



Fresno County Employees' Retirement Association

REQUEST FOR PROPOSAL

1111 H Street
Fresno, California 93721
Phone: (559) 457-0681 FAX: (559) 457-0318
dkendig@co.fresno.ca.us
www.FCERA.org

Request for Proposal No. 20160829.1

Construction Project Management Services

August 26, 2016

Closing date of Proposal will be at 5:00 P.M. on September 20, 2016

All proposal information will be available for review after contract award.

Clarifications of specifications are to be directed to: Donald C. Kendig, phone (559) 457-0681, FAX (559) 457-0318.

IMPORTANT: SUBMIT PROPOSAL IN SEALED PACKAGE WITH PROPOSAL No., AND PROPOSER'S NAME AND ADDRESS MARKED CLEARLY ON THE OUTSIDE

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OVERVIEW

Fresno County Employees' Retirement Association (FCERA) requests proposals from qualified construction project managers willing to perform the construction management services required by FCERA.

FCERA is in escrow to purchase 7766, 7772, and 7778 North Palm Avenue that will consist of three completed building envelope shells of which two will require additional office design and construction services under the proposed model agreement attached to this RFP (hereinafter referred to as the "Project").

FCERA, a local governmental entity, has a need for project management services to assist in the design and construction process, and to oversee the construction manager/contractor responsible for constructing the new building, and ensuring there is a labor compliance program meeting the requirements of the California State Department of Industrial Relations.

A detailed scope of work is provided within this RFP and the model agreement.

KEY DATES

RFP Issue Date: **August 26, 2016**

Selected proposer Conference: **None Scheduled.**
Questions should be e-mailed to dkendig@co.fresno.ca.us or faxed to (559) 457-0318

Deadline for Written or Fax Requests for Interpretations or Corrections of RFP: September 6, 2016
Fax No. (559) 457-0318

RFP Closing Date: **September 20, 2016 at 5:00 P.M.**
FCERA
1111 H Street
Fresno, CA 93721
dkendig@co.fresno.ca.us

Submit one (1) original, one (1) copy and one (1) electronic copy

ENGAGEMENT PROCESS

The following timetable outlines the anticipated conduct of the process:

Request for Proposal (RFP) Posted to FCERA Website:	August 26, 2016
Deadline for Questions and Clarifications 5PM	September 6, 2016
Questions and Responses Posted to FCERA Website:	September 9, 2016
Deadline for Submission of Proposals 5PM	September 20, 2016
Reference Checking	September 21-29, 2016
Evaluation Completed & Recommendation	September 30, 2016
Final Determination & Contract Negotiations Completed	October 19, 2016

PROPOSAL CONTENT REQUIREMENTS

Proposers are requested to submit their proposals in a binder (one that allows for easy removal of pages) with index tabs separating the sections identified. Each page should be numbered.

Merely offering to meet the specifications is insufficient and will not be accepted. Each proposer shall submit a complete proposal with all information requested. Supportive material may be attached as appendices. All pages, including the appendices, must be numbered.

The content and sequence of the proposals will be as follows:

- I. PROPOSAL IDENTIFICATION SHEET (as provided)
- II. TRANSMITTAL LETTER: A one-page transmittal letter must be submitted on proposer's firm's official business letterhead. The letter is to transmit the proposal and provide an introduction to the firm. The transmittal letter include the name, address and telephone number of the person or persons to be used for contact and who will be authorized to make representations for the proposer. The transmittal letter must be signed by individual authorized to commit the consultant to the scope of the work proposed at the price quoted in the firm's cost proposal.
 - A. Whether the proposer is an individual, partnership or corporation shall also be stated. It will be signed by the individual, partner, or an officer or agent of the corporation authorized to bind the corporation, depending upon the legal nature of the proposer. A corporation submitting a proposal may be required before the contract is finally awarded to furnish a certificate as to its corporate existence, and satisfactory evidence as to the officer or officers authorized to execute the contract on behalf of the corporation.
- III. TABLE OF CONTENTS
- IV. EXECUTIVE SUMMARY: The executive summary contains a condensed overview of the contents of each of the major sections of the proposal to provide members of the FCERA Evaluation Team with a broad understanding of the entire proposal. The executive summary should begin with an overview of the firm's organization and prior experience, identify key employees who will serve FCERA and their qualifications. It should also present highlights from the firm's Detailed Cost Projection.
- V. CONFLICT OF INTEREST STATEMENT: The Proposer may become involved in situations where conflict of interest could occur due to individual or organizational activities that occur within FCERA. In this section the proposer should address the potential, if any, for conflict of interest and indicate plans, if applicable, to address potential conflict of interest. This section will be reviewed by FCERA Counsel for compliance with conflict of interest as part of the review process. The selected Proposer shall comply will all federal, state and local conflict of interest laws, statutes and regulations.
- VI. ACKNOWLEDGMENTS AND AFFIDAVIT:
 - A. Sign and return General Conditions Acknowledgement (form provided)

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- B. Sign and return Non-Collusion Affidavit (form provided)
 - C. Sign and return Trade Secrets Acknowledgement (form provided)
- VII. EXCEPTIONS: If the RFP proposer has any exceptions to the requirements of the RFP, this section should include a description of those exceptions. If exceptions are not noted, FCERA will assume that the Proposer's proposals meet those requirements. The exceptions shall be noted as follows:
- A. Exceptions to General Requirements.
 - B. Exceptions to Background/Scope of Work.
 - C. Exceptions to Specific Terms and Conditions.
 - D. Exceptions to Proposal Content Requirements.
 - E. Exceptions to the Model Agreement.
- VIII. SELECTED PROPOSER COMPANY DATA: This section should include:
- A. The highlights of the firm's corporate resources, including total staff, organizational structure, financial stability, technical environment and details of previous experience. This section should include a description of the firm's experience with particular emphasis on work performed for other government agencies.
 - B. Descriptions of professional and experience qualifications of the person(s) who shall perform work under the resulting contract.
 - C. Any material (including letters of support or endorsement) indicative of the Proposer's capability.
 - D. A brief description of the Proposer's current operations, and ability to provide the services.
 - E. Reference List (form provided)
 - F. Describe any terminated contracts for services similar to Consultant's current proposal for the RFP and provide the following:
 - 1. Agency contract with
 - 2. Date of original contract
 - 3. Reason for termination
 - 4. Contact person and telephone number for agency
 - G. Describe any pending lawsuits or legal actions:
 - 1. Location filed, name of court and docket number
 - 2. Nature of the lawsuit or legal action

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IX. SCOPE OF WORK:

A. Proposers are provided a model scope of work and agreement and can discuss any modifications to the scope under this section that they deem appropriate.

X. COST PROPOSAL: Quotations may be prepared in any manner to best demonstrate the worthiness of your proposal; however, fitting them into the Model Agreement format will aid in analysis.

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PROPOSAL IDENTIFICATION SHEET

RESPONDENT TO COMPLETE AND RETURN WITH PROPOSAL

Our proposal is attached and identified
as: _____

The undersigned agrees to furnish the service stipulated at the prices and terms stated in the cost proposal.

Work services will commence within _____ calendar days after signing of the final contract.

Company: _____

Address: _____

Zip: _____

Signed by: _____

Print Name

Print Title

()

Telephone

()

Fax Number

E-mail Address

Date: _____

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**STANDARD INSTRUCTIONS AND CONDITIONS FOR
REQUESTS FOR PROPOSALS (RFP'S) AND REQUESTS FOR QUOTATIONS (RFQ'S)**

Note: the reference to "proposals" in the following paragraphs applies to RFP's and RFQ's

GENERAL CONDITIONS

By submitting a proposal the proposer agrees to the following conditions. These conditions will apply to all subsequent purchases based on this proposal.

1. PROPOSAL PREPARATION:

- A) All prices and notations must be typed or written in ink. No erasures permitted. Errors may be crossed out, initialed and corrections printed in ink by person signing proposal.
- B) .
- C) Proposal on each item separately. Prices should be stated in units specified herein. All applicable charges must be quoted; charges on invoice not quoted herein will be disallowed.
- D) Time of delivery is a part of the consideration and must be stated in definite terms and must be adhered to. F.O.B. Point shall be destination or freight charges must be stated.
- E) All proposals must be dated and signed with the firm's name and by an authorized officer or employee.
- F) Unless otherwise noted, prices shall be firm for 120 days after closing date of proposal.

2. SUBMITTING PROPOSALS:

- A) Each proposal must be submitted on forms provided in a sealed envelope with proposal name and closing date and time on the outside of the envelope/package.
- B) Interpretation: Should any discrepancies or omissions be found in the proposal specifications or doubt as to their meaning, the Proposer shall notify FCERA in writing at once. FCERA shall not be held responsible for verbal interpretations. Questions regarding the proposal must be received by FCERA by **September 6, 2016**. All addenda issued shall be in writing, duly issued by FCERA and incorporated into the contract.
- C) ISSUING AGENT/AUTHORIZED CONTACT: This RFP/RFQ has been issued by the Fresno County Employees' Retirement Association (FCERA). FCERA shall be the Selected proposer's sole point of contact with regard to the RFP/RFQ, its content, and all issues concerning it.

All communication regarding this RFP/RFQ shall be directed to an authorized representative of FCERA. The specific person managing this RFP/RFQ is identified on the cover page, along with his or her telephone number, and he or she should be the primary point of contact for discussions or information pertaining to the RFP/RFQ. Contact with any other FCERA representative, including elected officials, for the purpose of discussing this RFP/RFQ, its content, or any other issue concerning it, is prohibited unless authorized by FCERA. Violation of this clause, by the Selected proposer having unauthorized contact (verbally or in writing) with such other FCERA representatives, may constitute grounds for rejection by FCERA of the Selected proposer's quotation.

The above stated restriction on Selected proposer contact with FCERA representatives shall apply until FCERA has awarded a

purchase order or contract to a Selected proposer or Selected proposers, except as follows. First, in the event that a Selected proposer initiates a formal protest against the RFP/RFQ, such Selected proposer may contact the appropriate individual, or individuals who are managing that protest as outlined in FCERA's established protest procedures. All such contact must be in accordance with the sequence set forth under the protest procedures. Second, in the event a public hearing is scheduled before the Board of Retirement to hear testimony prior to its approval of a purchase order or contract, any Selected proposer may address the Board.

- D) Proposals received after the closing time will NOT be considered.
- E) Proposers are to proposal what is specified or requested first. If unable to or willing to, Proposer may proposal alternative or option, indicating all advantages, disadvantages and their associated cost.
- F) Proposals must comply with Business and Professions Code Section 7028.15.
- G) Where the State of California requires a Contractor's license, it is a misdemeanor for any person to submit a proposal unless specifically exempted.

3. TAXES, CHARGES AND EXTRAS:

- A) FCERA is subject to California sales and/or use tax. Please indicate as a separate line item if applicable.
- B) Charges for transportation, containers, packing, etc. will not be paid unless specified in proposal.

4. W-9 – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION:

Upon award of proposal, the Selected proposer shall submit to FCERA, a completed W-9 - Request for Taxpayer Identification Number and Certification if not already a current selected proposer with FCERA. This form is available from the IRS to complete on line at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

5. AWARDS:

- A) Subject to the local preference provisions referenced in Paragraph 6 below and more thoroughly set forth in the General Requirements section of this RFP/RFQ, award(s) will be made to the most to either the most reasonable Proposal. The evaluation will include such things as cost, availability, delivery costs and whose product and/or service is deemed to be in the best interest of FCERA. FCERA shall be the sole judge in making such determination.
- B) FCERA reserves the right to reject any and all proposals and to waive informalities or irregularities in proposals.
- C) After award, all proposals shall be open to public inspection. FCERA assumes no responsibility for the confidentiality of information offered in a proposal.

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6. TIE PROPOSALS:

All other factors being equal, the contract may be awarded by the FCERA Board at their own discretion.

7. PATENT INDEMNITY:

The Selected proposer shall hold FCERA, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with this proposal.

8. SAMPLES:

Samples, when required, must be furnished and delivered free and, if not destroyed by tests, will upon written request (within 30 days of proposal closing date) be returned at the Proposer's expense. In the absence of such notification, FCERA shall have the right to dispose of the samples in whatever manner it deems appropriate.

9. RIGHTS AND REMEDIES OF FCERA FOR DEFAULT:

A) In case of default by Selected proposer, FCERA may procure the articles or service from another source and may recover the cost difference and related expenses occasioned thereby from any unpaid balance due the Selected proposer or by proceeding against performance bond of the Selected proposer, if any, or by suit against the Selected proposer. The prices paid by FCERA shall be considered the prevailing market price at the time such purchase is made.

B) Articles or services, which upon delivery inspection do not meet specifications, will be rejected and the Selected proposer will be considered in default. Selected proposer shall reimburse FCERA for expenses related to delivery of non-specified goods or services.

C) Regardless of F.O.B. point, Selected proposer agrees to bear all risks of loss, injury or destruction to goods and materials ordered herein which occur prior to delivery and such loss, injury or destruction shall not release Selected proposer from any obligation hereunder.

10. DISCOUNTS:

Terms of less than 15 days for cash payment will be considered as net in evaluating this proposal. A discount for payment within fifteen (15) days or more will be considered in determining the award of proposal. Discount period will commence either the later of delivery or receipt of invoice by FCERA. Standard terms are Net Forty-five (45) days.

11. SPECIAL CONDITIONS IN PROPOSAL SCHEDULE SUPERSEDE GENERAL CONDITIONS.

12. The "General Conditions" provisions of this RFP/RFQ shall be superseded if in conflict with any other section of this proposal, to the RECYCLED PRODUCTS/MATERIALS:

Selected proposers are encouraged to provide and quote (with documentation) recycled or recyclable products/materials which meet stated specifications.

13. CONFIDENTIALITY:

All services performed by Selected proposer shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

Selected proposer shall submit to FCERA's monitoring of said compliance.

Selected proposer may be a business associate of FCERA, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, Selected proposer may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of FCERA as specified by FCERA, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to FCERA, as the "Covered Entity" under HIPAA'S Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

Selected proposer shall not use or further disclose PHI other than as permitted or required by FCERA, or as required by law without written notice to FCERA.

Selected proposer shall ensure that any agent, including any subcontractor, to which Selected proposer provides PHI received from, or created or received by the Selected proposer on behalf of FCERA, shall comply with the same restrictions and conditions with respect to such information.

14. APPEALS

Appeals must be submitted in writing within seven (7) working days after the notification of proposed recommendations. Appeals should be submitted to FCERA, 1111 H Street, Fresno, California 93721. Appeals should address only areas regarding RFP contradictions, procurement errors, quotation rating discrepancies, legality of procurement context, conflict of interest, and inappropriate or unfair competitive procurement grievance regarding the RFP process. Mere disagreement with the proposed recommendation shall not be the basis of a successful appeal.

The Retirement Administrator will provide a written response to the complaint within seven (7) working days unless the complainant is notified more time is required.

If the protesting Proposer is not satisfied with the decision of the Retirement Administrator, he/she shall have the right to appeal to the Board of Retirement within seven (7) business days after notification of the Retirement Administrator's decision.

15. ADDITIONAL OBLIGATIONS OF SELECTED CONTRACTOR:

A) The selected contractor shall perform and comply with its contractual and other obligation as contained herein.. Contractor also warrants on behalf of itself and all subcontractors engaged for the performance of the ensuing contract that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

B) Contractor shall obey all Federal, State, local and special district laws, ordinances and regulations.

PROPOSER TO COMPLETE

UNDERSIGNED AGREES TO FURNISH THE SERVICE STIPULATED IN THE ATTACHED PROPOSAL SCHEDULE AT THE PRICES AND TERMS STATED, SUBJECT TO THE "FCERA STANDARD INSTRUCTIONS AND CONDITIONS FOR REQUEST FOR PROPOSALS (RFP'S) AND REQUESTS FOR QUOTATIONS (RFQ'S)".

Except as noted on individual items, the following will apply to all items in the Proposal Schedule.

COMPANY

ADDRESS

CITY

STATE

ZIP CODE

()

TELEPHONE NUMBER

()

FACSIMILE

E-MAIL ADDRESS

SIGNED BY

PRINT NAME

TITLE

NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH RFP

(Title 23 United States Code Section 112 and Public Contract Code Section 7106)

To the Fresno County Employees' Retirement Association (FCERA):

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106 the Proposer declares that the RFP is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham proposal or that anyone shall refrain from proposing; that the Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the proposal are true; and, further, that the Proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, proposal, depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned Proposer declares and certifies under the penalty of perjury: that the only persons or parties interested in this RFP as principals are those named herein as Proposer, that he/she holds the position indicated below as a corporate officer or the owner or a partner in the business entity submitting this proposal; that the undersigned has examined the "Standard Instructions And Conditions For Requests For Proposals (RFP's) And Requests For Quotations (RFQ's)"; that the undersigned is informed of all the relevant facts surrounding the preparation and submission of this RFP, that the undersigned (if awarded a contract) will execute and fully perform the contract for which the proposals are called; that the undersigned will perform all the work and/or furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the undersigned will take in full payment therefore, the prices set forth in the pricing schedule of the contract; that the undersigned knows and represents and warrants to FCERA in care of the County of Fresno that this proposal is prepared and submitted without collusion with any other person, business entity, or corporation with any interest in this proposal.

I declare under penalty of perjury that the foregoing is true and correct.

Name of Proposer: _____

*Type of Business: Individual doing business under own name Corporation
 Individual doing business using a firm name Partnership
 Joint Venture (Please attach Joint Venture Agreement) Other: _____

Business Address: _____

City, State, Zip Code: _____

Dated: _____

By: _____
(Signature) (Print Initials)

Name: _____
(Type or Print Name)

Title: _____

Email Address: _____

Telephone Number: _____ Fax Number: _____

*To be signed by authorized corporate officer or partner or individual submitting the proposal.

EXAMPLE

If Proposer is:

- 1. ... An individual doing business under own name
- 2. An individual using a firm name
- 3. A Partnership
- 4. A Corporation

Sign:

Your name only
John Doe, an individual doing business as XYZ Company
John Doe and Richard Roe, partners doing business as
XYZ Company, By John Doe, partner
XYZ Company, by John Doe, secretary (or other title)

Note: The above Non-collusion Affidavit is part of the RFP. Signing this RFP on the signature portion thereof shall also constitute signature of this Non-collusion Affidavit. Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

TRADE SECRET ACKNOWLEDGEMENT

All proposals received by FCERA shall be considered "Public Record" as defined by Section 6252 of the California Government Code. This definition reads as follows:

"...Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975."

Each proposal submitted is a Public Record and is therefore subject to inspection by the public per Section 6253 of the California Government Code. This section states that "every citizen has a right to inspect any public record".

FCERA will not exclude any proposal or portion of a proposal from treatment as a public record except in the instance that it is submitted as a trade secret as defined by the California Government Code. Information submitted as proprietary, confidential or under any other such terms that might suggest restricted public access will not be excluded from treatment as public record.

"Trade secrets" as defined by Section 6254.7 of the California Government Code are deemed not to be public record. This section defines trade secrets as:

"...Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it."

Information identified by Proposer as "trade secret" will be reviewed by FCERA's legal counsel to determine conformance or non-conformance to this definition. Examples of material not considered to be trade secrets are pricing, cover letter, promotional materials, etc. Such material should be submitted in a separate binder not marked "Trade Secret".

FCERA WILL MAKE REASONABLE EFFORTS THAT INFORMATION THAT IS PROPERLY IDENTIFIED AS TRADE SECRET AND CONFORMS TO THE ABOVE DEFINITION WILL NOT BE DISCLOSED.

Trade secrets must be submitted in a separate binder that is plainly marked "Trade Secrets."

FCERA shall not in any way be liable or responsible for the disclosure of any proposals or portions thereof.

TRADE SECRET ACKNOWLEDGEMENT

I have read and understand the above "Trade Secret Acknowledgement."

I understand that FCERA bears no responsibility for protecting information submitted as a trade secret and shall not be liable for any claims for any damages (including attorneys' fees) whatsoever associated with the release of any records in the agency's possession. All material alleged to be "trade secrets" shall be delivered in a separate binder plainly marked "Trade Secret."

Enter company name on appropriate line:

_____ has submitted information identified as Trade
(Company Name) Secrets

_____ has **not** submitted information identified as Trade
(Company Name) Secrets

ACKNOWLEDGED BY:

_____ ()
Signature Telephone

Print Name and Title Date

Address

City State Zip

Firm: _____

REFERENCE LIST

Provide a list of at least five (5) customers/clients for whom you have recently provided similar services (preferably California State or local government agencies). Be sure to include addresses and phone numbers.

Reference Name: _____ City: _____ State _____
Contact _____ Phone No.: (____) _____
Date: _____
Service Provided: _____

Reference Name: _____ City: _____ State _____
Contact _____ Phone No.: (____) _____
Date: _____
Service Provided: _____

Reference Name: _____ City: _____ State _____
Contact _____ Phone No.: (____) _____
Date: _____
Service Provided: _____

Reference Name: _____ City: _____ State _____
Contact _____ Phone No.: (____) _____
Date: _____
Service Provided: _____

Reference Name: _____ City: _____ State _____
Contact _____ Phone No.: (____) _____
Date: _____
Service Provided: _____

Failure to provide a list of at least five (5) customers may be cause for rejection of this RFP.

GENERAL REQUIREMENTS

DEFINITIONS: The terms Proposer(s) and Contractor (including Selected Contractor) are all used interchangeably and refer to that person, partnership, corporation, organization, agency, etc. which is offering the proposal and is identified on the "Provider" line of the Proposal Identification Sheet.

RFP CLARIFICATION AND REVISIONS: Any revisions to the RFP will be issued and distributed as written addenda.

FIRM PROPOSAL: All proposals shall remain firm offers for at least ninety (90) days.

PROPOSAL PREPARATION: Proposals should be submitted in the formats shown under "PROPOSAL CONTENT REQUIREMENTS" section of this RFP.

SUPPORTIVE MATERIAL: Additional material may be submitted with the proposal as appendices. Any additional descriptive material that is used in support of any information in your proposal must be referenced by the appropriate paragraph(s) and page number(s).

Proposers are asked to submit their proposals in a binder (one that allows for easy removal of pages) with index tabs separating the sections identified in the Table of Contents. Pages must be numbered on the bottom of each page.

Any proposal attachments, documents, letters and materials submitted by the proposer shall be binding and included as a part of the final contract should your proposal be selected.

TAXES: The quoted amount must include all applicable taxes. If taxes are not specifically identified in the proposal it will be assumed that they are included in the total quoted.

SALES TAX: FCERA pays CA State Sales Tax regardless of Selected proposer's place of business.

INTERPRETATION OF RFP: Selected proposers must make careful examination of the requirements, specifications and conditions expressed in the RFP and fully inform themselves as to the quality and character of services required. If any person planning to submit a proposal finds discrepancies in or omissions from the RFP or has any doubt as to the true meaning or interpretation, correction thereof may be requested in writing (email acceptable) from FCERA by 5:00 p.m., **September 6, 2016**. Any change in the RFP will be made only by written addendum, duly issued by FCERA on its website by **September 9, 2016** at 5:00 p.m. FCERA will not be responsible for any other explanations or interpretations.

RETENTION: FCERA reserves the right to retain all proposals, excluding proprietary documentation submitted per the instructions of this RFP, regardless of which response is selected.

ORAL PRESENTATIONS: Each finalist may be required to make an oral presentation in Fresno and answer questions from FCERA personnel and Board of Retirement on **October 19, 2016**.

AWARD/REJECTION: The award will be made to the selected proposer offering the overall proposal deemed to be to the best advantage of FCERA or to County Public Works Department if deemed more appropriate by FCERA and the County of Fresno. FCERA shall

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be the sole judge in making such determination. FCERA reserves the right to reject any and all proposals. The proposal with the lowest fee will not arbitrarily be the selected proposals.

FCERA staff will conduct initial evaluations and contract negotiations.

Final evaluation of finalists and award will require approval by the Board of Retirement.

NEGOTIATION: FCERA will prepare and negotiate its own contract, based on the model agreement, with the selected proposer, giving due consideration to the stipulation of the selected proposer's standard contracts and associated legal documents. By submitting a proposal, selected proposer shall be deemed to accept the material terms of the attached form agreement.

WAIVERS: FCERA reserves the right to waive any informalities or irregularities and any technical or clerical errors in any quote as the interest of FCERA may require.

TERMINATION: FCERA reserves the right to terminate any resulting contract upon written notice.

MINOR DEVIATIONS: FCERA reserves the right to negotiate minor deviations from the prescribed terms, conditions and requirements with the selected proposer.

PROPOSAL REJECTION: Failure to respond to all questions or not to supply the requested information could result in rejection of your proposal.

ASSIGNMENTS: The ensuing proposed contract will provide that the selected proposer may not assign any payment or portions of payments without prior written consent of FCERA.

LIABILITIES: FCERA will not be held liable for any cost incurred by Selected proposers in responding to the RFP.

CONFIDENTIALITY: Proposers shall not disclose information about FCERA's business or business practices and safeguard confidential data which Selected proposer staff may have access to in the course of system implementation.

DISPUTE RESOLUTION: The ensuing contract shall be governed by the laws of the State of California.

Any claim which cannot be amicably settled without court action will be litigated in the U. S. District Court for the Eastern District of California in Fresno, CA or in a state court for Fresno County.

NEWS RELEASE: Selected proposers shall not issue any news releases or otherwise release information to any third party about this RFP or the Selected proposer's quotation without prior written approval from FCERA.

BACKGROUND REVIEW: FCERA reserves the right to conduct a background inquiry of each proposer and subcontractor, which may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting a proposal/proposal to FCERA, the Selected proposer consents to such an inquiry and agrees to make available to FCERA such books and records FCERA deems necessary to conduct the inquiry.

PERFORMANCE BOND: The successful proposers may be required to furnish a faithful performance bond.

EXCEPTIONS: Identify with explanation, any terms, conditions, or stipulations of the RFP with which you *CAN NOT* or *WILL NOT* comply with by proposal group.

ADDENDA: In the event that it becomes necessary to revise any part of this RFP, addenda will be provided to all agencies and organizations that receive the basic RFP.

SUBCONTRACTORS: If a subcontractor is proposed, complete identification of the subcontractor and his tasks should be provided. The primary contractor is not relieved of any responsibility by virtue of using a subcontractor.

CONFLICT OF INTEREST: FCERA shall not contract with, and shall reject any proposal or proposal submitted by the persons or entities specified below, unless the Board of Retirement finds that special circumstances exist which justify the approval of such contract:

1. Employees of FCERA or public agencies for which the Board of Retirement is the governing body.
2. Profit-making firms or businesses in which employees described in Subsection (1) serve as officers, principals, partners or major shareholders.
3. Persons who, within the immediately preceding twelve (12) months, came within the provisions of Subsection (1), and who were employees in positions of substantial responsibility in the area of service to be performed by the contract, or participated in any way in developing the contract or its service specifications.
4. Profit-making firms or businesses in which the former employees described in Subsection (3) serve as officers, principals, partners or major shareholders.
5. No FCERA employee, whose position in FCERA enables him to influence the selection of a Contractor for this RFP, or any competing RFP, and no spouse or economic dependent of such employee, shall be employees in any capacity by a Proposer, or have any other direct or indirect financial interest in the selection of a Contractor.
6. In addition, no FCERA employee will be employed by the selected proposer to fulfill the proposer's contractual obligations to FCERA.

POST-SEPARATION EMPLOYMENT PROHIBITED: No officer or employee of FCERA who separates from FCERA service shall for a period of one-year after separation enter into any employment, contract, or other compensation arrangement with any FCERA consultant, proposer, or other FCERA provider of goods, materials, or services, where the officer or employee participated in any part of the decision making process that led to FCERA relationship with the consultant, proposer or other FCERA provider of goods, materials or services.

EVALUATION CRITERIA: Respondents will be evaluated on the basis of their responses to all questions and requirements in this RFP and product cost. FCERA shall be the sole judge in the ranking process and reserves the right to reject any or all proposals. False, incomplete or unresponsive statements in connection with this proposal may be sufficient cause for its rejection.

SELECTION PROCESS: All proposals will be evaluated by FCERA staff and professional advisors, where appropriate. It will be their responsibility to make the finalist recommendations to the Board of Retirement.

One or more proposers may be required to make an oral presentation to the Board of Retirement. These presentations provide an opportunity for the proposers to clarify their proposals to ensure thorough, mutual understanding.

FCERA does not discriminate on the basis of race, religion, sex, sexual orientation, national origin, marital status, age, physical handicap or ownership by women or minorities.

INDEPENDENT CONTRACTOR: In performance of the work, duties, and obligations assumed by selected contractor under any ensuing Agreement, it is mutually understood and agreed that selected contractor, including any and all of selected contractor's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of FCERA. Furthermore, FCERA shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, FCERA shall retain the right to administer this Agreement so as to verify that selected contractor is performing its obligations in accordance with the terms and conditions thereof. Selected contractor and FCERA shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, selected contractor shall have absolutely no right to employment rights and benefits available to FCERA employees. Selected contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, selected contractor shall be solely responsible and save FCERA harmless from all matters relating to payment of selected contractor's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of the Agreement, selected contractor may be providing services to others unrelated to FCERA or to the Agreement.

HOLD HARMLESS CLAUSE: Selected contractor agrees to indemnify, save, hold harmless and at FCERA's request, defend FCERA, its officers, agents and employees, from any and all costs and expenses, damages, liabilities, claims and losses occurring or resulting to FCERA in connection with the performance, or failure to perform, by contractor, its officers, agents or employees under this Agreement and from any and all costs and expenses, damages, liabilities, claims and losses occurring or resulting to any person, firm or corporation who may be injured or damaged by the performance, or failure to perform, of contractor, its officers, agents or employees under this Agreement.

PRICE RESPONSIBILITY: The selected proposer will be required to assume full responsibility for all services and activities offered in the proposal, whether or not they are provided directly. Further, FCERA will consider the selected proposer to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract. The selected contractor may not subcontract or transfer the contract, or any right or obligation

arising out of the contract, without first having obtained the express written consent of FCERA.

ADDRESSES AND TELEPHONE NUMBERS: The Selected proposer will provide the business address and mailing address, if different, as well as the telephone number of the individual signing the contract.

ASSURANCES: Any contract awarded under this RFP must be carried out in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies. FCERA has a zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this RFP. The Contractor must also guarantee that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, or project, of the nature required under this RFP. In addition, the Contractor may be required to provide evidence substantiating that their employees have the necessary skills and training to perform the required services or work.

INSURANCE: On or before the Effective Date, Contractor shall furnish to FCERA satisfactory proof of the required insurance (Certificates of Insurance), which shall include a commitment by Contractor's insurers that they will mail notice of any cancellation or reduction of coverage below the amounts herein required by FCERA, at least thirty (30) days prior to the effective date of such cancellation or change. Such required insurance shall include:

(a) General Liability. Comprehensive general liability coverage of at least five million dollars (\$1,000,000) per occurrence and an annual aggregate limit of at least five million dollars (\$5,000,000) for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately or the general aggregate limit shall be at least five million dollars (\$5,000,000). Contractor shall list FCERA, its directors, officers, employees, independent contractors, authorized volunteers and consultants as additional insureds.

(b) Professional Liability Insurance (Errors and Omissions).

(i) In the event Contractor employs or contracts with licensed professional staff in providing the Services, professional liability (errors and omissions) insurance with limits of not less than one million dollars (\$1,000,000) per claim, with an annual aggregate of at least three million dollars (\$3,000,000) and with a deductible not to exceed fifty thousand dollars (\$50,000). A deductible greater than \$50,000 will be accepted upon FCERA receiving information satisfactory to FCERA of Contractor's ability to pay such a deductible.

(ii) Contractor and any of its subcontractors shall make full disclosure, in writing, to FCERA of all pending and open claims and disputes during the course of this Agreement that affect the specified aggregate limits of the Professional Liability Insurance policy.

(iii) Professional Liability Insurance shall extend for a minimum of two (2) years past the date of final payment to Contractor, including the resolution of all claims, disputes, and matters in question regarding the project.

(iv) In the event Contractor voluntarily changes, or involuntarily changes, due to circumstances beyond its control, its Professional Liability Insurance policy carrier during the course of this Agreement, such new policy shall include prior acts coverage retroactive, at least, to the Effective Date of this Agreement. Contractor may, at its option and expense, purchase supplemental or “tail” coverage from the former policy carrier, negotiate a retroactive reporting date with the new policy carrier for claims incurred but not reported as of the date of change in policy carrier, and shall in any event maintain Professional Liability Insurance in a manner that provides continuous coverage to FCERA throughout the term of this Agreement, and for a period of two (2) years past the issuance of final payment to Contractor.

(c) Automobile Liability. Comprehensive automobile liability coverage with a combined single limit of at least one million dollars (\$1,000,000) per accident for bodily injury and property damage on all vehicles operated under Contractor’s authority, whether or not owned by Contractor. Contractor shall list FCERA, its directors, officers, employees, independent contractors, authorized volunteers and consultants as additional insureds.

(d) Worker’s Compensation. Workers’ Compensation insurance in accordance with the California Labor Code.

AUDITS AND INSPECTIONS: The selected contractor shall at any time during business hours, and as often as FCERA may deem necessary, make available to FCERA for examination all of its records and data and respect to the matters covered by this Agreement. The selected contractor shall, upon request by FCERA, permit FCERA to audit and inspect all of such records and data necessary to ensure Contractor's compliance with the terms of this Agreement.

If this Agreement exceeds Ten Thousand and No/100 dollars (\$10,000.00), selected contractor shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

FCERA will not be held liable for any cost incurred by Proposers in responding to this RFP.

DEFAULT: In case of default by the selected proposer, FCERA may procure materials and services from another source and may recover the loss occasioned thereby from any unpaid balance due the selected proposer, or by any other legal means available to FCERA.

BREACH OF CONTRACT: In the event of breach of contract by either party, the other party shall be relieved of its obligations under this Agreement and may pursue any legal remedies.

SPECIFIC TERMS AND CONDITIONS

ISSUING AGENT: This RFP has been issued by FCERA. FCERA shall be the selected proposer's sole point of contact with regard to the RFP, its content, and all issues concerning it.

AUTHORIZED CONTACT: All communication regarding this RFP shall be directed to an authorized representative of FCERA. The specific buyer managing this RFP is identified on the cover page, along with his or her telephone number, and he or she should be the primary point of contact for discussions or information pertaining to the RFP. Contact with any other FCERA representative, including elected officials, for the purpose of discussing this RFP, its content, or any other issue concerning it, is prohibited unless authorized by FCERA. Violation of this clause, by the selected proposer having unauthorized contact (verbally or in writing) with such other FCERA representatives, may constitute grounds for rejection by FCERA of the selected proposer's quotation.

The above stated restriction on selected proposer contact with FCERA representatives shall apply until FCERA has executed a contract to a selected proposer or selected proposers, except as follows. First, in the event that a selected proposer initiates a formal protest against the RFP, such selected proposer may contact the appropriate individual, or individuals who are managing that protest as outlined in FCERA's established protest procedures. All such contact must be in accordance with the sequence set forth under the protest procedures. Second, in the event a public hearing is scheduled before the Board of Retirement to hear testimony prior to its approval of a purchase order or contract, any selected proposer may address the Board.

NUMBER OF COPIES: Submit **one (1) original, one (1) copy, and one (1) electronic copy** of your proposal no later than the proposal acceptance date and time as stated on the front of this document to FCERA. The cover page of each document is to be appropriately marked "Original" or "Copy".

REVIEW: All proposals will be evaluated by the Retirement Administrator and his designees and may consist of additional FCERA staff and professional advisors. The Retirement Administrator will recommend up to three finalists from the pool of submissions for the Board of Retirement's review, depending on the number of responses received.

The proposals will be evaluated in a multi-stage selection process. Some proposals may be eliminated or set aside after an initial review. If a proposal does not respond adequately to the RFP or the proposer is deemed unsuitable or incapable of delivering services, the proposal may be eliminated from consideration. Suitable proposers will then be ranked and the top three, if more than three suitable proposers exist will be presented to the Board of Retirement. It will be the Retirement Administrator's responsibility to rank the proposers and make a recommendation to the Board of Retirement.

SCOPE OF WORK

The goal of this RFP is to evaluate and select a qualified construction project manager (Consultant) willing to perform the construction management services required by FCERA.

The Consultant shall perform tasks which include, but shall not be limited to, the following:

- A. Assist in the preparation of agreement amendments for additional services and any and all services to be performed by subconsultants to the architect, to be executed between FCERA and its architect.
- B. Assist in the preparation and negotiation of an agreement to be executed between FCERA and the construction manager/contractor, for the performance of professional services necessary to construct the offices and appurtenances thereto, including but not limited to, mechanical and electrical engineering services, site work and construction, and installation of the electrical, plumbing, landscaping, and irrigation systems.
- C. Oversee and monitor any contract between FCERA and its architect regarding the Project.
- D. Oversee and monitor any contract between FCERA and the construction manager/contractor for the Project.
- E. Provide assistance and coordination in moving, or the procurement of, interior furnishings and equipment to be purchased by FCERA.
- F. Provide general project management services, which shall include the following:
 1. Assist in oversight of the inspection program.
 2. Provide on-site representation as required during construction of the offices and for periodic review of construction activities.
 3. Assist in resolution of construction issues as required.
 4. Assist and coordinate regarding any changes that may be required to the existing utility connections.
 5. Review and recommend for payment all project invoices.
 6. Assist in the processing of change orders.
 7. Coordinate in the preparation of project milestones and schedules.
 8. Assist in development of construction punch lists, final acceptance of the project and completion of record drawings.
 9. Provide advice and guidance regarding the compliance with statutes and regulations applicable to projects owned by governmental agencies.

- G. The CONSULTANT shall participate with FCERA and the consulting Architect of Record (hereinafter "the Architect") in the Conceptual Design, Schematic Design, Design Development and Construction Documents phases of the Project. The CONSULTANT shall provide construction contract administration services during the construction phase of the Project, to monitor all construction activities including: infrastructure improvements, off-site road, signal; site work; structural, architectural, mechanical, plumbing, electrical, landscape, low voltage and irrigation work; and other work as may be included.
- H. The CONSULTANT shall have access to and/or knowledge of Federal and California OSHA safety orders.
- I. In addition, the CONSULTANT shall identify potential areas of concern that may cause liability exposure to FCERA, and track and ensure the Contractor is keeping accurate field installation documentation.
- J. FCERA requires the CONSULTANT, together with CONSULTANT's project manager(s)/engineer(s) and clerical staff, be devoted to this project. They shall be available to the FCERA Representative, the Architect and Contractor each day the Project is under construction. The Designated CM shall be present at the Project site or at the field office, each day the Project is under construction except for scheduled days for sick, vacation, training and personal time as coordinated with the FCERA Representative. The CONSULTANT shall schedule all staff, which may be full-time or part-time as determined by the construction work activity. The CONSULTANT shall be responsible to provide professional supervision and adequate staffing at all times.
- K. Throughout the term of this Agreement, the CONSULTANT shall collaborate and partner with FCERA and other Project participants in the interest of maintaining the Project budget and schedule and minimizing claims. Partnering may be instituted during the design phases and shall be used during construction as necessary, and if conducted, conducted at 1111 H street, Fresno, CA 93721 (subject to change).
- L. CONSTRUCTION MANAGER'S DUTIES AND RESPONSIBILITIES
 1. The Designated CM shall participate in value engineering including Life Cycle Costing (LCC) and constructability review in the Design Development and Construction Documents phases with FCERA and the Architect.
 2. During the tenant improvement phase of the Project, the Designated CM shall assume primary responsibility for the performance of duties to achieve the successful completion of the project limited to those responsibilities of an agency construction manager and not assuming the responsibilities of the Architect/Engineer or Contractor(s). The Designated CM shall be the on-site representative for both FCERA and the FCERA safety officer for the Project, and shall be responsible for coordinating the efforts of contractors, architects, engineers, inspectors, testing laboratories, and other construction project service providers, as well as coordinating and assuring proper approvals have been obtained for all contract change order work.
 3. The CONSULTANT shall ensure the Contractor is required in the proposal and construction documents to contract, coordinate and cooperate with the

Proposal No. 20160826.1

California Department of Industrial Relations with regard to labor compliance requirements of the Project and its funding, and shall maintain a Project labor compliance program.

See Exhibit "A" of the Model Agreement for specific contract terms.

COST PROPOSAL

[Enter your proposed costs here that will be included in the attached model agreement

AWARD CRITERIA

COST

A. As submitted under the "COST PROPOSAL" section.

CAPABILITY AND QUALIFICATIONS

- A. Does the service descriptions address all the areas identified in the RFP? Will the proposed services satisfy FCERA's needs and to what degree?
- B. Does the proposer demonstrate knowledge or awareness of the problems associated with providing the services proposed and knowledge of laws, regulations, statutes and effective operating principles required to provide this service?
- C. The amount of demonstrated experience in providing the services desired in a California public defined benefit retirement plan.

MODEL AGREEMENT

Please see the attached model agreement to follow this document.

FORM SERVICES AGREEMENT

THIS SERVICES AGREEMENT (this "Agreement") is made and entered into this _____, 2016 (the "Effective Date"), by and between the FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, a local public agency ("FCERA"), and _____, a _____ ("Contractor"). FCERA and Contractor are collectively referred to herein as the "Parties" or singularly by their individual names or as a "Party."

RECITALS:

A. FCERA is a local public agency, formed pursuant to the County Employees Retirement Law of 1937.

B. FCERA is in escrow to purchase certain real property located at 7766, 7772, and 7778 North Palm Avenue, Fresno, California 93650, that will consist of three (3) completed shell buildings, two (2) of which will require additional office design and construction services, hereinafter referred to as the "Project."

C. The Project is deemed a public works project as defined in California Public Contract Code Section 1101, *et seq.*

D. FCERA requires an independent contractor to provide certain services related to the Project.

E. Contractor acknowledges that it possesses the qualifications and resources required to provide said services.

F. FCERA desires to retain Contractor to provide the services described herein, pursuant to the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above, which are hereby incorporated by this reference, and the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Scope of Work.** FCERA hereby engages Contractor to perform the work as specified in Exhibit "A," attached hereto and incorporated herein by this reference (the "Services").

2. **Term.** This Agreement shall commence on the Effective Date and shall continue in effect until (a) Contractor has performed the Services in full and FCERA executes a notice of completion of Contractor's obligations hereunder, whichever occurs first; or (b) unless sooner terminated as provided by this Agreement (the "Term").

3. **Compensation.** Compensation by FCERA to Contractor for completion of the Services shall be at the rates also set forth in Exhibit "A" (the "Services Fee").

Notwithstanding any provision of this Agreement to the contrary, the Services Fee shall not, under any circumstances, exceed _____ (\$ _____) (the "Maximum Services Fee"), nor shall FCERA, under any circumstances, be obligated to pay Contractor any amount in excess of the Maximum Services Fee, except as may be mutually agreed in writing.

4. **Payment.** Contractor shall send FCERA monthly invoices, which itemize actual expenses incurred by Contractor in providing the Services. Invoices shall be submitted by the 1st day of each month, and shall be itemized to identify the tasks undertaken to provide the Services. FCERA shall, at the rates specified under the Services Fee, pay charges due for Services satisfactorily performed within thirty (30) calendar days after its receipt of invoices from Contractor. All payments by FCERA to Contractor during the Term of this Agreement shall be made via check. FCERA reserves the right to withhold or reject payment in the event that, in FCERA's sole reasonable determination, Contractor has improperly performed a Service. FCERA shall have the right to demand of Contractor the repayment of funds to the Board of any funds disbursed to Contractor under this Agreement, which in FCERA's reasonable determination were not expended in accordance with the terms of this Agreement. Contractor shall promptly refund any such funds upon demand.

5. **Warranty.** Contractor hereby warrants that it will perform its Services in accordance with the standard of care normally practiced by construction management firms performing services of a similar nature at the time and place the Services are performed. At the written request of FCERA at any time within the one (1) year period after the earlier of (a) Substantial Completion (as defined below) of the Project; (b) the date that FCERA actually occupies or takes over the Project; or (c) termination of the Services pursuant to Paragraph 6 of this Agreement, Contractor shall perform all corrective services within the original scope of Services as are necessary to makes it Services conform to the foregoing warranty. If the performance of such corrective services is impractical, Contractor shall pay to FCERA the reasonable value of such corrective services. "Substantial Completion" means the date when construction is sufficiently complete in accordance with the construction documents so FCERA can occupy or utilize the Project or designated portion thereof for its intended use.

6. **Termination.**

(a) **Event of Non-Appropriation or Reduction of Funding.** The terms of this Agreement are contingent on the continued appropriation of funds to FCERA by the appropriating agency(ies). Should FCERA not receive, or otherwise receive a reduction of, appropriated funds from any federal, state, or local governmental agency, FCERA, in its sole discretion, shall have the option to terminate this Agreement at any time by giving Contractor thirty (30) days prior written notice.

(b) **Termination For Cause.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching Party. Termination shall be effective immediately upon receipt of the notice, or three (3) days from mailing of the notice, whichever occurs first. For the purposes of

this Paragraph, material breach of this Agreement shall include, but not be limited to, the following:

- (1) Failure of FCERA to pay Contractor in accordance with Paragraph 4 of this Agreement and not cure such failure within thirty (30) days of delinquency;
- (2) Contractor's submission to FCERA of an incorrect or incomplete invoice;
- (3) Failure of Contractor to perform the Services in a timely manner and to the satisfaction of FCERA, in FCERA's sole discretion;
- (4) Contractor's failure to keep in effect at all times insurance coverage as herein provided; or
- (5) Contractor files a petition under the Bankruptcy Code.

In no event shall any payment to Contractor by FCERA constitute a waiver by FCERA of any breach of this Agreement or any default which may then exist on the part of Contractor. Such payment shall neither impair nor prejudice any remedy available to FCERA with respect to the breach or default.

(c) **Termination Without Cause.** FCERA may, at its sole discretion, terminate this Agreement without cause for any reason not otherwise covered in this Paragraph 6, upon giving Contractor thirty (30) days prior written notice.

7. **Independent Contractor.** Contractor is an independent contractor. All persons employed to furnish the Services under this Agreement are employees of Contractor and not of FCERA.

(a) In performance of the work, duties and obligations assumed by Contractor under this Agreement, the Parties mutually understand and agree that Contractor, including any and all of Contractor's owners, officers, agents, employees, and independent contractors, will at all times be acting and performing as an independent contractor, and shall act in its independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of FCERA. Furthermore, FCERA shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its obligations under this Agreement. However, FCERA shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions of this Agreement.

(b) Contractor shall have the sole obligation to provide its employees with all legally required notices and postings, as well as all employee wages and benefits, and will withhold there from all Social Security and other withholdings required by applicable Federal or state laws and regulations.

8. **Defense, Indemnity, and Hold Harmless.**

(a) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless FCERA, its directors, officers, employees, agents, independent contractors, authorized volunteers, attorneys and consultants from and against any and all losses, costs, demands, attorneys' fees, expenses, obligations, liabilities, penalties, interests, recoveries, damages, claims and judgments (collectively, "Claims"), in law or in equity, of every kind and nature whatsoever, alleged to result from, arise out of, or be in any way connected with Contractor's or Contractor's directors, officers, employees, agents, independent contractors, subcontractors, or volunteers (collectively, "Contractor's Agents") operations under this Agreement, or any willful acts, recklessness, active or passive negligence, errors, or omissions of Contractor or Contractor's Agents directly or indirectly related to the performance of the Services to be provided under this Agreement.

(b) FCERA and Contractor hereby declare their mutual intent to cooperate in the defense of any Claim, suit or other action alleging liability, arising from the negligent performance or failure to perform of any contractor or subcontractor in connection with the Project. Such cooperation may include an agreement to prepare and present a cooperative defense after consultation with Contractor's professional liability insurance carrier.

9. **Licensure.** Contractor shall maintain in full force and effect all applicable licenses and certificates required for the provision of the Services pursuant to the terms and conditions of this Agreement. FCERA reserves the right to demand and inspect Contractor's licenses and certificates. Contractor shall provide FCERA copies of such records within five (5) days of such demand.

10. **Insurance.** On or before the Effective Date, Contractor shall furnish to FCERA satisfactory proof of the required insurance (Certificates of Insurance), which shall include a commitment by Contractor's insurers that they will mail notice of any cancellation or reduction of coverage below the amounts herein required by FCERA, at least thirty (30) days prior to the effective date of such cancellation or change. Such required insurance shall include:

(a) **General Liability.** Comprehensive general liability coverage of at least five million dollars (\$1,000,000) per occurrence and an annual aggregate limit of at least five million dollars (\$5,000,000) for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately or the general aggregate limit shall be at least five million dollars (\$5,000,000). Contractor shall list FCERA, its directors, officers, employees, independent contractors, authorized volunteers and consultants as additional insureds.

(b) **Professional Liability Insurance (Errors and Omissions).**

(i) In the event Contractor employs or contracts with licensed professional staff in providing the Services, professional liability (errors and omissions) insurance with limits of not less than one million dollars (\$1,000,000) per claim, with an annual aggregate of at least three million dollars (\$3,000,000) and with a deductible not to exceed fifty thousand dollars (\$50,000). A deductible greater than \$50,000 will be accepted upon FCERA receiving information satisfactory to FCERA of Contractor's ability to pay such a deductible.

(ii) Contractor and any of its subcontractors shall make full disclosure, in writing, to FCERA of all pending and open claims and disputes during the course of this Agreement that affect the specified aggregate limits of the Professional Liability Insurance policy.

(iii) Professional Liability Insurance shall extend for a minimum of two (2) years past the date of final payment to Contractor, including the resolution of all claims, disputes, and matters in question regarding the project.

(iv) In the event Contractor voluntarily changes, or involuntarily changes, due to circumstances beyond its control, its Professional Liability Insurance policy carrier during the course of this Agreement, such new policy shall include prior acts coverage retroactive, at least, to the Effective Date of this Agreement. Contractor may, at its option and expense, purchase supplemental or "tail" coverage from the former policy carrier, negotiate a retroactive reporting date with the new policy carrier for claims incurred but not reported as of the date of change in policy carrier, and shall in any event maintain Professional Liability Insurance in a manner that provides continuous coverage to FCERA throughout the term of this Agreement, and for a period of two (2) years past the issuance of final payment to Contractor.

(c) **Automobile Liability.** Comprehensive automobile liability coverage with a combined single limit of at least one million dollars (\$1,000,000) per accident for bodily injury and property damage on all vehicles operated under Contractor's authority, whether or not owned by Contractor. Contractor shall list FCERA, its directors, officers, employees, independent contractors, authorized volunteers and consultants as additional insureds.

(d) **Worker's Compensation.** Workers' Compensation insurance in accordance with the California Labor Code.

11. **Audits and Inspections.** Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be reasonably satisfactory to FCERA. Contractor shall at any time during normal business hours, and as often as FCERA may deem necessary, make available to FCERA for examination all of its records, books, correspondence,

instructions, drawings, receipts subcontracts, purchase orders, vouchers, memorandum, and other data (the "Records") with respect to the matters covered by this Agreement, and Contractor shall preserve the Records for a period of three (3) years after final payment, or such longer period as may be required by law. Contractor shall, upon request by FCERA, permit FCERA to inspect all the Records necessary to ensure the Contractor's compliance with this Agreement.

12. **Subcontractors.** All subcontractors used by Contractor shall be approved in writing by FCERA before they are retained by Contractor; provided, however, that such approval shall not be unreasonably withheld, and that those subcontractors listed in Exhibit "B," attached hereto and incorporated herein, shall be considered approved by FCERA. Should Contractor retain any subcontractors, compensation to be paid to Contractor under Paragraph 3 of this Agreement shall not be increased.

13. **General.**

(a) **FCERA Representatives.** The Executive Director of FCERA and his or her duly appointed representative(s) shall administer this Agreement, and shall have authority to act on behalf of FCERA.

(b) **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties relating to the Services described herein, and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties with regard thereto.

(c) **Modification.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing.

(d) **Notices.** All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this Subparagraph (d). The addresses and addressees noted below shall be that Party's designated address and addressee for delivery or mailing of notices. Any Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:30 p.m. or on a Saturday, Sunday or legal holiday it shall be deemed

received on the next business day:

To FCERA: Donald C. Kendig, Retirement Administrator
Fresno County Employees' Retirement Association
1111 H Street
Fresno, California 93721
Facsimile: (559) 457-0318
Email: dkendig@co.fresno.ca.us

To Contractor: Attn: _____

Facsimile: _____
Email: _____

(e) **Non-Discrimination and Equal Opportunity.** Contractor shall comply with all applicable laws providing equal employment opportunities. Contractor shall not discriminate against any person on the grounds of race, color, creed, gender, gender identity, gender expression, religion, marital status, registered domestic partner status, age, national origin or ancestry, physical or mental disability, medical condition including genetic characteristics, sexual orientation, pregnancy, citizenship status, military or veteran status, or any other characteristic made unlawful by federal, state, or local laws. These non-discrimination and equal opportunity requirements shall apply, without limitation, to retirement, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

(f) **Assignment and Binding Effect.** Contractor shall not assign all or any part of this Agreement, or any obligation or interest hereof, or any monies due or which may become due hereunder, without the prior written consent of FCERA, which consent may be withheld in FCERA's sole discretion. Subject to the provisions of the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the respective heirs, executors, administrators, successors and assigns of the Parties.

(g) **Headings.** The subject headings of the sections and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

(h) **Construction.** All words used in this Agreement shall be construed to include the plural as well as the singular number, and vice versa; words used in this Agreement in the present tense shall include the future as well as the present; and words used in this Agreement in the masculine gender shall include the feminine and neuter genders, whenever the context so requires.

(i) **Costs and Expenses.** Each Party shall pay all costs and expenses

incurred, or to be incurred, by it in negotiating and preparing this Agreement and all exhibits to this Agreement, and in closing an carrying out the transactions contemplated by this Agreement, including, without limitation, its attorneys', paralegals', and other professionals' fees and costs.

(j) **Attorneys' Fees.** If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys', paralegals' and other professionals' fees and costs in addition to any other reasonable relief to which it may be entitled.

(k) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that venue for any dispute or litigation arising under this Agreement shall be in the County of Fresno, State of California, if instituted in the State courts, or the Eastern District of California (Fresno), if instituted in the Federal courts.

(l) **Waiver.** A waiver of any breach of this Agreement by the Parties to this Agreement shall not constitute a continuing waiver, or a waiver of any subsequent breach of the same, or any breach of another provision of this Agreement.

(m) **Partial Invalidity.** If any provision of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, including, without limitation, the portions thereof not held to be invalid, void or unenforceable, shall nevertheless continue to be in full force and effect without being impaired or invalidated in any way.

(n) **Time.** Time is of the essence of this Agreement and all of its provisions.

(o) **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

(p) **Dispute Resolution.** If a dispute arises during the Term, then within three (3) business days after a written request by either Party, FCERA's representative and Contractor's representative, or a person designated by either such representative, shall confer to resolve the issue. If the Parties' representatives or the designated person, as the case may be, cannot resolve the dispute or either Party determines they are not making progress toward resolution of the issue within twenty (20) business days after their initial conference, then the Parties reserve the right to resolve such dispute in any manner provided by law.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

“FCERA”

FRESNO COUNTY EMPLOYEES’
RETIREMENT ASSOCIATION, a local
public agency

By _____
Name:
Title:

Date _____

Recommended by Retirement Administrator

Donald C. Kendig

Date _____

“Contractor”

_____, a

By _____
Name:
Title:

Date _____

Exhibit "A"

Services & Fees

1. Services Generally. Contractor will serve as FCERA's representative and is to verify that the construction of the Project matches the plans and specifications and any approved change orders to those documents. Contractor shall be on site daily during construction of the Project, including through total Project completion and until final payment to all contractors are approved, within the hours allotted in Section 2, below. Contractor will not be responsible for final inspections of record.

(a) Daily Reports. Contractor shall keep daily reports including photographic documentation of all observed activities that take place on the site during the allotted time defined herein and document personal observations. A copy of these daily reports shall be filed with FCERA's designated contact and kept as a permanent Record.

(b) Observation and Reporting Inconsistencies. Contractor shall personally observe activities that take place on the site during the allotted time defined herein and shall provide written notice to FCERA and the architect when those activities are not in conformance with the contract documents. On the basis of onsite observations and communication with the general contractor, Contractor shall keep FCERA informed of the progress of the work, and will endeavor to guard FCERA against defects and deficiencies in the work of the general contractor.

(c) Set of Documents. Contractor shall keep a set of all contract documents, including any updates to the Project plans and specifications, issued by the architect in its office at all times. The general contractor shall be responsible for maintaining the record set of plans and specifications onsite.

(d) Weekly Meetings. Contractor shall attend weekly meetings with FCERA, the architect, and the general contractor.

(e) Corrective Items Log. Contractor shall keep a running log of corrective items for review at the weekly meetings. Upon written notice from the general contractor that the work is complete, Contractor shall compile a written list of all construction deficiency items that have not been corrected or are not in conformance with the construction documents. Contractor shall review corrective measures that are made pursuant to the deficiency list with the general contractor and report findings to FCERA.

(f) Monthly Payment Requests and Certified Payroll Records. Contractor shall distribute payment requests and certified payroll records to appropriate persons for their review/records when received from the general contractor. Contractor shall assist FCERA with review of the general contractor's monthly payment requests. Based on Contractor's observations, and an evaluation of the general contractor's

application for payment, Contractor and the architect will determine the amount owing to the general contractor and will issue to FCERA certificates for payment incorporating such amount. Contractor shall distribute certified payroll records monthly to the County of Fresno Department of Public Works and Planning and others as directed by FCERA.

(g) Deviations. Contractor shall notify FCERA and the architect immediately of observed deviations of the construction from the construction documents and keep FCERA and the architect informed at all times of any changes/modifications that such deviations require. Contractor will have authority to act on behalf of FCERA only to the extent provided in the contract documents, unless otherwise modified by written instrument.

(h) Test Lab/Inspection Coordination. Contractor shall coordinate, keep on file and distribute copies (as required) of all special inspections and materials lab testing reports. Contractor shall coordinate with the special inspector to assure their timeliness and completeness of inspections by the special inspector and shall report to FCERA, any concerns as to the capabilities of the special inspector service. The special inspection services are a separate contract.

(i) Contractor Requests for Change Review. Contractor shall review the contents of requests for changes to the contract price submitted by the general contractor, assemble information concerning the request, endeavor to determine the cause of the request, and make recommendations to FCERA with respect to a response to the request. Changes to the agreement between FCERA and the general contractor shall be affected only by change orders executed by FCERA.

2. Specific Services. Contractor shall provide the following services:

(a) Assist in preparing agreements (and amendments to those agreements as needed) for architectural services to be executed between FCERA and its architect (and any and all services to be performed by subcontractors to FCERA's architect).

(b) Assist in preparing and negotiating agreements to be executed between FCERA and contractors for the performance of professional services necessary to construct the offices and appurtenances thereto, including but not limited to, mechanical and electrical engineering services, site work and construction, and installation of the electrical, plumbing, landscaping, and irrigation systems.

(c) Oversee and monitor any contract(s) between FCERA and FCERA's architect regarding the Project.

(d) Oversee and monitor any contract(s) between FCERA and contractors regarding the Project.

(e) Provide assistance and coordination in moving, or the procurement

of, interior furnishings and equipment already owned or to be purchased by FCERA.

(f) Provide general project management services, which shall include the following:

(i) Assist in oversight of an inspection program.

(ii) Provide on-site representation as required during construction of FCERA's offices and for periodic review of construction activities.

(iii) Assist in resolution of construction issues as required.

(iv) Assist and coordinate regarding any changes that may be required to the existing utility connections.

(v) Review and recommend for payment all Project invoices.

(vi) Assist in the processing of change orders.

(vii) Coordinate in the preparation of Project milestones and schedules.

(viii) Assist in development of construction punch lists, final acceptance of the Project and completion of record drawings.

(ix) Provide advice and guidance regarding the compliance with statutes and regulations applicable to projects owned by governmental agencies.

(g) Contractor shall participate with FCERA and FCERA's architect in the Conceptual Design, Schematic Design, Design Development and Construction Documents phases (as each of those phases are defined in documents prepared by FCERA's architect) of the Project. Contractor shall provide construction contract administration services during the construction phase of the Project to monitor all construction activities, including but not limited to infrastructure improvements; off-site road, signal work; site work; structural, architectural, mechanical, plumbing, electrical, landscape, low voltage and irrigation work; and other work as may be necessary to complete the Project.

(h) Contractor shall ensure compliance with all Federal and California OSHA safety orders.

(i) Contractor shall identify potential areas of concern that may cause liability exposure to FCERA, and track and ensure the Contractor is keeping accurate field installation documentation.

(j) Contractor, together with Contractor's project manager(s)/engineer(s) and clerical staff, shall be devoted to this project and shall be available to FCERA, FCERA's architect, and Project contractors each day the Project is under construction. Contractor shall designate an individual construction manager (the

“Designated CM”) who shall be present, at the Project site or at the field office, each day the Project is under construction except for scheduled days for sick, vacation, training and personal time as coordinated with FCERA. Contractor shall schedule all staff, which may be full-time or part-time as determined by the construction work activity. Contractor shall be responsible to provide professional supervision and adequate staffing at all times.

(k) Contractor shall collaborate with FCERA and other Project participants in the interest of maintaining the project budget and project schedule and minimizing claims. Meetings to collaborate may be instituted during the design phases and shall be used during construction as necessary, and if conducted, conducted at 1111 H Street, Fresno, California 93721 (subject to change).

3. Designated CM’s Duties And Responsibilities.

(a) The Designated CM shall participate in value engineering, including Life Cycle Costing (LCC), and constructability review in the Design Development and Construction Documents phases with FCERA and FCERA’s architect.

(b) During the tenant improvement phase of the Project, the Designated CM shall assume primary responsibility for the performance of duties to achieve the successful completion of the Project limited to those responsibilities of an agency construction manager and not assuming the responsibilities of the architect, engineer, or contractor(s). The Designated CM shall be the on-site representative for both FCERA and the FCERA safety officer for the Project, and shall be responsible for coordinating the efforts of contractors, architects, engineers, inspectors, testing laboratories, and other Project service providers, as well as coordinating and assuring proper approvals have been obtained for all contract change order work.

(c) Contractor shall ensure all contractors are required in the bid and construction documents to contract, coordinate, and cooperate with the California Department of Industrial Relations with regard to labor compliance requirements of the Project and its funding, and shall maintain a Project labor compliance program.

4. Time Allotment. Contractor’s performance of the services described in Section 1 above shall be limited to _____ hours of billable time, or as increased through subsequent amendments to this Agreement. Billable time to perform services is based on estimated time for each scope activity shown in Attachment 1 to this Exhibit A, which is incorporated herein by this reference. Actual time to perform activities may vary from the estimated time provided herein. Contractor shall not exceed total allotted time for a given period without advance written authorization from FCERA.

Exhibit "B"

Approved Subcontractors