



**MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION**

Request for Proposal for Actuarial Audit Services

November 1, 2017

Proposal Submission Deadline
Friday, December 1, 2017

I. INTRODUCTION

Mendocino County Employees Retirement Association (MCERA or the Association) is a public retirement system organized under and governed by the County Employees Retirement Law of 1937 (1937 Act), codified as California Government Code §31450 et seq. Under provisions of the 1937 Act, management of MCERA, including general administration, disability matters and control of investment assets, is vested in the Board of Retirement (Board). The Board is composed of nine members and one alternate. MCERA funding is generated from three sources: earnings on investments, employer contributions, and employee contributions.

Members of MCERA are the retired and active employees of the County of Mendocino; Mendocino County Superior Court of California, and the Russian River Cemetery District. Members are classified as General, Safety or Probation members. The 1937 Act provides for a defined benefit retirement system and the benefits are set by statute. The types of benefits provided to members are service retirement, disability retirement (both service and non-service connected), death benefits, and survivor's benefits.

As of June 30, 2017 there were 1,123 active members, 479 inactive members, and 1,462 retired members and beneficiaries. MCERA administered 10 retirement tiers, each with slightly different benefit factors. As of June 30, 2017, market value of MCERA's net assets was \$484 million. Further information is available at the MCERA web site, www.mendocinocounty.org/retirement.

II. PROJECT BACKGROUND

MCERA invites proposals from actuarial firms familiar with public employee retirement systems to perform an audit of the current MCERA consulting actuary – Segal Consulting (Consulting Actuary or Segal). The firm selected will serve as Auditing Actuary for MCERA on a limited term engagement as described below.

The actuarial audit (Audit) is a component of the Association's overall plan with respect to actuarial services. The June 30, 2017 valuation was presented and finalized in November 2017, and the Experience Study for the three years ended June 30, 2015 was presented in April, 2017.

Segal has served as consulting actuary to MCERA since July 2010. The most recent actuarial audit was completed in 2011 for the Experience Study for the three years ended June 30, 2008 and the June 30, 2009 annual valuation. The most recent actuarial audit reviewed the work of the MCERA consulting actuary prior to the engagement of Segal.

The Board adopted the "Actuarial Funding and Practices Policy" in April, 2017 to supersede the previous "Statement of Actuarial Funding Policy" adopted in July, 2013. The "Actuarial Funding and Practices Policy" states that the MCERA Board will provide for an actuarial audit at least once every six years. The policy can be found on the MCERA website at the following address: <https://www.mendocinocounty.org/home/showdocument?id=7304>.

Schedule of Events

MCERA reserves the right to modify this schedule at any time.

Deliverables	Date
Release of RFP	November 1, 2017
Questions from Vendor Due	November 13, 2017
Answer to Vendor Questions Posted	November 17, 2017
RFP Submission Deadline	December 1, 2017
Interview (if needed)	December 13, 2017
Vendor Selection	December 13, 2017

III. SCOPE OF SERVICES

A. Audit of Triennial Experience Study

Auditing Actuary will assess the actuarial assumptions and funding methodology. The purpose of the audit is to provide an opinion regarding the reasonableness and accuracy of the actuarial assumptions and methodologies employed by Consulting Actuary. The audit will not include a parallel experience analysis. Rather, the audit will focus on comparing MCERA adopted assumptions to industry norms as well as reviewing the structure and application of the assumptions upon the test lives. The review of actuarial methods should be based upon industry standards as well as auditing firm's experience with similar retirement system.

The Auditing Actuary will consult with Segal and MCERA staff in the course of the engagement. Both MCERA and Segal will supply data to the Auditing Actuary for the valuation period. The experience study can be found on the MCERA website at the following address: <https://www.mendocinocounty.org/home/showdocument?id=7312>.

B. Audit of Annual Actuarial Valuation

Auditing Actuary will conduct a valuation audit for the years ended June 30, 2016. The audit will be a full replication valuation audit of the June 30, 2016 actuarial valuations and a review of detailed output on certain select test lives from the valuation group.

Auditing Actuary will consult with Segal and MCERA staff in the course of the engagement. MCERA and the Consulting Actuary will supply data to the Auditing Actuary for the valuation periods. The annual actuarial valuation can be found on the MCERA website at the following address:

Such audit shall include but not be limited to:

- a) Evaluation of the available data for the performance of the experience study and valuation, the degree to which such data is sufficient to support the conclusion of the

investigation, and the use and appropriateness of any assumptions made regarding such data.

- b) Evaluations of the results and reconciliation of any discrepancies between the findings, assumptions, methodology, rates, and/or adjustments of the Auditing Actuary and Consulting Actuary.
- c) Valuation to be performed using assumptions, methodologies and funding methods used by Consulting Actuary in its performance of the valuation. Auditing Actuary shall reproduce all work and not rely on the work of Consulting Actuary.

IV. TIMELINE

The proposed timeline for the actuarial audit is as follows:

- January-February, 2018 – Segal and MCERA Staff provide data and exchange information with Auditing Actuary
- March-April, 2018 – Auditing Actuary provides comments on the Triennial Experience Study; Segal provided an opportunity to respond. Auditing Actuary to provide comments on June 30, 2016 Actuarial Valuation.
- May 9, 2018 – Auditing Actuary makes presentation to MCERA Board with the final audit report of the experience study and the June 30, 2017 valuation.

V. ACTUARIAL FIRM QUALIFICATIONS

The actuarial auditing firm should meet all of the qualifications listed below. The term “Senior Auditor” refers to the lead and most senior actuary to provide direct services to MCERA. The term “Supporting Auditors” refers to less senior actuaries that will support the Senior Auditor in providing direct services to MCERA. The term “Auditing Actuaries” refers to the Senior Auditor and all Supporting Auditors to be assigned to and provide direct services to MCERA.

1. The firm must be a professional organization that provides actuarial valuations, experience studies, actuarial audits and public pension consulting services.
2. The firm must have performed actuarial services for a minimum of 10 years.
3. Liability, professional errors and omissions insurance in the amount of at least \$10,000,000 must be in effect at the time the proposal is submitted and throughout the term of the engagement.
4. Within the past three years, the firm must have had at least three public pension clients (preferably 1937 Act agencies), serving at least 5,000 active members and 5,000 retired and/or survivor members, who used the firm as primary actuarial consultant for valuations, experience studies and/or actuarial audit tasks.
5. The Senior Auditor performing the work must be a Fellow of the Society of Actuaries and an enrolled actuary. Any Supporting Auditor must be either a Fellow, enrolled, or have five years of public pension consulting experience.
6. The Senior Auditor performing the services must have a minimum of ten years of experience

as an actuary providing public pension consulting services, experience analysis, valuations, and actuarial audit assignments for multi-employer public retirement systems with memberships of at least 2,500 members and annuitants.

7. Any Supporting Auditor performing services must have five years of experience as an actuary providing public pension consulting services, experience analysis, valuations, and actuarial audit assignments for multi-employer public retirement systems with memberships of at least 7,500 members and annuitants.
8. The firm must provide its own work facilities, equipment, supplies and support staff to perform the required services.

VI. GENERAL CONDITIONS OF PROPOSAL SUBMISSION

A. All proposals submitted become the property of MCERA. Should a Proposer wish to withdraw its proposal, a written letter must be received by MCERA.

B. There is no expressed or implied obligation for MCERA to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Costs for developing proposals are entirely the responsibility of the Proposer and will not be chargeable to or reimbursable by MCERA.

C. All proposals submitted in response to this RFP shall become the exclusive property of MCERA and shall be subject to public disclosure pursuant to the California Public Records Act (Cal. Govt. Code Section 6250 et. seq.). The Act provides that access to information concerning the conduct of the public's business is a fundamental and necessary right of every person in the state. Public records are defined as any writing related to the conduct of the public's business. Public records are open to inspection during normal business hours.

D. There are specific exceptions to the Public Records Act. In the event MCERA receives a request for inspection of any proposal submitted pursuant to this RFP, it is the responsibility of the organization whose proposal has been requested to assert any right of confidentiality that may exist. MCERA will not make that assertion on behalf of the Proposer. Absent a judicial determination that the documents are exempt from disclosure, they will be subject to inspection.

E. Submission of a proposal constitutes a complete waiver of any claims whatsoever against MCERA and its agents, officers or employees, that MCERA has violated a Proposer's right to privacy, disclosed trade secrets or caused any damage by allowing the proposal to be inspected.

F. All proposals must remain valid for a period of not less than 90 days from the submission. This includes pricing as well as nominated engagement staff.

G. MCERA reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected.

H. MCERA may, in its sole discretion, enter into contracts with multiple providers.

I. MCERA reserves the right to contact current and former clients of the Proposer for information at any time during the proposal process.

J. MCERA reserves the right to accept or reject any or all proposals and may waive any requirements of this Request for Proposal if it deems it in the best interests of MCERA.

K. MCERA reserves the right to contact individual Proposers for clarifying information at any time during the proposal process.

L. MCERA may modify the RFP prior to the fixed date for submission of proposals by issuance of an addendum.

VII. PROPOSAL CONTENTS

A. Background and Financial Information

1. Describe the proposing organization's structure. Include the following:
 - a. Ownership information of the firm. Describe any material changes in organizational structure, or ownership that have occurred in the past 5 years. Provide names of all entities with ownership stakes. Detail affiliated companies and/or joint ventures.
 - b. Background information. How long has the firm been providing actuarial consulting services to public pension clients?
 - c. What is the importance (percentage) of actuarial services within the firm? What percentage of revenue comes from actuarial services?
2. List the locations of each office that provide actuarial services within the firm. Which office would be responsible for work performed for MCERA? What is the staffing for that office?
3. Provide the latest two years' audited financial reports for the firm. Provide additional information necessary to demonstrate financial stability, including total revenue, net income / (loss), assets, liabilities, and net worth for each year.
4. Discuss the firm's competitive advantage over other firms in the actuarial audit service area. Why should MCERA hire your firm?
5. Over the past five years, has your organization or any officer or principal been involved in any litigation or other legal proceedings related to any actuarial consulting activities or actuarial auditing services? If so, provide a brief explanation and indicate the current status.
6. Has your firm, within the last ten years, been censured or fined by any regulatory body? If so, please indicate the dates and describe the situation.
7. Has any litigation been brought against the firm by any entity for fraud, malpractice, misrepresentation, negligence, or similar cause of action? If so, please document this information.
8. Is the firm affiliated with any other firm(s) offering non-actuarial services to MCERA or Segal that could represent conflicts of interest? If yes, briefly describe your firm's policies and procedures for doing business with these affiliates while safeguarding against conflicts of interest. .
9. Do you, your parent company, or any affiliated company have any business

relationships with Segal? If so, describe that relationship.

10. List and describe any professional relationship your firm or any of your actuarial consulting group staff have with any member of the MCERA Board of Retirement, staff or plan sponsors.
11. Has anyone in your firm provided any gifts, travel expenses, entertainment, or meals to any member of the MCERA Board of Retirement, or MCERA staff in the last twelve months? If yes, describe the expense and the purpose.
12. Have any of the personnel that will be assigned to this audit previously performed an audit of Segal?

B. Personnel Information

1. How many actuaries does your firm employ?
2. Describe the background of the professionals in the firm's actuarial consulting services group:
 - What percentage are currently Fellows of the Society of Actuaries? Enrolled actuaries?
 - What ongoing educational programs are supported and/or required?
3. For the key executives and professionals in the actuarial auditing consulting group assigned to MCERA, including the Senior Auditor and Secondary Auditor(s), please provide resumes (or biographies) that include the following information:
 - Name
 - Title
 - Responsibilities within the firm. If a person has multiple responsibilities, indicate the percentage of time spent on each function in a footnote to the table.
 - Years of relevant experience.
 - Years with the firm.
 - Degrees and professional designations.
 - Institution awarding each degree and designation.
 - Publications authored and/or presentation summary.
4. How long has your actuarial consulting group worked as a team?
5. For the Senior Auditor and all Secondary Auditors, list their public fund actuarial audit assignments for the past five years. Include for each assignment the date of the final audit report, whether the auditor served as the Senior or Secondary Auditor, and the client's name and size (number of pension plan members and annuitants). Include

reference clients' contact information.

6. For the Senior Auditor and all Secondary Auditors who may provide services to MCERA, state the role each would play in accomplishing the required services.
7. For the Senior Auditor and each Secondary Auditor, please state the total number of clients currently assigned to these individuals; are the assignments for general actuarial services or actuarial audit services? What is the accessibility to the actuaries assigned to MCERA?
8. Are there any potential conflicts of interest with the proposed Senior and/or Supporting Actuaries within the MCERA assignment? Are there any potential conflicts of interest related to other client relationships? If so, provide details on the entity or activity.
9. Does the firm have a transition plan to deal with the possible sudden departure of key professionals assigned to MCERA's actuarial auditing project? Describe the plan.

In the event an actuary must be replaced, the replacement must meet the same standards as outlined in this proposal and be acceptable to MCERA. Failure to provide a new replacement acceptable to MCERA will constitute a breach of the firm's agreement.

C. Proposed Actuarial Auditing Methods

1. Describe the specific methodology to be used for the required scope of services identified in Section III. Scope of Services.
2. Provide a timeline for completion of the work identified Section III. Scope of Services.
3. Describe your firm's theory and methodology used in recommending an appropriate actuarial cost method for a public pension fund.
4. Describe your firm's theory and methodology for actuarial assumptions development (except for the interest rate assumption, which is addressed separately).
5. Describe the methodology used to formulate a pension fund's actuarial interest rate assumption. How may this methodology differ from client to client? Under what circumstances would you recommend MCERA change its interest rate assumption?
6. Describe your firm's approach to recommendations regarding the amortization of unfunded liabilities.
7. Describe your approach to measuring funded status and funding progress in order to facilitate the assessment of trends over several valuations of a client.
8. Describe the capabilities of your valuation system(s) and your computer system support.
9. Describe your quality control processes for actuarial audit reports and recommendations. How are these services monitored and reviewed?
10. Provide an example of one recent actuarial audit report for an existing client.

D. Actuarial Auditing Experience and References

1. Please list client relationships where **only** actuarial auditing services similar to this RFP have been or are being provided.
2. For all **current** public pension plan full-service actuarial clients, state the client's name, and their asset and membership size. Designate by asterisk which of these clients are multi-employer plans. In addition, describe the nature of the consulting relationship with:
 - A full-service actuarial consulting client that has been assigned for at least two years to the Senior Auditor proposed for the MCERA account.
 - The client with the longest full-service actuarial consulting relationship with your firm.
 - The former client who most recently terminated your firm's full-service actuarial consulting contract.
 - A multi-employer public pension plan client for whom your firm has provided full service actuarial consulting for at least three years.
3. Please provide the name, title, address, and telephone number for at least three client references for whom your firm has provided actuarial audit services similar to this Request for Proposal. Include the following detail:
 - The client for whom the firm most recently completed an actuarial audit.
 - The scope of the actuarial auditing services required for these referenced clients.
 - The client for whom the Senior Auditor most recently completed an actuarial audit.
4. List all pension plan clients that have terminated their actuarial service contracts with your firm in the last five years. Include the client firm's name, size (number of pension plan members and annuitants), date of contract termination, and reason(s) for contract termination.
5. Within the last five years, has your firm been notified by any actuarial consulting services client that your firm is in default of its contract, or that conditions exist jeopardizing continuation of that contract? If so, state the client firm's name, year the notice was received, reasons for the notice, and resolution or current status of the relationship.
6. Have your firm's actuarial consulting service products been audited by another actuarial firm within the last five years? If so, state the number of such audits and whether any resulted in revisions to your clients' annual valuation results, actuarial assumptions, or actuarial cost methods. Which firm(s) audited your actuarial product?

E. Additional Required Information

1. Will subcontractors be used in providing the required MCERA services? If so, describe the specific services that would be subcontracted, the name of the subCONSULTANT,

the cost to your firm of these services, and how you would control the quality of services provided.

2. Please describe your firm's legal resources, both in-house and external consultants, if retained.
3. Do you have plans/arrangements for business continuity? Briefly describe your business recovery plans. Include plans related to client data files in your description.
4. Please describe the coverage levels for errors and omissions insurance and any fiduciary or professional liability insurance your firm carries. Is the coverage on a per-client basis, or is the dollar figure applied to the firm as a whole? List the insurance carriers.
5. How does the firm monitor and measure actuarial client satisfaction and actuarial audit satisfaction?
6. Describe the resources your firm has that specifically address the needs of public fund clients.
7. Provide one recent valuation audit report and one recent triennial experience study audit report as provided to an existing or former client.

F. Actuarial Audit Fee Proposal

1. Describe the fee you propose for the actuarial audit engagement described above and how the proposed fee will be billed. The proposed fee should be all-inclusive, as no additional charges for actuarial audit services will be allowed. The fee will be paid on a fixed fee basis.
2. Following the fee schedule provided in Appendix A, please provide a maximum fee assuming video conference presentation of the final audit and the additional cost of an on-site presentation of the final audit.
3. Additionally, please provide hourly rates for additional services, as may be requested by MCERA, beyond the scope of services described above. Any additional services will be agreed upon in writing before the conduct of any additional work.

G. Proposed Contract Amendments

1. A sample contract is attached to indicate the type of agreement contemplated and to set forth some of the general provisions that MCERA anticipates including in the final agreement(s). In submitting a proposal, the Proposer will be deemed to have agreed to each clause unless the proposal identifies an objection, sets forth the basis for the objection, and provides substitute language to make the clause acceptable to the Proposer. Any proposed revision is subject to additional review and may not be added unless MCERA determines in its sole discretion that the performance of the services under the contract is dependent upon such changes. The sample contract provisions are contained in Appendix B.

VIII. PROPOSAL SUBMISSION AND EVALUATION PROCESS

A. Contact

Judy Zeller
Mendocino County Employees Retirement Association
625-B Kings Court
Ukiah, CA 95482
retirementassociation@mendocinocounty.org

- B. Need to Modify RFP.** If any ambiguity, conflict, discrepancy, omission or other error is discovered in this RFP, notify MCERA, attention Judy Zeller, in writing. If MCERA deems it necessary, modifications will be made by addenda issued to all participating respondents and posted on MCERA's website.
- C. Proposal Submission.** Proposals must be received by: 12:00 p.m., Pacific Time on December 1, 2017. Late proposals will not be accepted. On the outside of the sealed response package, clearly mark:

Response to RFP for Actuarial Auditing Services

Please submit 2 printed sets of the proposal and related information plus a USB Flash Drive containing a complete electronic copy of the proposal and related information to:

Judy Zeller
Mendocino County Employees Retirement Association
625-B Kings Court
Ukiah, CA 95482

Additionally, proposers should e-mail an electronic version of the proposal and related information to retirementassociation@mendocinocounty.org.

D. Proposal Organization.

Proposals should be organized in the following manner:

1. Cover Letter stating that the proposal is complete as submitted. All prices, cost schedules, and/or other factors contained in the proposal are valid for 90 days from the proposal closing date and must include the signature of the representative(s) who are authorized to legally bind the proposer.
2. Table of Contents
3. Executive Summary
4. Background and Financial Information
5. Personnel Information
6. Proposed Actuarial Auditing Methods
7. Actuarial Auditing Experience and References
8. Additional Required Information

9. Actuarial Audit Fee Proposal
10. Proposed Contract Amendments
11. Attachments

E. Proposal Review. MCERA will review and evaluate the proposals. MCERA anticipates selecting one or more firms as finalists in December 2017. The evaluation criteria will be the following:

- Qualifications – Firm’s ability to meet the qualifications.
- Ability – The firm’s ability to provide the requested services.
- Related Experience – The firm’s demonstrated, related experience in providing services comparable to the Board’s needs. Expertise in all aspects of actuarial auditing, preferably as it relates to public entities and the 1937 Act.
- Assigned Individuals – The credentials and experience of the person(s) who would be assigned to MCERA’ account.
- Fee Proposal – The fee structure proposed by the firm.
- General quality and adequacy of response, including completeness of response, conformity to terms and conditions.
- Quality of references – Level of satisfaction of present and/or former clients.
- Other Factors – Any other factors that would be in the best interest of the Board to consider which were not previously described.

F. Interviews. MCERA may schedule presentations of the finalists. Note that there may not be any oral presentations; each proposal is expected to be complete in and of itself.

G. Notification of Contract Award and Start Date Notification of MCERA’ decision to award a contract for actuarial audit services will be by e-mail in December, 2017.

**APPENDIX A
FEE SCHEDULE**

The Auditor must state a firm, fixed price for the audit to provide audit services as described herein, in accordance with the terms and conditions of this document.

Audit Services	Proposed Fee
Maximum Fee (Assuming video conference presentation of final audit report.)	
Additional cost for on-site presentation of final audit report (if elected by MCERA).	

Additional Professional Services	Rate/ Hour
A. Professional Personnel (proposer may change titles below)	
Actuarial Audit Partners	
Actuarial Audit Manager	
Actuarial Audit Senior	
Actuarial Audit Secondary	
B. Support Personnel	
Clerical	
Other	

**APPENDIX B
CONTRACT REQUIREMENTS**

**MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2017, is by and between the MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION, hereinafter referred to as “MCERA”, and XX, hereinafter referred to as the “CONSULTANT”.

WITNESSETH

WHEREAS, MCERA may retain independent CONSULTANTs to perform special services to or for MCERA; and

WHEREAS, MCERA desires to retain CONSULTANT for its fiscal audit services; and,

WHEREAS, CONSULTANT is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to MCERA.

NOW, THEREFORE it is agreed that MCERA does hereby retain CONSULTANT to provide the services described in Exhibit “A”, and CONSULTANT accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements

The term of this Agreement shall be from XX, 2018 through XX, 20XX.

WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MCERA

By: _____

NAME AND ADDRESS OF MCERA:

James Wilbanks, Retirement Administrator

625-B Kings Court

Ukiah, CA 95482

CONSULTANT/COMPANY NAME

By: _____

NAME AND ADDRESS OF CONSULTANT:

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

LEGAL COUNSEL REVIEW:

APPROVED AS TO FORM:

By: _____
Jeff Berk, Legal Counsel

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONSULTANT:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONSULTANT is an Independent CONSULTANT. CONSULTANT is not the agent or employee of MCERA in any capacity whatsoever, and MCERA shall not be liable for any acts or omissions by CONSULTANT nor for any obligations or liabilities incurred by CONSULTANT.

CONSULTANT shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONSULTANT shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold MCERA harmless from any and all liability which MCERA may incur because of CONSULTANT's failure to pay such amounts.

In carrying out the work contemplated herein, CONSULTANT shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent CONSULTANTs and shall not be treated or considered in any way as officers, agents and/or employees of MCERA.

CONSULTANT does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of MCERA is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by MCERA.

Notwithstanding the foregoing, if MCERA determines that pursuant to state and federal law CONSULTANT is an employee for purposes of income tax withholding, MCERA may upon two (2) week's written notice to CONSULTANT, withhold from payments to CONSULTANT hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **STANDARD OF CARE:** MCERA has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirement of applicable federal, state and local laws, it being understood that acceptance of CONSULTANT'S work by MCERA shall not operate as a waiver or release.
3. **PERFORMANCE STANDARD:** CONSULTANT shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONSULTANT'S profession. CONSULTANT hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of CONSULTANT'S work by MCERA shall not operate as a waiver or release. If MCERA determines that any of CONSULTANT'S work is not in accordance with such level of

competency and standard of care, MCERA, in its sole discretion, shall have the right to do any or all of the following: (a) require CONSULTANT to meet with MCERA to review the quality of the work and resolve matters of concern; (b) require CONSULTANT to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

4. **ASSIGNED PERSONNEL:** CONSULTANT shall assign only competent personnel to perform work hereunder. In the event that at any time MCERA, in its sole discretion, desires the removal of any person or persons assigned by CONSULTANT to perform work hereunder, CONSULTANT shall remove such person or persons immediately upon receiving written notice from MCERA. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by MCERA to be key personnel whose services were a material inducement to MCERA to enter into this Agreement, and without whose services MCERA would not have entered into this Agreement.

CONSULTANT shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of MCERA. With respect to performance under this Agreement, CONSULTANT shall employ the following key personnel: XX.

In the event that any of CONSULTANT'S personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of CONSULTANT'S control, CONSULTANT shall be responsible for timely provision of adequately qualified replacements.

5. **INDEMNIFICATION:** CONSULTANT agrees to accept all responsibility for loss or damage to any person or entity, including MCERA, and to indemnify, hold harmless, and release MCERA, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including CONSULTANT, that arise out of, pertain to, or relate to CONSULTANT'S or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. CONSULTANT agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such CONSULTANT'S or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. CONSULTANT'S obligations under this Section apply whether or not there is concurrent or contributory negligence on MCERA's part, but to the extent required by law, excluding liability due to MCERA's conduct. MCERA shall have the right to select its legal counsel at CONSULTANT'S expense, subject to CONSULTANT'S approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CONSULTANT or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.
6. **INSURANCE AND BOND:** CONSULTANT shall at all times during the term of the Agreement with MCERA maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
7. **WORKERS' COMPENSATION:** CONSULTANT shall provide Workers' Compensation insurance, as applicable, at CONSULTANT's own cost and expense and further, neither the CONSULTANT nor its carrier shall be entitled to recover from MCERA any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
8. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONSULTANT shall observe and comply

with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONSULTANT shall indemnify and hold MCERA harmless from any and all liability, fines, penalties and consequences from any of CONSULTANT's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONSULTANT's performance of this Agreement, CONSULTANT shall immediately notify MCERA by telephone. CONSULTANT shall promptly submit to MCERA a written report, in such form as may be required by MCERA of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONSULTANT's sub-CONSULTANT, if any; (3) name and address of CONSULTANT's liability insurance carrier; and (4) a detailed description of the accident and whether any of MCERA's equipment, tools, material, or staff were involved.
 - c. CONSULTANT further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to MCERA the opportunity to review and inspect such evidence, including the scene of the accident.
- 9. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONSULTANT as provided in Exhibit "B" hereto as funding permits.
 - 10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONSULTANT.
 - 11. TRAVEL EXPENSES: CONSULTANT shall not be allowed or paid travel expenses unless set forth in this Agreement.
 - 12. OWNERSHIP OF DOCUMENTS: CONSULTANT hereby agrees to provide to a private, not-for-profit, successor and if there is none then assigns MCERA and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by MCERA, the CONSULTANT, the CONSULTANT's subconsultants or third parties at the request of the CONSULTANT (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONSULTANT shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONSULTANT agrees to take such further steps as may be reasonably requested by MCERA to implement the aforesaid assignment. If for any reason said assignment is not effective, CONSULTANT hereby grants MCERA and any assignee of the MCERA an express royalty – free license to retain and use said Documents and Materials. MCERA's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONSULTANT's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

CONSULTANT shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONSULTANT and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold MCERA harmless from

any claims for infringement of patent or copyright arising out of such selection.

MCERA's rights under this Paragraph 12 shall not extend to any computer software used to create such Documents and Materials.

13. CONFLICT OF INTEREST: The CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
14. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To MCERA: MENDOCINO COUNTY EMPLOYEES RETIREMENT
ASSOCIATION
625-B Kings Court
Ukiah, CA 95482
Attn: James Wilbanks, Retirement Administrator

To CONSULTANT: XX

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

15. USE OF MCERA PROPERTY: CONSULTANT shall not use MCERA property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
16. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONSULTANT

certifies that it will comply with all federal and state laws pertaining to equal employment opportunity and that it shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, ancestry, marital status, political affiliation or physical or mental condition, in matters pertaining to recruitment, hiring, training, upgrading, transfer, compensation or termination.

- a. CONSULTANT shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONSULTANT shall, if requested to so do by MCERA, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by MCERA, CONSULTANT shall provide MCERA with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONSULTANT shall include the provisions set forth in paragraphs a through d (above) in each of its subcontracts.
17. **DRUG-FREE WORKPLACE:** CONSULTANT and CONSULTANT's employees shall comply with MCERA's (Mendocino County's) policy of maintaining a drug-free workplace. Neither CONSULTANT nor CONSULTANT's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at MCERA facility or work site. If CONSULTANT or any employee of CONSULTANT is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at MCERA facility or work site, the CONSULTANT, within five days thereafter, shall notify the head of MCERA. Violation of this provision shall constitute a material breach of this Agreement.
 18. **ENERGY CONSERVATION:** CONSULTANT agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
 19. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONSULTANT shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with MCERA.
 20. **AUDITS; ACCESS TO RECORDS:** The CONSULTANT shall make available to MCERA, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to MCERA, and shall furnish to MCERA, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as MCERA may require with regard to any such expenditure or disbursement charged by

the CONSULTANT.

The CONSULTANT shall maintain full and adequate records in accordance with MCERA requirements to show the actual costs incurred by the CONSULTANT in the performance of this Agreement. If such books and records are not kept and maintained by CONSULTANT within the County of Mendocino, California, CONSULTANT shall, upon request of MCERA, make such books and records available to MCERA for inspection at a location within County or CONSULTANT shall pay to MCERA the reasonable, and necessary costs incurred by MCERA in inspecting CONSULTANT's books and records, including, but not limited to, travel, lodging and subsistence costs. CONSULTANT shall provide such assistance as may be reasonably required in the course of such inspection. MCERA further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by MCERA, and the CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after MCERA makes the final or last payment or within four (4) years after any pending issues between MCERA and CONSULTANT with respect to this Agreement are closed, whichever is later.

21. DOCUMENTS AND MATERIALS: CONSULTANT shall maintain and make available to MCERA for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 12 of this Agreement. CONSULTANT's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by MCERA), and CONSULTANT shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following MCERA's last payment to CONSULTANT under this Agreement.
22. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
23. TERMINATION WITHOUT CAUSE: Notwithstanding any other provision of this Agreement, at any time and without cause, MCERA shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to CONSULTANT.
24. TERMINATION FOR CAUSE: Notwithstanding any other provision of this Agreement, should CONSULTANT fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, MCERA may immediately terminate this Agreement by giving CONSULTANT written notice of such termination, stating the reason for termination.
25. CHOICE OF LAW: This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
26. VENUE: All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
27. 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, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

28. **ADVERTISING OR PUBLICITY:** CONSULTANT shall not use the name of MCERA, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of MCERA in each instance.
29. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between MCERA and CONSULTANT relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.
30. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
31. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
32. **ASSURANCE OF PERFORMANCE:** If at any time MCERA has good objective cause to believe CONSULTANT may not be adequately performing its obligations under this Agreement or that CONSULTANT may fail to complete the Services as required by this Agreement, MCERA may request from CONSULTANT prompt written assurances of performance and a written plan acceptable to MCERA, to correct the observed deficiencies in CONSULTANT's performance. CONSULTANT shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of MCERA's request and shall thereafter diligently commence and fully perform such written plan. CONSULTANT acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
33. **SUBCONSULTING/ASSIGNMENT:** CONSULTANT shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the MCERA's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONSULTANT shall use subconsultants identified in Exhibit "A" and shall not substitute subconsultants without MCERA's prior written approval.
 - c. CONSULTANT shall remain fully responsible for compliance by its subconsultants with all the terms of this Agreement, regardless of the terms of any agreement between CONSULTANT and its subconsultants.
34. **INTELLECTUAL PROPERTY WARRANTY:** CONSULTANT warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONSULTANT PRODUCTS") to be provided by CONSULTANT in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONSULTANT hereby grants to MCERA, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display,

prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONSULTANT PRODUCTS to the extent reasonably necessary to use the CONSULTANT PRODUCTS in the manner contemplated by this agreement.

CONSULTANT further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONSULTANT PRODUCTS provided to MCERA under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the MCERA relating to a CONSULTANT PRODUCT, CONSULTANT shall indemnify and defend the MCERA pursuant to Paragraph 5 of this AGREEMENT.

In the case of any such claim of infringement, CONSULTANT shall either, at its option, (1) procure for MCERA the right to continue using the CONSULTANT Products; or (2) replace or modify the CONSULTANT Products so that that they become non-infringing, but equivalent in functionality and performance.

35. ELECTRONIC COPIES: The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
36. COOPERATION WITH MCERA: Consultant shall cooperate with MCERA and MCERA staff in the performance of all work hereunder.
37. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 5), Ownership of Documents (Paragraph 12), and Conflict of Interest (Paragraph 13), shall survive termination or expiration for two (2) years.
38. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONSULTANT shall provide the services as described in the Request for Proposals for INSERT SPECIFIC SERVICES. The Request for Proposals for INSERT SPECIFIC SERVICES and proposal submitted to MCERA by CONSULTANT are hereby incorporated by reference into this agreement. If a conflict between the Request for Proposals for INSERT SPECIFIC SERVICES, or the proposal submitted by CONSULTANT, and this agreement results, then the agreement shall take precedence.

In additional to services outlined in Request for Proposals for INSERT SPECIFIC SERVICES and the proposal submitted by CONSULTANT, CONSULTANT shall also provide the following services:

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

(Insert Terms Here)

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude MCERA from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, CONSULTANT's indemnity obligations under Paragraph 5 of this Agreement.

CONSULTANT shall furnish to MCERA certificates of insurance with General Liability/Professional Liability/Automobile Liability Endorsements evidencing at a minimum the following:

- a. General Liability / Personal and ADV injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Automobile Liability / Combined single limit bodily injury and property damage liability - \$500,000 each occurrence.
- c. Professional Liability (Errors & Omissions) - \$1,000,000 each occurrence.

[END OF INSURANCE REQUIREMENTS]