



Peralta Community College District

501 5th Avenue Oakland, California 94606

Phone (510) 466-7225 Fax (510) 587-7873

Purchasing Department

ADDENDA

RFP No.: 17-18/19 Investment Management Services, Multi-Year Contract

January 12, 2018

ADDENDUM No. 3

This addendum supersedes items of the original contract documents wherein it is inconsistent with it. All other conditions remain unchanged. The following changes, modifications, corrections, additions or clarifications shall apply to the contract documents and shall be made a part of and subject to all of the requirements thereof as if originally specified or shown. It is the responsibility of the bidder to review the list of attachments to ensure that the addendum is full and complete. This Addendum modifies the original Bid Documents for the above RFP.

Acknowledge receipt of this addendum in the space provided on the BID FORM. Failure to do so may subject Bidder to disqualification.

Revisions/Additions

Attachment 6 – Investment Management Service Agreement was not provided on the original RFP 17-18/19. (Please see attachment).

END OF ADDENDUM THREE

AGREEMENT FOR INVESTMENT MANAGEMENT SERVICES

This Agreement (“Agreement”) is entered into on the _____ day of _____, 2017, by and between the Other Post-Employment Benefits Trust Retirement Board (“Board”) of the Peralta Community College District (“District”) and _____ (“Investment Manager”).

WHEREAS, the District has adopted and maintains the Peralta Community College District Retiree Healthcare Plan (the "Plan") for the purpose of providing welfare benefits to certain eligible employees; and

WHEREAS, the District has entered into the Indenture of Trust, dated as of December 1, 2005, between the District and Deutsche Bank National Trust Company, relating to \$153,749,832.25 Peralta Taxable 2005 Limited Obligation OPEB (Other Post-Employment Benefit) Bonds (the "Indenture"), and Section 4.01 of the Indenture provides that these bonds are secured by a pledge of and lien on amounts held in the Retiree Health Benefit Program Fund; and

WHEREAS, the District is authorized under Section 4.06 of the Indenture to request the trustee under the Indenture to transfer funds held by the trustee to a third party custodian to be invested as determined by the District (or its appropriated delegated representative) in accordance with California Government Code section 53622; and

WHEREAS, U.S. Bank National Association pursuant to the Agreement of Resignation, Appointment and Acceptance dated June 21, 2013, became the successor trustee to Deutsche under the Indenture (in such capacity, "U.S. Bank"); and

WHEREAS, the District has authorized and the Plan appoints the Board for purposes specified therein, including for the purposes of appointing a custodian to maintain custody of the assets and a trustee to hold in trust all funds contributed to the Plan and grants the Board the authority to enter into an agreement pursuant to which a trust shall be created for such purpose; and

WHEREAS, the Board, acting on behalf of the District under a delegation made under California Government Code section 53621, has engaged a trustee to maintain custody of certain of the funds transferred from the District’s Retiree Health Benefit Program Fund under the Indenture as is permissible for the Board to do under Section 4.6 of the Indenture, to be known as the “Peralta OPEB Retiree Medical Trust 1” (hereinafter, “Trust”) as a funding vehicle for payment of benefits under the Plan for employees hired prior to July 1, 2004 who are eligible for post-employment health benefits; and

WHEREAS, the Trust is administered by the Board, a separate body from the District’s Board of Trustees; and

WHEREAS, the Board is charged with the investment of the assets of the Trust, in accordance with the provisions of Article XVI, Section 17 of the California Constitution, and California Government Code sections 53620, 53621, and 53622, and is authorized to engage an investment manager for the purpose of providing investment management services to the Board pursuant to California Government Code section 53060, and

WHEREAS, the Board desires to obtain investment management services in connection with Request for Proposals (“RFP”) No. _____, and issued the RFP dated _____, 2017, a copy of which is attached, as Exhibit A, and incorporated herein, and

WHEREAS, Investment Manager desires to furnish the services described in the RFP and has submitted a written proposal dated _____, 2017, and

WHEREAS, copies of relevant portions of the Investment Manager-provided materials described in the preceding sentence are attached, as Exhibit B, and incorporated herein,

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter set forth, the parties hereby agree as follows:

1. PERFORMANCE OF SERVICES

Investment Manager agrees to provide professional investment management services to the Board in accordance with the terms and conditions of this Agreement, including Exhibit A and Exhibit B.

2. SCOPE OF SERVICES

The scope of services that Investment Manager will provide consist of the services set forth in Exhibit A, Section 5.

3. OPEB TRUST INFORMATION

The Board agrees to provide Investment Manager with reasonably necessary and appropriate information for Investment Manager to perform its obligations under this Agreement, as requested by Investment Manager from time to time, including a written summary of any investment limitations or restrictions. The Board agrees to inform Investment Manager within a reasonable time of any change in circumstances affecting the needs or goals of the Board.

4. TERM OF AGREEMENT

The term of this Agreement is from _____ to _____, with the option, at the Board's sole discretion, to extend for two additional one-year periods, unless terminated sooner in accordance with Section 19 of this Agreement. Upon expiration of this Agreement, the provisions of Section 19 of this Agreement regarding termination apply.

5. KEY PERSONNEL

At all times during the term of this Agreement [*lead Investment Manager's name*] shall serve as the primary staff person of Investment Manager to undertake, render and oversee all of the services under this Agreement. Upon written notice by Investment Manager and approval by the Board, which will not be unreasonably withheld, Investment Manager may substitute this person with another person, who possesses similar qualifications and experience for this position.

6. COMPENSATION

A. Fees for Services

The Board will pay compensation to Investment Manager in accordance with the following fee schedule:

	Total Fee
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Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Optional year 1	
Optional year 2	

Investment Manager represents and warrants that the rate of the fees paid by the Board is not and will not be higher than any investment management fee paid or payable by any other tax-exempt client of Investment Manager with investment management services comparable to the services required under this Agreement. If Investment Manager charges a lower fee to a fund of similar size and complexity, then Investment Manager will reduce the fees for the Board accordingly.

B. Fee Limitation

The fees described in this Section are all-inclusive and cover all services provided under this Agreement, including but not limited to investment policy development, asset allocation assistance, regular rebalancing, manager selection and monitoring, and quarterly and annual performance reporting. Investment Manager will not be reimbursed for travel time, expenses, telephone costs, copying costs, etc. Unless the Board provides advance written consent, no additional fees or other costs of any kind shall be charged, directly or indirectly, to the Board or the Trust assets for services provided under this Agreement. To the extent additional work is undertaken as agreed to by the Board in writing and in advance, such additional work will be charged based on the terms agreed to by the parties.

C. Payment of Fees

- i. All fees under this Section 6 will be payable by the Board only to Investment Manager, and not to any subcontractor or other vendor engaged to provide services under this Agreement.
- ii. Fees shall be paid monthly in arrears. At the end of each calendar month, Investment Manager shall prepare and submit to the Board an invoice for fees then due under this Agreement.
- iii. All undisputed invoices will be paid within _____ days of receipt.
- iv. If the Board has a genuine good faith dispute in relation to all or any portion of an invoice submitted by Investment Manager, the Board may withhold payment of the amount subject to dispute and will notify Investment Manager within ____ days of receipt of the disputed invoice of the withheld amount. If all or any portion of the disputed amount becomes payable, the Board will make payment of such amount within ____ days of the date the parties agree such amount is due by the Board.
- v. Annual fees under this Agreement will be pro-rated to reflect the monthly billing cycle, and to reflect any period when services are provided for less than a full month. If this Agreement is terminated by either the Board or Trustee effective as of a date which is not the end of a calendar month, the Board shall pay Trustee a pro rata portion of the fee payable hereunder through the written receipt of such notice based on the actual number of days of such month that have elapsed.

- vi. No payment made to the Trustee shall constitute a waiver of any claim or right that the Board may have against the Trustee.
- vii. The Board may withhold payment on or offset against an invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect the Board from loss because of:
 - viii. the Trustee's failure to perform services in accordance with the Agreement;
 - ix. third-party claims, suits, or liens arising out of or relating to the Trustee's performance of services under the Agreement, except to the extent secured or provided for by insurance, bond, or otherwise to the Board's reasonable satisfaction; or
 - x. the Trustee's failure to pay money to the Board when due.
- xii. Notwithstanding any provision to the contrary, the Board shall have no obligation to make any payment to the Trustee at any time, after notice to the Trustee when the Trustee is in material breach of the Agreement; or
- xiii. the Trustee fails to furnish and maintain evidence of current insurance in accordance with the requirements of the Agreement.

D. Expenses

- i. Investment Manager shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, and investment management facilities. Investment Manager shall not be reimbursed for travel expenses.
- ii. Except as expressly provided otherwise herein, the Trust shall pay all of its own expenses including, without limitation, taxes, expenses of an investment fund, expenses of the Trust's actuary, independent auditors and legal counsel, if any, and fees and expenses of administration of the Trust.

E. Other Services

If and to the extent that the Board requests that Investment Manager render services beyond the scope of this Agreement, such additional services will be compensated separately on terms to be agreed upon between the Board and Investment Manager at the hourly or other rates specified in Exhibit B, Section 7.P.

F. Conflicting Provisions

Notwithstanding anything to the contrary, the terms of this Section override any conflicting provisions in the attached Exhibits A and B regarding fees.

7. REGISTERED INVESTMENT ADVISER; FIDUCIARY STATUS

- A. Investment Manager hereby represents that it is a registered investment adviser under the Investment Advisers Act of 1940. Investment Manager shall immediately notify the Board if at any time during the term of this Agreement it is not so registered or if its registration is suspended.
- B. The Investment Manager acknowledges and agrees that it is a fiduciary of the Plan, and as such, with respect to the investment and other discretionary Trust asset management services provided under this Agreement, the Investment Manager is subject to California

Government Code section 53622 with respect to those funds held in trust hereunder. In accordance with California Government Code section 53622, the Investment Manager agrees that, in performing any duty allocated to the Investment Manager under this Agreement, the Trustee shall discharge its duties (i) solely in the interest of, and for the exclusive purposes of, providing benefits to participants in the Plan, minimizing employer contributions thereto, and defraying reasonable expenses of administering the Plan; (ii) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims, and (iii) shall diversify the investments of the funds so as to minimize the risk of loss and maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

- C. The federal securities law imposes liabilities under certain circumstances on persons who are required to act in good faith. Nothing in this Agreement in any way constitutes a waiver or limitation of rights that the Board or Trust may have under any federal or state securities laws.

8. SUSPENSIONS, COMPLAINTS

Investment Manager shall promptly give notice to the Board if Investment Manager receives written notice of the filing against it or any professional of Investment Manager who has performed any service with respect to the Trust in the 24 preceding months, of any complaints or disciplinary actions by the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, the NASD, any Attorney General or any regulatory agency or authority of any State.

9. NOTICES

- A. All communications relating to the day-to-day activities of the Investment Manager in providing services to the Board will be exchanged between the Board (or its designee) and *[lead Investment Manager's name]*.
- B. All notices required to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, registered and postage prepaid and addressed to the respective parties as follows:

If to the Board:

OPEB Trust Retirement Board
Peralta Community College District
Attn: **OPEB Trust Retirement Administrator [Verify title of new position]**
333 East 8th Street
Oakland, CA 94606

If to Investment Manager:

Investment Manager
Attn: [name]
[Address]
[City, State and zip code]

Notification of a change in the name of the contact person shall be in writing.

10. OWNERSHIP OF WORK

- A. All reports, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by Investment Manager are the property of the Board. The Board will be entitled to access and copies of these materials during the progress of the work. Any such materials remaining in the hands of Investment Manager or in the hands of any subcontractor or other vendor providing services under this Agreement upon completion or termination of work will be immediately delivered to the Board. If any materials are lost, damaged or destroyed before final delivery to the Board, Investment Manager shall replace them at its own expense and Investment Manager assumes all risk of loss, damage or destruction of or to such materials.
- B. Any and all rights of copyright to materials prepared under this Agreement are, to the extent permitted by law, hereby assigned to the Board. Investment Manager agrees to execute any additional documents which may be necessary to evidence such assignment.

11. CONFIDENTIALITY

Any Board materials to which Investment Manager has access or work prepared by Investment Manager during the course of this Agreement (“Confidential Information”) will be held in confidence by Investment Manager, who will exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees and agents of Investment Manager as necessary to accomplish the performance of services to be performed under this Agreement. Except as required by law, Investment Manager will not release any reports, information, or promotional materials prepared in connection with this Agreement whether confidential or not to any third party without prior written approval of the Board. To the extent permitted by law, Investment Manager shall notify the Board in advance of releasing any reports, information or promotion materials that Investment Manager is required to disclose by law.

12. SUBCONTRACTORS

Investment Manager shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the Board, except for service firms engaged in drawing, reproduction, typing and printing. Investment Manager shall be solely responsible for reimbursing any subcontractors and the Board will have no obligation to them.

13. INDEMNIFICATION

Investment Manager shall indemnify, defend and hold harmless the Board, its members, designees, directors, officers, representatives, employees, contractors, agents, successors and assigns, and the District from and against any and all liability, claims, damages, losses, expenses (including but not limited to reasonable attorneys’ fees, arbitration costs, judgments, fines, and amounts paid in settlement), actions, demands, and suits whatsoever caused by, arising from, or related to the Investment Manager’s performance of services provided under this Agreement, including any act or omission of Investment Manager, or any of its directors, officers, members, agents, representatives, employees, or subcontractors. Investment Manager further agrees to defend any and all such actions, suits or claims and pay all reasonable attorneys’ fees and all

other incurred costs and expenses. If any judgment is rendered against the Board or any of the other individuals enumerated above in any such action, Investment Manager shall, at its own expense, satisfy and discharge the same. This provision shall survive the termination of the Agreement.

14. INSURANCE

A. Types of Insurance

1) Commercial General Liability Insurance

Investment Manager shall, at its own expense, procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined limit of at least \$1,000,000 each occurrence and a general aggregate limit of at least \$2,000,000. This insurance must include but not be limited to premises and operations, contractual liability covering the indemnity provisions contained in this Agreement, personal injury, products and completed operations, and broad form property damage, and include a Cross Liability endorsement.

Said Policy must protect Investment Manager and the Board in the same manner as though a separate policy had been issued to each, but nothing in said policy may operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as insured.

2) Business Automobile Liability

Investment Manager shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$1,000,000 per occurrence for all owned, non-owned and hired automobiles. This insurance must provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

3) Workers' Compensation and Employers' Liability Insurance

If Investment Manager employs any person to perform work in connection with this Agreement, Investment Manager shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance in conformance with the laws of the State of California, and federal laws where applicable. Employers' Liability Insurance must not be less than \$1,000,000 for each accident and \$1,000,000 for each disease, with a policy limit of \$1,000,000.

The Policy must contain a waiver of subrogation in favor of the Board and its officers, directors, employees, volunteers, and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constitute, singly, jointly, or severally.

4) Professional Liability Insurance

Investment Manager shall also maintain Professional Liability Insurance covering Investment Manager's performance under this Agreement, with a limit of liability of \$5,000,000 for any one claim and \$5,000,000 annual aggregate. This insurance must be applicable to any claim arising from the work performed under this Agreement. The policy must contain an "Extended Reporting Period" provision providing for at least one year of Extended Reporting. In the event of non-renewal or cancellation, Investment Manager must purchase the Extended Reporting Period coverage at Investment Manager's sole expense or provide evidence of new coverage with a retroactive date prior to the commencement of work under this Agreement. Prior to commencing work under this Agreement, Investment Manager shall furnish to the Board a Certificate of Insurance, or a certified copy of the insurance policy if requested, indicating compliance with the requirements of this paragraph. This certificate or policy must further stipulate that 30 days' advance written notice of any cancellation, non-renewal or estimated settlements in excess of the limits of the policy will be given to the Board. In the event of a reduction in limits, Investment Manager will provide evidence of reinstatement of limits or provide evidence of additional coverage so that a minimum of \$5,000,000 per claim/\$5,000,000 annual aggregate is evidenced.

Investment Manager shall notify the Board of any professional liability claim that has an estimated settlement value in excess of the policy. If the amount of the professional liability insurance is reduced by other claims, Investment Manager shall procure such additional insurance to restate the limits as required under this Agreement.

If any insurance specified above must be provided on a claims-made basis, then in addition to the coverage requirements stated above, such policy must provide that:

- a. Policy retroactive date coincides with or precedes Investment Manager's start of work (including subsequent policies purchased as renewals or replacements).
- b. Investment Manager will make every effort to maintain similar insurance for at least three years following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, Investment Manager agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement.

The policy must also allow for reporting of circumstances or incidents that might give rise to future claims.

5) Cyber Risk Insurance

Investment Manager shall also procure and maintain Cyber Risk Insurance in the minimum amount of \$1,000,000 per claim for the duration of this Agreement and three years following its termination to respond to privacy and network security liability claims, including but not limited to: liability arising from theft,

dissemination, and/or use of data of the Board and/or Trust, including but not limited to bank, credit card account and personally identifiable information, such as name, address, social security numbers, etc., regardless of how stored or transmitted; network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or (ii) the inability of an authorized user to gain access to Board and/or Trust data, including denial of service, unless caused by a mechanical or electrical failure; liability arising from the introduction of a computer virus into, or otherwise causing damage to, a Board and/or Trust or third party computer, computer system, network, or similar computer related property and the data, software, and programs thereon; and crisis management expenses (i.e. notification, public relations, reputation damage, forensics, etc.) for a data breach.

B. General Insurance Requirements

1) Acceptable Insurance

All policies will be issued by insurers acceptable to the Board. This insurance must be issued by an insurance company or companies authorized to do business in the State of California with minimum "Best's" rating of A- and with minimum policyholder surplus of \$25,000,000 or a company acceptable to the Board in its sole discretion. All policies must be issued in a form satisfactory to the Board and must be issued specifically as primary insurance. Workers' Compensation coverage requirements may be met with the California State Compensation Fund.

2) Procure and Maintain Insurance

Investment Manager shall, at its own cost and expense, procure and maintain at all times during the performance of this Agreement, all of the required policies specified above. The failure to procure or maintain the required insurance policies acceptable to the Board will constitute a material breach of contract.

Any person, firm, or corporation that Investment Manager authorizes to work upon the District's property, including any subcontractor, will be deemed to be Investment Manager's agent and will be subject to all applicable terms of this Agreement. Prior to Investment Manager's start of the work or entry onto the District's property, Investment Manager agrees to require its subcontractors to procure and maintain, at Investment Manager's (or its subcontractors) sole cost and expense (and to prove to the Board's reasonable satisfaction that it remains in effect throughout the performance of the work under this Agreement), the kinds of insurance described herein.

Investment Manager shall not commence work until proper evidence of insurance coverage of the types and amounts specified in this Section has been provided to the Board. Investment Manager must not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times must satisfy the requirements of the insurer for the purpose of maintaining said insurance in effect.

3) Terms of Policies

All insurance specified above must remain in force until all work to be performed is satisfactorily completed. If the insurance is provided on a claims-made basis it must remain in force for the entire term of the Agreement and a minimum of three years thereafter.

4) Claims

If any claim is made by any third person against Investment Manager on account of any incident connected to this Agreement, Investment Manager shall promptly report the fact in writing to the Board, giving full details of the claim.

C. Evidence of Insurance and Endorsements

The Investment Manager must submit a Certificate of Insurance demonstrating compliance with the required insurance policies. Prior to the commencing of work or entering onto the District's property, Investment Manager shall file a Certificate of Insurance with the Board evidencing the foregoing coverages, including the following endorsements:

- 1) The insurance company(ies) issuing such policy(ies) will provide at least 30 days' notice to the Board of cancellation or non-renewal.
- 2) That the policy(ies) is primary insurance and the insurance company(ies) providing such policy(ies) will be liable thereunder for the full amount of any loss or claim that Investment Manager is liable for under this Section, up to and including the total limit of liability, without right of contribution from any other insurance maintained or which may be maintained by the Board.
- 3) Such insurance will include as additional insureds, with the exception of Professional Liability Insurance, the Board, and its respective directors, officers, employees, and agents while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.
- 4) The policy will also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the Board as an additional insured will not in any way affect the Board's rights as respects any claim, demand, suit or judgment made, brought, or recovered against Investment Manager. Said policy will protect Investment Manager and the Board in the same manner as though a separate policy had been issued to each, but nothing in said policy will operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

D. Consequence of Lapse

Should any required insurance not be procured or lapse during the term of this Agreement, requests for payment originating after such lapse will not be processed until the Board receives satisfactory evidence of reinstated coverage as required by the

Agreement. If insurance is not reinstated, the Board may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

15. INDEPENDENT CONTRACTOR

Neither Investment Manager nor any party contracting with Investment Manager will be deemed to be an employee of the Board or the District. Investment Manager is and will be an independent contractor, and the legal relationship of any person performing services for Investment Manager will be one solely between that person and Investment Manager.

16. ASSIGNMENT

Neither party to this Agreement shall assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the other party.

17. COMPLIANCE WITH LAW

The Trustee shall fully comply with all laws, executive orders, regulations, and other legal requirements applicable to the Trustee and to the services performed under this Agreement. Failure to comply with this provision shall constitute a material breach of the Agreement.

18. BOARD REPRESENTATIVE

The Chair of the Board, or such person or persons as he or she designates in writing from time to time, will represent and act for the Board, except when approval or other action is required to be given or taken by the entire Board.

19. TERMINATION OF THIS AGREEMENT

- A. The Board has the right to terminate this Agreement at any time, for any reason or no reason, by giving 30 days' written notice to Investment Manager.
- B. If the Agreement is terminated for any reason other than a breach or default by Investment Manager, the Board shall pay to Investment Manager in accordance with the provisions of Section 6 all sums actually due and owing from the Board for all services performed and all permitted expenses incurred up to the day reasonable transition to a new provider of investment management services to the Board is completed. If the Agreement is terminated for breach or default, the Board shall remit final payment to Investment Manager in an amount to cover only those services performed and permitted expenses incurred in full accordance with the terms and conditions of this Agreement up to the effective date of termination.
- C. Upon receipt of a termination notice, Investment Manager agrees to cooperate fully with the Board in the orderly transfer of business to Investment Manager's successor. Upon receipt of notice of termination, Investment Manager agrees to use its best efforts to assist the Board in transferring responsibility for services being provided in the manner designated by the Board, within a reasonable period of time from the date of the termination notice, consistent with the Investment Manager's and the Board's fiduciary duty under California law.

- D. The Board will not in any manner be liable for Investment Manager's actual or projected lost profits had Investment Manager completed the services required by this Agreement.

20. BOOKS, AUDIT AND INSPECTION OF RECORDS

Investment Manager shall maintain appropriate records of all of its activities under this Agreement. All Investment Manager and subcontractors costs incurred in the performance of this Agreement will be subject to audit. Investment Manager and its subcontractors shall permit the Investment Manager, or its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy Investment Manager's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Agreement at any reasonable time, and to audit and verify statements, invoices or bills submitted by Investment Manager pursuant to this Agreement. Investment Manager shall also provide such assistance as may be required in the course of such audit. Investment Manager shall retain these records and make them available for inspection hereunder for a period of four years after expiration or termination of the Agreement.

21. DISCLOSURE

Investment Manager warrants that it has delivered to the Board, at least five business days before the execution of this Agreement, Investment Manager's current Securities and Exchange Commission Form ADV, Part II (Investment Manager's disclosure statement). The Board acknowledges receipt of such disclosure statement at least five business days before the execution of this Agreement. Investment Manager agrees to continue to provide all disclosures to the Board that would be required if the Trust fund were subject to the Employee Retirement Income Security Act of 1974, as amended from time to time.

22. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of this Agreement, Investment Manager shall not discriminate against any employee or an applicant for employment because of race, religion, color, sex, disability or national origin.

23. CONFLICT OF INTEREST

- A. Investment Manager warrants and represents that it is familiar with California Government Code Sections 1090 et seq. and 87100 et seq., and that it does not know of any facts that constitute a violation of said sections or the District's conflict of interest code, District Board of Trustees Policy 2710. The Investment Manager represents that it has completely disclosed to the Board, and if applicable will disclose in the future, all facts bearing upon any possible interests, direct or indirect, which the Investment Manager believes any member of the Board, or other officer, agent, or employee of the Board, or any department presently has, or will have, in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. If the Investment Manager subsequently becomes aware of any such facts, the Investment Manager shall promptly provide notice to the Board of same, along with a proposal for remedying the violation. The Board at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.
- B. The Investment Manager represents that it does not presently have, and shall not have during the period of the Agreement, any direct or indirect interest that would conflict in any manner or degree with the performance of services required by the Agreement. The

Investment Manager further represents that it will not employ, subcontract to, or otherwise involve any person or entity having such conflicts of interest in the performance of the Agreement. If the Investment Manager subsequently becomes aware of any such conflicts of interest, the Investment Manager shall promptly provide notice to the Board of same, along with a proposal for remedying the violation. The Board, at its sole discretion, may determine whether the proposal or any other proposed resolution is satisfactory.

- C. Investment Manager may be required to publicly disclose financial interests under the Board's or the District's Conflict of Interest Code. Investment Manager agrees to promptly submit a Statement of Economic Interest on the form provided by the Board upon receipt. No person previously in the position of director, officer, employee or agent of the Board may act as an agent or attorney for, or otherwise represent, Investment Manager by making any formal or informal appearance, or any oral or written communication, before the Board, or any officer or employee of the Board, for a period of 12 months after leaving office or employment with the Board if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or contract.

24. FRAUD OR MISAPPROPRIATION

The Investment Manager certifies that none of its officers has been convicted of fraud or misappropriation of funds.

25. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding will recover, in addition to all court costs, reasonable legal fees.

26. APPLICABLE LAW

This Agreement, its interpretation, and all work performed under it will be governed by the laws of the State of California.

27. JURISDICTION AND VENUE

The parties agree that any action brought by either party under or in relation to this Agreement, including without limitation to interpret or enforce any provision of this Agreement, shall be brought in, and each party agrees to and does hereby submit to the jurisdiction and venue of, any state or federal court located in Alameda County.

28. BINDING ON SUCCESSORS

All of the terms, provisions, and conditions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

29. TITLES OF PROVISIONS

The titles given to the provisions of the Agreement are for ease of reference only and shall not be used in the construction or interpretation of the Agreement or relied upon or cited for any other purpose.

30. ENTIRE AGREEMENT; AMENDMENT; EXECUTION

- A. This Agreement, including attachments and Exhibits, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties.
- B. No amendment to this Agreement may violate the terms of the Plan, the Indenture, or applicable law.
- C. In the event of a conflict between the terms and conditions of this Agreement and an attachment or Exhibit, the terms of this Agreement will prevail. Each party to this Agreement represents and warrants that any person or persons signing this Agreement on behalf of such part is authorized and empowered to sign and deliver this Agreement for such party.

31. SEVERABILITY

If any provision of this Agreement shall be held or made non-enforceable by a statute, rule, regulation, decision of a tribunal or otherwise, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable to the maximum extent permitted by law or equity while most nearly preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement and, to that extent, the provisions of this Agreement shall be deemed to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the ____ day of _____, 2017.

OPEB TRUST RETIREMENT BOARD

Investment Manager

By: _____
[name], [title]

By: _____
[name], [title]

APPROVED AS TO LEGAL FORM:

By: _____
Attorneys for the Board