

PROFESSIONAL SERVICES AGREEMENT

EXECUTIVE SEARCH SERVICES

This Agreement is made by and between the Fresno County Employees' Retirement Association ("the Client") and Alliance Resource Consulting ("Consultant").

1. **Search Engagement.** The Client agrees to engage the Consultant to perform those services described below, for completion of the project described as follows: the Retirement Administrator recruitment ("the Search").
2. **Services.** The Consultant agrees to perform certain services necessary for completion of the Search, which services shall include the following:
 - a) Position analysis and preparation of recruitment brochure
 - b) Place advertisements in appropriate nationwide journals and publications
 - c) Candidate identification and recruitment
 - d) Resume review and screening
 - e) Progress report
 - f) Interviews with and preliminary background checks on leading candidates
 - g) Final report
 - h) Finalize background checks on top one to two candidates
 - i) Assist with interviews and negotiations

A complete description of the services to be provided are contained in a proposal from the Consultant to the Client previously submitted on April 28, 2014. The entirety of said proposal is

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3. **Relationship.** The Consultant is an independent contractor and is not to be considered an agent or employee of the Client.
4. **Compensation.** As full compensation for the Consultant's professional services performed hereunder, the Client shall pay the Consultant the amount of **\$28,000 (twenty-eight thousand dollars)**. The Consultant's fee will be split between four invoices. The first invoice is an "engagement fee" of \$7,000 and will be due once the professional services agreement has been signed. The Consultant will submit three equal monthly invoices for the remaining fees, plus an amount for expenses, due and payable upon receipt.

5. **Expense Reimbursement.** The Consultant shall be entitled to reimbursement for actual expenses incurred from the Client such as advertising, reasonable and necessary travel, sourcing, support services, background checks and other related items, as well as costs specifically incurred for the performance of services, such as telecommunications, cellular phone, insurance, postage, and photocopying. Expenses are not to exceed \$9,500 (nine thousand five hundred dollars). The Consultant shall provide the Client with a listing of expenses by category of expense as a part of the billings and back-up invoices for any expense exceeding \$100.00. The three major client meetings will be: one to develop the Recruitment Profile, one to present our Progress Report, and one to attend the first round of candidate interviews.

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6. **Compensation for Additional Services.** In the event the Client requires services in addition to those described in Paragraph 2, the Consultant shall be compensated at a negotiated rate for professional services, plus reimbursement of expenses. In the event the Client desires more than three on-site meetings, the fee per additional meeting will be \$1,500 plus direct expenses.

Deleted: In the event that the Client hires, within one year of completion of this recruitment project, any candidates identified as a result of Consultant's recruitment project for any position other than Retirement Administrator, the Client agrees to pay Consultant a negotiated fee of 50% of the original professional fee (a maximum of \$14,000) for each additional candidate hired. For purposes of this paragraph, "Candidate" is defined to include any and all individuals about whom information of any sort was provided only by Consultant in writing to the Client in the course of this recruitment project. The parties hereto agree that the obligations set forth in this paragraph shall survive the termination of this Agreement.

7. **Records Retention**

Consultant will retain copies of all hard copy documents associated with the recruitment for three years from the anniversary date of the hiring of the candidate. Retention of records beyond three years must be requested in writing before end of that three year period. Records stored beyond three years will be maintained in an off-site secure storage facility at a cost of \$50 per box per year, or delivered to the Client's possession at Client's request. Additional costs associated with access, retrieval, delivery, organizing, photocopying, etc. shall be billed as a separate invoice at a rate of \$50 per hour.

8. **Method of Payment.** Monthly progress payments of the Consultant's professional services fee and expenses shall be made by the Client within forty-five (45) days after receipt of a properly completed invoice from the Consultant, as outlined in our proposal.

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9. **Term.** The term of this Agreement shall commence on June 5, 2014, at which time the Consultant shall begin work on the Search and shall continue, subject to the termination provisions of Paragraph 11, until the date that the Consultant completes the Search. The time of completion of the Search is estimated to be 100 days from the date of the meeting to develop the Recruitment Profile. This contract will continue until a satisfactory placement is made at no additional cost (professional time and expenses) until a placement is made.

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10. **Termination.** This Agreement may be terminated: (a) by either party at any time for failure of the other party to comply with the terms and conditions of this Agreement; (b) by either party upon 10 days prior written notice to the other party; or (c) upon mutual written agreement of both parties. In the event of termination, and provided Consultant shall not have failed to comply with the terms of this Agreement, the Consultant shall stop work immediately and shall be entitled to compensation for professional service fees and for expense reimbursement to the date of termination; and the Consultant shall provide to the Client all work product completed or in progress at such date and communicate such recommendations and conclusions to the Client as may have been formed by such date. Provided Consultant shall not have failed to comply with the terms of this Agreement, (a) if Client terminates, within the first 30 days of the assignment, following either verbal or written authorization to proceed, one-third of the professional fee will be due; (b) if Client terminates thereafter, the fee beyond the first one-third will be prorated based upon the number of calendar days which have elapsed; and (c) if a Client terminates after 90 days, all professional fees will be due in full.

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11. **Insurance and Indemnity.** The Consultant shall maintain in force during the term of the Agreement, General Liability Insurance including Personal Injury; Professional Liability; Automobile Liability Insurance (Non-Owned and Hired Liability); and Workers' Compensation Insurance as identified below.

- i. Automobile Liability insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with minimum limits for Bodily Injury and Property Damage liability one million dollars (\$1,000,000) combined single limits. Such insurance shall be provided by a business or commercial vehicle policy.
- ii. Commercial General Liability insurance against claims of Personal Injury (including bodily injury and death) and Property Damage arising from the operations of the contractor, including coverage for premises and operations, use of independent contractors, and products and completed operations. Policy is to be on an occurrence basis with minimum limits of \$1,000,000 per Occurrence for bodily injury, personal injury and property damage. Client, its board members, officials, agents, and employees shall be named as an additional insured with respects to work performed on behalf of Client to this policy.
- iii. Professional Liability Insurance against claims for damages arising out of negligence, acts, mistakes or failure to take appropriate action in the performance of business or professional duties, with minimum limits of one-million dollars (\$1,000,000).
- iv. Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

If any of the insurance coverages required under this Agreement is written on a claims-made basis, the insurance policy shall provide an extended reporting period of not less than four (4) years following termination of this Agreement or completion of Consultant's work specified in this Agreement, whichever ever is later.

Prior to Consultant commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to the Client by Certificate of Insurance. Consultant shall maintain the above-stated insurance coverage until the completion of all obligations under this Agreement. Such insurance coverage shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the Client. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

All insurance shall be issued by a company or companies listed in the current Best's Key Rating Guide@ publication with a minimum of an "A-; VII" rating, or in special circumstances, be pre-approved by the Client.

- i. All insurance afforded by Consultant pursuant to this Agreement shall be primary to and not contributing to any other insurance maintained by the Client. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve the Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the Client from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.
- ii. Failure by the Consultant to maintain all such insurance in effect at all time required by this Agreement shall be a material breach of this Agreement by the Consultant. The Client, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from such breach. Alternatively, the Client may purchase such required insurance coverage, and without further notice to the Consultant, the Client shall deduct from sums due to the Consultant any premiums and associated costs advanced or paid by the Client for such insurance. If the balance of monies obligated to the Consultant pursuant to this Agreement is not sufficient to reimburse the Client for the premiums and any associated costs, the Consultant agrees to reimburse the Client for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by the Client to take this alternative action shall not relieve the Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

The Consultant shall furnish the Client with original certificates and amendatory endorsements effecting coverage. All certificates and endorsements are to be received with 10 days of their issuance and before any work commences under the contract.

Indemnity: Consultant agrees to indemnify, save, hold harmless and at the Client's request, defend the Client, its officers, agents, and employees from any and all costs and expenses, damages,

liabilities, claims, and losses occurring or resulting to the Client in connection with the performance, failure to perform or other wrongful acts by Consultant, 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, failure to perform or other wrongful acts of Consultant, its officers, agents, or employees under this Agreement.

12. **Client Responsibilities.** The Client shall inform Consultant about matters relevant to the search that Client wishes to keep confidential; provide names of people previously interviewed/considered for this position; forward copies of resumes received; provide feedback to Consultant regarding the information and recommendations provided by Consultant; communicate internal decisions/deadlines that impact the recruitment process and/or the delivery of work product; promptly decide upon and follow up in scheduling interviews with the most promising candidates; and assist in providing information to candidates that will enable them to make their career decisions.

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13. **Candidate Travel.** ~~Consultant shall not be responsible for reimbursing any expenses~~ for candidates who travel to the Client for interviews. Client travel policies shall be provided to the Consultant at the initial start meeting.

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14. **Equal Opportunity Employer.** ~~Client is an equal opportunity employer and makes hiring decisions without regard to race, ancestry, religion, color, sex, age, national origin, sexual orientation, disability, or veteran's status, and Consultant agrees to conduct this project consistent with Client's policies and all applicable state and federal laws.~~

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15. **Miscellaneous.**

- a) The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the proposal referred to and incorporated by reference in Par. 2 above.
- b) Neither this Agreement nor any rights or obligations hereunder shall be assigned or delegated by the Consultant without the prior written consent of the Client, which consent may be withheld for any reason satisfactory to Client.
- c) This Agreement shall be modified only by a written Agreement duly executed by the Client and the Consultant.
- e) This Agreement shall be governed by and construed in accordance with the laws of the State of California and all legal actions arising or relating to its terms may be commenced only in a state or federal court located in Fresno, California. The parties hereby acknowledge that this Agreement was made and entered into in Fresno County, California and that they are subject to the personal jurisdiction of the courts located in that county.

f) All notices required or permitted under this Agreement shall be deemed to have been given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at such party's address listed below, or when delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

16. Confidentiality. The Consultant will preserve the confidentiality of all communications between and among Consultant, Client and Candidate and will not disclose any such confidential information to third parties, and will not use any such confidential information, except as contemplated by this Agreement. Consultant may refer to FCERA in its customer lists and in advertising and promotional materials, and may use FCERA as a reference to potential clients. Consultant shall take any and all appropriate steps to impose these confidentiality obligations on its employees, contractors and agents. Notwithstanding the foregoing, the confidentiality provisions of this Agreement shall not apply to: (i) information that is already known to Consultant the time of disclosure or is or becomes publicly known through no wrongful act on Consultant's part; (ii) information that is rightfully received by Consultant from a third party without breach of this Agreement; (iii) information that is developed by the Consultant independently and without breach of this Agreement, provided such development was not based on the confidential information of Client; (iv) information that was or is furnished by a non-Candidate third party to Consultant without restrictions on the third party similar to those set forth herein; and/or information that is required to be disclosed by applicable law (provided that Consultant has consulted with Client so far as is practicable before such disclosure).

17. This Agreement may be executed in several counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which, when taken together, shall constitute one and the same signatory page of the Agreement.

APPROVED:

Dated: _____, 2014

Dated: _____, 2014

Alliance Resource Consulting, LLC

Fresno County Employees' Retirement Association

By _____ By _____

Title _____ Title _____

400 Oceangate, Suite 510
Long Beach, CA, 90802

1111 H Street
Fresno, CA 93721

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