

APPENDIX A

AGREEMENT FOR LEGAL SERVICES
BY AND BETWEEN
THE SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION (SDCERA)
AND
[REDACTED] (COUNSEL)

This Agreement (“Agreement”) for professional legal services is made and entered into as of [REDACTED] (“Agreement Date”), at San Diego, California, by and between the San Diego County Employees Retirement Association (“SDCERA”), and [REDACTED] (“Counsel”).

RECITALS

WHEREAS, SDCERA is required to provide for the conduct of administrative hearings in connection with the determination of applications for disability retirement benefits under the County Employees Retirement Law of 1937; and

WHEREAS, SDCERA has determined that Counsel has the requisite high qualifications and special expertise to represent SDCERA staff during the disability administrative hearing process and desires to retain Counsel serve as a disability counsel.

The Agreement shall consist of this document, Exhibit A Statement of Work, Exhibit B Fee Schedule and Billing Guidelines, and Exhibit C [Counsel’s Proposal and any vendor provisions, if applicable], incorporated by reference. In the event of a conflict between any provisions of this Agreement, the following order of precedence shall govern: First (1st) this document; Second (2nd) Exhibit B; Third (3rd) Exhibit A; and Fourth (4th) Exhibit C, if applicable.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Services to be Provided.

Counsel agrees to perform the services (Services) described in the Statement of Work (Statement of Work) attached to this Agreement as Exhibit A.

2. Compensation.

SDCERA will compensate Counsel for services rendered pursuant to this Agreement in accordance with Exhibit B, Fee Schedule.

3. Term.

The term of this Agreement commences on [EFFECTIVE DATE] and continues through [TERMINATION DATE].

4. Independent Contractor.

4.1 Counsel agrees to perform the Services as an independent contractor and agrees they will be acting at all times as such. Neither party intends, and this Agreement should not be construed, to create any relationship of agent, servant, employee, partnership, joint venture, or association between Counsel and SDCERA. Counsel is not, and will not, be deemed to be for any purpose (including, without limitation, Workers’ Compensation) an employee of San Diego County (the “County”). Counsel is not entitled to any

rights, benefits, or privileges of County employees. Counsel is not eligible to participate in any insurance, savings, pension, or deferred compensation offered by SDCERA or the County.

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

4.3 Counsel accepts full and complete responsibility for filing all tax returns and paying all taxes which may be required or due for payments received from SDCERA under this Agreement. SDCERA will memorialize payments for Counsel's services on a Form 1099.

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

5. SDCERA's Contracting Officer Representative (COR).

SDCERA's Contracting Officer Representative (COR), responsibility for determining whether the Services are performed to SDCERA's satisfaction. SDCERA's COR is [Insert name, Title].

6. Indemnification and Insurance.

6.1 Counsel shall indemnify, defend and save harmless SDCERA, its agents, officers and employees from and against any and all liability, damage, suit, cost of suit, or expense, including defense costs and attorney's fees, arising out of or connected with third party claims for damages of any nature whatsoever arising from or connected with Counsel's operations or its services, including, without limitation, claims for bodily injury, death, personal injury, or property damage, including damage to Counsel's property, caused by Counsel in the performance of this agreement. Notwithstanding the foregoing, the Counsel shall not be liable for any special, consequential, incidental, exemplary damages or loss (or any lost profits, taxes, interest, tax penalties, savings or business opportunity) or any loss, damage, or liability arising from the negligence or willful misconduct of SDCERA.

6.2. Without limiting Counsel's indemnification of SDCERA, Counsel shall provide and maintain at its own expense during the term of this Agreement the following policy or policies of insurance covering its operations hereunder. Such insurance shall be secured through a carrier satisfactory to SDCERA and certificates evidencing such insurance shall be delivered to SDCERA on or before the effective date of this Agreement. SDCERA is to be given by Counsel at least thirty (30) days written notice in advance of any modification or cancellation of any policy of insurance.

6.2.1 Such insurance shall be primary in all instances and shall name San Diego County Employees Retirement Association as an additional insured and shall include certificate(s) or other evidence of coverage satisfactory to SDCERA shall be delivered to prior to commencing services under this Agreement and annually thereafter.

6.3. Such certificates or other evidence shall:

6.3.1 Specifically identify this Agreement.

6.3.2 Clearly evidence all coverages required in this Agreement.

6.3.3 Contain the express condition that SDCERA is to be given written notice by mail at least 30 days in advance of cancellation for all policies, or, alternatively, in the event the insurers that otherwise provide satisfactory insurance hereunder do not assume third-party notification provisions, Counsel hereby agrees to notify SDCERA at least 30 days in advance of any cancellation of any of the policies provided for herein.

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

6.3.5 Self-Insured Retentions must be declared to and approved by SDCERA. SDCERA may require Counsel to purchase coverage with no retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention will be satisfied by the named Counsel.

6.3.6 SDCERA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

6.5. Failure to Maintain Coverage. Counsel's failure to maintain the required insurance, or to provide evidence of insurance coverage acceptable to SDCERA, shall constitute a material breach of the contract upon which SDCERA may immediately terminate or suspend this Agreement. SDCERA, at its sole option, may obtain damages from Counsel resulting from said breach.

6.6. Compensation for SDCERA Costs. In the event that Counsel fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to SDCERA, Counsel shall pay full compensation for all costs incurred by SDCERA up to levels of insurance stipulated below.

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

6.8. Survival of Obligations. Counsel's obligations under this Section 6 shall survive expiration or termination of this Agreement.

6.9. Commercial General Liability. Counsel shall provide and maintain a Commercial General Liability insurance policy, which names SDCERA as additional insured. Such policy shall cover legal liability for bodily injury and property damage arising out of Counsel's business operations and services that Counsel provides pursuant to this Agreement. Such policy shall include, without limitation, endorsements for Property Damage, Premises-Operations, Products/Completed Operations, Contractual, and Personal/Advertising Injury with a limit of at least \$1,000,000 per occurrence and an annual aggregate of at least \$1,000,000.

6.10. Auto Liability. Counsel 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 \$300,000 each occurrence.

6.11. Workers' Compensation. Counsel shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to Counsel's employees for injuries arising from or connected with any services provided to SDCERA under this Agreement. Counsel shall provide and maintain a program of Workers' Compensation, in an amount and form to meet all applicable statutory requirements, if Counsel hires employees.

6.12. Professional Liability. Counsel shall provide and maintain professional liability insurance coverage. Limits of not less than \$100,000 per claim/\$300,000 aggregate shall be provided.

7. Non-Exclusive Services.

This Agreement is not exclusive. Counsel has the right to perform services for others during the term of this Agreement, but Counsel agrees not to engage in any business, work or services of any kind under Agreement, or otherwise, for any person, organization or agency, which in the opinion of SDCERA is detrimental to the interests of SDCERA or that would materially interfere with the performance of the Services. Counsel agrees to disclose such information regarding business, work, or services they perform on behalf of any person, organization, or agency as SDCERA may reasonably require verifying Counsel's compliance with this Section.

8. Agreement Not Assignable.

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

9. Confidentiality and Proprietary Rights.

9.1 SDCERA's Propriety Rights. All completed deliverables (which may include: materials, documents, data, reports, and other information developed under this Agreement specifically and exclusively for SDCERA) delivered to SDCERA, excluding any Counsel Material (defined below) contained or embodied therein (collectively "Deliverables") become the sole property of SDCERA upon payment therefor, and upon the expiration or earlier termination of this Agreement, Counsel will promptly deliver to SDCERA all deliverables prepared by Counsel under this Agreement. Counsel may retain possession of all working papers prepared by Counsel. During and after the term of this Agreement, SDCERA shall have the right to inspect any and all such working papers upon reasonable prior notice and during normal business hours at no additional cost, when undergoing an External Quality Assurance Review. Both parties hereto acknowledge that Counsel retains the exclusive rights to its working papers and the intellectual capital (including, without limitation, methodologies, know how, models, general skills, expertise, ideas, concepts, techniques, processes, software, materials, tools, other intellectual propriety or information and any graphic or digitized representation of any of these) developed or possessed by Counsel prior to, or acquired under the performance of this Agreement and the foregoing shall not be deemed Deliverables and Counsel shall not be restricted in any way with respect thereto (collectively, "Counsel Materials"). SDCERA shall have non-exclusive, non-transferable license to use Counsel Materials for its own internal use and only for the purposes for which they are delivered to the extent they form part of a Deliverable.

9.2 Confidential Information. Counsel understands that, during the performance of this Agreement, it will have access to confidential and proprietary SDCERA information, policies and procedures, benefits, business practices, and technology concerning SDCERA's operations, as well as sensitive confidential member information and business critical non-member information (collectively, Confidential Information). For clarity, Confidential Information includes all information of any and every kind provided

to Counsel, regardless of whether it may previously have been disclosed by SDCERA or others in other contexts, in that SDCERA needs to know to whom, when, where, and how all of its information has been disseminated and reserves to itself the right to determine to whom, when, where, and how such information is released. Confidential Information further includes all information related in any way to SDCERA provided to Counsel.

Confidential Information may be provided to Counsel or generated or stored by Counsel in written, electronic, verbal, and all others forms. Counsel understands and agrees that:

9.2.1 Counsel shall not disclose Confidential Information to any person within its organization except those persons required to perform the services of the Agreement.

9.2.2 Counsel shall not disclose Confidential Information to any third party without SDCERA's advance written approval.

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

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

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

10. Nondiscrimination.

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

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

11. Compliance with Laws.

Counsel shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be included in this Agreement are incorporated by this reference. Counsel shall indemnify and hold SDCERA harmless from any loss, damage or liability resulting from a violation by Counsel of any such laws, rules, regulations, ordinances, and directives. Notwithstanding the foregoing, Counsel shall not be liable for any special, consequential, incidental, exemplary damages or loss (or any lost profits, taxes, interest, tax penalties, savings or business opportunity) or any loss, damage, or liability arising from the negligence or willful misconduct of SDCERA.

12. Conflict of Interest.

No officer or employee of SDCERA whose position enables him or her to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such officer or employee shall be employed in any capacity or in any way remunerated by Counsel or have any direct or indirect financial interest in this Agreement or in Counsel.

13. Modifications.

Any modification to this Agreement must be in writing, signed by Counsel and SDCERA, to be effective.

14. Termination for Default.

Services performed under this Agreement may be terminated in whole or in part by SDCERA providing to Counsel a written Notice of Default if (1) Counsel fails to perform the services within the time specified in this Agreement or any extension approved by SDCERA, provided Counsel shall not be liable for delays beyond his reasonable control, or (2) Counsel fails to materially perform any other covenant or condition of this Agreement, or (3) Counsel fails to make progress so as to endanger its performance under this Agreement provided Counsel shall not be liable for delays beyond its reasonable control.

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

Without limitation of any additional rights or remedies to which it may be entitled, if SDCERA terminates all or part of the services for Counsel's Default, SDCERA, in its sole discretion, may procure replacement services.

If it is determined that Counsel was not in Default under the provisions of this Agreement, or that the Default was excusable, then the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued under Section 15, Termination for Convenience.

15. Termination for Convenience.

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

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

In the event that Counsel determines, in its professional judgment, that they cannot complete the services, Counsel may withdraw from the engagement without liability. In addition, Counsel reserves the right to, in whole or in part, decline to perform services if information comes to their attention indicating that performing any Services could cause Counsel to be in violation of applicable law, regulations or standards or in a conflict of interest, or to suffer reputational damage. On termination of this Agreement for whatever reason: (i) Counsel shall render an invoice in respect of any Services performed and expenses incurred since the date of the last invoice issued, and (ii) SDCERA shall pay the undisputed amounts of such invoice.

16. Disaster Recovery & Business Continuity.

Counsel will implement and maintain disaster recovery and business continuity procedures that are reasonably designed to recover data processing systems, data communications facilities, information, data and other business-related functions of SDCERA in a manner and time frame consistent with legal, regulatory and business requirements applicable to SDCERA.

17. Data Breach Verification.

17.1 Counsel shall provide an annual written, signed attestation that to the best of its knowledge, no data breach, hacking, or incidental divulging of Member Records has occurred and that no Member Record has been compromised. The attestation shall verify that adequate internal policies and procedures exist to prevent data theft and unauthorized access.

17.2 Counsel shall comply with California Civil Code § 1798.29(e) and California Civ. Code § 1798.82(f). In the event of a security breach of more than 500 records, the Counsel shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General.

17.3 Counsel shall notify any California resident whose unencrypted personal information, as defined, was acquired, or reasonably believed to have been acquired, by an unauthorized person as required by California Civil Code §1798.29(a) and California Civ. Code§1798.82(a).

17.4 Notwithstanding the legal notification requirements in the preceding paragraphs, Counsel will immediately notify SDCERA upon its discovery of any incident or data breach.

18. Criminal Background Check Requirement.

Counsel shall ensure that criminal background checks are required and completed for any employee, director, officer, agent, subcontractor, Counsel, or volunteer who will be providing any services, accessing SDCERA or client data, or has access to SDCERA data or facilities. Background checks shall, at a minimum, include California Department of Justice Live Scan Fingerprinting. Contractor shall also have a documented process for reviewing the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients or risk to services to be performed under Agreement. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of such persons listed above in this section. Counsel shall utilize a subsequent arrest notification service or perform a criminal background check annually during the term of this Agreement for any employee, director, officer, agent, subcontractor, Counsel, or volunteer who will be providing any services under this Agreement. Counsel shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with Section 9 of the Agreement.”

19. Audit, Inspection & Monitoring

SDCERA or its authorized agent, shall have the right to monitor, assess, and evaluate Counsel's performance under this Agreement, to conduct audits, inspections, reviews of reports, and interviews of staff and participants involved with the services provided under this Agreement; and to monitor Counsel's access to the SDCERA network and any equipment provided to perform the work under this Agreement.

20. Disentanglement.

20.1 General Obligations.

Upon the expiration or termination of all or a portion of the services provided hereunder (“Transitioning Services,”), SDCERA may elect to have such services, substantially similar services, or follow-on services (“Disentangled Services”) performed by SDCERA or one or more separate contractors (“Replacement Provider”). Counsel shall take all actions necessary to accomplish a complete and timely transition of the Disentangled Services (“Disentanglement”) without any material impact on the services. Counsel shall cooperate with SDCERA and otherwise take all steps reasonably required to assist SDCERA in effecting a complete and timely Disentanglement. Counsel shall provide Replacement Provider with all information regarding the services and any other information needed for Disentanglement.

Counsel shall provide for the prompt and orderly conclusion of all work required under this Agreement, as SDCERA may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly Disentanglement.

20.2 Disentanglement Process.

Counsel and SDCERA shall discuss in good faith a plan for Counsel’s Disentanglement that shall not lessen in any respect Counsel’s Disentanglement obligations. If SDCERA requires the provision of Transitioning Services after expiration or termination of the Agreement or Disentanglement work not otherwise required under this Agreement, for which additional compensation will be due, such services shall be compensated at: (i) the applicable rates in Agreement or a reasonable pro-rata of those prices, or (ii) if no applicable rates apply, no more than Counsel’s costs. Such work must be approved in writing by SDCERA approval of a written Disentanglement plan or separately in writing and is subject to the Compensation clause on the signature page.

Counsel’s obligation to provide Disentanglement services shall not cease until all Disentanglement obligations are completed to SDCERA’s reasonable satisfaction, including the performance by Counsel of all Specific Obligations of Counsel. SDCERA shall not require Counsel to perform Transitioning Services beyond 12 months after expiration or termination, provided that Counsel meets all Disentanglement obligations and other obligations under the Agreement.

20.3 Specific Obligations.

The Disentanglement shall include the performance of the following specific obligations (“Specific Obligations”):

20.3.1 No Interruption or Adverse Impact

Counsel shall cooperate with SDCERA and Replacement Provider to ensure a smooth Disentanglement, with no interruption of or adverse impact to Disentangled Services, Transitioning Services, other work required under the Agreement, or services provided by third parties.

20.3.2 Client Authorizations.

Counsel shall obtain from clients served by Counsel all client consents or authorizations legally necessary to transfer client data to Replacement Provider.

20.3.3 Leases, Licenses, and Third-Party Agreements.

Counsel shall procure at no charge to SDCERA all authorizations necessary to grant Replacement Provider the use and benefit of any third-party agreements pending their conveyance or assignment to Replacement Provider.

Counsel, at its expense, shall convey or assign to Replacement Provider leases, licenses, and other third-party agreements procured under this Agreement, subject to written approval of the Replacement Provider (and SDCERA, if Replacement Provider is other than SDCERA).

Without limiting any other provision of this Agreement, Counsel shall reimburse SDCERA for any losses resulting from Counsel's failure to comply with any terms of any third-party agreements prior to the date of conveyance or assignment.

20.3.4 Return, Transfer, and Removal of Assets.

Counsel shall return to SDCERA all SDCERA assets in Counsel's possession, pursuant to this Agreement.

SDCERA shall be entitled to purchase at net book value Counsel assets used primarily for the provision of Disentangled Services to or for SDCERA, other than those assets expressly identified as not being subject to this provision. Counsel shall promptly remove from SDCERA's site any Counsel assets that SDCERA, or its designee, chooses not to purchase under this provision.

20.3.5 Delivery of Documentation.

Notwithstanding section 13.5 of this Agreement, and without limiting Counsel's obligations thereunder, Counsel shall deliver to Replacement Provider (and/or SDCERA, if Replacement Provider is other than SDCERA), all documentation and data necessary for Disentanglement.

21. Entire Agreement and Severability.

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

22. Governing Law and Venue.

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

22.2 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 or in any court of the State of California sitting in San Diego County.

22.3 Each party to this Agreement consents to the exclusive personal and subject matter jurisdiction of any United States District Court sitting in San Diego County and any court of the State of California sitting in San Diego County, and their appellate courts for the purpose of all legal actions and proceedings arising

out of or relating to this Agreement or the transactions it contemplates, including all claims of any nature or type, whether in contract, tort, statutory, equitable, legal, or otherwise.

23. Attorney's Fees.

In the event of litigation between the parties concerning this Agreement, the prevailing party shall be entitled to recover reasonable costs and expenses incurred therein, including attorney's fees, which shall be included in the limitation of liability described in Section 4. 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.

24. Interpretation.

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

25. 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.

26. Standards of Performance.

SDCERA acknowledges that the Services will involve analysis, judgment and other performance from time to time in a context where the participation of SDCERA or others is necessary, where answers often are not certain or verifiable in advance, and where facts and available information change with time. Accordingly, evaluation of Counsel's Services shall be based solely on Counsel's substantial conformance with any standards or specifications expressly set forth in this Agreement and any applicable Statement of Work hereunder, and all applicable federal and state laws and regulations and applicable professional standards (including, but not limited to, the American Institute of Certified Public Accountants ("AICPA") Statements on Standards for Consulting Services). SDCERA acknowledges that the Services will involve the participation and cooperation of management and others of SDCERA. Unless SDCERA and Counsel agree otherwise, in writing, Counsel shall have no responsibility to update any of Counsel's work after its completion.

27. Other Costs.

Unless expressly provided for, the Services do not include giving testimony or appearing or participating in discovery proceedings, in administrative hearings, in court, or in other legal or regulatory inquiries or proceedings. Except with respect to a dispute or litigation between Counsel and SDCERA, Counsel's costs, expenses, and time spent in legal and regulatory matters or proceedings arising from this Agreement, such as subpoenas, testimony, bankruptcy filings or proceedings, consultation involving private litigation, arbitration, government or industry regulation inquiries, whether made at SDCERA's request or the request of a third party, will be billed to SDCERA separately at Counsel's standard rates for such services.

28. Notices.

All notices or other communications required under this Agreement shall be in writing, addressed as provided below.

Notice to SDCERA:

[Insert Name, Title]
SDCERA
2275 Rio Bonito Way, Suite 100
San Diego, CA 92108
[Phone Number]

Notice to Counsel

[Insert Name, Title]
[Company Name]
[Company Address]

[Phone Number]

29. Third Party Beneficiaries.

The information contained in documents prepared by Counsel in the course of providing services under the terms of this Agreement is for the sole use of SDCERA in accordance with the purpose of this Agreement hereunder. The deliverables are not for a third party’s benefit of reliance, and Counsel disclaims any contractual or other responsibility or duty of care to others based upon the Services, work product or deliverables. Any work product, deliverables, or documents delivered by Counsel shall be released only as redacted in accordance with law or with the prior written permission of Counsel. Except to the extent expressly provided hereto to the contrary, no third-party beneficiaries are intended under this Agreement.

30. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, SDCERA and Counsel execute this Agreement valid as of the date last signed by the parties below and effective as of the date provided for in Section 3. The person(s) signing this Agreement for Counsel represents and warrants that they are duly authorized to bind Counsel and have the legal capacity to execute and deliver this Agreement.

DATED: _____ By: _____
[Insert Name] Chief Executive Officer
SDCERA

DATED: _____ By: _____
[Insert Name, Title]

APPROVED AS TO FORM

By: _____
[Insert Name] Chief Legal Officer, SDCERA

Dated: _____

Exhibit A

STATEMENT OF WORK

Disability Counsel will represent SDCERA staff in all aspects of the hearing de novo process in accordance with the SDCERA's Administrative Disability Hearing Rules including:

- A. Reviewing disability applications referred by staff and determining what evidence is needed to successfully advocate for the staff position during the HDN process.
- B. Eliciting testimony via deposition, reviewing evidence, preparing all HDN papers, and representing staff during the HDN.
- C. Reviewing the hearing officer's recommended decision and finding of facts to determine if SDCERA should raise objections to the Board and answering any objections raised by the applicant.
- D. Representing staff before the Board and any subsequent litigation.
- E. Assisting staff in the application of California disability law to factual scenarios as requested.

Disability Counsel may be asked to assist in other legal matters at the request of SDCERA.

Exhibit B
FEE SCHEDULE AND BILLING GUIDELINES

1. Hourly Rate. [Insert applicable rate sheet]
2. Payment Methodology. Counsel will submit an invoice no later than twenty days following the end of the month during which the services were completed. Invoices will be submitted to SDCERA via email as follows:

To: [COR] include email address

Cc: accountspayable@sdcera.org
3. Billing Guidelines.
 - a. Monthly Invoices: Counsel shall send a monthly invoice, setting forth the fees for services performed and other expenses incurred during the previous billing period.
 - b. Staffing: Counsel agrees that only those attorneys and other non-attorney staff members who have been identified in Counsel's RFP response who have been approved by SDCERA shall incur expenses for work on the SDCERA account unless Counsel obtains prior written consent. Absent such advance consent, SDCERA shall not be responsible for work performed by Counsel. SDCERA reserves the right to continued approval of the personnel providing services to SDCERA and may remove, withdraw or withhold consent as to any existing or proposed personnel.
 - c. Hourly Increments: Counsel shall charge hourly rates in increments of one-tenth (.1) of an hour.
 - d. Duplicate Billing: Counsel will not charge for and SDCERA will not be responsible to pay for duplicate work performed by staff at the same professional level. Counsel will make the most efficient use of its personnel to minimize charges incurred on SDCERA's behalf. For example, Counsel should not have two attorneys appearing on the same matter, reviewing the same documents or reviewing each other's work without the prior consent of SDCERA. SDCERA will allow reasonable expenses for a senior attorney's review of less experienced counsel or non-lawyer staff over which the attorney must exercise supervision.
 - e. Itemization of Charges Billed: Counsel will itemize each service performed separately. Group itemization is not acceptable. Each itemized billing shall contain the following in support of the amount charged:
 - i. The identity of the person performing the work;
 - ii. The amount of time expended for such work; and

iii. A description of the work performed sufficient to allow SDCERA to identify the scope of the work and the reasonableness of the charges. SDCERA will only pay for substantive work on SDCERA projects.

f. Out-of-County Travel: Any travel outside of San Diego County and estimated expenses must be approved by SDCERA in advance. SDCERA shall only reimburse for actual, necessary, and reasonable out-of-pocket expenses that have been approved in advance by SDCERA on prescribed forms.