

**CITY AND COUNTY OF SAN FRANCISCO
EMPLOYEES' RETIREMENT SYSTEM**

REQUEST FOR PROPOSALS FOR

ACTUARIAL AUDIT

**FOR THE CITY AND COUNTY OF SAN FRANCISCO EMPLOYEES'
RETIREMENT SYSTEM**

DATE: MARCH 15, 2018

DEADLINE FOR SUBMISSION: APRIL 18, 2018, 5:00 P.M. (PACIFIC TIME)

City and County of San Francisco Employees' Retirement System

Request for Proposals for

ACTUARIAL AUDIT FOR THE CITY AND COUNTY OF SAN FRANCISCO EMPLOYEES' RETIREMENT SYSTEM

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Request for Proposals for

Actuarial Audit for the City and County of San Francisco Employees' Retirement System

I. Introduction

The City and County of San Francisco Employees' Retirement System ("SFERS") is soliciting proposals from qualified professional actuarial consulting firms for an actuarial audit. One of the duties of the SFERS Retirement Board is to ensure that an actuarial audit or equivalent is conducted at least every five years. The purpose of this project is for an independent actuary (contractor), other than the SFERS retained actuary, to provide an evaluation sufficient to allow the reviewer to express an opinion regarding the reasonableness and/or accuracy of valuation results, actuarial assumptions, and actuarial methods in connection with the July 1, 2017 actuarial valuation.

Established in 1922, SFERS is dedicated to securing, protecting and prudently investing pension trust assets, administering mandated benefit programs, and providing promised benefits to over 59,000 active and retired member/employees of the City and County of San Francisco. SFERS administers four separate benefit plans for the City and County of San Francisco: the Firefighter Plan, the Police Plan, the Miscellaneous Safety Plan, and the Miscellaneous Plan. Each of these plans consists of multiple tiers.

All plans administered are actuarially funded using an entry age actuarial cost method with level percent of payroll amortization of unfunded accrued liabilities. Additional information regarding the System and plans administered may be found at <https://mysfers.org> including the June 30, 2017 Financial Statements and Supplemental Information for Fiscal Year ended June 30, 2017 and the July 1, 2017 actuarial valuation report (see Resources & Publications).

II. Scope of Services

SFERS' retained actuary is Cheiron. The scope of this project is limited to reviewing the work of Cheiron to the degree necessary for the contractor to express opinions regarding the accuracy and/or reasonableness of the following:

- Results of the valuations including analysis of contribution rates and accrued liabilities,
- Assumptions in use,
- Proper application of the funding method.

In addition, the contractor should express an opinion regarding whether or not the valuations were performed by qualified actuaries and were performed in accordance with principles and practices prescribed by the Actuarial Standards Board.

The contractor should not budget significant resources for the purpose of reviewing the data provided by SFERS to its retained actuary. The proposal should include one in-person meeting to present and discuss the final report to the Retirement Board. All other meetings and communications should be handled by phone, e-mail, etc.

It is anticipated that the SFERS Retirement Board (the "Board") will consider awarding a contract at the May 9, 2018 Board meeting. The work will cumulate with a report by the contractor to the Board

regarding the results of the actuarial review. A draft of materials to be presented to the Board should be submitted to the Actuarial Services Coordinator on Monday, July 23, 2018 for approval by the Executive Director. All materials must be approved by Friday, July 27, 2018. Forty paper copies of the approved Board materials must be delivered to SFERS by Tuesday, July 31, 2018 for presentation at the August 8, Board meeting. The completed report must be presented, in person, by the contractor to the Retirement Board.

See Appendix A for further details on required proposal contents.

III. Submission Requirements

For the duration of the Request for Proposals process, the City and County of San Francisco Employees' Retirement System and the Retirement Board will enter into a "blackout" period during which communications and meetings between interested parties and SFERS employees and Board members related to the subject matter of this Request for Proposals and any interested party's response to this Request for Proposals will be prohibited. This blackout will continue until the review and hiring of a consulting firm is completed.

This blackout will enable SFERS to treat all respondents fairly during the Request for Proposals process and permit the unbiased review of responses.

Blackout conditions are outlined below:

- Interested parties are to refrain from face-to-face meetings or communications with SFERS employees and Board members (communications include telephone conversations, letters and email) except as provided in Section V(B)(2) herein;
- This blackout remains in effect until the successful bidder enters into a contractual agreement with SFERS; and
- Interested parties may meet with SFERS employees or a Board member only if the meeting is limited to discussions that are not related to this Request for Proposals or any interested party's response to this Request for Proposals. SFERS' Executive Director will be notified of such meetings and will maintain a log of all such meetings occurring during the "blackout" period for this Request for Proposals.

Nothing in this "blackout" policy shall limit an interested party, who is currently engaged by the Retirement System as a service provider, from engaging in all meetings and communications with SFERS employees required to effectively conduct the Retirement System's business under the existing engagement.

If you have any questions regarding the blackout conditions, please contact Jay Huish, Executive Director, at (415) 487-7015.

A. Time and Place for Submission of Proposals

Proposals must be submitted and received by 5:00 p.m. (Pacific Standard Time), on April 18, 2018 as follows: an electronic file via e-mail and five (5) printed copies in a sealed envelope clearly market "Actuarial Review Proposal". Proposals are to be mailed to:

Janet Brazelton
Actuarial Services Coordinator
City and County of San Francisco Employees' Retirement System
Attn: Actuarial Review Proposal
1145 Market Street, 5th Floor
San Francisco, CA 94103
e-mail: janet.brazelton@sfgov.org

B. Format and Content of Proposals

COMPLETENESS, CLARITY, AND BREVITY ARE IMPORTANT. CANDIDATES SHOULD SUBMIT ALL INFORMATION REQUESTED IN THIS REQUEST FOR PROPOSALS ("RFP") IN THE SPECIFIED FORMAT. RESPONSES NOT MEETING FORMAT REQUIREMENTS OR THAT ARE INCOMPLETE IN ANY WAY MAY BE REJECTED. CANDIDATES ARE URGED TO READ THIS RFP CAREFULLY, TO TAKE CARE IN THE PREPARATION OF RESPONSES, AND TO CAREFULLY PROOFREAD THE FINAL VERSIONS FOR ACCURACY AND COMPLETENESS.

The Candidate's response to this Request for Proposals must be organized in the format listed below and detailed in Appendix A:

1. Introduction and Executive Summary
2. Firm Organization, Personnel, Clients, and Other Proposal Contents
3. Fee Proposal

SFERS intends to award this contract to the firm (or firms) that it considers will provide the best overall program services. SFERS reserves the right to accept other than the lowest priced offer and to reject any proposals that are not responsive to this request.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications - Unless otherwise indicated, all qualifications must be met as of December 31, 2017.

The Proposer must meet all of the following minimum qualifications, to SFERS' satisfaction, to be given further consideration for a contract award. The Proposer within the response to this RFP must establish minimum qualifications. Failure to satisfy all of the minimum qualifications, based on SFERS' sole judgment, will result in the rejection of the proposal.

1. As of December 2017, the firm must have been in business at least five years providing services similar to those described in the Scope of Services section.

2. At least one key professional member of the firm assigned to SFERS' account must have a minimum of ten years consulting experience with defined benefit public plans.
3. The firm must carry Errors and Omissions Insurance coverage or must have applied for such coverage by the submission date of the RFP. E&O insurance will be required throughout the duration of the contract.

B. Selection Criteria

All proposals will be reviewed to determine whether the proposals meet the requirements of this RFP. The primary factors which will be considered include, but will not necessarily be limited to, the following:

- Experience of the contractor and its staff in providing actuarial consulting services to large public pension systems (10% weight)
- Qualifications of the consulting staff to be assigned to this project, particularly regarding relevant experience with public pension systems and actuarial auditing (15% weight)
- Ability of the contractor to provide the requested services as demonstrated in the proposal (40% weight)
- Quality, conciseness, clarity, and completeness of the proposal (25% weight)
- Proposed fees and works schedules related to the assignment (10% weight)

V. Schedule

A. Schedule of Events

<u>Action</u>	<u>Date</u>
RFP is advertised and issued	March 15, 2018
Deadline to submit written questions and requests for interpretation	March 28, 2018
Response to written questions to be provided to all participants	April 4, 2018
Deadline for Submission of Proposal	April 18, 2018
Review of proposals & selection of Successful Proposer	April 19 – May 4, 2018
Retirement Board approval of Successful Proposer	May 9, 2018 (tentative)
Final Report	July 27, 2018 (tentative)
Presentation of Final Report to the Board	August 8, 2018 (tentative)

B. Explanation of Events

1. Release of RFP – the RFP will be advertised and posted in the City’s Bid and Opportunity newsletter as well as SFERS’ website (<https://mysfers.org>). All firms meeting minimum qualifications, as stated in Section IV, will be welcome to participate.
2. The City will keep a record of all parties who request and receive copies of the RFP. Any requests for information concerning the RFP must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of the RFP from SFERS. No questions or requests for interpretation will be accepted after March 28, 2018.

In preparing their responses, candidates should rely only on written material concerning this RFP issued by SFERS.

3. SFERS will respond to all candidates’ written questions by April 4, 2018.

**Deadline for submission of the RFP response is
5:00 PM, Pacific Time, April 18, 2018.
No exceptions to this deadline will be granted.**

4. SFERS reserves the right to interview final candidates at SFERS’ offices in San Francisco at dates to be determined.
5. All proposals submitted will be considered public documents. Any material that the candidate considers “Business-Confidential” should be so marked on the proposal.

C. Contract Award

To be considered, all proposals must comply with the requirements and specifications outlined in this RFP.

During contract negotiations, if SFERS or its agent is unable to agree to contract terms with the Proposer receiving the highest evaluation in this RFP process, SFERS reserves the right to terminate contract negotiations with that Proposer without undertaking another RFP process, and to negotiate with the Proposer receiving the next highest evaluation.

1. Termination – This RFP in no manner obligates SFERS or any of its agencies to the eventual procurement of services described, implied or which may be proposed, until confirmed by a written contract. Progress toward this end is solely at the discretion of SFERS and may terminate at any time prior to the signing of a contract.

SFERS reserves the right to cancel this RFP at any time and to reject any and all proposals submitted in response to this RFP, if SFERS determines such action or actions are in its best interest.

2. Proposal Applicability – To allow sufficient time for contract negotiation, all fees and conditions stated in the proposal must be firm for a period of 120 days from the deadline for submission of proposals.
3. Negotiation Requirements – SFERS reserves the right to negotiate a change in terms if, in its sole opinion, the representatives assigned by the contractor are not adequately meeting SFERS' needs for this contract.
4. Legal Review – SFERS expects that all candidates will agree to be bound by the terms and conditions articulated in this RFP. For this reason, it is strongly recommended that Proposers have the terms and conditions contained herein reviewed with corporate counsel and that concerns be brought to the attention of SFERS staff in a timely manner.
5. Governing Law – This procurement and any agreement with Proposers that may result shall be governed by the laws of the State of California and the City and County of San Francisco. Submission of a proposal constitutes acceptance of this condition.
6. Basis for Proposal – Only information supplied by the SFERS staff in writing or in this RFP should be used in the preparation of proposals.
7. Proposal Preparation Cost – Any cost incurred by the Proposer in the preparation, transmittal or presentation of any proposal or material submitted in response to this RFP will be borne solely by the Proposer.
8. Proposer Qualification – SFERS may take such investigations as necessary to determine the ability of the Proposer to fulfill the terms of this RFP. SFERS reserves the right to reject the proposal of any Proposer who, in SFERS' opinion, is not a responsible candidate as defined below:

“Responsible candidate” means a candidate who submits a complete proposal and who has furnished, when required, information and data to prove that its financial resources, production and service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.

9. Non-Discrimination in Contracts - All contracts are subject to the non-discrimination ordinance of the City and County of San Francisco. Contractors should note the provision prohibiting discrimination by contractors in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees.

VI. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the SFERS, in writing, if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to SFERS promptly after discovery, but in no

event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all requests for written modification or clarification of the RFP, must be directed in writing to:

Janet Brazelton
Actuarial Services Coordinator
City and County of San Francisco Employees' Retirement System
Attn: Actuarial Review Proposal
1145 Market Street, 5th Floor
San Francisco, CA 94103
E-mail: janet.brazelton@sfgov.org

C. Addenda to RFP

SFERS may modify the RFP, prior to the proposal due date, by issuing written addenda. Addenda will be sent via regular, first class U.S. mail to the last known business address or by electronic means to the last provided email address of each firm listed with SFERS as having received a copy of the RFP for proposal purposes. SFERS will also post to its website (<https://mysfers.org>) any written addenda. SFERS will make reasonable efforts to notify Proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the Proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by SFERS prior to the proposal due date regardless of when the proposal is submitted. Therefore, the SFERS recommends that the Proposer call SFERS before submitting its proposal to determine if the Proposer has received all addenda.

D. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

E. Revision of Proposal

A Proposer may revise a proposal on the Proposer's own initiative at any time before the deadline for submission of proposals. The Proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Proposer.

At any time during the proposal evaluation process, SFERS may require a Proposer to provide oral or written clarification of its proposal. SFERS reserves the right to make an award without further clarifications of proposals received.

F. Errors and Omissions in Proposal

Failure by SFERS to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

G. Financial Responsibility

SFERS accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP and associated materials will become the property of SFERS and may be used by SFERS in any way deemed appropriate.

H. Proposer's Obligations Under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Government Conduct Code, which states:

No person who contracts with the City and County of San Francisco, for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the Retirement System or the board on which a City elective officer serves.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil or administrative penalties:

(a) Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.

(b) Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.

(c) Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

I. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

J. Public Access to Meetings and Records

If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer must comply with the reporting requirements of that Chapter. The Proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

K. Reservations of Rights by SFERS

The issuance of this RFP does not constitute an agreement by SFERS that any contract will actually be entered into by SFERS. SFERS expressly reserves the right at any time to:

- 1)** Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- 2)** Reject any or all proposals;
- 3)** Reissue a Request for Proposals;
- 4)** Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;

- 5) Procure any materials, equipment or services specified in this RFP by any other means; or
- 6) Determine that no project will be pursued.

L. No Waiver

No waiver by SFERS of any provision of this RFP shall be implied from any failure by SFERS to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

M. Local Business Enterprise Participation

SFERS strongly encourages proposals from qualified Local Business Enterprises (LBEs) as defined in Chapter 14.B of the San Francisco Administrative Code. If you desire to participate in the City's Local Business Enterprise Program, which helps certain financially disadvantaged businesses increase their ability to compete effectively for City contracts, go to the "Qualify to do Business" tab under Vendor Information on the Office of Contract Administration website at <http://sfgov.org/oca/> for details and required forms.

N. Chapter 12B and 12C: Nondiscrimination in Employment and Benefits

Chapter 12B and 12C of the San Francisco Administrative Code are incorporated by reference as though fully set forth herein. Chapters 12B and 12C prohibit discrimination by City contractors in employment, the use of property, the provision of public accommodations and in the provision of benefits to employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees.

Please refer to Appendix B regarding the requirements of San Francisco Administrative Code Chapters 12B and 12C.

O. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

VII. City Contract Requirements

A. Standard Contract Provisions

The successful Proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages. Full text of all referenced San Francisco municipal codes can be viewed online at www.sfgov.org at the *SF Municipal Codes* link under the Open Gov tab and then Legislation & Codes.

B. Required Standard City Forms

Before the City can award any contract to Proposer, the Proposer must register as a prospective Bidder with the City and complete certain forms online in the City's Supplier Portal:

1. Business Registration Certificate;
2. Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits; and
3. IRS Form W-9 – Request for Taxpayer Identification Number and Certification.

Complete descriptions of these required forms are available at the “Qualify to do Business” tab of the Office of Contract Administration website at <http://sfgov.org/oca/> under Vendor Information or in Appendix B of this RFP.

Appendix A

Required Proposal Contents

Introduction and Executive Summary

Submit a letter of introduction and executive summary of the proposal. A person authorized by your firm to obligate your firm to perform the commitments contained in the proposal must sign the letter. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

Proposal Contents

The proposal contents must include the following:

- Contractor's name, address of the office providing services under the contract, telephone number and e-mail address
- General description of the contractor, including size, number of employees, primary business, and other business or services offered.
- Identification of the supervising actuary available for assignment on the engagement
- Identification of other personnel who will be performing work under the contract
- Summary information regarding the professional and experience qualifications for supervising and support actuaries and other personnel who will perform work under the contract
- Description of the contractor's experience in providing actuarial and consulting services for large public employee retirement systems and a list of the public employee retirement systems for which the firm has performed services similar to those identified under Section II. Scope of Services of the Request for Proposal.
- Description of your understanding of the requested services including your proposed approach in providing the services requested
- Estimated fees, quoted on both a "best estimate" and "not to exceed" basis and proposed timeline (work schedule) for the contract. This contract is budgeted at \$75,000 - \$80,000.

Appendix B

Required Vendor Forms

All vendors must register with the City and complete certain forms before the City can do business with them. Information for City Suppliers and Bidders may be found here:

<https://sfcitypartner.sfgov.org/>

Self-service training may be found here:

<https://sfcitypartner.sfgov.org/Training/TrainingGuide>

Information about business registration can be found here:

<https://newbusiness.sfgov.org/vendor/>

For help and support:

<https://sfcitypartnersupport.sfgov.org/support/home>

or call (415) 944-2442.

Appendix C
Sample Professional Services Contract

Agreement between

THE SAN FRANCISCO CITY AND COUNTY EMPLOYEES' RETIREMENT SYSTEM
and
[NAME OF FIRM]

THIS Agreement is made this ____ day of [MONTH, YEAR] in the City and County of San Francisco, State of California, by and between: [NAME AND ADDRESS OF FIRM] ("Actuary") and the San Francisco Retirement Board ("Retirement Board"), by and through the San Francisco City and County Employees' Retirement System ("System").

RECITALS

WHEREAS, The System is a duly established and existing public retirement system created under the Charter of the City and County of San Francisco, and

WHEREAS, The Retirement Board has plenary authority and fiduciary responsibility for investment of System monies and administration of the System; and

WHEREAS, The Retirement Board, through the System, wishes to retain a professional actuarial consulting firm to _____ [DESCRIPTION OF SERVICES]; and

WHEREAS, The System issued a request for proposal ("RFP") for _____ [DESCRIPTION OF RFP]. As a result of that RFP process, the System recommended and the Retirement Board approved selection of Actuary to _____ [DESCRIPTION OF SERVICES]; and

WHEREAS, Actuary represents and warrants that it is qualified to perform the services required by System under this Agreement;

Now, THEREFORE, in consideration of the promises and mutual covenants herein contained, Actuary and System do hereby agree as follows:

1. **Term of the Agreement.** Subject to Section 7 of this Agreement, the term of this Agreement is from [DATE] to [DATE].
2. **Engagement.** System hereby engages Actuary to _____ [DESCRIPTION OF SERVICES]. Actuary hereby accepts that engagement.
3. **Services.** Actuary agrees to perform the services described in Exhibit A, Scope of Services, attached hereto and incorporated by reference as if fully set forth herein. Actuary's services shall meet the requirements and standards set forth in this Agreement. Actuary will promptly correct any errors or omissions in the provision of such services, at no cost or expense to System and in a timely manner after a request by System.

4. Compensation.

- a. For the full performance and completion of the services described in Exhibit A, Actuary shall be compensated as set forth in Exhibit B, Fee Schedule, attached hereto and incorporated by reference as if fully set forth herein. The fee set in Exhibit B includes the compensation for professional services as well as travel, printing, delivery, secretarial and clerical support services and any other costs incurred as may be necessary to perform the services under this Agreement in a professional manner. The Actuary shall furnish invoices as specified in Exhibit B. No charges shall be incurred under this Agreement nor shall any payments become due to Actuary until reports, services, or both, required under this Agreement are received from Actuary and approved by the System as being in accordance with this Agreement. System may withhold payment to Actuary in any instance in which Actuary has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall System be liable for interest or late charges for any late payments.
- b. In no event shall the compensation under this Agreement exceed _____ [SPECIFY AMOUNT].
- c. Payment Does Not Imply Acceptance of Work. The granting of any payment by System, or the receipt thereof by Actuary, shall in no way lessen the liability of Actuary to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of the work, equipment or materials may not have been apparent or detected at the time the payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by System and in that case must be replaced by Actuary without delay.

5. Actuary's Responsibility.

- a. Actuary represents and warrants that it meets the standards of a qualified actuary under the provisions of the Employee Retirement Income Security Act of 1974, and that it has specific experience providing actuarial services to public retirement systems. Actuary further agrees that it shall perform its obligations under this Agreement in the highest professional manner, and with the competence, care, skill, prudence and diligence prevailing in the actuarial industry and that a prudent person acting in a like capacity to that of Actuary and familiar with actuarial services would use in the conduct of those services. In performing services under this Agreement, Actuary shall adhere to professional and ethical standards required of actuaries under the Code of Professional Conduct. Actuary shall be responsible for and cause any and all of its employees, agents and representatives providing services under this Agreement to exercise the same standard of care and comply with the Code of Professional Conduct.
- b. Actuary shall comply at all times with all federal, State of California, and local laws applicable to Actuary and the System, and shall obtain from the appropriate authorities any permits and licenses required for the conduct of Actuary's business and the provision of services under this Agreement.

Appendix C
Sample Professional Services Contract

- c. The Actuary acknowledges that it must maintain independence from all interests other than the interests of the System and its members and beneficiaries, as those interests are expressed by the Retirement Board. Actuary further acknowledges that the System staff act as the agent for the Retirement Board in its relationship with the Actuary, but is subordinate to the Retirement Board and cannot direct the Actuary to consider interests contrary to those expressed by the Retirement Board.
- d. The services and deliverables Actuary provides under this Agreement shall not infringe on any intellectual property rights of any other third party.

6. Personnel.

- a. Work under this Agreement shall be performed only by personnel under the supervision of and in the employment of Actuary, who in Actuary's judgment have the necessary education, training and experience to perform the tasks Actuary assigns to them under this Agreement. Actuary will comply with System's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at System's request, must be supervised and directed by Actuary. Actuary shall commit adequate resources to complete the services within the schedule specified in this Agreement.
- b. The System may designate in writing, from time to time, that certain personnel of the Actuary are "key personnel." Actuary shall immediately notify the System in writing of any changes in key personnel within its organization. Key personnel under this Agreement are: [SPECIFY].

7. Budget Authorization. This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco. Charges will accrue only after prior written authorization certified by the City Controller, and any amount of the System's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to the System at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The System has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Actuary's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

This section controls against any and all other provisions of this Agreement.

- 8. Invoices.** Actuary shall submit invoices for services under this Agreement in a form acceptable to the System.
- 9. False Claims.** Actuary acknowledges that Actuary is subject to San Francisco Administrative Code Section 21.35, which provides that any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The San Francisco Administrative Code is available on the web at:

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http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the System a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the System; (c) conspires to defraud the System by getting a false claim allowed or paid by the System; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the System; or (e) is a beneficiary of an inadvertent submission of a false claim to the System, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the System within a reasonable time after discovery of the false claim.

10. Taxes. Actuary has the sole obligation to pay any taxes, including, without limitation, California sales and use taxes, and payroll taxes for Actuary personnel, levied on this Agreement, the transaction, or the services delivered.

11. Independent Contractor.

- a. In performing services under this Agreement, Actuary is acting at all times as an independent contractor, and is wholly responsible for the manner in which it performs the services and work under this Agreement. Any terms in this Agreement referring to direction from System shall be construed as providing for direction as to policy and the result of Actuary's work only, and not as to the means by which a result is obtained. System does not retain the right to control the means or the method by which Actuary performs work under this Agreement. This Agreement is not intended, and may not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association between Actuary and System. Neither Actuary nor any agents or employees of Actuary shall have employee status with System, nor be entitled to participate in any plans, arrangements, or distributions by System pertaining to or in connection with any retirement, health or other benefits that System may offer its employees. Actuary is liable for the acts and omissions of itself, its employees and its agents. Actuary shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Actuary's performing services and work, or any agent or employee of Actuary providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between System and Actuary or any of Actuary's agents or employees.
- b. If any governmental authority should, nevertheless, determine that Actuary is an employee, then the System's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to the Actuary and to the applicable governmental authority does not exceed the maximum amount specified in Section 4(b). Actuary shall refund any amounts necessary to effect such reduction.

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12. Insurance.

- a. Without in any way limiting Actuary's liability pursuant to the "Indemnification" section of this Agreement, Actuary must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
 - 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 - 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
 - 4) Professional errors and omissions liability insurance with annual limits not less than \$10,000,000 each claim and in the aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
 - 1) Name as Additional Insured the Retirement System and Retirement Board, and their Officers, Agents, and Employees.
 - 2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. Regarding Workers' Compensation, Actuary hereby agrees to waive subrogation which any insurer of Actuary may acquire from Actuary by virtue of the payment of any loss. Actuary agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the System for all work performed by the Actuary, its employees, agents and subcontractors.
- d. All policies shall provide thirty days' advance written notice to the System of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the System address in the "Notices" section.
- e. Should any of the required insurance be provided under a claims-made form, Actuary shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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- f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
 - g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the System receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the System may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
 - h. Before commencing any operations under this Agreement, Actuary shall furnish to System certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to System, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
 - i. Approval of the insurance by System shall not relieve or decrease the liability of Actuary hereunder.
- 13. Indemnification.** Actuary shall indemnify and save harmless the System, and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Actuary or loss of or damage to property, arising directly or indirectly from Actuary's performance of this Agreement, including, but not limited to, Actuary's use of facilities or equipment provided by System or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on System, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of System and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Actuary, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and System's costs of investigating any claims against the System. In addition to Actuary's obligation to indemnify the System, Actuary specifically acknowledges and agrees that it has an immediate and independent obligation to defend System from any claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Actuary by System and continues at all times thereafter. Actuary shall indemnify and hold System harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by System, or any of their officers or agents, of articles or services to be supplied in the performance of this Agreement.
- 14. Limitation on Liability of the System.** The System's payment obligations hereunder shall be limited to the payments under Section 4 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the System be liable, regardless of whether the

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claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

- 15. Termination for Convenience.** The System shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The System shall exercise this option by giving Actuary written notice of termination. The notice shall specify the date on which termination shall become effective.

Upon termination of this Agreement, Actuary shall commence and perform, with diligence, all actions necessary on the part of Actuary to effect the termination of this Agreement on the date specified by the System and to minimize the liability of Actuary and the System to third parties as a result of termination. All such actions shall be subject to the prior approval of the System.

16. Default; Remedies

- a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:
- 1) Actuary fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

9. False Claims
10. Taxes
12. Insurance
19. Proprietary or Confidential Information of System
24. No Assignment or Subcontracting
30. Drug-Free Workplace
45. Compliance with Laws
48. Protection of Private Information
49. Graffiti Removal

- 2) Actuary fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from System to Actuary.
- 3) Actuary (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Actuary or of any substantial part of Actuary's property or (e) takes action for the purpose of any of the foregoing.
- 4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Actuary or with respect to

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- any substantial part of Actuary's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Actuary.
- b. On and after any Event of Default, System shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, System shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Actuary any Event of Default; Actuary shall pay to System on demand all costs and expenses incurred by System in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. System shall have the right to offset from any amounts due to Actuary under this Agreement or any other agreement between System and Actuary all damages, losses, costs or expenses incurred by System as a result of such Event of Default and any liquidated damages due from Actuary pursuant to the terms of this Agreement or any other agreement.
- c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.
17. **Rights and Duties upon Termination or Expiration.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:
- | |
|---|
| 4(c). Payment Does Not Imply Acceptance of Work |
| 9. False Claims |
| 10. Taxes |
| 11. Independent Contractor |
| 12. Insurance |
| 13. Indemnification |
| 14. Limitation on Liability of the System |
| 19. Proprietary or Confidential Information of System |
| 20. Ownership of Results |
| 21. Works for Hire |
| 23. Audit and Inspection of Records |
| 40. Modifications |
| 41. Administrative Remedy |
| 42. California Law; Venue. |
| 43. Construction |
| 44. Entire Agreement |
| 46. Severability |
| 48. Protection of Private Information |
| 50. Cooperative Drafting |

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Upon termination of this Agreement prior to expiration of the term specified in Section 1, this Agreement shall terminate and be of no further force or effect. Actuary shall transfer title to System, and deliver in the manner, at the times, and to the extent, if any, directed by System, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to System.

18. **Conflict of Interest.** Through its execution of this Agreement, Actuary acknowledges that it is familiar with the provision of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the San Francisco Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of those provisions and agrees that it will immediately notify the System if it becomes aware of any such fact during the term of this Agreement.
19. **Proprietary or Confidential Information of System.** Actuary understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Actuary may have access to private or confidential information that may be owned or controlled by System and that such information may contain proprietary or confidential details, including but not limited to financial and other information of System members and beneficiaries, the disclosure of which to third parties may be damaging to System and its members and beneficiaries. Actuary agrees that all information disclosed by System to Actuary shall be held in confidence and used only in performance of the Agreement. Actuary shall exercise the same standard of care to protect such information as a reasonably prudent actuary would use to protect its own proprietary data.
20. **Ownership of Results.** Any interest of Actuary or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Actuary or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to System. However, Actuary may retain and use copies for reference and as documentation of its experience and capabilities. The Retirement Board and System shall have the unrestricted authority to publish, disclose, distribute or otherwise use in whole or in part any reports, data or other materials prepared under this Agreement, crediting Actuary as the source.
21. **Works for Hire.** If, in connection with services performed under this Agreement, Actuary or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the System. If it is ever determined that any works created by Actuary or its subcontractors under this Agreement are not works for hire under U.S. law, Actuary hereby assigns all copyrights to such works to the System, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the System, Actuary may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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22. **Notices.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail (return receipt requested) or by fax with confirmation, and shall be addressed as follows:

To the System: Jay Huish, Executive Director
San Francisco City and County Employees' Retirement System
1145 Market Street, 5th Floor
San Francisco, CA 94103
E-mail address: jay.huish@sfgov.org

To the Actuary: [SPECIFY]

From time to time, either party may designate a new recipient or address for notice for purposes of this Section 22 by written notice to the other party.

23. **Audit and Inspection of Records.** Actuary agrees to maintain and make available to the System, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Actuary will permit System to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Actuary shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon System by this Section 23.
24. **No Assignment or Subcontracting.** The services under this Agreement are personal in nature and Actuary shall perform the work contemplated with resources available within its own organization. Neither this Agreement nor any duties or obligations hereunder may be assigned, subcontracted or delegated by Actuary without prior written consent of the System.
25. **Earned Income Credit Forms.** Administrative Code Section 12O requires that employers provide their Eligible Employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Actuary shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Actuary has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Actuary; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in this Section 25 shall constitute a material breach by Actuary of the terms of this Agreement. If, within thirty days after Actuary receives written notice of such a breach, Actuary fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Actuary fails to commence efforts to cure within such period or thereafter fails to diligently

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pursue such cure to completion, the System may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Actuary shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section 25 and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

- 26. Local Business Enterprise Utilization.** Actuary understands and agrees to comply fully with all the requirements of the Local Business Enterprise Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase the Actuary's obligations or liabilities, or materially diminish Actuary's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made part of this Agreement as though fully set forth in this section. Actuary's willful failure to comply with any applicable provision of the LBE Ordinance is a material breach of Actuary's obligations under this Agreement and shall entitle the System, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Actuary shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting.

Actuary agrees to maintain records necessary for monitoring its compliance with Chapter 14B for a period of three years following termination of this Agreement.

27. Nondiscrimination; Penalties.

- a. **Actuary Shall Not Discriminate.** In the performance of this Agreement, Actuary agrees not to discriminate against any employee, City and County of San Francisco or System employee working with Actuary, applicant for employment with Actuary, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.
- b. **Subcontracts.** Actuary shall incorporate by reference in all subcontracts under this Agreement the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Actuary's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- c. **Nondiscrimination in Benefits.** Actuary does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the System

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elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

- d. **Condition to Contract.** As a condition to this Agreement, Actuary shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
 - e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Actuary shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Actuary understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Actuary and/or deducted from any payments due Actuary.
- 28. MacBride Principles – Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Actuary acknowledges and agrees that he or she has read and understood this section.
- 29. Tropical Hardwood and Virgin Redwood Ban.** Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.
- 30. Drug-Free Workplace.** Actuary acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on System’s premises. Actuary agrees that any violation of this prohibition by Actuary, its employees, agents or assigns will be deemed a material breach of this Agreement.
- 31. Resource Conservation.** Actuary shall comply in good faith with Chapter 5 of the San Francisco Environment Code (Resource Conservation), which is hereby made a part of this Agreement as though fully set forth herein.

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- 32. Sunshine Ordinance.** Actuary understands that under San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between the System and persons or firms seeking contracts, must be open to public inspection immediately after a contract has been awarded. All information provided by Actuary which is covered by that ordinance (as it may be amended) will be made available to the public upon appropriate request.
- 33. Limitations on Contributions.** Through execution of this Agreement, Actuary acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the System for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Actuary acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Actuary further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Actuary's board of directors; Actuary's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Actuary; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Actuary. Additionally, Actuary acknowledges that Actuary must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Actuary further agrees to provide to System the names of each person, entity or committee described above.
- 34. Prohibition on Political Activity with System Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Actuary may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Actuary agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City and County of San Francisco Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Actuary violates the provisions of this section, the System may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Actuary from bidding on or receiving any new System contract for a period of two (2) years. The Controller will not consider Actuary's use of profit as a violation of this section.
- 35. Compliance with Americans with Disabilities Act.** Actuary acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Actuary shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal,

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state and local disability rights legislation. Actuary agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Actuary, its employees, agents or assigns will constitute a material breach of this Agreement.

36. **Requiring Minimum Compensation for Employees.** Actuary agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance ("MCO"), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web:
[http://www.amlegal.com/nxt/gateway.dll/California/administrative/chapter12pminimumcompensation?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca](http://www.amlegal.com/nxt/gateway.dll/California/administrative/chapter12pminimumcompensation?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca).
37. **Requiring Health Benefits for Covered Employees.** Unless exempt, Actuary agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web:
[http://www.amlegal.com/nxt/gateway.dll/California/administrative/chapter12qhealthcareaccountability?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca](http://www.amlegal.com/nxt/gateway.dll/California/administrative/chapter12qhealthcareaccountability?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca).
38. **No Waiver.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.
39. **Documents and Reports.** The Actuary will furnish to the System and its authorized representatives, on reasonable notice (which in no event need ever be more than five (5) business days) and during ordinary business hours, full access (including useable electronic data format) to the records maintained by Actuary with regard to this Agreement. Any interest of Actuary in reports, memoranda, or other documents prepared by the Actuary in connection with services to be performed under this Agreement shall become the property of and will be transmitted to the System in a useable format (including electronic data format) upon demand.
40. **Modifications.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
41. **Administrative Remedy.** All disputes, controversies or claims arising under or relating to this Agreement shall be presented to the Executive Director of the System for disposition. The Executive Director's decision shall be deemed an exhaustion of all administrative remedies. However, the Executive Director's decision shall not preclude resorting to judicial remedy.

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42. **California Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
43. **Construction.** Section headings are for reference only and shall not be used to interpret this Agreement. Terms such as “hereunder” or “herein” refer to this Agreement as a whole. Terms such as “include” or “including” shall be deemed followed by the words “without limitation.” References to consents, approvals, determinations or other decisions of the System shall refer to the sole judgment of the System.
44. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes all other oral or written provisions. The attached Exhibits A and B are a part of this Agreement.
45. **Compliance with Laws.** Actuary shall keep itself fully informed of the provisions of San Francisco Charter and Municipal codes and ordinances, the rules and regulations of the System, and State of California and federal laws that in any manner affect the performance of this Agreement, and must at all times comply with such federal, California and local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.
46. **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
47. **Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the San Francisco City Attorney. No invoices for services provided by law firms or attorneys, including without limitation, as subcontractors of Actuary, will be paid unless the provider received advance written approval from the City Attorney.
48. **Protection of Private Information.** Actuary has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Actuary agrees that any failure of Actuary to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the System may terminate the Agreement, bring a false claim action against Actuary pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Actuary.
49. **Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a

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sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City and County of San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Actuary shall remove all graffiti from any real property owned or leased by Actuary in the City and County of San Francisco within forty eight (48) hours of the earlier of Actuary's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the Actuary to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

50. **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.
51. **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first referenced above.

**SAN FRANCISCO CITY AND COUNTY
EMPLOYEES' RETIREMENT SYSTEM**

By: _____ Date: _____
Jay Huish
Executive Director

[FIRM NAME]

By: _____ Date: _____
NAME
TITLE

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By: _____
Robert A. Bryan
Deputy City Attorney

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EXHIBIT A
SCOPE OF SERVICES

Actuary agrees to provide the following services:

Consulting and Advisory Services. [SPECIFY]

Deadlines and Deliverables. [SPECIFY]

Point of Contact. Actuary's point of contact with the System for day to day work under this Agreement is:

Janet Brazelton
Actuarial Services Coordinator
San Francisco City and County Employees' Retirement System
1145 Market Street, 5th Floor
San Francisco, CA 94103
Phone: (415) 487-7024
Email: janet.brazelton@sfgov.org

System's point of contact with Actuary for day to day work under this Agreement is:

[SPECIFY]

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EXHIBIT B
FEE SCHEDULE

[SPECIFY FEE ARRANGEMENT AND INVOICE SCHEDULE]