



BOARD OF RETIREMENT

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Donald C. Kendig, CPA
Retirement Administrator

DATE: October 7, 2015

TO: Board of Retirement

FROM: Donald C. Kendig, CPA
Retirement Administrator

STAFF CONTACT: Becky Van Wyk
Assistant Retirement Administrator

SUBJECT: Approve Taxation Legal Counsel Contract – RECEIVE AND FILE; APPROVE

Background and Discussion

The Board approved the issuance of a Request for Quote (RFQ) for a Taxation Legal Counsel on July 15, 2015 for the purpose of contracting with a firm to for a Tax Determination Letter with the Internal Revenue Service in January 2016. During that meeting, Harvey Leiderman, Reed Smith, advised the Board that it the Internal Revenue Service was considering revising the tax determination letter regulations eliminating the need to renew previously issued tax determination.

On September 2, 2015 Staff presented to the Board the three responses to the RFQ: Hanson Bridgett, Steptoe & Johnson, and ICE Miller. Pricing for preparation of the tax determination letter, excluding filing fees, range between \$10,000 and \$55,000, depending on the complexity of the filing. Additional costs would be incurred if a Voluntary Compliance Plan (VCP) is required. Only one firm provided an estimated cost for a VCP, estimated at \$25,000. Administration recommended, and the Board directed staff to initiate contract negotiations with Steptoe & Johnson for the filing of a tax determination letter.

Staff is returning to the Board for the approval of the negotiated contract. Jeff Rieger, of Reed Smith, acting Board Counsel, was instrumental in its review. The redline of the contract with Steptoe (attachment 2) only had three changes compared to the RFP language:

- (1) Steptoe wanted to limit its liability to their insurance coverage, and we agreed to take out that paragraph altogether, which puts us where we started. Essentially no substantive change.

September 2, 2015

Request for Quotation – Board Legal Counsel

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(2) On the conflict waiver, Steptoe asked for something much more complicated than what you see in it now, which is what Reed Smith suggested in response. In the context of this contract, this means that if the IRS wanted to hire Steptoe in an unrelated matter, FCERA would not assert a conflict. This is almost certainly not going to happen and, even if it did, Staff and Reed Smith do not see any problem with Steptoe representing the IRS in an unrelated matter.

(3) Reed Smith added the option for the Board to agree in writing to add to the \$25,000 authorized under this contract. This makes it easier for everyone in the event that the Board wants to do that without putting together a new contract.

Since the attached has only minor modifications from what appeared in the RFP, this agreement is being placed on the consent calendar and Staff recommends approval.

Fiscal and Financial Impacts

Legal services under this agreement will not exceed \$25,000 without Board approval.

Recommended Action(s)

1. Approve the negotiated legal services agreement (Attachment 1).

Attachment(s)

1. Legal Services Agreement
2. Legal Services Agreement Red Line

Fresno County Employees' Retirement Association
1111 H Street, Fresno, CA 93721
Phone: (559) 457-0681
Fax: (559) 457-0318

**AGREEMENT
FOR
TAXATION LEGAL SERVICES**

This Agreement for Taxation Legal Services (the "Agreement") is made and entered into by and between the Fresno County Employees' Retirement Association ("FCERA") and STEPTOE AND JOHNSON LLP ("LAW FIRM") on October 7, 2015 ("Agreement Date").

Recitals

WHEREAS, FCERA was created by and operates pursuant to the County Employees Retirement Law of 1937 (the '37 Act"), and FCERA is administered by the Board of Retirement ("Board"); and

WHEREAS, the FCERA and the Board desire to engage an LAW FIRM to perform Taxation Legal Counsel services; and

WHEREAS, LAW FIRM desires to perform the services, and has represented to FCERA that it is qualified to perform the aforesaid Taxation Legal Counsel services; and

WHEREAS, FCERA has determined LAW FIRM is qualified to perform the aforesaid services and desires to retain LAW FIRM for those purposes.

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

Terms and Conditions

1. Definitions.

For purposes of this Agreement, capitalized terms have the meanings set forth in this Section 1.

"Agents" means any employees, agents, or representatives of LAW FIRM acting in connection with this Agreement.

"Agreement" means this Agreement for Legal counsel Services. Services entered into by and between FCERA and LAW FIRM, including the Exhibits and Attachments attached hereto.

“Agreement Date” means the date shown in the preamble of this Agreement.

“LAW FIRM” means business entity formed by one or more lawyers to engage in the practice of law.

“Covered Persons” means FCERA, its trustees, officers, and employees.

“Effective Termination Date” means the date on which all or a specified portion of the work under this Agreement will formally cease, as specified in any Notice of Termination delivered by FCERA to LAW FIRM.

"Force Majeure" means any cause, circumstance, or event beyond the control and without the fault or negligence of LAW FIRM that causes LAW FIRM to fail to perform its obligations hereunder. Such causes, circumstances or events may include, but are not restricted to, acts of God or of the public enemy, acts of any foreign, international, federal or state government (including all subdivisions thereof) in such government's sovereign capacity, fires, floods and earthquakes; but in every case the failure to perform must be beyond the control and without the fault or negligence of LAW FIRM.

"FCERA" means the Fresno County Employees Retirement Association, an independent public pension fund established under the authority of the County Employees Retirement Law of 1937 (California Government Code Sections 31450 et seq.).

“FCERA’s Project Director” means Becky Van Wyk, FCERA’s Retirement Administrator.

"Legal Requirements" means all federal, state, county and local laws, rules, regulations, and ordinances, presently existing or enacted or promulgated during the term of this Agreement, which may apply to LAW FIRM in relation to its performance under this Agreement.

"Member Records" means any records relating to FCERA's members or beneficiaries to which LAW FIRM or its Agents may be exposed when performing under this Agreement.

2. Description of Services

- A. Work to be performed.** LAW FIRM agrees to perform the services described in this Agreement and in Exhibit A (Scope of Work), attached hereto and incorporated herein by reference.

- B. Standard of Care.** The LAW FIRM agrees that it shall perform its obligations under this Agreement with the competence, care, skill, prudence and diligence prevailing in the law industry. LAW FIRM shall be responsible for and cause any and all of its employees, agents and representatives providing services in connection with this Agreement to exercise the same Standard of Care.
- C. Quality of Services.** LAW FIRM's services will meet the requirements and standards set forth in this Agreement. LAW FIRM will promptly correct any errors or omissions in the provision of such services, at no cost or expense to FCERA and in a timely manner after the request by FCERA's Project Director.
- D. LAW FIRM's Work Schedule.** LAW FIRM and FCERA's Project Director will agree in advance on LAW FIRM's work schedule. Services and work provided by the LAW FIRM at the FCERA's request under this Agreement and Exhibit A will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and FCERA laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the LAW FIRM; provided, however, that such schedule is subject to review by and concurrence of the FCERA.
- (1) LAW FIRM designates Don Wellington, as its principal agent to perform the services described in this Agreement. LAW FIRM will not remove said individual or LAW FIRM's Project Manager from the work without the prior written consent of the FCERA's Project Director, which FCERA may withhold in its discretion, but such restriction shall not apply to instances of employment termination, serious illness, death, or other causes beyond LAW FIRM's control.
- (2) Upon the request of FCERA's Project Director, LAW FIRM will replace any additional personnel or subcontractors assigned by LAW FIRM to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.
- E. Cooperation with Other Professionals.** LAW FIRM agrees to cooperate with such professionals as FCERA may engage to assist FCERA in the performance of its duties, including, without limitation, the law firm engaged by FCERA to perform **its Taxation Legal services**.

3. FCERA's Proprietary Rights.

All documents, drawings and written work product prepared or produced by the LAW FIRM under this Agreement and Exhibit A, including without limitation electronic data files, are the property of the LAW FIRM; provided, however, the FCERA shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the LAW FIRM may copyright the same, except that, as to any work which is copyrighted by the LAW FIRM, the FCERA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

4. Project Responsibility.

A. FCERA's Project Director. FCERA's Project Director, shall, on a regular basis, interface with LAW FIRM's Project Manager.

(1) FCERA's Project Director is responsible for:

(a) Providing overall management and coordination of this Agreement acting as liaison for FCERA; and

(b) Providing coordination of the provisions and objectives of this Agreement; and

(c) Approving invoices submitted prior to payment for work performed and deliverables delivered in accordance with this Agreement, which approval will not be unreasonably withheld; and

(d) Providing direction to LAW FIRM in all matters relating to policy, information requirements, and procedural requirements, and

(e) Providing or making sure data, information and materials requested by the LAW FIRM are provided to LAW FIRM on a timely basis.

(2) FCERA's Project Director or any person delegated responsibility for the administration of this Agreement by FCERA's Project Director will not have any personal liability to LAW FIRM for any action taken or not taken by such individual while acting or purporting to act as FCERA's Project Director or delegate of such Project Director.

B. LAW FIRM's Project Manager. LAW FIRM's Project Manager is Don Wellington. LAW FIRM shall inform FCERA in writing of the name of any alternate Project Manager or designee within a reasonable time of choosing the same, and the appointment of such individual(s) shall be subject to FCERA's approval, which may be withheld in its sole discretion. LAW FIRM's Project Manager:

- (1) Is responsible for the LAW FIRM's day-to-day activities related to the work to be performed under this Agreement and Exhibit A; and
- (2) Has full authority to act for LAW FIRM on all matters relating to the daily operation of this Agreement; and
- (3) Will be reasonably available during FCERA's normal working hours for telephone contact and to meet with FCERA personnel designated to discuss LAW FIRM's performance.

C. Additional Law Firm Personnel.

- (1) FCERA has the absolute right, during the period of LAW FIRM's performance under this Agreement, to approve or disapprove any of LAW FIRM's assigned personnel designated as Project Manager, engagement partners, managers, other senior supervisory staff, or specialists, or any proposed changes in these categories of LAW FIRM's personnel. LAW FIRM shall provide the FCERA Project Director, or his designee, with a résumé of the proposed replacement(s) and an opportunity to interview the person(s) prior to FCERA approving or disapproving the proposed change.
- (2) Upon request by FCERA's Project Director, LAW FIRM will replace any of LAW FIRM's personnel or Agents assigned to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

5. Compensation and Payment.

A. Compensation. FCERA shall compensate LAW FIRM for services rendered under this Agreement as set forth in Exhibit B, attached hereto and incorporated herein by reference.

B. Expenses. LAW FIRM is not entitled to reimbursement of out-of-pocket travel expenses for any expenses related to meetings at FCERA's regular place of business. LAW FIRM's expenses are included in the compensation described in Section 5.A and therefore LAW FIRM is not entitled to any separate reimbursement for any expenses incurred by it in discharging its duties under this Agreement, unless otherwise agreed by FCERA.

- C. Additional Compensation.** Except as expressly provided in Exhibit A and Exhibit B of this Agreement, LAW FIRM shall not be entitled to nor receive from FCERA any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, LAW FIRM shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.
- D. Withholding of Taxes.** FCERA will not withhold any Federal or State income taxes or Social Security tax from any payments made by FCERA to LAW FIRM under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of LAW FIRM. FCERA has no responsibility or liability for payment of LAW FIRM's taxes or assessments.
- E. Invoices and Payment.** All invoices are to be submitted to Becky Van Wyk, Assistant Retirement Administrator, FCERA, 1111 H Street, Fresno, CA 93721.
- F. Non-Compensable Services.** LAW FIRM agrees that should work be performed outside the **Scope of the Work** described in Exhibit A, without the prior written consent of FCERA in accordance with the Section 21 "Amendments" to this Agreement, such work will be deemed to be a gratuitous effort on the part of LAW FIRM, and LAW FIRM will have no claim against FCERA for such work, and FCERA will have no obligation to pay for such work.

6. Term and Termination.

- A. General Term.** Subject to the termination provisions in this Section, the term of this Agreement begins on the Agreement Date and based on successful completion of the immediate past year's services shall continue for three (3) years through June 30, 2018. Upon mutual agreement of parties, the Agreement may be renewed annually for up to three (3) additional years. Any extensions shall be in written form as amendments to this Agreement.
- B. Termination for Convenience.** The FCERA may terminate this agreement upon 30 days prior written notice to the LAW FIRM. Termination of this Agreement shall not affect the FCERA's obligation to pay for all fees earned and reasonable costs necessarily incurred by the LAW FIRM as provided in Section 5.A herein, subject to any applicable setoffs. FCERA's termination of this Agreement under Section 6.B is not a waiver of FCERA's right to make a claim against LAW FIRM for damages resulting from any default by LAW FIRM, which occurred prior to the Effective Termination Date.

- C. Termination for Default.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.
- D. Automatic Termination.** This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of LAW FIRM's business, (c) cancellation of insurance required under the terms of this Agreement, (d) if, for any reason, LAW FIRM ceases to be licensed or otherwise authorized to do business in the State of California, and the LAW FIRM fails to remedy such defect or defects within thirty (30) days of receipt of written notice of such defect or defects, (e) if LAW FIRM materially breaches any of the warranties, representations, agreements, and covenants made in Section 11 and in Section 19 (Conflicts and Disqualification), (f) if LAW FIRM is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; and/or (g) if LAW FIRM attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining FCERA's prior written consent.
- E. Force Majeure.** LAW FIRM may not be terminated for default, if LAW FIRM's failure to perform under this Agreement arises solely from causes of Force Majeure.
- F. Rights, Remedies and Responsibilities upon Termination.** If this Agreement is terminated, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions also apply to any termination of this Agreement.
- (1) **Recovery of Reasonable Damages Upon Default.** If FCERA terminates this Agreement in whole or in part for default pursuant to Section 6.C or Section 6.D above, FCERA is entitled to recover from LAW FIRM all reasonable damages resulting from such default. By way of example and not limitation, FCERA may procure, upon such terms and in such manner as FCERA may deem appropriate, services similar to those terminated, and LAW FIRM will be liable to FCERA for any excess cost of such similar services.
 - (2) **Payment when Terminated for Convenience.** If FCERA terminates this Agreement for convenience, FCERA will pay LAW FIRM for work already performed but for which LAW FIRM has not been compensated through the Effective Termination Date.

- (3) Payment Withheld for Default. FCERA shall not authorize and shall withhold payment for services provided if FCERA terminates this Agreement for default. In the event the damages caused by such default are less than the withheld payment for services, the amount withheld in excess of the damages shall be paid to LAW FIRM.
- (4) Good Faith Transfer. Upon any termination of this Agreement by FCERA, and to the extent directed by FCERA, LAW FIRM will cooperate with FCERA in good faith to effect a smooth and orderly transfer of such services and all applicable records to a successor designated by FCERA. LAW FIRM will respond promptly to reasonable inquiries of such successor LAW FIRM with respect to the Work Papers and matters of continuing law significance to FCERA. Upon termination of this Agreement, LAW FIRM will retain all Work Records according to the record retention provisions set forth in Section 13 below.

7. Required Licenses, Certificates and Permits.

Any licenses, certificates or permits required by the federal, state, FCERA or municipal governments for LAW FIRM to provide the services and work described in Exhibit A must be procured by LAW FIRM and be valid at the time LAW FIRM enters into this Agreement. Further, during the term of this Agreement, LAW FIRM must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by LAW FIRM at no expense to the FCERA.

8. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, LAW FIRM shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. FCERA is not obligated to reimburse or pay LAW FIRM for any expense or cost incurred by LAW FIRM in procuring or maintaining such items. Responsibility for the costs and expenses incurred by LAW FIRM in providing and maintaining such items is the sole responsibility and obligation of LAW FIRM.

9. Insurance

- A. LAW FIRM shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

(1) General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

(a) If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by LAW FIRM under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) If written on a claims form, LAW FIRM will continue to name FCERA as an additional insured or provide an extended two year reporting period commencing upon termination or cancellation of this Agreement.

(2) Automobile Liability Insurance

If the LAW FIRM or the LAW FIRM's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

(3) Workers' Compensation Insurance

Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the LAW FIRM certifies that the LAW FIRM is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and that the LAW FIRM will comply with such provisions before commencing the performance of the work of this Agreement.

(4) Professional Liability.

Errors and omissions professional liability insurance with a limit of at least \$10,000,000 per claim. LAW FIRM will notify FCERA in writing of any change in coverage amount subsequent to the effective Agreement Date. LAW FIRM warrants its professional liability insurance is applicable to LAW FIRM's actions and obligations under this Agreement.

- B.** Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by FCERA. At the option of the FCERA, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the LAW FIRM shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the FCERA guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The FCERA, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the LAW FIRM agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the LAW FIRM's defense and indemnification obligations as set forth in this Agreement.
- C.** The LAW FIRM shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the FCERA and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the LAW FIRM, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the LAW FIRM; (c) premises owned, occupied or used by the LAW FIRM; and (d) automobiles owned, leased, hired or borrowed by the LAW FIRM. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the FCERA and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the LAW FIRM.
- D.** The LAW FIRM's insurance coverage shall be primary insurance regarding the FCERA and FCERA's officers, officials and employees. Any insurance or self-insurance maintained by the FCERA or FCERA's officers, officials and employees shall be excess of the LAW FIRM's insurance and shall not contribute with LAW FIRM's insurance.
- E.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the FCERA or its officers, officials, employees or volunteers.

- F.** The LAW FIRM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- G.** Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to FCERA. The LAW FIRM shall promptly notify, or cause the insurance carrier to promptly notify, the FCERA of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- H.** Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the FCERA; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the FCERA; lesser ratings must be approved in writing by the FCERA.
- I.** LAW FIRM shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.
- J.** At least ten (10) days prior to the date the LAW FIRM begins performance of its obligations under this Agreement, LAW FIRM shall furnish FCERA with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the LAW FIRM. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in FCERA's sole and absolute discretion, approved by FCERA. FCERA reserves the right to require complete copies of all required insurance policies and endorsements, at any time.
- K.** The limits of insurance described herein shall not limit the liability of the LAW FIRM and LAW FIRM's officers, employees, agents, representatives or subcontractors.

10. Defense and Indemnification.

To the fullest extent permitted by law, LAW FIRM shall indemnify, hold harmless and defend the FCERA, its Board and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees (collectively "claims"), arising out of, resulting from, or in connection with the performance of this Agreement by the LAW FIRM or LAW FIRM's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, LAW FIRM's obligation to indemnify FCERA, its Board, and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the LAW FIRM in causing the Claim on which such judgment, decree or arbitration award is based.

11. LAW FIRM's Representations, Warranties and Covenants.

LAW FIRM makes the following representations, warranties, covenants and agreements, acknowledging they constitute a material inducement to FCERA to enter into this Agreement.

- A. Authorization.** This Agreement has been duly authorized, executed and delivered by LAW FIRM and constitutes the legal, valid and binding agreements and obligations of LAW FIRM, enforceable against LAW FIRM in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity. LAW FIRM is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any contract or agreement, that would be breached or violated by LAW FIRM's execution, delivery or performance of this Agreement.
- B. Gratuities.** No gratuities in the form of gifts, entertainment or otherwise, were offered or given by LAW FIRM or its Agents to any officer, fiduciary, or employee of FCERA or the County of Fresno, California with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. LAW FIRM covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance, continuation, and/or amendment of this Agreement. If it is found that such gratuities have been offered or given by LAW FIRM or its Agents, FCERA may terminate this Agreement upon one (1) calendar day's written notice; however, the facts upon which FCERA bases such findings will be at issue and may be reviewed in any competent court. In the event of such termination, FCERA may pursue the same remedies against LAW FIRM as it could pursue in the event of default by LAW FIRM.

- C. Conflicts of Interest With Persons Related to FCERA.** No FCERA employee or fiduciary, whose position with FCERA enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person, is or will be employed in any capacity by LAW FIRM, or does or will have any direct or indirect financial interest in this Agreement.
- D. Recruiting.** During the term of this Agreement and for one (1) calendar year thereafter, LAW FIRM, and any employee of LAW FIRM providing services to FCERA, will not intentionally induce or persuade any employee of FCERA to join LAW FIRM.
- E. Changes.** LAW FIRM will notify FCERA in writing within ten (10) business days of any of the following changes: (i) LAW FIRM becomes aware that any of its representations, warranties, covenants, or agreements set forth herein has been breached or ceases to be true at any time during the term of this Agreement; (ii) there is a change in LAW FIRM's personnel assigned to perform services under this Agreement, (iii) there is any change in control of LAW FIRM, (iv) LAW FIRM becomes aware of any other material change in its business organization, including without limitation the filing for bankruptcy relief, or (v) LAW FIRM becomes aware of an actual conflict arising out of work it performs on behalf of the FCERA.
- F. LAW FIRM and its Agents.** LAW FIRM's Agents who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any consent decree with respect to any matter involving infringement of intellectual property rights, breach of fiduciary duty, or fraud.

12. Independent Contractor Status.

- A.** All acts of LAW FIRM and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of LAW FIRM relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of FCERA. LAW FIRM, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of FCERA. Except as expressly provided in Exhibit A, LAW FIRM has no authority or responsibility to exercise any rights or power vested in the FCERA. No agent, officer or employee of the FCERA is to be considered an employee of LAW FIRM. It is understood by both LAW FIRM and FCERA that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship, partnership, servant or a joint venture, or association.

- B.** At all times during the term of this Agreement, the LAW FIRM and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of FCERA.
- C.** LAW FIRM shall determine the method, details and means of performing the work and services to be provided by LAW FIRM under this Agreement. LAW FIRM shall be responsible to FCERA only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to FCERA's control with respect to the physical action or activities of LAW FIRM in fulfillment of this Agreement. LAW FIRM has control over the manner and means of performing the services under this Agreement. LAW FIRM is permitted to provide services to others during the same period service is provided to FCERA under this Agreement. If necessary, LAW FIRM has the responsibility for employing other persons or firms to assist LAW FIRM in fulfilling the terms and obligations under this Agreement.
- D.** If in the performance of this Agreement any third persons are employed by LAW FIRM, such persons shall be entirely and exclusively under the direction, supervision and control of LAW FIRM. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the LAW FIRM.
- E.** It is understood and agreed that as an independent LAW FIRM and not an employee of FCERA, the LAW FIRM and the LAW FIRM's officers, employees, agents, representatives or subcontractors do not have any entitlement as a FCERA employee, and do not have the right to act on behalf of the FCERA in any capacity whatsoever as an agent, or to bind the FCERA to any obligation whatsoever.
- F.** It is further understood and agreed that LAW FIRM must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of LAW FIRM's assigned personnel under the terms and conditions of this Agreement.
- G.** As an independent LAW FIRM, LAW FIRM hereby indemnifies and holds FCERA harmless from any and all claims that may be made against FCERA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

13. Records and Audit

- A. Records Retention.** LAW FIRM shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of six years from the termination or completion of this Agreement. This includes but not limited to any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof. This includes but is not limited to any pertinent activity, dates, and time spent providing services hereunder, invoices billed to FCERA, proprietary data and any other records created by LAW FIRM or its agents in connection with this Agreement (“FCERA Records”).
- B. Records Review and Audit.** Any authorized representative of FCERA shall have access to and the right to audit, evaluate, examine, excerpt and copy or transcribe any FCERA Records (other than that portion of such Records that evidence the confidential/proprietary information and/or trade secrets of LAW FIRM or any third party) during the period such records are to be maintained by LAW FIRM. Further, FCERA has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement. FCERA agrees that any such review and audit will be conducted in a manner to minimize interference with LAW FIRM’s normal business activities. Upon reasonable advance notice to LAW FIRM, LAW FIRM will make the persons responsible for creating and maintaining FCERA Records available to FCERA during such review and audit for the purpose of responding to FCERA’s reasonable inquiries. FCERA will pay all costs associated with such audit, other than any costs incurred by LAW FIRM to make personnel available as required by the preceding sentence.

14. Confidentiality; Proprietary Rights

- A. FCERA's Proprietary Rights.** All reports under this Agreement become the sole property of FCERA. Both parties hereto acknowledge that LAW FIRM retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as LAW FIRM protects FCERA's interests in all of its confidential records and property.
- B. Member Records.** LAW FIRM acknowledges that when performing under this Agreement, LAW FIRM may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. LAW FIRM will maintain the confidentiality of all Member Records according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality.

C. FCERA's Policies, Procedures and Strategies. LAW FIRM will protect the security of and keep confidential all materials, data, and other information received by LAW FIRM regarding FCERA's assets and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.

D. LAW FIRM's Proprietary Materials. Absent LAW FIRM's written consent authorizing disclosure, FCERA will use reasonable means to protect and maintain the confidentiality of any of LAW FIRM's materials, which LAW FIRM considers to be proprietary, so long as:

- (1) LAW FIRM clearly and prominently marks all such material "confidential;" and
- (2) Public disclosure of such material is not requested pursuant to the California Public Records Act (Cal. Gov't. Code Section 6250 et seq., the "Act"), or by the order of any tribunal having jurisdiction.
 - (a) If an action is commenced against FCERA under Act or otherwise that challenges FCERA's refusal to disclose LAW FIRM's proprietary material, LAW FIRM will defend FCERA in the action at LAW FIRM's expense, and will pay any judgment for damages or attorneys' fees that may be entered as a result of FCERA's refusal to disclose LAW FIRM's confidential material. FCERA will provide notice to LAW FIRM so LAW FIRM can get a protective order or opinion of counsel to turn over confidential material.
 - (b) FCERA's obligations under subsection (1) do not apply to:
 - (1) Any confidential information that FCERA can demonstrate has become public information through no breach of this Agreement by FCERA; and
 - (2) The FCERA Records.

15. Nondiscrimination

During the performance of this Agreement, LAW FIRM and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. LAW FIRM and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the FCERA's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

16. Assignment

This is an agreement for the services of LAW FIRM. FCERA has relied upon the skills, knowledge, experience and training of LAW FIRM and its associates and employees as an inducement to enter into this Agreement. LAW FIRM shall not assign or subcontract this Agreement without the express written consent of FCERA. Further, LAW FIRM shall not assign any monies due or to become due under this Agreement without the prior written consent of FCERA.

17. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

18. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which LAW FIRM or FCERA shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To FCERA: FCERA
 Attention: Retirement Administrator
 1111 H Street
 Fresno, CA 93721

To LAW FIRM: Steptoe & Johnson LLP
 Attention: Don Wellington
 Address 633 West Fifth Street, Suite 700
 City State Los Angeles, CA 90071

19. Conflicts and Disqualification

LAW FIRM hereby affirms that there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a Conflict of Interest. A Conflict of Interest means that because of other activities or relationships with other persons, LAW FIRM or its subcontractor is unable or potentially unable to render impartial assistance or advice to FCERA, or LAW FIRM's objectivity in performing the agreement work is or might be otherwise impaired.

If an actual or potential Conflict of Interest arises subsequent to the date of this agreement, LAW FIRM shall make a full disclosure in writing to FCERA of all relevant facts and circumstances. This disclosure shall include a description of actions that LAW FIRM has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. LAW FIRM will continue performance of work under the agreement until notified by FCERA of any contrary action to be taken. LAW FIRM shall comply with California Rule of Professional Conduct 3-310 with respect to actual and potential conflicts of interest, provided, however, that FCERA agrees in advance to waive any conflict that may arise under Rule 3-310(C)(3).

20. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or FCERA statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

21. Amendment

This Agreement and its exhibits may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

22. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

23. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

24. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

25. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed and enforced in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall be conducted in the state and/or federal courts located in Fresno County, State of California, and all parties consent to such venue and the personal jurisdiction of such courts

26. Time of the Essence

Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

27. 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 instrument.

28. Authority to Execute

The persons signing this Agreement are duly authorized to execute the document on behalf of and to bind their respective parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

**FRESNO COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION**

[LAW FIRM]

By: _____

Steven J. Jolly
Chair, Board of Retirement
"FCERA"

"LAW FIRM"

APPROVED AS TO FORM:

By: _____

Donald Kendig
Retirement Administrator

EXHIBIT A

SCOPE OF WORK

The scope of work is defined in the Response to the Request for Quote submitted by LAW FIRM dated August 7, 2015 and made part of this agreement by reference.

EXHIBIT B

COMPENSATION

The LAW FIRM shall be compensated as follows:

Hourly Rate	<u>\$525</u>
Retainer Amount	<u>\$0</u>
<u>Estimated cost to prepare and file a tax determination letter request by January 31, 2016</u>	
<u>\$14,700 to \$19,950, excluding filing costs</u>	
<u>Estimated number of hours to prepare a tax determination letter 28 – 38 hours</u>	

Maximum contract amount \$25,000, unless the Board increases such amount in writing.

Fresno County Employees' Retirement Association
1111 H Street, Fresno, CA 93721
Phone: (559) 457-0681
Fax: (559) 457-0318

**AGREEMENT
FOR
TAXATION LEGAL SERVICES**

This Agreement for Taxation Legal Services (the "Agreement") is made and entered into by and between the Fresno County Employees' Retirement Association ("FCERA") and STEPTOE AND JOHNSON LLP ("LAW FIRM") on October 7, 2015 ("Agreement Date").

Recitals

WHEREAS, FCERA was created by and operates pursuant to the County Employees Retirement Law of 1937 (the '37 Act"), and FCERA is administered by the Board of Retirement ("Board"); and

WHEREAS, the FCERA and the Board desire to engage an LAW FIRM to perform Taxation Legal Counsel services; and

WHEREAS, LAW FIRM desires to perform the services, and has represented to FCERA that it is qualified to perform the aforesaid Taxation Legal Counsel services; and

WHEREAS, FCERA has determined LAW FIRM is qualified to perform the aforesaid services and desires to retain LAW FIRM for those purposes.

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

Terms and Conditions

1. Definitions.

For purposes of this Agreement, capitalized terms have the meanings set forth in this Section 1.

"Agents" means any employees, agents, or representatives of LAW FIRM acting in connection with this Agreement.

"Agreement" means this Agreement for Legal counsel Services. Services entered into by and between FCERA and LAW FIRM, including the Exhibits and Attachments attached

hereto.

“Agreement Date” means the date shown in the preamble of this Agreement.

“LAW FIRM” means business entity formed by one or more lawyers to engage in the practice of law.

“Covered Persons” means FCERA, its trustees, officers, and employees.

“Effective Termination Date” means the date on which all or a specified portion of the work under this Agreement will formally cease, as specified in any Notice of Termination delivered by FCERA to LAW FIRM.

"Force Majeure" means any cause, circumstance, or event beyond the control and without the fault or negligence of LAW FIRM that causes LAW FIRM to fail to perform its obligations hereunder. Such causes, circumstances or events may include, but are not restricted to, acts of God or of the public enemy, acts of any foreign, international, federal or state government (including all subdivisions thereof) in such government's sovereign capacity, fires, floods and earthquakes; but in every case the failure to perform must be beyond the control and without the fault or negligence of LAW FIRM.

"FCERA" means the Fresno County Employees Retirement Association, an independent public pension fund established under the authority of the County Employees Retirement Law of 1937 (California Government Code Sections 31450 et seq.).

“FCERA’s Project Director” means Becky Van Wyk, FCERA’s Retirement Administrator.

"Legal Requirements" means all federal, state, county and local laws, rules, regulations, and ordinances, presently existing or enacted or promulgated during the term of this Agreement, which may apply to LAW FIRM in relation to its performance under this Agreement.

"Member Records" means any records relating to FCERA's members or beneficiaries to which LAW FIRM or its Agents may be exposed when performing under this Agreement.

2. Description of Services

- A. Work to be performed.** LAW FIRM agrees to perform the services described in this Agreement and in Exhibit A (Scope of Work), attached hereto and incorporated herein by reference.
- B. Standard of Care.** The LAW FIRM agrees that it shall perform its obligations under this Agreement with the competence, care, skill, prudence and diligence prevailing in the

law industry. LAW FIRM shall be responsible for and cause any and all of its employees, agents and representatives providing services in connection with this Agreement to exercise the same Standard of Care.

C. Quality of Services. LAW FIRM's services will meet the requirements and standards set forth in this Agreement. LAW FIRM will promptly correct any errors or omissions in the provision of such services, at no cost or expense to FCERA and in a timely manner after the request by FCERA's Project Director.

D. LAW FIRM's Work Schedule. LAW FIRM and FCERA's Project Director will agree in advance on LAW FIRM's work schedule. Services and work provided by the LAW FIRM at the FCERA's request under this Agreement and Exhibit A will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and FCERA laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the LAW FIRM; provided, however, that such schedule is subject to review by and concurrence of the FCERA.

(1) LAW FIRM designates Don Wellington, as its principal agent to perform the services described in this Agreement. LAW FIRM will not remove said individual or LAW FIRM's Project Manager from the work without the prior written consent of the FCERA's Project Director, which FCERA may withhold in its discretion, but such restriction shall not apply to instances of employment termination, serious illness, death, or other causes beyond LAW FIRM's control.

(2) Upon the request of FCERA's Project Director, LAW FIRM will replace any additional personnel or subcontractors assigned by LAW FIRM to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

E. Cooperation with Other Professionals. LAW FIRM agrees to cooperate with such professionals as FCERA may engage to assist FCERA in the performance of its duties, including, without limitation, the law firm engaged by FCERA to perform **its Taxation Legal services.**

3. FCERA's Proprietary Rights.

All documents, drawings and written work product prepared or produced by the LAW FIRM under this Agreement and Exhibit A, including without limitation electronic data files, are the property of the LAW FIRM; provided, however, the FCERA shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is

copyrightable, the LAW FIRM may copyright the same, except that, as to any work which is copyrighted by the LAW FIRM, the FCERA reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

4. Project Responsibility.

A. FCERA's Project Director. FCERA's Project Director, shall, on a regular basis, interface with LAW FIRM's Project Manager.

(1) FCERA's Project Director is responsible for:

- (a) Providing overall management and coordination of this Agreement acting as liaison for FCERA; and
- (b) Providing coordination of the provisions and objectives of this Agreement; and
- (c) Approving invoices submitted prior to payment for work performed and deliverables delivered in accordance with this Agreement, which approval will not be unreasonably withheld; and
- (d) Providing direction to LAW FIRM in all matters relating to policy, information requirements, and procedural requirements, and
- (e) Providing or making sure data, information and materials requested by the LAW FIRM are provided to LAW FIRM on a timely basis.

- (2) FCERA's Project Director or any person delegated responsibility for the administration of this Agreement by FCERA's Project Director will not have any personal liability to LAW FIRM for any action taken or not taken by such individual while acting or purporting to act as FCERA's Project Director or delegate of such Project Director.

B. LAW FIRM's Project Manager. LAW FIRM's Project Manager is Don Wellington. LAW FIRM shall inform FCERA in writing of the name of any alternate Project Manager or designee within a reasonable time of choosing the same, and the appointment of such individual(s) shall be subject to FCERA's approval, which may be withheld in its sole discretion. LAW FIRM's Project Manager:

- (1) Is responsible for the LAW FIRM's day-to-day activities related to the work to be performed under this Agreement and Exhibit A; and
- (2) Has full authority to act for LAW FIRM on all matters relating to the daily operation of this Agreement; and
- (3) Will be reasonably available during FCERA's normal working hours for telephone contact and to meet with FCERA personnel designated to discuss LAW FIRM's performance.

C. Additional Law Firm Personnel.

- (1) FCERA has the absolute right, during the period of LAW FIRM's performance under this Agreement, to approve or disapprove any of LAW FIRM's assigned personnel designated as Project Manager, engagement partners, managers, other senior supervisory staff, or specialists, or any proposed changes in these categories of LAW FIRM's personnel. LAW FIRM shall provide the FCERA Project Director, or his designee, with a résumé of the proposed replacement(s) and an opportunity to interview the person(s) prior to FCERA approving or disapproving the proposed change.
- (2) Upon request by FCERA's Project Director, LAW FIRM will replace any of LAW FIRM's personnel or Agents assigned to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

5. Compensation and Payment.

- A. Compensation.** FCERA shall compensate LAW FIRM for services rendered under this Agreement as set forth in Exhibit B, attached hereto and incorporated herein by reference.
- B. Expenses.** LAW FIRM is not entitled to reimbursement of out-of-pocket travel expenses for any expenses related to meetings at FCERA's regular place of business. LAW FIRM's expenses are included in the compensation described in Section 5.A and therefore LAW FIRM is not entitled to any separate reimbursement for any expenses incurred by it in discharging its duties under this Agreement, unless otherwise agreed by FCERA.
- C. Additional Compensation.** Except as expressly provided in Exhibit A and Exhibit B of this Agreement, LAW FIRM shall not be entitled to nor receive from FCERA any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, LAW FIRM shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.
- D. Withholding of Taxes.** FCERA will not withhold any Federal or State income taxes or Social Security tax from any payments made by FCERA to LAW FIRM under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of LAW FIRM. FCERA has no responsibility or liability for payment of LAW FIRM's taxes or assessments.
- E. Invoices and Payment.** All invoices are to be submitted to Becky Van Wyk, Assistant Retirement Administrator, FCERA, 1111 H Street, Fresno, CA 93721.
- F. Non-Compensable Services.** LAW FIRM agrees that should work be performed outside the **Scope of the Work** described in Exhibit A, without the prior written consent of FCERA in accordance with the Section 21 "Amendments" to this Agreement, such work will be deemed to be a gratuitous effort on the part of LAW FIRM, and LAW FIRM will have no claim against FCERA for such work, and FCERA will have no obligation to pay for such work.

6. Term and Termination.

- A. General Term.** Subject to the termination provisions in this Section, the term of this Agreement begins on the Agreement Date and based on successful completion of the immediate past year's services shall continue for three (3) years through June 30, 2018. Upon mutual agreement of parties, the Agreement may be renewed annually for up to three (3) additional years. Any extensions shall be in written form as amendments to

this Agreement.

- B. Termination for Convenience.** The FCERA may terminate this agreement upon 30 days prior written notice to the LAW FIRM. Termination of this Agreement shall not affect the FCERA's obligation to pay for all fees earned and reasonable costs necessarily incurred by the LAW FIRM as provided in Section 5.A herein, subject to any applicable setoffs. FCERA's termination of this Agreement under Section 6.B is not a waiver of FCERA's right to make a claim against LAW FIRM for damages resulting from any default by LAW FIRM, which occurred prior to the Effective Termination Date.
- C. Termination for Default.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.
- D. Automatic Termination.** This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of LAW FIRM's business, (c) cancellation of insurance required under the terms of this Agreement, (d) if, for any reason, LAW FIRM ceases to be licensed or otherwise authorized to do business in the State of California, and the LAW FIRM fails to remedy such defect or defects within thirty (30) days of receipt of written notice of such defect or defects, (e) if LAW FIRM materially breaches any of the warranties, representations, agreements, and covenants made in Section 11 and in Section 19 (Conflicts and Disqualification), (f) if LAW FIRM is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; and/or (g) if LAW FIRM attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining FCERA's prior written consent.
- E. Force Majeure.** LAW FIRM may not be terminated for default, if LAW FIRM's failure to perform under this Agreement arises solely from causes of Force Majeure.
- F. Rights, Remedies and Responsibilities upon Termination.** If this Agreement is terminated, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions also apply to any termination of this Agreement.
- (1) **Recovery of Reasonable Damages Upon Default.** If FCERA terminates this Agreement in whole or in part for default pursuant to Section 6.C or Section 6.D above, FCERA is entitled to recover from LAW FIRM all reasonable damages resulting from such default. By way of example and not limitation, FCERA may procure, upon such terms and in such manner as FCERA may deem appropriate, services similar to those terminated, and LAW FIRM will be liable to FCERA for any excess cost of such similar services.

- (2) Payment when Terminated for Convenience. If FCERA terminates this Agreement for convenience, FCERA will pay LAW FIRM for work already performed but for which LAW FIRM has not been compensated through the Effective Termination Date.
- (3) Payment Withheld for Default. FCERA shall not authorize and shall withhold payment for services provided if FCERA terminates this Agreement for default. In the event the damages caused by such default are less than the withheld payment for services, the amount withheld in excess of the damages shall be paid to LAW FIRM.
- (4) Good Faith Transfer. Upon any termination of this Agreement by FCERA, and to the extent directed by FCERA, LAW FIRM will cooperate with FCERA in good faith to effect a smooth and orderly transfer of such services and all applicable records to a successor designated by FCERA. LAW FIRM will respond promptly to reasonable inquiries of such successor LAW FIRM with respect to the Work Papers and matters of continuing law significance to FCERA. Upon termination of this Agreement, LAW FIRM will retain all Work Records according to the record retention provisions set forth in Section 13 below.

7. Required Licenses, Certificates and Permits.

Any licenses, certificates or permits required by the federal, state, FCERA or municipal governments for LAW FIRM to provide the services and work described in Exhibit A must be procured by LAW FIRM and be valid at the time LAW FIRM enters into this Agreement. Further, during the term of this Agreement, LAW FIRM must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by LAW FIRM at no expense to the FCERA.

8. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, LAW FIRM shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. FCERA is not obligated to reimburse or pay LAW FIRM for any expense or cost incurred by LAW FIRM in procuring or maintaining such items. Responsibility for the costs and expenses incurred by LAW FIRM in providing and maintaining such items is the sole responsibility and obligation of LAW FIRM.

9. Insurance

A. LAW FIRM shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

(1) General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

(a) If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by LAW FIRM under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) If written on a claims form, LAW FIRM will continue to name FCERA as an additional insured or provide an extended two year reporting period commencing upon termination or cancellation of this Agreement.

(2) Automobile Liability Insurance

If the LAW FIRM or the LAW FIRM's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

(3) Workers' Compensation Insurance

Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the LAW FIRM certifies that the LAW FIRM is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and that the LAW FIRM will comply with such provisions before commencing the performance of the work of this Agreement.

(4) Professional Liability.

Errors and omissions professional liability insurance with a limit of at least \$10,000,000 per claim. LAW FIRM will notify FCERA in writing of any change in coverage amount subsequent to the effective Agreement Date. LAW FIRM warrants its professional liability insurance is applicable to LAW FIRM's actions and obligations under this Agreement.

- B.** Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by FCERA. At the option of the FCERA, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the LAW FIRM shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the FCERA guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The FCERA, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the LAW FIRM agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the LAW FIRM's defense and indemnification obligations as set forth in this Agreement.
- C.** The LAW FIRM shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the FCERA and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the LAW FIRM, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the LAW FIRM; (c) premises owned, occupied or used by the LAW FIRM; and (d) automobiles owned, leased, hired or borrowed by the LAW FIRM. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the FCERA and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the LAW FIRM.

- D.** The LAW FIRM's insurance coverage shall be primary insurance regarding the FCERA and FCERA's officers, officials and employees. Any insurance or self-insurance maintained by the FCERA or FCERA's officers, officials and employees shall be excess of the LAW FIRM's insurance and shall not contribute with LAW FIRM's insurance.
- E.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the FCERA or its officers, officials, employees or volunteers.
- F.** The LAW FIRM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- G.** Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to FCERA. The LAW FIRM shall promptly notify, or cause the insurance carrier to promptly notify, the FCERA of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- H.** Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the FCERA; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the FCERA; lesser ratings must be approved in writing by the FCERA.
- I.** LAW FIRM shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.
- J.** At least ten (10) days prior to the date the LAW FIRM begins performance of its obligations under this Agreement, LAW FIRM shall furnish FCERA with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the LAW FIRM. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in FCERA's sole and absolute discretion, approved by FCERA. FCERA reserves the right to require complete copies of all required insurance policies and endorsements, at any time.
- K.** The limits of insurance described herein shall not limit the liability of the LAW FIRM and LAW FIRM's officers, employees, agents, representatives or subcontractors.

10. Defense and Indemnification.

To the fullest extent permitted by law, LAW FIRM shall indemnify, hold harmless and defend the FCERA, its Board and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees (collectively "claims"), arising out of, resulting from, or in connection with the performance of this Agreement by the LAW FIRM or LAW FIRM's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, LAW FIRM's obligation to indemnify FCERA, its Board, and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the LAW FIRM in causing the Claim on which such judgment, decree or arbitration award is based~~contributing to such claim, damage, loss and expense.~~

~~LAW FIRM's obligation to defend, indemnify and hold the FCERA and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for LAW FIRM to procure and maintain a policy of insurance.~~

11. LAW FIRM's Representations, Warranties and Covenants.

LAW FIRM makes the following representations, warranties, covenants and agreements, acknowledging they constitute a material inducement to FCERA to enter into this Agreement.

- A. Authorization.** This Agreement has been duly authorized, executed and delivered by LAW FIRM and constitutes the legal, valid and binding agreements and obligations of LAW FIRM, enforceable against LAW FIRM in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity. LAW FIRM is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any contract or agreement, that would be breached or violated by LAW FIRM's execution, delivery or performance of this Agreement.
- B. Gratuities.** No gratuities in the form of gifts, entertainment or otherwise, were offered or given by LAW FIRM or its Agents to any officer, fiduciary, or employee of FCERA or the County of Fresno, California with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. LAW FIRM covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance,

continuation, and/or amendment of this Agreement. If it is found that such gratuities have been offered or given by LAW FIRM or its Agents, FCERA may terminate this Agreement upon one (1) calendar day's written notice; however, the facts upon which FCERA bases such findings will be at issue and may be reviewed in any competent court. In the event of such termination, FCERA may pursue the same remedies against LAW FIRM as it could pursue in the event of default by LAW FIRM.

- C. Conflicts of Interest With Persons Related to FCERA.** No FCERA employee or fiduciary, whose position with FCERA enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person, is or will be employed in any capacity by LAW FIRM, or does or will have any direct or indirect financial interest in this Agreement.
- D. Recruiting.** During the term of this Agreement and for one (1) calendar year thereafter, LAW FIRM, and any employee of LAW FIRM providing services to FCERA, will not intentionally induce or persuade any employee of FCERA to join LAW FIRM.
- E. Changes.** LAW FIRM will notify FCERA in writing within ten (10) business days of any of the following changes: (i) LAW FIRM becomes aware that any of its representations, warranties, covenants, or agreements set forth herein has been breached or ceases to be true at any time during the term of this Agreement; (ii) there is a change in LAW FIRM's personnel assigned to perform services under this Agreement, (iii) there is any change in control of LAW FIRM, (iv) LAW FIRM becomes aware of any other material change in its business organization, including without limitation the filing for bankruptcy relief, or (v) LAW FIRM becomes aware of an actual conflict arising out of work it performs on behalf of the FCERA.
- F. LAW FIRM and its Agents.** LAW FIRM's Agents who will be responsible for performing under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any consent decree with respect to any matter involving infringement of intellectual property rights, breach of fiduciary duty, or fraud.

12. Independent Contractor Status.

- A.** All acts of LAW FIRM and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of LAW FIRM relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of FCERA. LAW FIRM, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of FCERA. Except as expressly provided in Exhibit A, LAW FIRM has no authority or responsibility to exercise any rights or power vested in the FCERA. No agent, officer or employee of the FCERA is to be

considered an employee of LAW FIRM. It is understood by both LAW FIRM and FCERA that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship, partnership, servant or a joint venture, or association.

- B.** At all times during the term of this Agreement, the LAW FIRM and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of FCERA.
- C.** LAW FIRM shall determine the method, details and means of performing the work and services to be provided by LAW FIRM under this Agreement. LAW FIRM shall be responsible to FCERA only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to FCERA's control with respect to the physical action or activities of LAW FIRM in fulfillment of this Agreement. LAW FIRM has control over the manner and means of performing the services under this Agreement. LAW FIRM is permitted to provide services to others during the same period service is provided to FCERA under this Agreement. If necessary, LAW FIRM has the responsibility for employing other persons or firms to assist LAW FIRM in fulfilling the terms and obligations under this Agreement.
- D.** If in the performance of this Agreement any third persons are employed by LAW FIRM, such persons shall be entirely and exclusively under the direction, supervision and control of LAW FIRM. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the LAW FIRM.
- E.** It is understood and agreed that as an independent LAW FIRM and not an employee of FCERA, the LAW FIRM and the LAW FIRM's officers, employees, agents, representatives or subcontractors do not have any entitlement as a FCERA employee, and do not have the right to act on behalf of the FCERA in any capacity whatsoever as an agent, or to bind the FCERA to any obligation whatsoever.
- F.** It is further understood and agreed that LAW FIRM must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of LAW FIRM's assigned personnel under the terms and conditions of this Agreement.
- G.** As an independent LAW FIRM, LAW FIRM hereby indemnifies and holds FCERA harmless from any and all claims that may be made against FCERA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

13. Records and Audit

- A. Records Retention.** LAW FIRM shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of six years from the termination or completion of this Agreement. This includes but not limited to any handwriting, typewriting, printing, photo static, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof. This includes but is not limited to any pertinent activity, dates, and time spent providing services hereunder, invoices billed to FCERA, proprietary data and any other records created by LAW FIRM or its agents in connection with this Agreement (“FCERA Records”).
- B. Records Review and Audit.** Any authorized representative of FCERA shall have access to and the right to audit, evaluate, examine, excerpt and copy or transcribe any FCERA Records (other than that portion of such Records that evidence the confidential/proprietary information and/or trade secrets of LAW FIRM or any third party) during the period such records are to be maintained by LAW FIRM. Further, FCERA has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement. FCERA agrees that any such review and audit will be conducted in a manner to minimize interference with LAW FIRM’s normal business activities. Upon reasonable advance notice to LAW FIRM, LAW FIRM will make the persons responsible for creating and maintaining FCERA Records available to FCERA during such review and audit for the purpose of responding to FCERA’s reasonable inquiries. FCERA will pay all costs associated with such audit, other than any costs incurred by LAW FIRM to make personnel available as required by the preceding sentence.

14. Confidentiality; Proprietary Rights

- A. FCERA's Proprietary Rights.** All reports under this Agreement become the sole property of FCERA. Both parties hereto acknowledge that LAW FIRM retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as LAW FIRM protects FCERA's interests in all of its confidential records and property.
- B. Member Records.** LAW FIRM acknowledges that when performing under this Agreement, LAW FIRM may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. LAW FIRM will maintain the confidentiality of all Member Records according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality.

C. FCERA's Policies, Procedures and Strategies. LAW FIRM will protect the security of and keep confidential all materials, data, and other information received by LAW FIRM regarding FCERA's assets and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.

D. LAW FIRM's Proprietary Materials. Absent LAW FIRM's written consent authorizing disclosure, FCERA will use reasonable means to protect and maintain the confidentiality of any of LAW FIRM's materials, which LAW FIRM considers to be proprietary, so long as:

- (1) LAW FIRM clearly and prominently marks all such material "confidential;" and
- (2) Public disclosure of such material is not requested pursuant to the California Public Records Act (Cal. Gov't. Code Section 6250 et seq., the "Act"), or by the order of any tribunal having jurisdiction.

(a) If an action is commenced against FCERA under Act or otherwise that challenges FCERA's refusal to disclose LAW FIRM's proprietary material, LAW FIRM will defend FCERA in the action at LAW FIRM's expense, and will pay any judgment for damages or attorneys' fees that may be entered as a result of FCERA's refusal to disclose LAW FIRM's confidential material. FCERA will provide notice to LAW FIRM so LAW FIRM can get a protective order or opinion of counsel to turn over confidential material.

(b) FCERA's obligations under subsection (1) do not apply to:

- (1) Any confidential information that FCERA can demonstrate has become public information through no breach of this Agreement by FCERA; and
- (2) The FCERA Records.

15. Nondiscrimination

During the performance of this Agreement, LAW FIRM and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. LAW FIRM and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the FCERA's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the

Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

16. Assignment

This is an agreement for the services of LAW FIRM. FCERA has relied upon the skills, knowledge, experience and training of LAW FIRM and its associates and employees as an inducement to enter into this Agreement. LAW FIRM shall not assign or subcontract this Agreement without the express written consent of FCERA. Further, LAW FIRM shall not assign any monies due or to become due under this Agreement without the prior written consent of FCERA.

17. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

18. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which LAW FIRM or FCERA shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To FCERA: FCERA
 Attention: Retirement Administrator
 1111 H Street
 Fresno, CA 93721

To LAW FIRM: Steptoe & Johnson LLP
 Attention: Don Wellington
 Address 633 West Fifth Street, Suite 700
 City State Los Angeles, CA 90071

19. Conflicts and Disqualification

LAW FIRM hereby affirms that there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a Conflict of Interest. A Conflict of Interest means that because of other activities or relationships with other persons, LAW FIRM or

its subcontractor is unable or potentially unable to render impartial assistance or advice to FCERA, or LAW FIRM's objectivity in performing the agreement work is or might be otherwise impaired.

If an actual or potential Conflict of Interest arises subsequent to the date of this agreement, LAW FIRM shall make a full disclosure in writing to FCERA of all relevant facts and circumstances. This disclosure shall include a description of actions that LAW FIRM has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. LAW FIRM will continue performance of work under the agreement until notified by FCERA of any contrary action to be taken. [LAW FIRM shall comply with California Rule of Professional Conduct 3-310 with respect to actual and potential conflicts of interest, provided, however, that FCERA agrees in advance to waive any conflict that may arise under Rule 3-310\(C\)\(3\).](#)

20. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or FCERA statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

21. Amendment

This Agreement and its exhibits may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

22. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

23. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

24. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

25. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed and enforced in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall be conducted in the state and/or federal courts located in Fresno County, State of California, and all parties consent to such venue and the personal jurisdiction of such courts

26. Time of the Essence

Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

27. 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 instrument.

28. Authority to Execute

The persons signing this Agreement are duly authorized to execute the document on behalf of and to bind their respective parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

**FRESNO COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION**

[LAW FIRM]

By: _____
Steven J. Jolly
Chair, Board of Retirement
"FCERA"

"LAW FIRM"

APPROVED AS TO FORM:

By:
Donald Kendig
Retirement Administrator

EXHIBIT A

SCOPE OF WORK

The scope of work is defined in the Response to the Request for Quote submitted by LAW FIRM dated August 7, 2015 and made part of this agreement by reference.

EXHIBIT B

COMPENSATION

The LAW FIRM shall be compensated as follows:

Hourly Rate	<u>\$525</u>
Retainer Amount	<u>\$0</u>
<u>Estimated cost to prepare and file a tax determination letter request by January 31, 2016</u>	
<u>\$14,700 to \$19,950, excluding filing costs</u>	
<u>Estimated number of hours to prepare a tax determination letter 28 – 38 hours</u>	

| Maximum contract amount \$25,000, unless the Board increases such amount in writing.