



Donald C. Kendig, CPA  
Retirement Administrator

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

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**DATE:** September 2, 2015

**TO:** Board of Retirement

**FROM:** Donald C. Kendig, CPA  
Retirement Administrator

**STAFF CONTACT:** Becky Van Wyk  
Assistant Retirement Administrator

**SUBJECT: Request for Proposal: Board Legal Counsel – RECEIVE AND FILE; APPROPRIATE ACTION**

**Background and Discussion**

Daniel C. Cederborg, Fresno County Counsel (County Counsel), notified the Board of Retirement (Board) on April 9, 2015 that a partial conflict of interest existed that reduced the representation that County Counsel could provide to the Board. As a result, the Board directed Administration to begin a search for local attorney to represent the Board during Board meetings and to act as general counsel to the Board. In the interim, Harvey Leiderman of Reed Smith, the Board's fiduciary counsel, stepped in to provide general legal counsel and counsel during Board meetings.

A Request for Proposal for Board Legal Counsel was approved by the Board on July 15, 2015 with distribution limited to publishing in the Fresno Business Journal for three consecutive editions, July 20<sup>th</sup>, 22<sup>nd</sup> and 24<sup>th</sup>. A single response was received by an out of area legal firm. A letter has been sent to that firm thanking them for their submission.

An updated draft Request for Proposal for Board Legal Counsel is attached for your review. The following timetable outlines the anticipated conduct of the process:

Request for Proposal (RFP) issued:	September 4, 2015
Deadline for Questions and Clarifications	September 11, 2015
Due Date for Submission of Proposals	September 18, 2015
Evaluation of Proposals	September 21-24, 2015
Finalist Interviews	October 7, 2015
Contract Finalization	November 4, 2015 or shortly thereafter

**September 2, 2015**

**Request for Proposal – Board Legal Counsel**

**Page 2**

Staff recommends the Board's approval of the RFP and the delegation of the review of proposals to staff, with staff bringing to the Board the top 2-3 candidates.

Direct mailings of the Request for Proposal (RFP) will be forwarded to a select listing of local legal firms requesting submission of a response to the RFP, as well as follow up phone calls. In addition, staff will post the RFP on the FCERA website and list the RFP with the California Special District Association (CSDA) given that there are numerous special districts in the area, with boards, and attorneys that service them.

**Fiscal and Financial Impacts**

There will be minimal cost for the outreach and publication efforts, well within budget limits.

**Recommended Action(s)**

1. Approve the issuance of the Request for Proposal for Legal Services and delegate the Initial Screening to Staff.

**Attachment(s)**

1. Draft Request for Proposal for Legal Services



**Fresno County  
Employees' Retirement  
Association**

**Request for Proposal**

**To Perform Board Legal Counsel Services**

*September 2, 2015*

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### Attachments:

- A. Board Counsel Position Description
- B. Sample Legal Agreement

I.

**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 any one 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, proposer, 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 "General Conditions and Instructions to Proposers" and the specifications; 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 that this proposal is prepared and submitted without collusion with any other person, business entity, or corporation with any interest in this proposal.



II.

**CERTIFICATE OF INSURANCE**  
**CHECKLIST**

Provided to assist the proposer in meeting the required insurance provisions found in Section 9 of the sample legal Agreement (Attachment B).

Proposer \_\_\_\_\_ **BID Name.** Board Legal Counsel 2015-09-04.

	<u>Gen.</u> <u>Liab.</u>	<u>Auto</u>	<u>Wrkrs.</u> <u>Comp</u>	<u>E &amp; O</u>	
• The correct proposer name is listed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• NAIC # of insurers is provided on the certificate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Policy limits of insurance meet requirements in the agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Deductibles are declared and approved or waived by FCERA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Expiration date of policy is 6 months or more into the future	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• 30 - day notice of cancellation included	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Certificate Holder is "Fresno County Employees' Retirement Association" (FCERA) (Note: "Fresno County – CSA" for example is not acceptable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Endorsement naming "Fresno County Employees' Retirement Association" (FCERA) as "Additional Insured" included	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Waiver of Subrogation endorsement included (Worker's Compensation only)			<input type="checkbox"/>		
• Carrier is admitted/licensed to issue insurance in California.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
• Best's rating of no less than A-, and Financial Size Category of at least VII (for all "Insurers" listed on Certificate; State Fund is okay/an exception) <a href="http://www3.ambest.com/ratings/advanced.asp?bl=0&amp;Menu=Search+Best%27s+Ratings">http://www3.ambest.com/ratings/advanced.asp?bl=0&amp;Menu=Search+Best%27s+Ratings</a>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A

Comments:

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III.

**Introduction and Background**

FCERA is soliciting proposals from qualified law firms and individuals to provide Board Legal counsel services to FCERA Board and FCERA staff. It is FCERA's intent to obtain the services of one firm or individual to begin providing services in November 2015.

The Fresno County Employees' Retirement Association (FCERA) is an independent multi-employer public retirement trust established pursuant to California Government Code Section 31450 et seq. Under the provisions of the Government Code, the administration and investment of assets is governed by a nine member and one alternate Board of Trustees. Three of the trustees are elected by the active members, one trustee and one alternate are elected by the retired members, four are appointed by the Board of Supervisors and the County Treasurer is an ex-officio member of the Board of Trustees.

FCERA's thirty member staff administers benefits for the County of Fresno, Fresno Superior Courts, Fresno Madera Area Agency on Aging, Clovis Veterans Memorial District, and Fresno Mosquito and Vector Control District. FCERA currently administers retirement benefits for approximately 8,300 active members (including members in deferred retirement status) and 6,600 retired members and beneficiaries. The active membership is composed of general and safety classifications, each with multiple tiers. Each member classification/tier has a different benefit formula. Member contribution rates are established pursuant to state law and associated bargaining agreements. The County contribution rate is established based on the Plan Actuary's recommendation. FCERA currently administers approximately \$4.0 billion in plan assets.

FCERA retains the services of other attorneys to perform legal counsel services on disability retirement applications, divorce, investments, fiduciary and tax issues.

IV.

**Services to be Provided**

A. Board Legal Counsel Services

On April 9, 2015, Daniel Cederborg, Fresno County Counsel, wrote that his office would withdraw as counsel to FCERA Board of Retirement, due to a partial conflict of interest, effective immediately. As a result, the FCERA Retirement Board directed staff to issue an RFP for legal services.

See Attachment A – Board Counsel Position Description

See Attachment B – Sample Legal Agreement



V.

**Engagement Process**

The following timetable outlines the anticipated conduct of the process:

Request for Proposal (RFP) issued:	September 4, 2015
Deadline for Questions and clarifications	September 11, 2015
Due Date for submission of proposals	September 18, 2015
Evaluation of Proposals	September 21-24, 2015
Finalist Interviews (if needed)	October 7, 2015
Contract Finalization	November 4, 2015 or shortly thereafter

VI.

**General Conditions and Instructions To Proposer**

A. Proposal Content and Quantity

Proposals must be submitted in the format identified in Section VII, Paragraph I - Submission of Proposals and Paragraph J - Proposal Elements. All items shall be filled in and the signatures of all persons signing shall be written in longhand. FCERA may not consider proposals not submitted in the format specified.

Mistakes must be corrected and the correction inserted; the person signing the Proposal must initial the correction in ink.

**Five hard copies of the proposal and one electronic copy should be submitted. If proposals are bound, one additional copy should be submitted unbound. Proposals shall clearly identify the project name, and RFP response date September 18, 2015, on the outside of the envelope and be delivered in a sealed envelope no later than 4:00 p.m. to:**

Becky Van Wyk, Assistant Retirement Administrator  
Fresno County Employees' Retirement Association  
1111 H Street  
Fresno, CA 93721

Proposals received after that time shall be returned unopened to the respective Proposer and shall not be considered for evaluation.

B. Awarding Contract

Within ninety (90) days after the proposal opening, a contract may be awarded by FCERA to the most responsible and responsive Proposer/s, subject to the right of FCERA to reject all proposals, as it may deem proper in its absolute discretion. The time for awarding the contracts may be extended at the sole discretion of FCERA, if required to evaluate proposals or for such other purposes as FCERA may determine, **unless Proposer objects to such extension in writing with his proposal.**

C. Form Agreement; Exceptions and Alternatives.

A sample Agreement (Attachment B) is attached for the purpose of informing the Proposer of the fixed, predetermined, standard contract provisions with which they will be required to comply. The Agreement by this reference, made a part hereof, contains terms and conditions that apply to the performance of this work. If the Proposer suggests alternatives or states exceptions to any term or condition in the Agreement or to any provision or recurrent of the RFP, such alternative or exception shall be clearly stated and identified in the submitted proposal. Otherwise, the successful Proposer will be expected to sign the Agreement upon award of the contract. Any proposed alternative must satisfy all minimum qualifications specified in the RFP. FCERA expressly reserves the right, in its sole discretion, to (1) reject a proposal containing any exception or alternatives as nonconforming, or (2) accept any proposal alternative or exception and to award a contract based there on if determined to be in the best interest of FCERA.

These provisions are subject to revision by FCERA at any time prior to the signing of the Agreement.

**Proposer shall submit the following documents as a response to this RFP:**

- Return entire RFP package completed and signed.
- Complete and sign a Federal W9 form (Request for Taxpayer Identification Number and Certification).
- Complete and sign a California 590 form (Withholding Exemption Certificate)
- Any exceptions to the terms and conditions of this RFP, sample Agreement, and insurance requirements (see "insurance checklist) must be submitted with the proposal response.

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.

D. Protest and Appeal Procedures

1. General

Proposers wishing to protest or appeal a contracting decision by FCERA must follow the procedures provided by this section. Protests or appeals, which are not submitted in accordance with these procedures, will not be reviewed.

2. Definitions

- a. For the purposes of this procedure: "Days" means business days of FCERA.
- b. "Filing Date" or "Submission Date" means the date of receipt by FCERA in care of Becky Van Wyk, Assistant Retirement Administrator
- c. "Interested Party" means an actual or prospective bidder or proposer.
- d. "Bid" includes the term "offer" or "proposal" as used in the context of formal, informal, or negotiated contracts.

3. Protest Procedure

- a. Any interested party may file a written protest with FCERA not later than five (5) days after award of the bid.
- b. The protest shall be delivered or sent by registered mail. Interested parties may be represented by legal counsel if they desire. Each party shall bear its own costs and fees in connection with protest or appeal.
- c. The protest filed with FCERA shall:
  - Include the name, address, and business telephone number of the protestor;
  - Identify the search under protest by name, quotation/bid number where applicable, and quotation/bid date where applicable;
  - Contain a concise statement of the grounds for protest; and
  - Provide all supporting documentation, if any. Documentation submitted after filing the protest will not be reviewed.

4. Protest Review

- a. Upon receipt of a protest, FCERA shall review all the submitted materials and shall create and retain a written record of the review. FCERA shall respond in writing at least generally to each material issue raised in the protest not later than ten (10) days after receipt of the protest.

- b. FCERA decisions may be appealed in writing to the Fresno County Employees' Retirement Association Board of Retirement. The decision of the Board of Retirement shall be final.

## VII.

### **Additional Terms And Conditions**

#### A. Cost of Preparation of Proposal

FCERA shall not pay costs incurred in the proposal preparation, printing, or demonstration process. All such costs shall be borne by the Proposer.

#### B. Rights to Pertinent Materials

All responses, inquiries, and correspondence relating to the Request For Proposal and all reports, charts, coverage maps, displays, schedules, exhibits, and other documentation produced by the Proposer that are submitted as part of the proposal shall become the property of FCERA and will be kept confidential until such time as recommendation for award of a contract has been announced.

Any material that the Proposer believes is exempt from public disclosure and confidential or proprietary should be marked "**Confidential**" or "**Proprietary**". After the RFP is awarded to the successful Proposer/s all submitted material becomes public information unless marked "Confidential" or "Proprietary". FCERA will use reasonable means to ensure that such confidential information is safeguarded but will not be held liable for inadvertent disclosure of such materials, data and information. Submissions marked "confidential" in their entirety will not be honored as such and FCERA will not deny public disclosure of all or any portion of submittals so marked.

#### C. Public Records Act

All proposals become public information no later than at the conclusion of the selection process with the exception of those portions of a proposal that are identified at the time of the submittal by the Proposer as trade secrets and which are reasonably deemed by FCERA as not being public documents that must be disclosed under applicable sections of the California Public Records Act and other appropriate statues and regulations. By submitting information with portions marked "Confidential" or "Proprietary", the Proposer represents it has a good faith belief that such material is exempt from disclosure under the California Public Records Act and agrees to reimburse FCERA for, and to indemnify, defend and hold harmless FCERA, its officers, fiduciaries, employees and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys'

fees, expenses court costs of any nature whatsoever (collectively, "Claims") arising from or relating to FCERA's non-disclosure of any such designated portions of a proposal if disclosure is deemed required by law or court order.

D. Modification to Service Requirements

The Service Requirements (see attachment A) may be amended to meet available funding or to best meet the needs of FCERA. In the event that any additional services are required as identified herein, FCERA reserves the right to add such services by amending the Agreement.

E. Right of FCERA to Reject Proposals

FCERA reserves the right to reject any and all proposals or any part of the proposals, to waive minor defects or technicalities, or to solicit new proposals on the same project or on a modified project, which may include portions of the originally proposed project, as FCERA may deem necessary.

All proposals received after the time specified in this Notice will not be considered and will be returned unopened.

F. Insurance Provisions

The "Insurance Provisions" contained in Section 9 of the sample Agreement is/are hereby made a part of this RFP and any resultant contract. The Proposer shall acknowledge in the proposal responses the ability to meet the below insurance requirements and the requirements contained in Section 9 of the sample Agreement. All exceptions to the insurance requirements must be communicated in writing and included with the proposal response. The responder awarded the Agreement shall provide FCERA with a certificate of insurance and endorsements meeting and/or containing the following:

- Policy limits of insurance as required in the "sample" agreement Section 9
- Deductibles shall be declared
- NAIC# for insurers shall be provided on the certificate
- 30 - day notice of cancellation
- Certificate Holder is "Fresno County Employees' Retirement Association"
- Endorsement naming "Fresno County Employees' Retirement Association" as additional insured (GL and Auto)
- Waiver of subrogation (Workers' Compensation Section 9.A(3))
- Carrier admitted/licensed to issue insurance in California
- Best's rating of no less than A-, and Financial Size Category of at least VII

An "Insurance Checklist" is included in this RFP package.

G. Exceptions

The submission of a proposal shall be considered an agreement to all the terms, conditions (including insurance requirements) and specifications provided herein and in the various proposal documents, unless specifically noted otherwise in the proposal.

H. Examination of Proposal Documents - Proposal Inquiries

The Proposers shall carefully examine the Proposal Elements and satisfy themselves as to their sufficiency, and shall not at any time after submission of the proposal, dispute or complain of such Proposal Elements and the directions explaining or interpreting them.

Should a Proposer find discrepancies in or omissions from the Proposal Elements, or should the undersigned be in doubt as to their meaning, the undersigned shall at once notify FCERA. **Notification is to be in written form and must be submitted at least ten (10) days prior to the proposal due date.** Any interpretations by FCERA will be made in the same written form as received including e-mail, and will serve as an addendum to the RFP. Any change in requirements will be done in the form of written addenda. The receipt of any resulting amendment must be acknowledged in accordance with the directions on the amendment. Oral explanations or instructions given before the award of the contract will not be binding.

Questions/Inquiries must be submitted via e-mail, to: [bvanwyk@co.fresno.ca.us](mailto:bvanwyk@co.fresno.ca.us) or in written form and referred to:

FCERA  
c/o Becky Van Wyk, Assistant Retirement Administrator  
1111 H Street  
Fresno, Ca 93721

E-mail inquiries will be accepted until 5:00 p.m. on **September 11, 2015**. Any inquiries in written form other than e-mail are to be submitted at least seven (7) days before the proposal due date. All inquiries must identify the RFP section and page number to which the inquiry refers.

I. Submission of Proposals

The submission of a proposal(s) is a two (2) phase process. Proposal(s) are to consist of two (2) separately sealed envelopes, one marked "PROPOSAL" and the other marked "RFP-PRICING" and shall be submitted to FCERA at the place and time specified in this Notice.

During phase one (1) the Proposal Statements and RFP-Pricing will be received by FCERA. However, only the Proposal Statements will be opened at that time. The FCERA Staff will review Proposal Statements. The sealed pricing will remain so until the staff has completed the evaluation of the Proposal Statements. Upon notification of the completion of the evaluation of the Proposal Statements, the sealed pricing will be opened and the RFP-Pricing results will be calculated. The final evaluation results will be transmitted via email to the Board of Retirement.

In phase two (2), the Board of Retirement shall evaluate the pricing and select the proposal(s), which is/are considered to be the most effective and is/are in the best interest of FCERA.

J. Proposal Elements

The "PROPOSAL" response has two (2) elements as noted above - Proposal statements and RFP-Pricing. Each of the proposal elements, shall be preceded by an 8 ½" by 11" tab divider, with each sub section clearly labeled. Proposal documents not identified, if any, shall be included in a sub section labeled "Other RFP documents."

Electronic submissions shall be searchable and contain a linked table of contents.

Below are the detailed sections of the Proposal statement. Proposers shall address the sections as indicated:

1. Qualifications

Please submit your qualifications, which include a complete Company profile of your firm outlining its background, philosophy and experience and information about your firm's ability to perform the work. This section of the Proposal shall include responses to the following:

a. Organizational and Background

- (1) Number of years in business as a law firm
- (2) Brief history of the firm, including ownership structure, key principals and current organization structure (including the relationship between each component and your firm)
- (3) What distinguishes your firm from other law firms?

- (4) Describe any services your organization provides that may not be offered by other law firms.
- (5) Describe the independence your firm brings to a consulting relationship, including the advantages of having or not having partnerships and/or business affiliations.
- (6) Describe the services your firm provides and give the percentage of revenue derived from public employee retirement system legal services.
- (7) State the address of your corporate office. What office will service FCERA's account? How is that office staffed? What are the strengths of the staff in that office?
- (8) Indicate the primary contacts (and management hierarchy) that will be available for all aspects of the work. Include contacts for customer service and senior management. Attach resumes, and any certifications or licenses of these individuals.
- (9) List of references that have used your services. List names, addresses, telephone numbers and contact persons. List as references all 1937 Act clients.
- (10) List of contracts that have not been renewed or terminated in the past five (5) years. List names, addresses, telephone numbers, e-mail addresses, and contact persons.
- (11) Within the past three years, have there been any significant developments in your organization such as changes in ownership, restructuring or personnel reorganizations? Do you anticipate significant changes in your organization?

b. Delivery of Services

- (1) Provide a description of your company's understanding of the specific project goals and requirements for the service(s) for which you are proposing. Provide highlights that are particularly significant to the delivery of that particular service.
- (2) Approach and Understanding of Requirements:

Submit a technical proposal describing a sample scope of work including specifying tasks that would be completed to accomplish the Service Requirements outlined in Attachment A. This shall include a statement of



approach to the services, including a sample work plan, timeline, staffing procedures and resource plan.

Proposers shall identify what co-ordination and meetings FCERA will be required to provide. Describe your firm's backup procedures in the event that key personnel on this assignment should leave the firm. Describe the resources your firm has that specifically address the needs related to pensions of public sector clients.

**IT IS IMPORTANT THAT A COMPLETE DESCRIPTION BE PROVIDED.**

c. Standards of Conduct

- (1) Does your firm have a written code of conduct or a set of standards for professional behavior? If so, how are they monitored and enforced?
- (2) How are your recommendations to clients reviewed and monitored by your organization? Does your firm adhere to a level of consistency in your recommendations?
- (3) Within the last five years, has your organization or an officer or principal been involved in litigation or other legal proceedings relating to your Board Legal counsel services assignments? If so, please provide an explanation and indicate the current status or disposition. If any of these were resolved adversely, would they represent a potentially significant financial liability to your firm? If so, please describe.
- (4) Has your firm ever been censured by any regulatory body? If so, please describe.

d. Conflicts of Interest:

- (1) Are there any potential conflict of interest issues your firm would have in servicing FCERA? If so, describe them.
- (2) How does your firm identify and manage conflicts of interest?
- (3) Have you or anyone in your firm provided any gifts, travel and room expenses, entertainment or meals to any FCERA Board member or staff during the past 12 months? If yes, please describe the amount of expenses and what it was for.
- (4) List and describe any professional relationship you have with the County of Fresno, Fresno Superior Courts, Fresno Madera Area Agency on Aging, Clovis

Veterans Memorial District, Fresno Mosquito and Vector Control District, or legislative oversight bodies during the past three years.

e. Consulting team:

- (1) Please provide contact information for each professional that will be assigned to FCERA in a grid format similar to this:

Name  
Title  
Address  
Business Phone  
Business Fax  
E-mail Address

- (2) Please describe the role of each professional for this assignment.
- (3) Please describe your team's experience with similar work performed for other public retirement systems or corporate pensions.

f. Insurance and liability:

- (1) What limitation on liability, if any, do you impose through your contract?
- (2) Please describe the levels of coverage for errors and omissions insurance and any fiduciary or professional liability insurance your firm carries. Is the coverage on a per client basis, or is the dollar figure applied to the firm as a whole? List the insurance carriers.
- (3) Describe your quality assurance procedures.
- (4) Describe your firm's disaster recovery plan as it relates to the equipment, software, and data tapes and personnel that would be used in providing the services required by FCERA.

g. Subcontracting:

- (1) If your firm uses the services of a subcontractor, please identify the subcontractor and describe the skills and qualifications of the subcontractor and its individual employees.
- (2) Describe what portions of the project will be assigned to the subcontractor.

- (3) Identify the cost associated with the portions of the project assigned to the subcontractor.
- (4) Describe the inclusive periods and percentage of time the subcontractor will devote to the project.
- (5) Describe the contractual arrangement contemplated with each subcontractor and describe generally the control/delegation of responsibilities anticipated in that arrangement.

h. Other Information:

- (1) Provide any additional information that you believe to be relevant to the RFP and your capability to provide the services requested.

**VIII.**

**Required Appendices**

**Appendix A. Biographies**

Please include biographies for all professionals listed in your proposal. Indicate what year each professional joined your firm and describe his or her position, current responsibilities, areas of expertise, experience, education, professional designations and memberships, and relevant publications and presentations.

**Appendix B. Annual Financial Report**

Please attach your firm's current Annual Financial Report.

**Appendix C. Sample Contract or Agreement**

Please attach a sample service contract or agreement your firm uses.

**IX.**

**RFP-PRICING**

As set forth in section VII, paragraph I, submit a separate sealed envelope with a document that details the costs to FCERA for the proposal being submitted. **Please submit pricing using both an hourly rate, and on a retainer basis, identifying the total number of hours included under each pricing option.**

Anticipated Annual Service Commitment:

- 24 Board Meetings Days – 2 to 6 hours each, plus preparation time.
- 20 Agenda Review Meetings – 1 to 2 hours each, plus preparation time.
- Agenda Item Reviews – preparation time 1 to 2 hours an item, 5 items a meeting day on average.
- Periodic Monthly Calls – 1 to 5 hours each month.

In determining the fees/hourly rates proposed by each Proposer, FCERA shall disregard mathematical errors in addition, subtraction, multiplication and division that appear obvious on the face of the proposal. When an item price is required to be set forth in the proposal and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times FCERA's estimate of the quantity of work to be performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of FCERA, such a procedure would be inconsistent with the policy of the proposal procedure. The total paid for each such item of work shall be based upon the item price and not the total price.

Total price score is a proportional score using the lowest fees/hourly rates as the benchmark, rounded to the nearest whole number. This 100 possible points is neither per evaluator nor an aggregate score of the evaluators.

The formula for the weight assigned to the pricing is as follows:

$35 = (\text{lowest fees/hourly rates})$

$X\% = (\text{lowest fees/hourly rates} / \text{next lowest fees/hourly rates})$

$\text{Weight assigned to pricing} = (X\% * 35)$

**X.**

**Evaluation of Proposals**

The objective of this evaluation is to perform a thorough and fair evaluation of Proposer responses and facilitate the selection of a solution that best satisfies FCERA requirements. The following describes the evaluation process and associated components.

(1) Selection Process

Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Proposer concerning the type of information that shall

be used by the staff. Proposers shall be prepared to respond to requests by the staff for oral presentations, facility surveys, and other items deemed necessary to assist in the detailed evaluation process. Proposers are advised that FCERA, at their option, may award this proposal on the basis of the initial proposals.

(2) Evaluation Steps

**It is anticipated that the following steps will be performed by the staff in evaluating proposals; however, a strict observance to the Evaluation Steps is not required. A description of each evaluation step is provided.**

- Step 1 Review and Evaluation of proposal
- Step 2 Proposer Interviews (optional)
- Step 3 Ranking of Proposals
- Step 4 Recommendation of Award

The staff shall be responsible for performing the evaluations of each proposal, including an evaluation of the proposed cost. Each member of the Committee shall rate the Proposers separately. The scores of each of the Committee members shall then be aggregated to provide a total score for each of the Proposers.

The proposals shall be evaluated on the following categories and the maximum weight possible for each category is listed below:

<u>Evaluation Categories</u>	<u>Maximum Weight Possible</u>
Proposal Response	5
General Qualifications	25
California Public Retirement Experience	10
Understanding of the Project	<u>25</u>
Sub Total for Proposal Points	65
Cost	<u>35</u>
Total Possible Weight	100

The overall proposal weight (OPW) formula is as follows:

$$(\text{Aggregate proposal weight} + \text{pricing weight}) = \text{OPW}$$

Should FCERA exercise the option to interview, only those firms or persons judged by the evaluators to be the most qualified to perform the work required under the Agreement shall be placed on an "interview list". Those on the

interview list shall be requested to make a formal presentation of their proposals to the FCERA Board of Retirement. On the basis of the oral presentation and the written proposal, the Board of Retirement shall make a final decision.

(3) Award

Award(s) will be made to the qualified proposer(s) whose proposal(s) will be most advantageous to FCERA, with price and all other factors considered. All proposals received after the time specified in this Notice will not be considered and will be returned unopened.

## **ATTACHMENT A**

### **FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION'S**

#### **BOARD COUNSEL**

#### **POSITION DESCRIPTION**

##### **DEFINITION:**

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

##### **DUTIES AND ESSENTIAL FUNCTIONS:**

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

Attachment A

Board Counsel Position Description

For the Board Legal Counsel Services Request For Proposal 2015-9-02

Page 2 of 3

- Confers with the Retirement Administrator and FCERA staff regarding current and anticipated legal services issues and needs. Develops and recommends short and longer term plans for addressing legal service needs.
- Drafts contracts, resolutions, opinions, and other documents. Oversees the handling of various legal matters, including but not limited to, Public Records Act requests; subpoenas and discovery.
- Provides analysis of state and federal legislation and formulates legislative proposals for potential sponsorship by FCERA.
- Develops and provides legal education programs to the Board and staff. Provides and coordinates staff training on legal issues.
- Personally attends all regular and special meetings of the Board, including committee meetings as needed.

**MINIMUM QUALIFICATIONS:**

1. Education and Experience:

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

2. License:

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

**DESIRED KNOWLEDGE, ABILITIES, AND SKILLS:**

1. Knowledge Of:

California public retirement system law, particularly with respect to benefits; investment contracting; actuarial practices; general retirement system administration



Attachment A

Board Counsel Position Description

For the Board Legal Counsel Services Request For Proposal 2015-9-02

Page 3 of 3

and management; disability adjudication; the County Employees Retirement Law of 1937; the Brown Act; the Political Reform Act; and the legislative process. Also, experience with civil and administrative law proceedings in diverse practice areas; knowledge of applicable federal, state and local laws and regulations; methods and techniques of case management.

2. Ability To:

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

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

**SAMPLE  
AGREEMENT  
FOR  
BOARD LEGAL SERVICES**

This Agreement for Board Legal Services (the "Agreement") is made and entered into by and between the Fresno County Employees' Retirement Association ("FCERA") and \_\_\_\_\_ ("LAW FIRM") on \_\_\_\_\_, 2015 ("Agreement Date").

**Recitals**

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

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

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

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

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

**Terms and Conditions**

**1. Definitions.**

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

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

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

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

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

"Covered Persons" means FCERA, its trustees, officers, and employees.

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

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

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

"FCERA's Project Director" means Donald Kendig, FCERA's Retirement Administrator.

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

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

**2. Description of Services**

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

including, without limitation, the law firm engaged by FCERA to perform **its Board Legal services**.

**3. FCERA's Proprietary Rights.**

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

**4. Project Responsibility.**

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

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

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

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

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

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

**C. Additional Law Firm Personnel.**

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

**5. Compensation and Payment.**

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

**6. Term and Termination.**

- A. General Term.** Subject to the termination provisions in this Section, the term of this Agreement begins on the Agreement Date and based on successful completion of the immediate past year's services shall continue for three (3) years through \_\_\_\_\_.

Upon mutual agreement of parties, the Agreement may be renewed annually for up to three (3) additional years. Any extensions shall be in written form as amendments to this Agreement.

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



resulting from such default. By way of example and not limitation, FCERA may procure, upon such terms and in such manner as FCERA may deem appropriate, services similar to those terminated, and LAW FIRM will be liable to FCERA for any excess cost of such similar services.

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

**7. Required Licenses, Certificates and Permits.**

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

**8. Office Space, Supplies, Equipment, Etc.**

Unless otherwise provided in Exhibit A, LAW FIRM shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. FCERA is

not obligated to reimburse or pay LAW FIRM for any expense or cost incurred by LAW FIRM in procuring or maintaining such items. Responsibility for the costs and expenses incurred by LAW FIRM in providing and maintaining such items is the sole responsibility and obligation of LAW FIRM.

**9. Insurance**

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

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

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

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

(2) Automobile Liability Insurance

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

(3) Workers' Compensation Insurance

Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the LAW FIRM certifies that the LAW FIRM is aware of the provisions of section 3700 of the Labor Code which

requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and that the LAW FIRM will comply with such provisions before commencing the performance of the work of this Agreement.

(4) Professional Liability.

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

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

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

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

**10. Defense and Indemnification.**

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

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

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

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

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

the County of Fresno, California with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. LAW FIRM covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance, continuation, and/or amendment of this Agreement. If it is found that such gratuities have been offered or given by LAW FIRM or its Agents, FCERA may terminate this Agreement upon one (1) calendar day's written notice; however, the facts upon which FCERA bases such findings will be at issue and may be reviewed in any competent court. In the event of such termination, FCERA may pursue the same remedies against LAW FIRM as it could pursue in the event of default by LAW FIRM.

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

**12. Independent Contractor Status.**

- A.** All acts of LAW FIRM and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of LAW FIRM relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of FCERA. LAW FIRM, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of FCERA. Except as expressly provided in Exhibit A, LAW FIRM has no authority or responsibility to exercise any rights or power vested in the FCERA. No agent, officer or employee of the FCERA is to be considered an employee of LAW FIRM. It is understood by both LAW FIRM and FCERA that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship, partnership, servant or a joint venture, or association.
- B.** At all times during the term of this Agreement, the LAW FIRM and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of FCERA.
- C.** LAW FIRM shall determine the method, details and means of performing the work and services to be provided by LAW FIRM under this Agreement. LAW FIRM shall be responsible to FCERA only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to FCERA's control with respect to the physical action or activities of LAW FIRM in fulfillment of this Agreement. LAW FIRM has control over the manner and means of performing the services under this Agreement. LAW FIRM is permitted to provide services to others during the same period service is provided to FCERA under this Agreement. If necessary, LAW FIRM has the responsibility for employing other persons or firms to assist LAW FIRM in fulfilling the terms and obligations under this Agreement.
- D.** If in the performance of this Agreement any third persons are employed by LAW FIRM, such persons shall be entirely and exclusively under the direction, supervision and control of LAW FIRM. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the LAW FIRM.
- E.** It is understood and agreed that as an independent LAW FIRM and not an employee of FCERA, the LAW FIRM and the LAW FIRM's officers, employees, agents, representatives or subcontractors do not have any entitlement as a FCERA employee, and do not have the right to act on behalf of the FCERA in any capacity whatsoever as an agent, or to bind the FCERA to any obligation whatsoever.

- F. It is further understood and agreed that LAW FIRM must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of LAW FIRM's assigned personnel under the terms and conditions of this Agreement.
- G. As an independent LAW FIRM, LAW FIRM hereby indemnifies and holds FCERA harmless from any and all claims that may be made against FCERA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

**13. Records and Audit**

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

**14. Confidentiality; Proprietary Rights**

- A. **FCERA's Proprietary Rights.** All reports under this Agreement become the sole property of FCERA. Both parties hereto acknowledge that LAW FIRM retains the right to use its



experience, expertise and knowledge on similar projects for other clients, so long as LAW FIRM protects FCERA's interests in all of its confidential records and property.

- B. Member Records.** LAW FIRM acknowledges that when performing under this Agreement, LAW FIRM may be exposed to Member Records and that such Member Records are considered confidential and protected from public disclosure by law. LAW FIRM will maintain the confidentiality of all Member Records according to all applicable federal, state, county and local laws, regulations, ordinances and directives relating to confidentiality.
- C. FCERA's Policies, Procedures and Strategies.** LAW FIRM will protect the security of and keep confidential all materials, data, and other information received by LAW FIRM regarding FCERA's assets and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.
- D. LAW FIRM's Proprietary Materials.** Absent LAW FIRM's written consent authorizing disclosure, FCERA will use reasonable means to protect and maintain the confidentiality of any of LAW FIRM's materials, which LAW FIRM considers to be proprietary, so long as:
- (1) LAW FIRM clearly and prominently marks all such material "confidential;" and
  - (2) Public disclosure of such material is not requested pursuant to the California Public Records Act (Cal. Gov't. Code Section 6250 et seq., the "Act"), or by the order of any tribunal having jurisdiction.
    - (a) If an action is commenced against FCERA under Act or otherwise that challenges FCERA's refusal to disclose LAW FIRM's proprietary material, LAW FIRM will defend FCERA in the action at LAW FIRM's expense, and will pay any judgment for damages or attorneys' fees that may be entered as a result of FCERA's refusal to disclose LAW FIRM's confidential material. FCERA will provide notice to LAW FIRM so LAW FIRM can get a protective order or opinion of counsel to turn over confidential material.
    - (b) FCERA's obligations under subsection (1) do not apply to:
      - (1) Any confidential information that FCERA can demonstrate has become public information through no breach of this Agreement by FCERA; and
      - (2) The FCERA Records.

**15. Nondiscrimination**

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

**16. Assignment**

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

**17. Waiver of Default**

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

**18. Notice**

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

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

To LAW FIRM:                Name  
   Attention:  
   Address  
   City State

**19. Conflicts and Disqualification**

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

If an actual or potential Conflict of Interest arises subsequent to the date of this agreement, LAW FIRM shall make a full disclosure in writing to FCERA of all relevant facts and circumstances. This disclosure shall include a description of actions that LAW FIRM has taken and proposes to take to avoid, mitigate, or neutralize the action or potential conflict of interest. LAW FIRM will continue performance of work under the agreement until notified by FCERA of any contrary action to be taken.

**20. Severability**

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

**21. Amendment**

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

**22. Entire Agreement**

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

**23. Advice of Attorney**

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

**24. Construction**

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

**25. Governing Law and Venue**

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

**26. Time of the Essence**

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

**27. Execution in Counterparts**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.



**EXHIBIT A**

**SCOPE OF WORK**

The LAW FIRM shall provide services under this Agreement as **identified in their response to the FCERA RFP:**

**< to be modified and inserted by Proposer/s >**

**EXHIBIT B**

**COMPENSATION**

The LAW FIRM shall be compensated as follows:

Hourly Rate	\$\$\$\$\$
Retainer Amount	\$\$\$\$\$
(Number of hours included In the retainer)	