communications, or I.T. network audit logs, security or system audit logs, and data procedures.
- 5.2 Data Protection. All data, whether or not marked confidential, shall not be stored by [Vendor], copied, analyzed, monitored or otherwise used except for the purposes set forth in this Agreement. [Vendor] shall not disclose any SDCERS data to any person or entity except to [Vendor] personnel in order to provide services under this Agreement. All data shall remain in the United States unless otherwise authorized by SDCERS in writing.
- 5.3 Compliance with Laws. [Vendor] shall comply fully with all applicable laws, regulations, and government orders and notification requirements relating to, Confidential Information, data breach, and data privacy with respect to any such Confidential Information that [Vendor] receives or has access to under this Agreement. [Vendor] shall implement and maintain reasonable security procedures such as the Center for Internet Security's top 18 Critical Security Controls. [Vendor] agrees to have its employees

working under this agreement to execute SDCERS' confidentiality and non-disclosure agreement. Also, [Vendor] agrees to have independent consultant(s) audit its security practices and procedures annually, and shall make the consultant's report available to SDCERS, and adopt remediation measures identified by the consultant(s) unless it is commercially unreasonable.

- 5.4 Personnel Background Checks. [Vendor] shall perform background checks on all [Vendor] personnel who shall perform services for SDCERS. [Vendor] shall not assign any person to perform services for SDCERS who has not authorized a background investigation, or [Vendor] knows has a felony conviction or misdemeanor, that relates to their suitability as an employee, within the previous seven years except to the extent prohibited by applicable law.
- 5.5 Destruction of Data and Electronic Storage Media. Upon termination of this Agreement, or upon SDCERS request, [Vendor] shall permanently return and/or delete all data from any storage media operated by [Vendor]. All electronic storage media containing Confidential Information must be wiped or degaussed for physical destruction or disposal, in a manner meeting forensic industry standards. [Vendor] must document evidence of erasure and destruction. This evidence must be available for review upon request.
- 5.6 Physical Security. All backup media containing Confidential Information must be encrypted and contained in secure, environmentally-controlled storage area owned, operated, or contracted for by [Vendor]. [Vendor] shall comply with additional privacy and/or security reviews upon request. SDCERS shall not be required to pay additional fees for any additional privacy and/or security reviews requested.
- 5.7 Data Safeguards. [Vendor] agrees to monitor and consistently test its data safeguards, and to adjust its data safeguards as-needed and/or the results of any relevant testing or monitoring. [Vendor] shall maintain proof of testing and monitoring and provide proof if requested.
- 5.8 Data Incident/Breach. If [Vendor] suspects or becomes aware of any unauthorized access to or loss of Confidential Information ("Data Incident/Breach"), [Vendor] shall immediately notify SDCERS in writing and shall fully cooperate with SDCERS at [Vendor]'s expense to prevent, mitigate, or stop the Data Incident/Breach. [Vendor] shall defend, indemnify and hold SDCERS, its affiliates, and their respective officers, directors, employees and agents, harmless from and against any and all claims, liability, loss, costs and damages, including reasonable attorney fees, arising out of or relating to any third party claim arising from breach by [Vendor] of its obligations contained in this section, except to the extent resulting from the acts or omissions of SDCERS. [Vendor] shall indemnify SDCERS for costs incurred in investigating or remediating a Data Incident/Breach, providing notice to affected individuals and law enforcement, attorney's fees, and public relations costs related to any Data Incident/Breach. SDCERS shall have the right to litigation counsel of its choice, control of litigation, and settlement shall not

occur without SDCERS' consent. All Confidential Information that [Vendor] has access to under this Agreement shall remain the property of SDCERS.

- 5.9 Applicable California Government Code Sections. [Vendor] explicitly agrees to abide by the requirements set forth in California Government Code sections 11549.3 (b); 11015.5 (b) and 11019.9 (b).
- 5.10 Survival of Obligations. The obligations of [Vendor] under Section 5 shall survive the termination of this Agreement.

## **6. Term and Termination**

- 6.1 Term. The term for this Agreement is xxxx.
- 6.2 Termination. SDCERS may terminate this Agreement for any reason upon 30 days written notice.
- 6.3 Upon termination of this Agreement for any reason, [Vendor] shall return to SDCERS or destroy (as requested by SDCERS) all Confidential Information received from SDCERS, or created, maintained, or received by [Vendor] that the [Vendor] maintains in any form. [Vendor] shall retain no copies of this information. The obligations of [Vendor] under this section shall survive the termination of this Agreement.

## **7. Indemnification, Insurance, and Limitation of Liability**

- 7.1 Indemnification. As an independent contractor, [Vendor] shall indemnify, defend, save, and hold harmless SDCERS, its trustees, officers, employees, contractors, agents, and representatives from and against any and all liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, expenses (including, without limitation, defense costs and attorney's fees), and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or relating to the services performed by [Vendor] for SDCERS. The obligations of [Vendor] under this section shall survive the termination of this Agreement.
- 7.2 Insurance. [Vendor] agrees to secure and maintain the following insurances throughout the Agreement: Worker's Compensation in the amount required by law; General Liability and automobile liability insurance (if driving for SDCERS) in the amount of at least one million dollars; malpractice insurance in an amount of at least \$15 million dollars; and Cyber Insurance/Data Breach Insurance covering privacy liability, regulatory action, and breach response expenses of at least one million dollars. [Vendor] agrees to name SDCERS as an "additional insured" on the Cyber Insurance/Data Breach insurance without any deductible.
- 7.3 Limitation of Liability. SDCERS' payment obligations shall be limited to the payments described above. Notwithstanding any other provisions on this Agreement, in no event

shall SDCERS be liable, regardless of whether the claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits, arising out of or in connection with this Agreement or services performed in connection with this Agreement. The obligations of [Vendor] under this section shall survive the termination of this Agreement.

- 7.4 Control of Defense. In the event that an indemnified party becomes aware of a third party proceeding which constitutes a matter for which either the indemnified party is entitled to indemnification under this section, as applicable, or if determined adversely to the indemnified party, would provide a basis for a claim for indemnification under this section, as applicable (each such claim, a “Third Party Indemnifiable Claim”), and with respect to the defense of such Third Party Indemnifiable Claim, and subject to the limitations on settlement set forth in SDCERS’ Board Rules, the indemnified party shall assume and control the settlement and defense of such proceeding and appoint and select lead counsel. The indemnified party shall keep the other party, as applicable, reasonably informed of the defense of such proceeding by providing copies of any pleadings or other material communications, to the extent that receipt of such documents does not affect any privilege relating to any indemnified party. The indemnifying party shall (and shall cause its respective Affiliates to) provide reasonable cooperation to the indemnified party in connection with the defense or settlement of such proceeding, including by making available, at the indemnified party’s expense, such witnesses, records, materials and other information in such party’s possession or under such party’s control as may be reasonably requested by the indemnifying party.

## **8. Governmental Provisions and Conflicts of Interest**

- 8.1 [Vendor] agrees to abide by all state and federal laws governing the services it provides to SDCERS. [Vendor] warrants that it holds all licenses and legal authority to perform the services described herein and shall continue to do so long as long as it is performing services for SDCERS. [Vendor] shall comply with new, amended or revised laws, regulations and procedures that apply to the performance of this agreement.
- 8.2 Contingent Fees. No person or selling agency has been employed or retained to solicit or secure this Agreement under any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of [Vendor] or bona fide established commercial or selling agencies maintained by [Vendor] for the purpose of securing business. In the event of any breach or violation of this warranty, SDCERS shall have the right to immediately terminate this Agreement and, in SDCERS' sole discretion, to deduct from [Vendor]’s compensation under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 8.3 Gratuities. No gratuities in the form of gifts, entertainment or otherwise, were offered or given by [Vendor] to any Trustee, officer, fiduciary, or employee of SDCERS or the City of San Diego, San Diego Unified Port District or San Diego County Regional Airport

Authority with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. [Vendor] covenants that no such gratuities shall 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 [Vendor], SDCERS may terminate this Agreement immediately.

- 8.4 Conflicts of Interest With Persons Related to SDCERS. No SDCERS employee or fiduciary, whose position with SDCERS enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person, is or shall be employed in any capacity by [Vendor], or does or shall have any direct or indirect financial interest in this Agreement.
- 8.5 Public Entity Law. [Vendor] acknowledges that SDCERS is a public entity and as such, is subject to laws governing public entities, including but not limited to the California Public Records Act. [Vendor] agrees that SDCERS shall have the authority, in its sole discretion, to comply with those laws as it determines necessary and [Vendor] agrees not to interfere with SDCERS' actions and shall have no claim against SDCERS for performing such acts. Vendor also acknowledges that SDCERS reserves all available immunities, defenses, rights of actions as a government entity and that SDCERS does not waive any such immunities, defenses, rights, or actions.
- 8.6 ADA Compliance. Any presentation [Vendor] provides to SDCERS in PDF format must be compliant with the Web Content Accessibility Guidelines (“WCAG”) 2.1 as specified in the Department of Justice’s final rule revising the regulation implementing title II of the Americans with Disabilities Act (ADA), as revised. (See, *Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities*, 89 Fed. Reg. 80, 31321 (Apr. 24, 2024)). If requested by SDCERS, Vendor agrees to provide material in PDF format that is in compliance with these ADA guidelines.

## **9. Records, Investigations, and Audits**

- 9.1 [Vendor] shall keep and maintain accurate records related to its performance under this Agreement, including but not limited to any pertinent activity, dates and time spent providing services hereunder, invoices billed to SDCERS, proprietary data, and any other records created by [Vendor] in connection with this Agreement. [Vendor] agrees to provide SDCERS with these records, if requested, and shall keep and maintain such records for six years following the termination of this Agreement.
- 9.2 To the extent permitted by law, [Vendor] shall promptly advise SDCERS in writing of any investigation, examination, complaint, disciplinary action or other proceeding relating to or affecting [Vendor]’s ability to perform its duties under this Agreement, or involving any person working for [Vendor] who has performed any service with respect to SDCERS' account.

- 9.3 VENDOR agrees that SDCERS, or any duly authorized representative of SDCERS, shall have access to and the right to examine, audit, excerpt, copy or transcribe any SDCERS Records at any time during the term of this Agreement, or at any time for up to six (6) years after the termination of this Agreement. SDCERS agrees that any such review and audit shall be conducted in a manner to minimize interference with VENDOR's normal business activities. Upon reasonable advance notice to VENDOR, VENDOR shall make SDCERS' Records available for review and audit during normal business hours. VENDOR shall make the persons responsible for creating and maintaining SDCERS' Records available to SDCERS during such review and audit for the purpose of responding to SDCERS' reasonable inquiries. SDCERS shall pay all costs associated with such audit, other than any costs incurred by VENDOR to make personnel available as required by the preceding sentence; however, if the audit reveals that VENDOR has materially violated any of the provisions of this Agreement, VENDOR shall pay all costs associated with such audit. At SDCERS' request, VENDOR shall deliver copies of SDCERS Records to SDCERS or to such third party designated by SDCERS at SDCERS' cost and expense.
- 9.4 Audit Settlement. If such audit finds that SDCERS' dollar liability for such work is less than payment made by SDCERS, then the difference shall be either repaid by VENDOR to SDCERS by cash payment upon demand or, at the option of SDCERS, deducted from any amounts otherwise due to VENDOR from SDCERS. If such audit finds that SDCERS' dollar liability for such work is more than the payments made by SDCERS, then the difference shall be paid to VENDOR by SDCERS.
- 9.5 Financial Statements. During the term of this Agreement. VENDOR shall deliver to SDCERS a copy of VENDOR's most recent audited annual financial statements (or if none, financial statements certified as true and correct by VENDOR's Chief Executive Officer) as soon as they become available to VENDOR in the ordinary course.

## **10. General Provisions**

- 10.1 Notices. Any notice or other communication required or permitted by this Agreement must be in writing and may be given by the United States mail or by a nationally-recognized overnight courier service. Any notice or communication shall be given to the parties hereto at the following addresses until a new notice address is provided by either party in writing pursuant to this paragraph:

If to [Vendor]:

Xxxx

If to SDCERS:

Xxxx

- 10.2 Relationship of Parties. The parties understand that each party is at all times acting and performing as an independent contractor with respect to the other and that this Agreement creates no relationship of partnership, joint venture, employment or similar relationship, and that neither party has any authority to act as agent for the other by virtue of this Agreement. Each party is responsible for paying the compensation and fringe benefits, if any, of its own employees, and neither party has responsibility to the other party with respect to withholding or payment of any taxes due by employers to governmental authorities.
- 10.3 Entire Agreement, Amendment. This Agreement contains the entire agreement between the parties and supersedes all previous and collateral agreements or understandings with respect to the subject matter hereof. No amendment or modification of this Agreement shall be effective unless in writing and signed by both parties.
- 10.4 Severability. If a court of competent jurisdiction holds that any of the provisions of this Agreement, or portions thereof, are unenforceable or invalid, the holding shall not render the remaining provisions or portions of the Agreement invalid or unenforceable, unless the unenforceable or invalid provision or portion materially impairs the benefits of the Agreement.
- 10.5 No Subcontractors. [Vendor] shall not use subcontractors to perform the services described herein without the written consent of SDCERS. In any case, [Vendor] shall be responsible for the work of any subcontractors as if performed by [Vendor] employees and the security of SDCERS' data that is accessed and/or stored by the subcontractor.
- 10.6 Applicable Law and Venue. This Agreement, and any disputes arising out of this Agreement, shall be governed by the laws of the State of California, without regard to choice of law principles. Any dispute shall be resolved in a court of competent jurisdiction in San Diego County, California. The parties acknowledge that SDCERS does not waive the right to a jury trial.
- 10.7 Waiver or Breach. Failure of either party to this Agreement to insist on strict performance of any of its terms and conditions shall not be construed as a waiver any terms or conditions of this Agreement; all terms and conditions shall remain in full force.
- 10.8 Assignment. No assignment of this Agreement or the rights and obligations arising under this Agreement is valid without the written consent of both parties.
- 10.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original agreement, but which together are the same instrument.
- 10.10 Force Majeure. Neither party shall be liable to the other party for failure to perform due

to circumstances beyond its reasonable control, to the extent and during the period of the prevention or delay. The affected performing party must promptly notify the other party of the nature and anticipated length of continuance of the circumstances.

- 10.11 No Interpretation Against Drafter. Each party recognizes that this Agreement is a legally binding contract and acknowledges that such party has had the opportunity to consult with legal counsel of choice. In any construction of the terms of this Agreement, the same shall not be construed against either party on the basis of that party being the drafter of such terms.
- 10.12 No Third Party Rights. The provisions of this Agreement are intended to bind the Parties as to each other and are not intended to and do not create rights in any other person or confer upon any other person any benefits, rights or remedies, and no person is or is intended to be a third party beneficiary of any of the provisions of this Agreement.
- 10.13 Joint and Several Liability. If [Vendor] consists of more than one person or entity, the liability of each such person or entity signing this Agreement as [Vendor] is joint and several.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**San Diego City Employees'  
Retirement System**

**[Vendor]**

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

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

Name: xxxx

Name: xxxx

Title: xxxx

Title: Director, [Vendor] Client Services

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

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

**APPROVED AS TO FORM:  
SDCERS' Legal Division**

By:

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

Title:

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