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BOARD AGENDA LETTER

DATE: December 20, 2023
TO: Board of Retirement
FROM: Donald C. Kendig, CPA, Retirement Administrator
SUBJECT: **Approval of Board Counsel Services Agreement – APPROVE**

Recommended Action

1. Approve the proposed, restated and amended, agreement for Board legal services with Baker Manock & Jensen, PC.

Alternative Action

2. Pull the item for any Board directed changes or a separate vote.

Fiscal and Financial Impacts.

The proposed contract contains new hourly rates, level setting for the 2024 year. Commencing on January 1, 2025, Baker Manock & Jensen, PC (“BMJ”) may increase the compensation described in Exhibit B by an amount not to exceed Consumer Price Index for All Urban Consumers (CPI-U) for the previous twelve (12) months. This provides an objective ceiling for any future increases.

Background and Discussion

On September 20, 2023, your Board, by majority vote, approved the conversion of the Board Counsel agreement to sole source and directed me to commence negotiations and to bring back a proposed Agreement for your Board’s approval.

The modifications are summarized as follows:

- Date incrementations.
- Minor formatting and ministerial edits.
- The addition of Craig Armstrong as a principal agent (attorney) with either one or the other in attendance. Ken still maintains the lead position.
- Compensation paragraph modified to provide for CPI adjustments.
- Simplification of agreement term and termination. Can be terminated for convenience, default, or automatically (under certain conditions).
- Updated address.
- A compensation adjustment commencing January 1, 2024.

I do not anticipate any nuances with the Board approving this item on consent or pulling the item for a separate vote but, what makes consideration of this item unique is that Board counsel cannot participate or advise on this item per footnote 5 of FCERA's procurement process:

Provided, however, that FCERA legal counsel shall not be asked to confirm, review, or participate in, and FCERA legal counsel shall not confirm, review, or participate in, a procurement or contract that directly or indirectly benefits FCERA legal counsel or that otherwise constitutes a conflict of interest for FCERA legal counsel. In such an event, the Board may, at its discretion, form an ad hoc committee to confirm that the circumstances required by the Due Diligence Policy, Paragraph III. 2) f)¹, have been met and that the Retirement Administrator's recommendation complies with federal, state, and local laws, regulations, and ordinances applicable to the proposed procurement.

Since this matter is open for public discussion under the Brown Act, the Board may wish to discuss it further, and staff welcomes any questions, comments, or concerns, I will ask Board counsel to recuse itself, if this item is pulled for anything other than to record a roll call vote.

Attachments

1. Proposed Board Counsel Agreement
2. Board Counsel Agreement Red Line

¹ Corrected from "e)" to "f)".

Fresno County Employees' Retirement Association
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**RESTATED AND AMENDED AGREEMENT
FOR
BOARD LEGAL SERVICES**

THIS RESTATED AND AMENDED AGREEMENT FOR BOARD LEGAL SERVICES (this "Agreement") is made and entered into by and between the Fresno County Employees' Retirement Association, a local governmental agency ("FCERA"), and Baker Manock & Jensen, PC, a California professional corporation ("LAW FIRM") on January 1, 2024 ("Agreement Date").

Recitals

WHEREAS, FCERA was created by and operates pursuant to the County Employees Retirement Law of 1937 (Gov. Code § 31450 et seq.), and FCERA is administered by the Board of Retirement ("Board"); and

WHEREAS, although LAW FIRM presently performs legal services for FCERA, the engagement agreement between the parties shall expire by its terms on December 31, 2023; and

WHEREAS, FCERA and the Board desire to engage the LAW FIRM to perform legal counsel services under the terms provided herein; and

WHEREAS, LAW FIRM desires to perform the legal counsel services, and has represented to FCERA that it is qualified to perform the aforesaid legal counsel services; and

WHEREAS, FCERA has determined LAW FIRM is qualified to perform the aforesaid legal counsel 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" has the meaning given in the preamble of this Agreement.

"Agreement Date" means the date shown in the preamble of this Agreement.

"Board" has the meaning given in the Recitals of this Agreement.

"LAW FIRM" has the meaning given in the preamble of this Agreement.

"LAW FIRM's Project Manager" has the meaning given in Section 4(B) of this Agreement.

"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, pandemics, 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" has the meaning given in the preamble of this Agreement.

"FCERA's Project Director" means Donald Kendig, FCERA's Retirement Administrator, or any successor to the position of FCERA Retirement Administrator.

"FCERA Records" has the meaning given in Section 13(A) of this Agreement.

"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 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 Kenneth J. Price and Craig W. Armstrong, as its principal agents to perform the services described in this Agreement ("LAW FIRM's Project Manager"). 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 other legal services required or desired by FCERA in FCERA's sole and absolute discretion.

3. Attorney Work Product and Records.

FCERA shall have the right to all attorney work product and other records consistent with the California Rules of Professional Conduct and this Agreement.

4. Project Responsibility.

A. FCERA's Project Director. FCERA's Project Director is the Retirement Administrator, and 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 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 FCERA's Project Director.

B. LAW FIRM's Project Manager. LAW FIRM's Project Managers are Kenneth J. Price and Craig W. Armstrong. LAW FIRM shall inform FCERA in writing of the name of any alternate LAW FIRM 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 Managers:

- (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 LAW FIRM's Project Managers, 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 its 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. Commencing on January 1, 2025, LAW FIRM may increase the compensation described in Exhibit B by an amount not to exceed Consumer Price Index for All Urban Consumers (CPI-U) for the previous twelve (12) months.

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 Donald C. Kendig, Retirement Administrator, FCERA, 7772 N Palm Ave, Fresno, CA 93711.
- 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, 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 shall continue until it is terminated pursuant to the terms and subject to the conditions of subsections B through D of this Section 6.
- B. Termination for Convenience.** FCERA may terminate this Agreement at any time and for any reason by giving written notice to LAW FIRM. Termination of this Agreement shall not affect FCERA's obligation to pay for all fees earned and reasonable costs necessarily incurred by LAW FIRM as provided in Section 5.A herein, subject to any applicable setoffs. FCERA's termination of this Agreement under this 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.
- (0) 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.
- (1) 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 legal significance to FCERA. Upon termination of this Agreement, LAW FIRM will retain all FCERA 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 LAW FIRM 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, LAW FIRM certifies that 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 \$5,000,000 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, the insurer shall reduce or eliminate such deductibles, or named insureds. 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.** LAW FIRM shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming 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 LAW FIRM, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of LAW FIRM; (c) premises owned, occupied or used by LAW FIRM; and (d) automobiles owned, leased, hired or borrowed by LAW FIRM. For Workers' Compensation insurance, the insurance carrier shall agree to waive

all rights of subrogation against 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 LAW FIRM.

- D.** LAW FIRM's insurance coverage shall be primary insurance regarding FCERA and FCERA's officers, officials and employees. Any insurance or self-insurance maintained by FCERA or FCERA's officers, officials and employees shall be excess of 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 FCERA or its officers, officials, employees or volunteers.
- F.** 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. LAW FIRM shall promptly notify, or cause the insurance carrier to promptly notify, 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 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 FCERA; lesser ratings must be approved in writing by FCERA.
- I.** 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 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.
- J.** The limits of insurance described herein shall not limit the liability of 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 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 LAW FIRM'S negligence or willful misconduct in performance of its services under this Agreement by 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 willful action of LAW FIRM in contributing to such claim, damage, loss and expense.

LAW FIRM's obligation to defend, indemnify and hold 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 immediately upon giving 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 FCERA. No agent, officer or employee of 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, 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, LAW FIRM and 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 FCERA in any capacity whatsoever as an agent, or to bind 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. Records.** LAW FIRM acknowledges that FCERA is a public agency subject to the California Public Records Act.
- 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, including the attorney work product and attorney-client communication privileges.
- 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. Code § 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 (Gov. Code § 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
7772 N Palm Ave
Fresno, CA 93711

To LAW FIRM: Baker Manock & Jensen, PC
Attention: Kenneth J. Price
5260 N. Palm Avenue, Suite 201
Fresno, California 93704

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.

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.

FCERA

LAW FIRM

FRESNO COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION

BAKER MANOCK & JENSEN, PC

By: _____
Nathan Magsig, Chair, Board of Retirement

By: _____
Kenneth J. Price, Managing Shareholder and
Attorney

APPROVED AS TO FORM:

Donald Kendig
Retirement Administrator

By: _____
Donald Kendig, Retirement Administrator

EXHIBIT A

ATTACHMENT A

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION'S

BOARD COUNSEL

POSITION DESCRIPTION

DEFINITION:

The Board Counsel acts as legal advisor to the FCERA Retirement Board (Board), providing responsible and complex legal support to the Board, the Retirement Administrator, and FCERA staff in meeting their operational and fiduciary responsibilities. Board Counsel researches, prepares and presents legal opinions and provides legal analysis regarding all aspects of FCERA's operations, excluding personnel, investment, disability, dissolution and fiduciary issues. The incumbent coordinates with other governmental or private sector entities on legal matters affecting FCERA and undertakes special projects and other duties as requested.

DUTIES AND ESSENTIAL FUNCTIONS:

- Represents and advises the Board and staff in specified legal matters pertaining to their offices and meeting their fiduciary responsibilities. Ensures that such activities of FCERA are legally supportable and in accordance with applicable laws, regulations and rules. Responds to and resolves sensitive and complex legal issues.
- Provides legal counsel during public and closed sessions of the Board (this entails attending Board meetings.) Provides legal advice, analysis, and opinions to the Board, Retirement Administrator and staff in matters affecting FCERA's operation, including but not limited to, public pension law; general civil law; and contracts.
- Assesses and makes recommendations for retaining the services of legal expertise when necessary to advance or protect FCERA's interests. Assures that FCERA's legal interests are fully and properly represented in any litigation. Assumes the responsibility for providing legal representation as may be necessary.
- Stays current on, studies, interprets and advises the Board, Retirement Administrator and staff on statutes, rules and regulations, court decisions and legal opinions impacting FCERA.
- Confers with the Retirement Administrator and FCERA staff regarding current and anticipated legal services issues and needs. Develops and recommends short and longer term plans for addressing legal service needs.

- Drafts contracts, resolutions, opinions, and other documents. Oversees the handling of various legal matters, including but not limited to, Public Records Act requests, subpoenas and discovery.
- Provides analysis of state and federal legislation and formulates legislative proposals for potential sponsorship by FCERA.
- Develops and provides legal education programs to the Board and staff. Provides and coordinates staff training on legal issues.
- Personally attends all regular and special meetings of the Board, including committee meetings as needed.

MINIMUM QUALIFICATIONS:

1. Education and Experience:

Any combination of education and experience that has provided the knowledge, skills, and abilities necessary for a Board Counsel. A typical way of obtaining the required qualifications is to possess the equivalent of seven years of progressively responsible experience in a comparable legal environment, including involvement with litigation and program management. Must have a Juris Doctor degree from a fully accredited American Bar Association approved law school or equivalent qualification.

2. License:

Current membership in the California State Bar. Prior membership in the California State Bar with ability to obtain membership in the California State Bar prior to hire date is also acceptable.

DESIRED KNOWLEDGE, ABILITIES, AND SKILLS:

1. Knowledge Of:

California public retirement system law, particularly with respect to benefits; investment contracting; actuarial practices; general retirement system administration and management; disability adjudication; the County Employees Retirement Law of 1937; the Brown Act; the Political Reform Act; and the legislative process. Also, experience with civil and administrative law proceedings in diverse practice areas; knowledge of applicable federal, state and local laws and regulations; methods and techniques of case management.

2.

Ability To:

Plan, organize, integrate and manage legal services for an organization; analyze alternatives, draw logical conclusions and develop cost-effective solutions; anticipate potential issues and develop proactive means for addressing problems; implement and enforce appropriate procedures and controls; apply applicable laws and regulations; communicate clearly and concisely, both orally and in writing; maintain confidentiality of information; establish and maintain effective working relationships with all levels of management, employees, retirement system participants and stakeholders, the public, the media, and others encountered in the course of work; and establish and maintain the trust and confidence of a diverse, multi-member governing board.

EXHIBIT B

**COMPENSATION
(starting January 1, 2024)**

Board Counsel (Price)	\$325
Board Counsel (Armstrong)	\$300____
Shareholder Attorneys	\$\$325
Senior Associates	\$275
Junior Associates	\$240
Paralegals	\$175

Fresno County Employees' Retirement Association
7772 N Palm Ave, Fresno, CA 93711
Phone: (559) 457-0681
Fax: (559) 457-0318

RESTATED AND AMENDED AGREEMENT
FOR
BOARD LEGAL SERVICES

THIS RESTATED AND AMENDED AGREEMENT FOR BOARD LEGAL SERVICES (this "Agreement") is made and entered into by and between the Fresno County Employees' Retirement Association, a local governmental agency ("FCERA"), and Baker Manock & Jensen, PC, a California professional corporation ("LAW FIRM") on ~~January 1, 2021~~ January 1, 2024 ("Agreement Date").

Recitals

WHEREAS, FCERA was created by and operates pursuant to the County Employees Retirement Law of 1937 (Gov. Code § 31450 et seq.), and FCERA is administered by the Board of Retirement ("Board"); and

WHEREAS, although LAW FIRM presently performs legal services for FCERA, the engagement agreement between the parties shall expire by its terms on December 31, ~~2020~~ 2023; and

WHEREAS, FCERA and the Board desire to engage the LAW FIRM to perform legal counsel services under the terms provided herein; and

WHEREAS, LAW FIRM desires to perform the legal counsel services, and has represented to FCERA that it is qualified to perform the aforesaid legal counsel services; and

WHEREAS, FCERA has determined LAW FIRM is qualified to perform the aforesaid legal counsel 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" has the meaning given in the preamble of this Agreement.

"Agreement Date" means the date shown in the preamble of this Agreement.

"Board" has the meaning given in the Recitals of this Agreement.

"LAW FIRM" has the meaning given in the preamble of this Agreement.

"LAW FIRM's Project Manager" has the meaning given in Section 4(B) of this Agreement.

"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, pandemics, 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" has the meaning given in the preamble of this Agreement.

"FCERA's Project Director" means Donald Kendig, FCERA's Retirement Administrator, or any successor to the position of FCERA Retirement Administrator.

"FCERA Records" has the meaning given in Section 13(A) of this Agreement.

"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 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 Kenneth J. Price and Craig W. Armstrong, as its principal agents to perform the services described in this Agreement ("LAW FIRM's Project Manager"). 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) LAW FIRM shall use best efforts to provide to have two attorneys present at each scheduled Board meeting (while only billing for one) when there is a need to do so (i.e. board action items, disabilities, divorces, litigation); in the event two attorneys cannot be present at a scheduled Board meeting or if the LAW FIRM'S Project Manager, in consultation with the Project Director, determines having two attorneys is unnecessary given the items to be discussed at the Board meeting the attorney present at the Board meeting will relay all necessary information and discussions regarding the Board meeting to the absent attorney in a prompt manner and at no expense to FCERA.~~

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- ~~(3)~~ 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 other legal services required or desired by FCERA in FCERA's sole and absolute discretion.

3. Attorney Work Product and Records.

FCERA shall have the right to all attorney work product and other records consistent with the California Rules of Professional Conduct and this Agreement.

4. Project Responsibility.

A.- FCERA's Project Director. FCERA's Project Director is the Retirement Administrator, and 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 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 FCERA's Project Director.

B. LAW FIRM's Project Manager. LAW FIRM's Project Managers ~~is-are~~ Kenneth J. Price and Craig W. Armstrong. LAW FIRM shall inform FCERA in writing of the name of any alternate LAW FIRM 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 Managers:

- (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 LAW FIRM's Project Managers, 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 its 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. Commencing on January 1, 2025, LAW FIRM may increase the compensation described in Exhibit B by an amount not to exceed Consumer Price Index for All Urban Consumers (CPI-U) for the previous twelve (12) months.

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 Donald C. Kendig, Retirement Administrator, FCERA, 7772 N Palm Ave, Fresno, CA 93711.
- 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, 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 December 31, 2023. Upon mutual agreement of the parties, this Agreement may be renewed annually for up to two (2) additional years. Any extensions shall be in written form as amendments to this Agreement until it is terminated pursuant to the terms and subject to the conditions of subsections B through D of this Section 6.~~
- B. Termination for Convenience.** FCERA may terminate this Agreement at any time and for any reason by giving written notice to LAW FIRM. Termination of this Agreement shall not affect FCERA's obligation to pay for all fees earned and reasonable costs necessarily incurred by LAW FIRM as provided in Section 5.A herein, subject to any applicable setoffs. FCERA's termination of this Agreement under this 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.
- (0) 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.
- (1) 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 legal significance to FCERA. Upon termination of this Agreement, LAW FIRM will retain all FCERA 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 LAW FIRM 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~~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, LAW FIRM certifies that 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 \$5,000,000 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, the insurer shall reduce or eliminate such deductibles, or named insureds. 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.

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C. LAW FIRM shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming 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 LAW FIRM, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of LAW FIRM; (c) premises owned, occupied or used by LAW FIRM; and (d) automobiles owned, leased, hired or borrowed by LAW FIRM. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against 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 LAW FIRM.

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D. LAW FIRM's insurance coverage shall be primary insurance regarding FCERA and FCERA's officers, officials and employees. Any insurance or self-insurance maintained by FCERA or FCERA's officers, officials and employees shall be excess of LAW FIRM's insurance and shall not contribute with LAW FIRM's insurance.

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E. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to FCERA or its officers, officials, employees or volunteers.

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F. 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.

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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. LAW FIRM shall promptly notify, or cause the insurance carrier to promptly notify, 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.

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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 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 FCERA; lesser ratings must be approved in writing by FCERA.

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I. 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 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.

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- J. The limits of insurance described herein shall not limit the liability of LAW FIRM and LAW FIRM's officers, employees, agents, representatives or subcontractors.

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10. Defense and Indemnification.

To the fullest extent permitted by law, LAW FIRM shall indemnify, hold harmless and defend 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 LAW FIRM'S negligence or willful misconduct in performance of its services under this Agreement by 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 willful action of LAW FIRM in contributing to such claim, damage, loss and expense.

LAW FIRM's obligation to defend, indemnify and hold 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 immediately upon giving 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 FCERA. No agent, officer or employee of 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, 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.

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- E. It is understood and agreed that as an independent LAW FIRM and not an employee of FCERA, LAW FIRM and 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 FCERA in any capacity whatsoever as an agent, or to bind 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.

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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. **Records.** LAW FIRM acknowledges that FCERA is a public agency subject to the California Public Records Act.
- 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, including the attorney work product and attorney-client communication privileges.

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. Code § 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 (Gov. Code § 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
 7772 N Palm Ave
 Fresno, CA 93711

To LAW FIRM: Baker Manock & Jensen, PC
 Attention: Kenneth J. Price
 5260 N. Palm Avenue, Suite ~~421~~-201
 Fresno, California 93704

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.

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.

Board Legal Counsel Contract
Baker Manock & Jensen, PC
Page 15 of 19

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

FCERA

LAW FIRM

FRESNO COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION

BAKER MANOCK & JENSEN, PC

By: _____
Nathan Magsig, Chair, Board of Retirement

By: _____
Kenneth J. Price, Managing Shareholder and
Attorney

APPROVED AS TO FORM:

Donald Kendig
Retirement Administrator

By: _____
Donald Kendig, Retirement Administrator

EXHIBIT A

ATTACHMENT A

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION'S

BOARD COUNSEL

POSITION DESCRIPTION

DEFINITION:

The Board Counsel acts as legal advisor to the FCERA Retirement Board (Board), providing responsible and complex legal support to the Board, the Retirement Administrator, and FCERA staff in meeting their operational and fiduciary responsibilities. Board Counsel researches, prepares and presents legal opinions and provides legal analysis regarding all aspects of FCERA's operations, excluding personnel, investment, disability, dissolution and fiduciary issues. The incumbent coordinates with other governmental or private sector entities on legal matters affecting FCERA and undertakes special projects and other duties as requested.

DUTIES AND ESSENTIAL FUNCTIONS:

- Represents and advises the Board and staff in specified legal matters pertaining to their offices and meeting their fiduciary responsibilities. Ensures that such activities of FCERA are legally supportable and in accordance with applicable laws, regulations and rules. Responds to and resolves sensitive and complex legal issues.
- Provides legal counsel during public and closed sessions of the Board (this entails attending Board meetings.) Provides legal advice, analysis, and opinions to the Board, Retirement Administrator and staff in matters affecting FCERA's operation, including but not limited to, public pension law; general civil law; and contracts.
- Assesses and makes recommendations for retaining the services of legal expertise when necessary to advance or protect FCERA's interests. Assures that FCERA's legal interests are fully and properly represented in any litigation. Assumes the responsibility for providing legal representation as may be necessary.
- Stays current on, studies, interprets and advises the Board, Retirement Administrator and staff on statutes, rules and regulations, court decisions and legal opinions impacting FCERA.
- Confers with the Retirement Administrator and FCERA staff regarding current and anticipated legal services issues and needs. Develops and recommends short and longer term plans for addressing legal service needs.

- Drafts contracts, resolutions, opinions, and other documents. Oversees the handling of various legal matters, including but not limited to, Public Records Act requests, subpoenas and discovery.
- Provides analysis of state and federal legislation and formulates legislative proposals for potential sponsorship by FCERA.
- Develops and provides legal education programs to the Board and staff. Provides and coordinates staff training on legal issues.
- Personally attends all regular and special meetings of the Board, including committee meetings as needed.

MINIMUM QUALIFICATIONS:

1. Education and Experience:

Any combination of education and experience that has provided the knowledge, skills, and abilities necessary for a Board Counsel. A typical way of obtaining the required qualifications is to possess the equivalent of seven years of progressively responsible experience in a comparable legal environment, including involvement with litigation and program management. Must have a Juris Doctor degree from a fully accredited American Bar Association approved law school or equivalent qualification.

2. License:

Current membership in the California State Bar. Prior membership in the California State Bar with ability to obtain membership in the California State Bar prior to hire date is also acceptable.

DESIRED KNOWLEDGE, ABILITIES, AND SKILLS:

1. Knowledge Of:

California public retirement system law, particularly with respect to benefits; investment contracting; actuarial practices; general retirement system administration and management; disability adjudication; the County Employees Retirement Law of 1937; the Brown Act; the Political Reform Act; and the legislative process. Also, experience with civil and administrative law proceedings in diverse practice areas; knowledge of applicable federal, state and local laws and regulations; methods and techniques of case management.

- 2.

Ability To:

Plan, organize, integrate and manage legal services for an organization; analyze alternatives, draw logical conclusions and develop cost-effective solutions; anticipate potential issues and develop proactive means for addressing problems; implement and enforce appropriate procedures and controls; apply applicable laws and regulations; communicate clearly and concisely, both orally and in writing; maintain confidentiality of information; establish and maintain effective working relationships with all levels of management, employees, retirement system participants and stakeholders, the public, the media, and others encountered in the course of work; and establish and maintain the trust and confidence of a diverse, multi-member governing board.

EXHIBIT B

COMPENSATION
(starting January 1, 2024)

Board Counsel (Price)	\$275 325 —
<u>Board Counsel (Armstrong)</u>	<u>\$300</u>
Team Shareholder Attorneys	\$225 \$275 \$325
Senior Associates (Armstrong)	\$240 275
Junior Associates	\$215 240
Paralegals	\$165 175

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