

**FIRST AMENDMENT
to
AUDITING SERVICES AGREEMENT**

**BROWN ARMSTRONG PAULDEN MCCOWN STARBUCK & KEETER,
ACCOUNTANCY CORPORATION**

This First Amendment to Auditing Services Agreement (hereinafter "First Amendment") is made this 15th day of April, 2009, by and between the FRESNO COUNTY EMPLOYEES' RETIRMENT ASSOCIATION (hereinafter referred to as "FCERA") and BROWN ARMSTRONG PAULDEN MCCOWN STARBUCK & KEETER, ACCOUNTANCY CORPORATION (hereinafter referred to as "AUDITOR").

R E C I T A L S

Whereas, on March 15, 2006, the FCERA and the AUDITOR entered into an Auditing Services Agreement (hereinafter referred to as the "Agreement") for a term of three (3) years, for the auditing of Financial Statements for the Years ending June 30, 2006 through June 30, 2008, subject to the express ability to extend the term upon mutual agreement; and

WHEREAS, the FCERA staff and FCERA Administrator and the AUDITOR discussed an extension of the Agreement for one year, potentially at an increase in price;

WHEREAS, the parties mutually desire and agree to amend such Agreement as set forth in this First Amendment; and

NOW, THEREFORE, in consideration of their mutual promises as hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. INCORPORATION OF RECITALS. The above Recitals are incorporated into the First Amendment as though set forth in full.
2. INCORPORATION OF AGREEMENT. A full and complete copy of the Agreement between FCERA and the AUDITOR, including its Exhibits "A" (FCERA's RFP), Exhibit "B" (AUDITOR's Proposal) and Exhibit "C" (AUDITOR's

"Sealed Dollar Cost Bid to Provide Auditing Services for the Years Ending June 30, 2006 through June 30, 2008") are attached hereto as Exhibit "1" and incorporated herein by this reference as if set forth in full.

3. Notwithstanding the date this First Amendment is signed, the parties hereby amend the Agreement (Exhibit "1"), effective retroactively to and including April 1, 2009, as set forth below:

A. The parties amend Paragraph 5, entitled "TERM AND TERMINATION", to add an additional year of service. The original term of three years was expressed as commencing on April 1, 2006 and extending for three years thereafter. Upon April 1, 2009, the following additional paragraph shall be deemed added to the end of Paragraph 5 of the Agreement:

"Notwithstanding the foregoing, this Agreement, as amended by the First Amendment, shall be in effect for a fourth year, starting April 1, 2009, and ending March 30, 2010. No other changes are made to Paragraph 5 by the First Amendment."

B. The parties amend Paragraph 2 "PAYMENTS FOR AUDITING SERVICES", to add a Fee Schedule for the additional one (1) year of Auditing Services, a true and correct copy of which is attached hereto as Exhibit "2" and incorporated herein as set forth in full.. Upon April 1, 2009, the following additional paragraph shall be deemed added to the end of Paragraph 2 of the Agreement:

"Notwithstanding the foregoing, this Agreement, as amended by the First Amendment, shall use a new, additional) Fee Schedule (a true and correct copy of which is attached to the First Amendment as Exhibit 2), for the fourth year of the Agreement, namely for the audit to be prepared for the fiscal year ended June 30, 2009. The Fee Schedule (Exhibit 2) reflects a ten percent (10%) cost increase over that set forth in Exhibit "C" to the Agreement and the parties mutually understand and agree that the total amount of \$65,230 is a **not to exceed total amount** for the said fourth year starting April 1, 2009, and ending March 30, 2010. No other changes are made

to Paragraph 2 by the First Amendment. Thus, all provisions of Paragraph 2 of the Agreement not modified herein for the fourth year shall continue in full force and effect.

4. All remaining provisions, terms, covenants, conditions and promises contained in the Agreement dated March 15, 2006, not modified in this First Amendment, shall remain in full force and effect for the fourth year of the Agreement, as amended hereby. It is expressly understood and mutually agreed that this First Amendment shall not effect an overlap in services rendered or of compensation owed therefore.

THIS FIRST AMENDMENT IS EXECUTED AND AGREED TO by the parties as set forth above.

BROWN ARMSTRONG PAULDEN
MCCOWN STARBUCK & KEETER,
ACCOUNTANCY CORPORATION

FRESNO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: 
AUTHORIZED REPRESENTATIVE

By: 
Its: CHAIR

AUDITING SERVICES AGREEMENT

**BROWN ARMSTRONG PAULDEN MCCOWN STARBUCK & KEETER,
ACCOUNTANCY CORPORATION**

This Agreement is made and entered into as of March 15, 2006, in FRESNO, California, by and between the FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (hereinafter referred to as "FCERA") and BROWN ARMSTRONG PAULDEN MCCOWN STARBUCK & KEETER, ACCOUNTANCY CORPORATION (hereinafter referred to as "AUDITOR").

WHEREAS, the FCERA was created pursuant to the County Employees Retirement Law of 1937 (hereinafter referred to as the "37 ACT") and is administered by the Board of Trustees (hereinafter referred to as the "BOARD");

WHEREAS, pursuant to Government Code section 31593, the Board, *"The retirement board shall conduct an audit of the retirement system at least once every 12 months and report upon its financial condition. The retirement board may retain the services of a certified public accountant to perform the annual audit. That audit shall be performed in accordance with generally accepted auditing standards. . . . The audit report shall address the financial condition of the retirement system, internal auditing controls, and compliance with applicable laws and regulations,"*

WHEREAS, AUDITOR is qualified to be a "certified public accountant" and is qualified to perform an audit in accordance with the GAAS as set forth by the AICPA, and with the *"Minimum Audit Requirements and Reporting Guidelines for California Public Retirement Systems,"* issued by the California State Controller; and

WHEREAS, the BOARD has determined that it would be in the best interest of the FCERA if AUDITOR were to be retained to provide the accounting services set forth herein below and, accordingly, has voted to approve this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises, the terms, covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. DESCRIPTION OF AUDITING SERVICES. The BOARD hereby delegates to AUDITOR the duties and AUDITOR hereby accepts and assumes responsibility to provide the auditing services described in Exhibit "A", (hereto, "Auditing Services"), and described in Exhibit "B", the BOARD's RFP and the AUDITOR's written responses to the RFP.

2. PAYMENTS FOR AUDITING SERVICES. In consideration of the services rendered in accordance with all terms and conditions and specifications set forth herein and set forth in Exhibits "A and B", BOARD shall make payment for auditing services to AUDITOR as set forth in Exhibit "C", (hereto, "Fee Schedule"). Said payments shall be made within thirty (30) days after full completion of the services by the AUDITOR. Any amendments to the fee schedule, Exhibit "C", agreed to by both parties shall be set forth in a written modification to the Agreement. The fees set forth in this section shall be the sole compensation owed by or to any person for AUDITOR's services under this Agreement.

3. RELATIONSHIP OF THE PARTIES. It is understood that this is an Agreement by and between the BOARD and an Independent Contractor and it is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.

4. NON-ASSIGNABILITY. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the BOARD, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement.

5. TERM AND TERMINATION. This Agreement shall be in effect for a term

of three years, starting April 1, 2006. Either party may terminate this Agreement at any time for any reason by providing thirty (30) days written notice. Termination to be effective on the date specified in the notice. In the event of termination under this paragraph, AUDITOR shall be paid for all work provided to the date of termination.

6. INDEMNIFICATION. The AUDITOR agrees to indemnify, defend and hold harmless the FCERA, its BOARD, trustees, officers and employees from any and all claims, actions, losses, damages, and/or liability arising from AUDITOR's negligent acts, errors or omissions and for any costs or expenses incurred by FCERA on account of any claim thereof, except where such indemnification is prohibited by law.

7. INSURANCE. Without in any way affecting the indemnity herein provided and in addition thereto, the AUDITOR shall secure and maintain throughout the Agreement the following types of insurance with limits as shown:

A. Workers' Compensation - A program of Workers' Compensation Insurance or a State Approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of AUDITOR and all risks to such persons under this Agreement.

B. Comprehensive General and Automobile Liability Insurance - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than five hundred thousand dollars (\$500,000.00)

C. Professional Errors and Omissions Liability Insurance - AUDITOR will secure an insurance policy for Professional Errors and Omissions insurance with

coverage of at least one million dollars (\$1,000,000.00) per claim or occurrence and shall cover all AUDITOR's officers, owners, and employees.

8. ADDITIONAL NAMED INSURED. All policies, except for the Workers' Compensation policy shall contain additional endorsements naming FCERA and its officers, employees, agents, and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. Copies of the endorsements are to be forwarded to FCERA within 30 days of executing this contract.

9. WAIVER OF SUBROGATION RIGHTS. Except for Professional Errors and Omissions Liability, AUDITOR shall require the carriers of the above required coverages to waive all rights of subrogation against FCERA, its BOARD, trustees, officers, and employees.

10. POLICIES PRIMARY AND NON-CONTRIBUTORY. All policies required above are to be primary and non-contributory with any insurance or self insurance programs carried or administered by FCERA.

11. PROOF OF COVERAGE. AUDITOR shall immediately furnish certificates of Insurance to the Retirement Administrator evidencing the Insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to FCERA, and AUDITOR shall maintain such insurance from the time AUDITOR commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this Agreement the AUDITOR shall furnish certified copies of the policies and all endorsements.

12. FORCE MAJEURE.

A. In the event AUDITOR is unable to comply with any provision of this Agreement due to causes beyond their control relating to acts of God, acts of war, civil disorders, or other similar acts, AUDITOR shall not be held liable to FCERA for such failure to comply.

B. In the event FCERA is unable to comply with any provision of this Agreement due to causes beyond their control relating to acts of God, acts of war, civil disorders, or other similar acts, FCERA shall not be held liable to AUDITOR for such failure to comply.

13. NOTICES AND REPORTS.

Any notices and reports required or desired to be services by either party upon the other shall be addressed to respective parties as set forth below:

FCERA:

Roberto L. Peña
Administrator
FRESNO County Employees' Retirement Association
1111 H Street
Fresno, CA 93721
559.457.0681
Fax 559.457.0318

AUDITOR:

ANDREW J. PAULDEN
Principal
Brown Armstrong, Paulden McCown Starbuck & Keeter
Accountancy Corporation
4200 Truxtun Ave. Suite 300
Bakersfield, CA 93309
(661) 324-4971
FAX (661) 324-4997

14. GOVERNING LAW AND VENUE. This Agreement will be construed in accordance with and governed by the laws of the State of California. Should any party

file a lawsuit over any matter arising out of this Agreement, said lawsuit will be filed and prosecuted in the County of FRESNO, State of California, and all parties hereto hereby consent to such venue and the personal jurisdiction of all courts sitting within such local.

15. ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS.

AUDITOR hereby agrees and represents that it is an equal opportunity employer and has adopted policies to implement the purpose and provisions of the Civil Rights Act of 1964, 42 USC § 2000(e) et seq. to assure that no person is denied employment on the basis of race, creed, color, sex or national origin in connection with its performance of this Agreement.

16. AFFIRMATIVE ACTION. The AUDITOR shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, handicap, ancestry or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

18. CONFIDENTIALITY. Except as provided by applicable law, or by order of a court or regulatory authority, AUDITOR shall maintain the confidentiality of all its records with respect to this Agreement, including, but not limited to, billing and the FCERA records. AUDITOR shall maintain the same confidentiality of these records as it does for other accounts.

19. VALIDITY. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision

20. WAIVER. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of said provision or any other provision of this Agreement. No waiver will be enforceable unless it is a written agreement executed by the party granting the waiver, making specific reference to this Agreement and reciting the parties' intention that it constitutes a waiver. Failure of either party to enforce at any time, or from time to time, any provisions of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

21. ATTORNEY FEES. In the event of any litigation regarding this Agreement, the prevailing party as determined by the appropriate court shall be entitled to recover reasonable attorney's fees.

22. CHANGES AND AMENDMENTS. The FCERA and AUDITOR reserve the right to amend any such terms and conditions of this Agreement, which may become necessary. Any revisions hereto will be accomplished by written agreement executed by both of the parties making specific reference to this Agreement and reciting the parties' intention that it constitutes an amendment.

23. MERGER. This Agreement, and the Exhibits attached hereto, will constitute the complete and exclusive statement of understanding between the parties, superseding all previous agreements, written or oral, and all other previous communication between the parties relating to the subject matter of this Agreement.

24. SOLE PROPERTY OF THE BOARD. Any system, documents or reports developed, produced or provided under this Agreement shall become the sole property of the BOARD.

24. AGREEMENT RENEWAL. This Agreement may be renewed for additional time periods provided that both parties sign renewal documents and the total payments during the renewal terms are specified.


EXECUTED AND AGREED TO by the parties as of the date first written above by their duly authorized representatives:

BROWN ARMSTRONG PAULDEN
MCCOWN STARBUCK & KEETER,
ACCOUNTANCY CORPORATION

FRESNO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: 

AUTHORIZED REPRESENTATIVE

By: 

Its: CHAIR

CONTRACT WITHOUT THE EXHIBITS
APPROVED AS TO FORM:

By: _____
Deputy County Counsel