FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION



Donald C. Kendig, CPA Retirement Administrator

BOARD OF RETIREMENT

Steven J. Jolly, Chair
Dr. Rod Coburn, III, Vice Chair
Laura P. Basua
Greg Baxter
Alan Cade, Jr.
Vicki Crow
Robert Dowell
Eulalio Gomez
Mary Ann Rogozinski, Alternate

DATE: February 17, 2016

TO: Board of Retirement

FROM: Donald C. Kendig, CPA

Retirement Administrator

STAFF CONTACT: Becky Van Wyk

Assistant Retirement Administrator

SUBJECT: Contract - Board Legal Counsel - RECEIVE AND FILE; APPROPRIATE ACTION

Background and Discussion

A Request for Proposal for Board Legal Counsel was approved by the Board on September 2, 2015 with distribution to 141 local attorneys and legal firms. Four responses were received including one from out of area legal firm. The responses were evaluated and determined that two of the local firms were viable candidates to serve as Board Legal Counsel. On November 9, 2015, an ad hoc committee consisting of Trustees Eulalio Gomez and Laura Basua accompanied Donald Kendig and Becky Van Wyk to the local offices of each of the two firms to meet the team that would work with FCERA, tour their facilities, and review financial information. The goal was to determine which firm would work best with FCERA's Board and staff.

Based on the Committee's analysis, Baker Manock & Jenson, PC was selected for further negotiations to serve as Board Counsel by the Board on December 2, 2015. Our negotiations are complete. I have attached both a redline and final draft of the contract that has been negotiated. The contract has been reviewed by Jeff Rieger, Reed Smith, Board Fiduciary Counsel. No legal issues were identified. In addition, the insurance requirements are being reviewed by Alliant Insurance, the Board's risk manager, to verify staff's determination that coverages are adequate. The contract is effective December 2, 2015. If found inadequate, staff will pull the item for Board consideration of the pros and cons of accepting lower insurance coverages.

Fiscal and Financial Impacts

Baker Manock & Jenson, PC bills in $1/10^{th}$ of an hour increments with rates based on the attorney or professional performing the work. Hourly rates vary between \$165 and \$250 per hour. Total charges would be determined by the amount of time spent working on FCERA's business.

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Recommended Action(s)

1. Approve the contract with Baker Manock & Jenson, PC and direct the Chair to sign as representative of the Board.

Attachment(s)

- 1. Final Draft Contract
- 2. Redline Draft Contract
- 3. Response to Request for Proposal for Legal Services submitted by Baker Manock & Jenson, PC
- 4. Fee Proposal by Baker Manock & Jenson, PC
- 5. Final Request for Proposal for Legal Services

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

> > Fax: (559) 457-0318

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 Baker Manock & Jensen, PC ("LAW FIRM") on December 2nd, 2015 ("Agreement Date").

Recitals

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

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

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

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

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

Terms and Conditions

1. <u>Definitions</u>.

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

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

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

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

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

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

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

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

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

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

"FCERA" has the meaning given in the preamble of this Agreement.

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

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

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

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

2. Description of Services

A. Work to be performed. LAW FIRM agrees to perform the services described in this Agreement and in Exhibit A (Scope of Work), attached hereto and incorporated herein by reference.

- **B.** Standard of Care. The LAW FIRM agrees that it shall perform its obligations under this Agreement with the competence, care, skill, prudence and diligence prevailing in the law industry. LAW FIRM shall be responsible for and cause any and all of its employees, agents and representatives providing services in connection with this Agreement to exercise the same standard of care.
- **C. Quality of Services.** LAW FIRM's services will meet the requirements and standards set forth in this Agreement. LAW FIRM will promptly correct any errors or omissions in the provision of such services, at no cost or expense to FCERA and in a timely manner after the request by FCERA's Project Director.
- D. LAW FIRM's Work Schedule. LAW FIRM and FCERA's Project Director will agree in advance on LAW FIRM's work schedule. Services and work provided by the LAW FIRM at FCERA's request under this Agreement and Exhibit A will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and FCERA laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the LAW FIRM; provided, however, that such schedule is subject to review by and concurrence of the FCERA.
 - (1) LAW FIRM designates <u>Kenneth J. Price</u>, 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) LAW FIRM shall use best efforts to provide two attorneys at each scheduled Board meeting; in the event two attorneys cannot be present at a scheduled Board meeting or if the LAW FIRM'S Project Manager, in consultation with the Project Director, determines having two attorneys is unnecessary given the items to be discussed at the Board meeting the attorney present at the Board meeting will relay all necessary information and discussions regarding the Board meeting to the absent attorney in a prompt manner and at no expense to FCERA.
 - (3) Upon the request of FCERA's Project Director, LAW FIRM will replace any additional personnel or subcontractors assigned by LAW FIRM to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

E. Cooperation with Other Professionals. LAW FIRM agrees to cooperate with such professionals as FCERA may engage to assist FCERA in the performance of its duties, including, without limitation, the law firm engaged by FCERA to perform other legal services required or desired by FCERA in FCERA's sole and absolute discretion.

3. Attorney Work Product and Records.

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

4. **Project Responsibility.**

- **A. FCERA's Project Director.** FCERA's Project Director, shall, on a regular basis, interface with LAW FIRM's Project Manager.
 - (1) FCERA's Project Director is responsible for:
 - (a) Providing overall management and coordination of this Agreement acting as liaison for FCERA; and
 - (b) Providing coordination of the provisions and objectives of this Agreement; and
 - (c) Approving invoices submitted prior to payment for work performed and deliverables delivered in accordance with this Agreement, which approval will not be unreasonably withheld; and
 - (d) Providing direction to LAW FIRM in all matters relating to policy, information requirements, and procedural requirements, and
 - (e) Providing or making sure data, information and materials requested by LAW FIRM are provided to LAW FIRM on a timely basis.
 - (2) FCERA's Project Director or any person delegated responsibility for the administration of this Agreement by FCERA's Project Director will not have any personal liability to LAW FIRM for any action taken or not taken by such individual while acting or purporting to act as FCERA's Project Director or delegate of FCERA's Project Director.
- **B. LAW FIRM's Project Manager.** LAW FIRM's Project Manager is Kenneth J. Price ("LAW FIRM's Project Manager"). LAW FIRM shall inform FCERA in writing of the name of any alternate LAW FIRM Project Manager or designee within a reasonable time of choosing the same, and the appointment of such individual(s) shall be subject to FCERA's approval, which may be withheld in its sole discretion. LAW FIRM's Project 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 LAW FIRM's 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 its designee, with a résumé of the proposed replacement(s) and an opportunity to interview the person(s) prior to FCERA approving or disapproving the proposed change.
- (2) Upon request by FCERA's Project Director, LAW FIRM will replace any of LAW FIRM's personnel or Agents assigned to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

5. Compensation and Payment.

- **A. Compensation.** FCERA shall compensate LAW FIRM for services rendered under this Agreement as set forth in Exhibit B, attached hereto and incorporated herein by reference.
- **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. <u>Term and Termination.</u>

- A. General Term. Subject to the termination provisions in this Section, the term of this Agreement begins on the Agreement Date and based on successful completion of the immediate past year's services shall continue for three (3) years through December 31, 2018. Upon mutual agreement of the parties, this 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. FCERA may terminate this Agreement at any time and for any reason by giving written notice to LAW FIRM. Termination of this Agreement shall not affect FCERA's obligation to pay for all fees earned and reasonable costs necessarily incurred by LAW FIRM as provided in Section 5.A herein, subject to any applicable setoffs. FCERA's termination of this Agreement under this Section 6.B is not a waiver of FCERA's right to make a claim against LAW FIRM for damages resulting from any default by LAW FIRM, which occurred prior to the Effective Termination Date.
- **C. Termination for Default.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

- D. Automatic Termination. This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of LAW FIRM's business, (c) cancellation of insurance required under the terms of this Agreement, (d) if, for any reason, LAW FIRM ceases to be licensed or otherwise authorized to do business in the State of California, and the LAW FIRM fails to remedy such defect or defects within thirty (30) days of receipt of written notice of such defect or defects, (e) if LAW FIRM materially breaches any of the warranties, representations, agreements, and covenants made in Section 11 and in Section 19 (Conflicts and Disqualification), (f) if LAW FIRM is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; and/or (g) if LAW FIRM attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining FCERA's prior written consent.
- **E. Force Majeure.** LAW FIRM may not be terminated for default, if LAW FIRM's failure to perform under this Agreement arises solely from causes of Force Majeure.
- **F. Rights, Remedies and Responsibilities upon Termination.** If this Agreement is terminated, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions also apply to any termination of this Agreement.
 - (1) Recovery of Reasonable Damages Upon Default. If FCERA terminates this Agreement in whole or in part for default pursuant to Section 6.C or Section 6.D above, FCERA is entitled to recover from LAW FIRM all reasonable damages resulting from such default. By way of example and not limitation, FCERA may procure, upon such terms and in such manner as FCERA may deem appropriate, services similar to those terminated, and LAW FIRM will be liable to FCERA for any excess cost of such similar services.
 - (2) Payment when Terminated for Convenience. If FCERA terminates this Agreement for convenience, FCERA will pay LAW FIRM for work already performed but for which LAW FIRM has not been compensated through the Effective Termination Date.
 - (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 legal significance to FCERA. Upon termination of this Agreement, LAW FIRM will retain all FCERA Records according to the record retention provisions set forth in Section 13 below.

7. Required Licenses, Certificates and Permits.

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

8. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, LAW FIRM shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for LAW FIRM to provide the services identified in Exhibit A to this Agreement. FCERA is not obligated to reimburse or pay LAW FIRM for any expense or cost incurred by LAW FIRM in procuring or maintaining such items. Responsibility for the costs and expenses incurred by LAW FIRM in providing and maintaining such items is the sole responsibility and obligation of LAW FIRM.

9. Insurance

- **A.** LAW FIRM shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:
 - (1) <u>General Liability</u>. 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) <u>Automobile Liability Insurance</u>

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

(3) Workers' Compensation Insurance

Workers' Compensation insurance as required by the California Labor Code. In signing this contract, LAW FIRM certifies that LAW FIRM is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and that the LAW FIRM will comply with such provisions before commencing the performance of the work of this Agreement.

(4) <u>Professional Liability</u>.

Errors and omissions professional liability insurance with a limit of at least \$5,000,000 per claim. LAW FIRM will notify FCERA in writing of any change in coverage amount subsequent to the effective Agreement Date. LAW FIRM warrants its professional liability insurance is applicable to LAW FIRM's actions and obligations under this Agreement.

B. Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by FCERA. At the option of the FCERA, the insurer shall reduce or eliminate such deductibles, or named insureds. The FCERA, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the LAW FIRM agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations,

claim administration and defense expenses related to or arising out of the LAW FIRM's defense and indemnification obligations as set forth in this Agreement.

- C. LAW FIRM shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming FCERA and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of LAW FIRM, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of LAW FIRM; (c) premises owned, occupied or used by LAW FIRM; and (d) automobiles owned, leased, hired or borrowed by LAW FIRM. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against FCERA and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by LAW FIRM.
- **D.** LAW FIRM's insurance coverage shall be primary insurance regarding FCERA and FCERA's officers, officials and employees. Any insurance or self-insurance maintained by FCERA or FCERA's officers, officials and employees shall be excess of LAW FIRM's insurance and shall not contribute with LAW FIRM's insurance.
- **E.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to FCERA or its officers, officials, employees or volunteers.
- **F.** LAW FIRM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- **G.** Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to FCERA. LAW FIRM shall promptly notify, or cause the insurance carrier to promptly notify, FCERA of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- **H.** Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to FCERA; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-: VII shall be acceptable to FCERA; lesser ratings must be approved in writing by FCERA.

I.

- I. FIRM shall furnish FCERA with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of LAW FIRM. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in FCERA's sole and absolute discretion, approved by FCERA. FCERA reserves the right to require complete copies of all required insurance policies and endorsements, at any time.
- **K.** The limits of insurance described herein shall not limit the liability of LAW FIRM and LAW FIRM's officers, employees, agents, representatives or subcontractors.

10. <u>Defense and Indemnification.</u>

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

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

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

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

A. Authorization. This Agreement has been duly authorized, executed and delivered by LAW FIRM and constitutes the legal, valid and binding agreements and obligations of

LAW FIRM, enforceable against LAW FIRM in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar limitations on creditors' rights generally and general principles of equity. LAW FIRM is not subject to or obligated under any law, rule or regulation of any governmental authority, or any order, injunction or decree, or any contract or agreement, that would be breached or violated by LAW FIRM's execution, delivery or performance of this Agreement.

- **B. Gratuities.** No gratuities in the form of gifts, entertainment or otherwise, were offered or given by LAW FIRM or its Agents to any officer, fiduciary, or employee of FCERA or the County of Fresno, California with a view toward securing this Agreement or securing any favorable determination made concerning the award of this Agreement. LAW FIRM covenants that no such gratuities will be offered or given to any such person with a view toward securing any favorable determination concerning the performance, continuation, and/or amendment of this Agreement. If it is found that such gratuities have been offered or given by LAW FIRM or its Agents, FCERA may terminate this Agreement immediately upon giving written notice; however, the facts upon which FCERA bases such findings will be at issue and may be reviewed in any competent court. In the event of such termination, FCERA may pursue the same remedies against LAW FIRM as it could pursue in the event of default by LAW FIRM.
- C. Conflicts of Interest With Persons Related to FCERA. No FCERA employee or fiduciary, whose position with FCERA enables such person to influence the award of this Agreement or any competing agreement, and no spouse or economic dependent of such person, is or will be employed in any capacity by LAW FIRM, or does or will have any direct or indirect financial interest in this Agreement.
- **D. Recruiting.** During the term of this Agreement and for one (1) calendar year thereafter, LAW FIRM, and any employee of LAW FIRM providing services to FCERA, will not intentionally induce or persuade any employee of FCERA to join LAW FIRM.
- E. Changes. LAW FIRM will notify FCERA in writing within ten (10) business days of any of the following changes: (i) LAW FIRM becomes aware that any of its representations, warranties, covenants, or agreements set forth herein has been breached or ceases to be true at any time during the term of this Agreement; (ii) there is a change in LAW FIRM's personnel assigned to perform services under this Agreement, (iii) there is any change in control of LAW FIRM, (iv) LAW FIRM becomes aware of any other material change in its business organization, including without limitation the filing for bankruptcy relief, or (v) LAW FIRM becomes aware of an actual conflict arising out of work it performs on behalf of the FCERA.
- F. LAW FIRM and its Agents. LAW FIRM's Agents who will be responsible for performing

under this Agreement are individuals experienced in the performance of the various functions contemplated by this Agreement and have not been convicted of any crime or found liable in a civil or administrative proceeding or pleaded no contest, or agreed to any consent decree with respect to any matter involving infringement of intellectual property rights, breach of fiduciary duty, or fraud.

12. <u>Independent Contractor Status.</u>

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

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subcontractors do not have any entitlement as a FCERA employee, and do not have the right to act on behalf of FCERA in any capacity whatsoever as an agent, or to bind FCERA to any obligation whatsoever.

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

13. Records and Audit

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

14. <u>Confidentiality; Proprietary Rights</u>

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

15. **Nondiscrimination**

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

16. Assignment

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

17. Waiver of Default

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

18. <u>Notice</u>

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:

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To FCERA: FCERA

Attention: Retirement Administrator

1111 H Street Fresno, CA 93721

To LAW FIRM: Baker Manock & Jensen, PC

Attention: Kenneth J. Price

5260 N. Palm Avenue, Suite 421

Fresno, California 93704

19. Conflicts and Disqualification

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

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

20. Severability

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

21. Amendment

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

22. Entire Agreement

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

23. Advice of Attorney

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

24. <u>Construction</u>

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. <u>Time of the Essence</u>

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

27. <u>Execution in Counterparts</u>

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.

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28. Authority to Execute

The persons signing this Agreement are duly authorized to execute the document on behalf of and to bind their respective parties.

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

FRESNO COUNTY EMPLOYEES' RETIREMENT BAKER MANOCK & JENSEN, PC

ASSUCI	ATION	
Ву:	Steven J. Jolly Chair, Board of Retirement "FCERA"	Kenneth J. Price Shareholder and Attorney "LAW FIRM"
Donald K	ED AS TO FORM: Cendig Int Administrator	
By: —— Donald K Retireme	endig ent Administrator	

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EXHIBIT A

SCOPE OF WORK

The LAW FIRM shall provide services under this Agreement as identified in their response to the FCERA RFP attached as Exhibit C of this agreement.

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EXHIBIT B

COMPENSATION

The LAW FIRM shall be compensated as identified in their response to the RFQ and attached as Exhibit D of this agreement.

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

Fax: (559) 457-0318

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 Baker Manock and & Jenson Jensen, PC ("LAW FIRM") on December 2nd, 2015 ("Agreement Date").

Recitals

WHEREAS, FCERA was created by and operates pursuant to the County Employees Retirement Law of 1937 (Gov. Code § 31450 et seq.)(the '37 Act"), and FCERA is administered by the Board of Retirement ('("Board"); and

WHEREAS, the FCERA and the Board desire to engage athen LAW FIRM to perform Legal Counsellegal counsel services; and

WHEREAS, LAW FIRM desires to perform the $\underline{legal\ counsel}$ services, and has represented to FCERA that it is qualified to perform the aforesaid $\underline{Board\ L}\underline{legal\ Counsel}$ services; and

WHEREAS, FCERA has determined LAW FIRM is qualified to perform the aforesaid <u>legal</u> counsel services and desires to retain LAW FIRM for those purposes.

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

Terms and Conditions

1. Definitions.

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

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

"Agreement" has the meaning given in the preamble of this Agreementmeans this

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Baker Manock and & Jenson Jensen, PC
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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.

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

"LAW FIRM" has the meaning given in the preamble of this Agreementmeans business entity formed by one or more lawyers to engage in the practice of law.

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

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

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

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

"FCERA" has the meaning given in the preamble of this Agreementmeans 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, or any successor to the position of FCERA Retirement Administrator.

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

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

"Member Records" means any records relating to FCERA's members or beneficiaries to

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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 Carecare.
- 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 <u>Kenneth J. Price</u>-, 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) LAW FIRM agrees to regularly shall use best efforts to provide two attorneys at each scheduled Board meeting; in the event two attorneys cannot be present at a scheduled Board meeting or if the LAW FIRM'S Project Manager, in consultation with the Project Director, determines having two attorneys is unnecessary given the items to be discussed at the Board —, themeeting the attorney present at the Board meeting will relay all necessary information and discussions regarding the Board meeting to the absent attorney in a prompt manner and at no expense to FCERA.

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- (3) Upon the request of FCERA's Project Director, LAW FIRM will replace any additional personnel or subcontractors assigned by LAW FIRM to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.
- E. Cooperation with Other Professionals. LAW FIRM agrees to cooperate with such professionals as FCERA may engage to assist FCERA in the performance of its duties, including, without limitation, the law firm engaged by FCERA to perform its Board Legalother legal services required or desired by FCERA in FCERA's sole and absolute discretion.

3. FCERA's Proprietary Rights Attorney Work Product and Records.

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

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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.

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- (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 <u>such</u> <u>FCERA's</u> Project Director.
- B. LAW FIRM's Project Manager. LAW FIRM's Project Manager is Kenneth J. Price ("LAW FIRM's Project Manager"). LAW FIRM shall inform FCERA in writing of the name of any alternate LAW FIRM Project Manager or designee within a reasonable time of choosing the same, and the appointment of such individual(s) shall be subject to FCERA's approval, which may be withheld in its sole discretion. LAW FIRM's Project 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 LAW FIRM's 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-its designee, with a résumé of the proposed replacement(s) and an opportunity to interview the person(s) prior to FCERA approving or disapproving the proposed change.
- (2) Upon request by FCERA's Project Director, LAW FIRM will replace any of LAW FIRM's personnel or Agents assigned to perform services under this Agreement, who are in FCERA's opinion, unable to effectively carry out the responsibilities of this Agreement.

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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 December 31, 2018. Upon mutual agreement of the parties, the this 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 at any time and for any reason by givingagreement 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 this Section 6.B is not a waiver of FCERA's right to make a claim against LAW FIRM for damages resulting from any default by LAW FIRM, which occurred prior to the Effective Termination Date.
- **C. Termination for Default.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.
- D. Automatic Termination. This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of LAW FIRM's business, (c) cancellation of insurance required under the terms of this Agreement, (d) if, for any reason, LAW FIRM ceases to be licensed or otherwise authorized to do business in the State of California, and the LAW FIRM fails to remedy such defect or defects within thirty (30) days of receipt of written notice of such defect or defects, (e) if LAW FIRM materially breaches any of the warranties, representations, agreements, and covenants made in Section 11 and in Section 19 (Conflicts and Disqualification), (f) if LAW FIRM is subject to criminal indictment or conviction, or is found civilly or criminally liable by a trial court, jury or administrative body in connection with any matter involving breach of trust, breach of fiduciary duty, fraud, or theft; and/or (g) if LAW FIRM attempts or purports to assign this Agreement, or any portion hereof, or any of its rights or obligations hereunder, without obtaining FCERA's prior written consent.
- **E. Force Majeure.** LAW FIRM may not be terminated for default, if LAW FIRM's failure to perform under this Agreement arises solely from causes of Force Majeure.
- **F. Rights, Remedies and Responsibilities upon Termination.** If this Agreement is terminated, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date. The following provisions also apply to any termination of this Agreement.
 - (1) Recovery of Reasonable Damages Upon Default. If FCERA terminates this Agreement in whole or in part for default pursuant to Section 6.C or Section 6.D above, FCERA is entitled to recover from LAW FIRM all reasonable damages resulting from such default. By way of example and not limitation, FCERA may

procure, upon such terms and in such manner as FCERA may deem appropriate, services similar to those terminated, and LAW FIRM will be liable to FCERA for any excess cost of such similar services.

- (2) Payment when Terminated for Convenience. If FCERA terminates this Agreement for convenience, FCERA will pay LAW FIRM for work already performed but for which LAW FIRM has not been compensated through the Effective Termination Date.
- (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 FIRMlaw firm with respect to the Work Papers papers and matters of continuing law legal significance to FCERA. Upon termination of this Agreement, LAW FIRM will retain all Work FCERA Records according to the record retention provisions set forth in Section 13 below.

7. Required Licenses, Certificates and Permits.

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

8. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, LAW FIRM shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor—LAW FIRM to provide the services identified in Exhibit A to this Agreement. FCERA is not obligated to reimburse or pay LAW FIRM for any expense or

cost incurred by LAW FIRM in procuring or maintaining such items. Responsibility for the costs and expenses incurred by LAW FIRM in providing and maintaining such items is the sole responsibility and obligation of LAW FIRM.

9. <u>Insurance</u>

- **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) <u>General Liability</u>. 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—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

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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 \$10,000,0005,000,0000 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.

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- **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: 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.
- IJ. 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 willful action 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. <u>LAW FIRM's Representations, Warranties and Covenants.</u>

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

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

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

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

12. <u>Independent Contractor Status.</u>

- 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 RightsRecords. LAW FIRM acknowledges that FCERA is a public agency subject withto the California Public Records Act. All reports records 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, including the attorney work product and attorney-client communication privileges.
- C. FCERA's Policies, Procedures and Strategies. LAW FIRM will protect the security of and keep confidential all materials, data, and other information received by LAW FIRM regarding FCERA's assets and its policies, procedures and strategies for the evaluation, acquisition, development, management and disposition of same.
- D. LAW FIRM's Proprietary Materials. Absent LAW FIRM's written consent authorizing disclosure, FCERA will use reasonable means to protect and maintain the confidentiality of any of LAW FIRM's materials, which LAW FIRM considers to be proprietary, so long as:
 - (1) LAW FIRM clearly and prominently marks all such material "confidential;" and
 - Public disclosure of such material is not requested pursuant to the California Public Records Act (Cal. Gov'±. 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 Gov. 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

Board Legal Counsel Contract
Baker Manock and & Jenson Jensen, PC
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Attention: Retirement Administrator

1111 H Street Fresno, CA 93721

To LAW FIRM:	Baker Manock & Jensen, PC
	Attention: Kenneth J. Price
	5260 N. Palm Avenue, Suite 421
	Fresno, California 93704Name
	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. <u>Construction</u>

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. <u>Time of the Essence</u>

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.

Board Legal Counsel Contract
Baker Manock and & Jenson Jensen, PC
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28. Authority to Execute

The persons signing this Agreement are duly authorized to execute the document on behalf of and to bind their respective parties.

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION	BAKER MANOCK AND & JENSON JENSEN, PC
By:Steven J. Jolly	Kenneth J. Price
Chair, Board of Retirement "FCERA"	Shareholder and Attorney "LAW FIRM"
APPROVED AS TO FORM: Donald Kendig Retirement Administrator	
By: ————————————————————————————————————	

Board Legal Counsel Contract

Baker Manock and & Jenson Jensen, PC

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EXHIBIT A

SCOPE OF WORK

The LAW FIRM shall provide services under this Agreement as identified in their response to the FCERA RFP attached as Exhibit C of this agreement.

to be modified and inserted by Proposer/s >

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Board Legal Counsel Contract

Baker Manock and & Jenson Jensen, PC

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EXHIBIT B

COMPENSATION

The LAW FIRM shall be compensated as follows:

Hourly Rate \$\$\$\$\$

Retainer Amount \$\$\$\$\$

(Number of hours included In the retainer) identified in their response to the RFQ and attached as Exhibit D of this agreement.

COVER PAGE

Legal Name of Firm: BAKER MANOCK & JENSEN, PC

Address: 5260 NORTH PALM AVENUE, SUITE 421, FRESNO, CA 93704

Telephone No. (559) 432-5400

Primary representative/manager/partner-in-charge

Name: CARL R. REFUERZO

Title: MANAGING PARTNER

Telephone No.: (559) 432-5400

E-mail: crefuerzo@bakermanock.com

Primary Contact for this RFP if different from above

Name: KENNETH J. PRICE

Title: SHAREHOLDER

Telephone No.: (559) 432-5400

E-mail: kprice@bakermanock.com

The following proposal shall remain valid for a period of not less than 120 days from the date written below. The representations made herein are made under penalty of perjury.

ATTESTED ON THIS 18th DAY OF SEPTEMBER, 2015

CARL R. REFUERZO

Managing Partner

Baker Manock & Jensen, PC



Proposal to Provide Legal Services to the Fresno County Employees' Retirement Association

September 18, 2015

Fig Garden Financial Center 5260 North Palm Avenue, Suite 421 Fresno, California 93704 (559) 432-5400 telephone (559) 432-5620 facsimile



FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Request For Proposal

1	Firm Profile and Background
2	Delivery of Services
3	Standards of Conduct
4	Conflicts of Interest
5	Consulting Team
6	Insurance and Liability
7	Subcontracting
8	Other Information

APPENDICES

- A Biographies/ResumesB Annual Financial Report
- C Sample Contract or Agreement

TAB 1 – Firm Profile and Background.

Brief Biography/Resume of the Firm

Baker Manock & Jensen is a California Professional Corporation. The firm traces its lineage to attorneys who began practicing in Fresno in 1902. The firm remained small throughout much of its first half century, with only three to four lawyers well into the 1950s. John H. Baker joined the firm in 1957, followed by Kendall L. Manock in 1961. In the 1960s, the firm began growing in response to the community's increasing need for comprehensive legal services. In 1972, Douglas B. Jensen joined the firm. In 1974 the firm's current name was established. The firm has enjoyed steady growth since the 1970s and is now the third largest firm in Central California. Its current size is 41 attorneys including 18 shareholders, 13 associates, 8 Of Counsel, 2 attorneys in Senior Counsel capacity, and 9 paralegals. A list of the primary contacts that will be available to the Fresno County Employees' Retirement Association is included in Tab 2 of this Proposal, and copies of their resumes are included in Tab 8.

Baker Manock & Jensen is located in Northwest Fresno at the Fig Garden Financial Center, 5260 North Palm Avenue, Suite 421, Fresno, California 93704. We are known for our commitment to quality and integrity. We have both experienced litigators and transaction lawyers, and the largest business department in the Fresno area. Our areas of practice include agribusiness, alternative dispute resolution/mediation, business litigation, construction, corporate and general business, creditors' rights and bankruptcy, employment law, environmental law, estate planning, health care law, intellectual property, personal injury, professional liability, public agency, real estate, reclamation and water law, tax compliance and litigation, and white collar crime. Although we are located in Fresno, some of our specialty practices, such as our public agency practice, are statewide. We serve businesses, individuals, public agencies and lenders. In addition, we are particularly known for our representation of large, medium, and small special districts through Fresno County and the State. Responsive and always putting your agency first is how we do business.

Baker Manock & Jensen has received and currently maintains an "AV" rating by the legal industry's largest and most distinguished directory of lawyers, Martindale-Hubbell. The AV rating is the highest awarded by Martindale-Hubbell and indicates the firm's legal ability is rated "very high to preeminent" and its ethical standards are "very high." Our attorneys have regional, statewide, and national reputations for excellence.

Baker Manock & Jensen was awarded the 2012 Law Firm of the Year by the Fresno County Bar Association Pro Bono Services Section. We are also a past winner of the Fresno Bee Excellence in Business Award in the Professional Service category, the only law firm to receive the award. The award is given to organizations which demonstrate high ethical standards in business and professional dealings, business success and growth, quality employee and customer service, service to the community, and a concern for the environment.

At Baker Manock & Jensen, we do not simply *encourage* our attorneys and staff members to take an active role in community and professional organizations, we *require* it. We hire people who want to make their community a better place and our firm policies demonstrate this commitment. We have donated significant amounts of pro bono legal services, as well as substantial time and monetary contributions to many of Fresno's non-profit organizations.

Demonstrated Experience & Demonstrated Successful Past Performance

Baker Manock & Jensen has represented a broad cross-section of agencies and commercial, industrial, and service businesses before state and federal courts in all aspects of business litigation and arbitration, including contracts, fraud, bankruptcy, employment, construction, and environmental matters. We also provide a full range of experience in all aspects of administrative, transactional, and litigation matters, including statutory compliance, real estate, eminent domain, public construction, contracting, condemnation, environmental issues, personnel and employment, property damage claims, and a variety of other legal questions routinely faced by a public agency.

Baker Manock & Jensen has extensive experience handling the "nuts and bolts" of law relating to public agencies including, but not limited to, matters involving California open meetings laws, the California Public Records Act, conflicts of interest, contracting, and competitive procurements. We have also formed a variety of public entities with board structures and provide advice on board elections as well as the administration and operation of the agency. We regularly represent our public and private clients on various complex transactional matters including, but not limited to, contracts, creditors' rights issues, structuring, formation, capitalization and financing issues, acquisition, sale, lease, and transfer agreements regarding real and personal property. Additionally, Baker Manock & Jensen attorneys regularly assist public agencies and private clients with property acquisitions throughout Central California. These transactions range from relatively small transactions to complicated multimillion-dollar deals. Our attorneys are experienced in each step of the process from negotiation strategies, investigating all aspects of real and personal property disputes, and advising clients regarding regulatory issues.

No other firm in the Central Valley represents as many or such diverse agencies as Baker Manock & Jensen. Approximately eighteen percent (18%) of our firm's revenue is derived from providing legal services to public agencies or appearing before governmental agencies on behalf of our clients. Our firm represents numerous public agencies, such as the Afuera De Chorro Mutual Water Company, Alta Irrigation District, Associated Students of Fresno State, Children & Families Commission of Fresno County, Children & Families Commission of Madera County, Children & Families Commission of Merced County, Children & Families Commission of Solano County, City of Pismo Beach, City of Guadalupe, City of Solvang, Clovis Cemetery District, Consolidated Irrigation District, Deep Springs College, Deer Creek Storm Water District, Fresno City and County Housing Authority, Fresno Local Agency Formation Commission, Fresno Metropolitan Flood Control District, Fresno Regional Workforce Investment Board, Fresno Slough Water District, Garfield Water District, Hills Valley Irrigation District, Kings River Water District, Madera Workforce Board, Mendota Unified School District, North Central Fire Protection District, Root Creek Water District, Tranquillity Irrigation District, and the Tri-Valley Water District. In addition, the firm represents individuals and businesses before public agencies in a broad variety of matters.

Very few, if any, local firms have extensive experience representing local retirement boards regarding the County Employees Retirement Law of 1937 (the "1937 Act"). Baker Manock & Jensen is no exception. However, our firm has experience with the 1937 Act as we represented the County of Fresno in litigating the validity of the so-called "Fresno Method."

While Mr. Price did not serve as lead counsel in that proceeding, he was a part of Baker Manock & Jensen's successful team of attorneys protected the interests and integrity of the County of Fresno's retirement system.

There have been no public agency contracts with the firm that have not been renewed or terminated in the past five (5) years. We have short-term engagements with many clients, but those engagements expired according to the original terms of their agreements. Additionally, there have not been any significant developments in our firm's organization involving ownership, restructuring, or personnel reorganizations. The firm does not anticipate any such changes at this time.

References

Some of Baker Manock & Jensen's public agency clients are listed below in the table below. Due to attorney-client privilege restrictions, we are unable to provide the Association with a list of private clients. However, some of the advice, guidance, and work product that Baker Manock & Jensen would provide to the Fresno County Employees' Retirement Association is similar to that we have provided to some of our private clients.

CLIENT'S NAME	CLIENT CONTACT NAME	CLIENT'S TELEPHONE NUMBER	DESCRIPTION AND SCOPE OF SERVICE(S) INCLUDING DATES	
Afuera De Chorro Mutual Water	Pat Rusco	805.549.2400	General Counsel	
Company	T at Nasco	003.343.2400	Dates: Starting 3/27/2007	
Alta Irrigation District	Christ Kapheim	559.591.0800	General Counsel	
Alta Imgation District	Christ Kaphellii	333.331.0800	Dates: Starting 6/14/1982	
Associated Students Fragge State	Tara Powers-Mead	559.278.2656	General Counsel	
Associated Students Fresno State	Tara Powers-Iviead	559,278,2050	Dates: Starting 3/13/2002	
	F. Clin Daniel	550 241 6515	General Counsel	
Children & Families Commission of	Emilia Reyes	559.241.6515		
Fresno County		550 664 5455	Dates: Starting 6/22/2008	
Children & Families Commission of	Chinayera Hardaman	559.661.5155	Special Counsel	
Madera County			Dates: Starting 3/29/2011	
Children & Families Commission of	Martha Hermosillo	209.385.7337	Special Counsel	
Merced County	<u> </u>		Dates: Starting 3/29/2011	
Children & Families Commission of	Christina Arrostuto	707.784.1340	Special Counsel	
Solano County			Dates: Starting 3/29/2011	
City of Guadalupe	Dave Fleischman	805.466.4711	Special Counsel	
	<u> </u>		Dates: Starting 5/9/2011	
City of Pismo Beach	Dave Fleischman	805.466.4711	Special Counsel	
,			Dates: Starting 7/29/2009	
City of Solvang	Brad Vidro	805.686.9465	Special Counsel	
,			Dates: Starting 3/16/2000	
Clovis Cemetery District	Anna Herrera	559,299,6057	General Counsel	
clovis cernetery district	Anna Herrera	333.233.0037	Dates: Starting 11/23/1994	
Consolidated Invigation District	Phil Desatoff	559.896.1661	General Counsel	
Consolidated Irrigation District	Phil Desatoli	223.630.1001	Dates: Starting 7/29/1985	
	5 N 1 C	760.073.4465		
Deep Springs College	Dave Neidorf	760.872.4465	General Counsel	
			Dates: Starting 9/22/1989	
Deer Creek Storm Water District	Matthew Hurley	559.992.8980	General Counsel	
· · · · · · · · · · · · · · · · · · ·			Dates: Starting 5/5/2014	
Fresno Local Agency Formation	David Fey	559.495.0604	General Counsel	
Commission			Dates: Starting 11/14/2005	
resno Metropolitan Flood Control	Alan Hofmann	559.456.3292	General Counsel	
District			Dates: Starting 8/30/1983	
resno Regional Workforce	Blake Konczal	559.490.7100	General Counsel	
nvestment Board			Dates: Starting 10/6/2009	
resno Slough Water District	Elizabeth Reeves	559.698.7225	General Counsel	
S			Dates: Starting 8/2015	
Sarfield Water District	Pat Ricchiuti	559.299.1120	General Counsel	
			Dates: Starting 3/22/2000	
Hills Valley Irrigation District	Dennis Keller	559.732.7938	General Counsel	
mis valley migation district	Definis Rener	333.732.7330	Dates: Starting 7/25/1983	
Kings River Water District	Jack Paxton	559.875.7721	General Counsel	
lings River water District	Jack Paxton	333.073.7721	Dates: Starting 8/28/1985	
(-1)	Flair - Conic	EEO CC3 4EOO	General Counsel	
Madera Workforce Board	Elaine Craig	559.662.4500		
	Neil 6	FEO CEE 4040	Dates: Starting 10/17/2011	
Mendota Unified School District	Mike Crass	559.655.4942	General Counsel	
			Dates: Starting 1/27/2012	
North Central Fire Protection	Rusty Nonini	559.275.5531	General Counsel	
District			Dates: Starting 12/20/2012	
Root Creek Water District	Phil Pierre	559.435.6403	General Counsel	
			Dates: Starting 11/13/1996	
ranquility Irrigation District	Danny Wade	559.698.7225	General Counsel	
			Dates: Starting 8/2015	
Fri-Valley Water District	Dennis Keller	559.875.7721	General Counsel	
		1	Dates: Starting 1/12/1984	

TAB 2 – Delivery of Services.

Delivery of Services

Baker Manock & Jensen is proud to submit this proposal to provide legal services for the Fresno County Employees' Retirement Association. We believe that the depth of our practice, our reputation as the preeminent law firm for public agencies and businesses in Fresno, and our commitment to the community make us the strongest and most proven choice for the Fresno County Employees' Retirement Association.

Requirements of the Fresno County Employees' Retirement Association

Baker Manock & Jensen understands the requirements of the Fresno County Employees' Retirement Association. We have reviewed the duties and essential functions the Fresno County Employees' Retirement Association is seeking its Board Counsel to fulfill, and we are familiar with the "1937 Act". As Board Counsel for the Fresno County Employees' Retirement Association, would work diligently to become familiar with all specific provisions of the 1937 Act to ensure that we are providing accurate and relevant legal advice. We have extensive experience with public agency clients who operate under acts and statutes specific to them, including districts formed by a special act, such as the Fresno Metropolitan Flood Control District, which our firm has served as general counsel of since 1975. All attorneys proposed to provide services to the Fresno County Employees' Retirement Association have experience serving clients who must comply with and operate under laws specific to those clients. Our attorneys are prepared to acquire whatever additional expertise is necessary to provide the Fresno County Employees' Retirement Association with the highest level of legal services possible.

If selected, we would represent the Fresno County Employees' Retirement Association with an understanding of and commitment to the following special principles: (1) identify realistic goals at the outset of each matter and develop practical, cost-effective strategies to achieve them, and conserve public monies; (2) staff the matter with the proper range of experienced attorneys and paralegals who are able to perform many of the important services at reduced rates; (3) work closely with the Fresno County Employees' Retirement Association's Board, management and key employees; (4) encourage the Fresno County Employees' Retirement Association to designate one or more key personnel as necessary to manage the matter internally from the Fresno County Employees' Retirement Association's perspective; (5) recognize that the public entity should not be intimidated by or pay monies at any time other than when justified by the evidence, thereby discouraging future frivolous claims; and (6) work with the Fresno County Employees' Retirement Association as a team, providing its staff and directors with a vigorous defense and candid evaluation of the status of claims while following their instructions based on their analysis of the case in light of the public entity's policy objectives and long-term obligations to the public.

Technical Approach, Technical Capabilities, and Proposed Management Plan

We believe that the best strategy for adhering to the above principles is to establish regular channels of communication; to wit, designating a primary contact and appropriate legal team and remaining in close contact with the Fresno County Employees' Retirement Association. We have experienced great success with this approach to client service with our

major public agency clients. This provides a continuous understanding of the status of cases and immediate access to lawyers from our office who can provide a quick response to inquiries.

Our team will be available to the Fresno County Employees' Retirement Association at any time to handle the legal matters that may arise on a routine basis including, but not limited to, reviewing and revising contracts, advising on personnel policies and procedures, providing guidance on open meeting laws and public records act requests, and counseling on the maze of conflict-of-interest laws that impact your association. Our size and diversity of practice areas equip Baker Manock & Jensen with the ability to provide the Fresno County Employees' Retirement Association with legal assistance for general legal services, Board meeting and Board of Director legal advice, analysis of potential or anticipated legal matters, and other services as needed. Baker Manock & Jensen attorneys pride themselves in thinking proactively. We identify legal issues that may arise for our clients in order to minimize future costly mistakes.

Baker Manock & Jensen's team approach to representing the Fresno County Employees' Retirement Association will follow its proven pattern in providing legal services to governmental, quasi-governmental, and non-profit entities for which it serves as counsel. The team will provide breadth and depth of services, backup when necessary, and will include attorneys experienced in advising and representing public agencies. In addition, expertise in the applicable legal specialties and attorneys with varying levels of experience will ensure that services are rendered in the most efficient manner and at the most cost-effective rate. Senior attorneys provide services that call on their experience, and less experienced attorneys provide services at a lesser rate, such as legal research when required.

Mr. Price would serve as the initial and primary contact for all Fresno County Employees' Retirement Association matters. Therefore, he will be responsible for ensuring that all work is handled in a competent and timely fashion to the Fresno County Employees' Retirement Association's satisfaction, reviewing bills and payment arrangements, and providing appropriate staffing for all matters. Mr. Price will also be responsible for making certain that all attorneys working for the Fresno County Employees' Retirement Association are aware of its particular needs and policies regarding that legal work.

When a legal matter surfaces, we propose that the designated representative or representatives at the Fresno County Employees' Retirement Association bring the matter to Mr. Price's attention. After a preliminary review of the legal matter, Mr. Price will either handle the matter himself or consult with the appropriate Baker Manock & Jensen attorney team leader regarding the matter. Mr. Price is experienced in handling nearly all aspects of public agency representation and, to ensure continuity of service, in many cases he will handle the matter himself and always in a cost-effective manner.

Along with the authorized Fresno County Employees' Retirement Association representative or representatives, the team will decide on the necessary level of action. Then, depending upon the issue, Mr. Price will call upon the expertise of the other attorneys, paralegals, and staff at Baker Manock & Jensen to implement the agreed upon legal strategy in the most cost-effective manner. Mr. Price will identify the individual in the firm with the greatest developed expertise for the particular matter and will remain informed about the status of all matters by receiving copies of all correspondence and other documents relating to them. In

this manner, Mr. Price will be able to address any and all questions raised by the Fresno County Employees' Retirement Association regardless of whether or not he is personally handling the matter.

TAB 3 – Standards of Conduct.

Standards of Conduct

All of our attorneys, paralegals and staff go through a rigorous interview process before they are hired. We require conflict checks to ensure that no conflict arises between a new attorney, paralegal or staff member and our existing clients. If there is a potential conflict between a new attorney and an existing client, we follow the California Rules of Professional Responsibility for lawyers. If there is a potential conflict between a paralegal or staff member and an existing client, we work through the situation to determine whether or not the conflict can be waived.

Once hired, all attorneys, paralegals and staff go through a thorough training process on how to use our computer system and software for billing, word processing, and researching. Our Word Processing Department provides trainings on a regular basis to make sure that the members of our firm are "up-to-speed" on how to use all of our programs. This ensures that we are working efficiently with our system.

Furthermore, the staff, paralegals and associate attorneys are reviewed on a biannual basis. This way, we make sure the Baker Manock & Jensen team is providing its best work, in the most efficient manner, and in a good working environment. We strive for excellence among our entire Baker Manock & Jensen team!

TAB 4 – Conflicts of Interest.

Conflicts of Interest

Our firm is unaware of any conflicts of interest that would preclude it form providing legal services to the Fresno County Employees' Retirement Association. Baker Manock & Jensen currently represents Fresno Local Area Formation Commission ("Fresno LAFCo"), which has employees who are Fresno County Employees' Retirement Association participants. However, we do not believe our representation of Fresno LAFCo creates a conflict of interest, and we only point this fact out for the sake of clarity and transparency.

As mentioned in a previous section of this Proposal, our firm requires conflict checks to ensure that no conflict arises between a new attorney, paralegal or staff member and our existing clients. If there is a potential conflict between a new attorney and an existing client, we follow the California Rules of Professional Responsibility for lawyers. If there is a potential conflict between a paralegal or staff member and an existing client, we work through the situation to determine whether or not the conflict can be waived.

Additionally, anytime the firm contemplates taking on a new client, we conduct an exhaustive conflict check process, which includes querying our client database software for any potential or actual conflicts, as well as circulating individual correspondence to all attorneys to inquire whether a conflict exists or not.

Baker Manock & Jensen is not aware of anyone in our firm providing gifts, travel and room expenses, entertainment, or meals to any Fresno County Employees' Retirement Association Board member or staff during the past 12 months.

TAB 5 – Consulting Team.

Consulting Team

Lead Attorney: Kenneth J. Price

<u>Team Members:</u> Lauren D. Layne, Craig W. Armstrong, Matthew E. Hoffman, Peter N. Zeitler, Steven M. Crass, & Robert D. Wilkinson

Mr. Price has been with the firm since 2002 and chairs the firm's Public Agency Practice Group and Business Department. He would be the lead attorney and would advise the Fresno County Employees' Retirement Association at its meetings and hearings, supervise the team, and provide services regarding administrative and government law, claims, contracts, and any litigation. Mr. Price is an honors graduate of Loyola Law School and was admitted to the California Bar in 2003. He represents numerous governmental or quasi-governmental organizations as general counsel including, the Fresno Regional Workforce Investment Board, the Fresno Local Agency Formation Commission, First 5 Fresno County, the Fresno City and County Housing Authority, the Northern Central Fire Protection District, the Fresno Metropolitan Flood Control District, the Fresno Convention & Entertainment Center, and Stockton Arena.

Mr. Price is widely considered to be an expert on several aspects of public agency representation including Brown Act compliance and conflict of interest law. He is the only attorney between Los Angeles and the Bay Area serves on the California State Bar Public Law Executive Committee, which adopts practice guidelines for all public lawyers in California. He we was named as "Top 100 Lawyer in California" by the *Daily Journal*, California's largest and most prestigious legal periodical in California. Mr. Price regularly lectures, on legal issues that commonly impact local governmental agencies, including, but not limited to, open meeting laws, public records disclosure, conflicts of interest, and public agency contract requirements.

Mr. Price is very knowledgeable in areas relating to real estate, environmental issues, and hazardous waste. He has vast experience in the area of contracts, and preparing and reviewing ordinances and resolutions. He also advises nonprofit corporations in their ongoing compliance with state and federal regulations.

Ms. Layne is an associate at Baker Manock & Jensen and a member of the firm's Public Agency and Water Law Practice Group. She is a 2010 honors graduate of University of the Pacific, McGeorge School of Law and was admitted to the California Bar the same year. She regularly handles matters impacting public agencies including contract drafting and review, the California Public Records Act, the Elections Code, conflict of interest laws, open meeting requirements, AB 1234 training, condemnation and eminent domain. Ms. Layne serves as general counsel or assistant general counsel for numerous public agencies. She prepares and reviews agendas, resolutions, ordinances, policies, and other documents. Ms. Layne also has experience with statutes and regulations pertaining to the assessment of fees and charges for water and related services, including Proposition 218, and land use law.

Mr. Armstrong is an associate at Baker Manock & Jensen and a member of the firm's Public Agency and Water Law, and Real Property Practice Groups. He is graduate of University

of California, Berkeley School of Law and is admitted to the California Bar. His law practice includes public agency, real property, water law, general corporate business, and agribusiness.

Mr. Hoffman is on the firm's Executive Committee. He would handle real estate transactions, the drafting of commercial contracts, and any finance and related audit concerns. Mr. Hoffman is a 1994 graduate of Hastings College of Law and has been with the firm for 20 years. Although Mr. Hoffman's practice generally focuses on forming corporations, partnerships and limited liability companies, he has extensive experience assisting his clients in a wide variety of financing, real estate and development.

Mr. Zeitler practices in the areas of commercial finance, corporate law and real estate, with an emphasis on transactional matters. He joined the firm in 2015. His expertise includes mergers and acquisitions, commercial and real estate lending, real estate acquisitions, troubled debt restructure, creditor's rights, tax-exempt bond finance, business restructure, and general business transactions. Mr. Zeitler is active in the local county bar, where he has served as the chairman of the Central Valley Real Property Roundtable, the Fresno County Bar Association Real Property Law Section, and the Fresno County Bar Association Business Law Section.

Mr. Crass is the chair of the firm's Employment Law Practice Group. He would be responsible for employment, labor law and human resources issues facing the Fresno County Employees' Retirement Association. Mr. Crass, who is a 2000 graduate of University of San Diego School of Law, a former Navy JAG and federal prosecutor, has been with the firm since 2011. He is experienced in defending against claims of unlawful discrimination and breach of employment contract, wage and hour, and other public employment-related claims. Mr. Crass is also experienced in advising management regarding employee relations issues such as the calculation and payment of wages, at-will employment conditions, employees' right to privacy, and the handling of employee complaints.

Mr. Wilkinson is a member of the firm's Litigation Practice Group. He would serve as the primary litigation attorney for the Fresno County Employees' Retirement Association should such a need arise. Mr. Wilkinson is a 1981 graduate of UC Davis King Hall Law School and has been with the firm since 1988. Mr. Wilkinson has extensive trial experience and represents clients in areas of civil rights, general business matters, eminent domain, condemnation, and white collar crime. He has tried more than 30 jury trials and numerous bench trials, including First 5 Fresno County's recent successful litigation against the state of California.

Each attorney can be contacted by mail at 5260 N. Palm Avenue, Suite 421, Fresno, California, 93704, by telephone at (559) 432-5400, or by fax at (559) 432-5620. Each attorney's title and email address is provided in the grid below.

Name	Title	Email Address	
Kenneth J. Price	Shareholder	kprice@bakermanock.com	
Lauren D. Layne Associate		llayne@bakermanock.com	
Craig W. Armstrong	Associate	carmstrong@bakermanock.com	

Robert D. Wilkinson	Shareholder	rwilkinson@bakermanock.com	
Matthew E. Hoffman	Shareholder	mhoffman@bakermanock.com	
Peter N. Zeitler Sharehold		pzeitler@bakermanock.com	
Steven M. Crass	Shareholder	scrass@bakermanock.com	

TAB 6 – Insurance and Liability.

Insurance and Liability

A. What limitation on liability, if any, do you impose through your contract?

We do not impose any limitations on liability through our standard engagement letter, a copy of which is attached hereto as Appendix C.

B. 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.

The firm carries professional liability insurance with a limit of \$10,000,000 per claim, and an aggregate limit of \$20,000,000. The firm's errors and omissions coverage is a Claims Made policy. There is no Additional Insured status on the firm's errors and omissions coverage.

C. Describe your quality assurance procedures.

As mentioned above, Mr. Price would serve as the initial and primary contact for all Fresno County Employees' Retirement Association matters. This way, Mr. Price will act as a filter to ensure that all matters are handled in a timely and efficient manner. Mr. Price will either handle the matter himself or consult with the appropriate Baker Manock & Jensen attorney team leader regarding the matter.

If the Fresno County Employees' Retirement Association so desires, we can conduct matter update conferences. Those meetings would be regularly scheduled, or held as special circumstances warrant, with the appropriate representatives from the Fresno County Employees' Retirement Association, Mr. Price, and those necessary members of the firm who may be handling a specific matter. At the conference, Baker Manock & Jensen attorneys would provide the designated Fresno County Employees' Retirement Association representative with an overview of the status of the matter(s) being handled at that time. Representatives from the Fresno County Employees' Retirement Association and Baker Manock & Jensen attorneys can then discuss and agree upon a prudent course of action.

D. 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.

Baker Manock & Jensen's information technology disaster recovery plan provides that all data stored on firm servers is backed up every three (3) hours. This element of the recovery plan will soon be modified to provide for backup every hour once the firm finishes installing and implementing a new backup server. Upon each backup, all firm data is encrypted and replicated offsite to two (2) geographically separate locations. In the event of a disaster, the firm's servers could be virtualized in the cloud and a VPN (virtual private network) set up to restore service.

The firm also has a power generator in place to provide backup power to all critical areas of the firm's office in the event of a power outage. Additionally, the firm maintains two Internet

lines, and have arrathe other fails.	anged those line	s so that one will	automatically prov	vide service in the event

TAB 7 – Subcontracting.

See Tab 8 regarding Baker Manock & Jensen being a Meritas affiliate.

TAB 8 – Other Information.

Baker Manock & Jensen is a Member of the Meritas Organization

Baker Manock & Jensen is a member of the prestigious Meritas organization, an independent association of nearly 200 top-rated law firms located throughout the world. We are the only firm in the Central Valley that has this Meritas affiliation.

The Meritas membership has expanded to nearly 5,000 attorneys in more than 70 countries. Member firms are located in all the major markets and traditional business centers in the world, as well as in many emerging markets. Through our membership in Meritas, Baker Manock & Jensen can provide its clients with access to legal assistance in every major city in the world. Meritas members are electronically linked via the Internet and broadcast fax to provide efficient communication with one another.

Meritas member firms are locally based, independent law firms with full-service and specialized, commercial law practices. Each has made a commitment to provide quality client service. Potential members must endure a rigorous 10-step selection process. In almost every case, only one firm has been selected in each market. Baker Manock & Jensen is the only Meritas firm in Central California. As a member in Meritas, Baker Manock & Jensen is subject to ongoing client satisfaction evaluations.

Baker Manock & Jensen's Meritas affiliation allows us to work with specialized counsel all over the country, and the world, to provide the best service to our clients. For example, we have access to attorneys in numerous states that specialize in 1937 Act representation and related matters and we could hire one of these attorneys to work with Baker Manock & Jensen to provide the highest level of expertise in all matters relating to the Fresno County Employees' Retirement Association. This is just one example of the benefits we can provide the Fresno County Employees' Retirement Association as a Meritas firm.

Board Legal Counsel Services Request For Proposal 2015-09-04 Page 4 of 20

I declare under penalty of perjury that the foregoing is true and correct. Name of Proposer: Baker Manock & Jensen, PC □ Individual doing business under own name *Type of Business: □ Partnership □ Individual doing business using a firm name □Joint Venture (Please attach Joint Venture Agreement) Business Address: 5260 North Palm Avenue, Suite 421 City, State, Zip Code: Fresno, California 93704 Dated: September 18, 2015 By: (Print Initials) (Signature) Name: Carl R. Refuerzo (Type or Print Name) Title: Managing Shareholder Email Address: kprice@bakermanock.com (559) 432-5620 Telephone Number: (559) 432-5400 Fax Number: *To be signed by authorized corporate officer or partner or individual submitting the proposal. **EXAMPLE** Sign: If Proposer is: 2. An individual using a firm nameJohn Doe, an individual doing business as Blank Company Blank Company, By John Doe, partner 4. A Corporation Blank Company, by John Doe, secretary (or other title)

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

APPENDIX A - Biographies.



ATTORNEYS AT LAW

KENNETH J. PRICE

Areas of Expertise

Mr. Price is a partner with Baker Manock & Jensen. His law practice includes public agency law, business law, real estate transactions, land use, and government relations. He has extensive experience dealing with issues that impact all public agencies including the Brown Act, the Public Records Act, employment law, contracts, procurement, and conflicts of interest. He regularly lectures throughout California on such matters. Mr. Price successfully led the charge to prevent the State of California from raiding \$1 billion in trust funds from First 5 agencies throughout California. In 2012, he was named by the Daily Journal, California's largest and most prestigious legal newspaper, as a Top 100 Lawyer in California and is the only attorney from the Central Valley urrently appointed to the State Bar Public Law Executive Committee.

Professional Experience

- Baker Manock & Jensen, Shareholder, 2007-Present
- Baker Manock & Jensen, Associate, 2002-2007
- Allen Matkins Leck Gamble & Mallory, Summer Associate, 2001
- Los Angeles County District Attorney, Special Assistant to the District Attorney, 1998-2001
- U.S. Senator Dianne Feinstein, District Director and Deputy State Director, 1992-1998

Professional and Civic Organizations

- Fresno County Bar Association, Member
- Public Law Section of the California State Bar, Executive Committee Member
- American Bar Association, State and Local Government Law & Real Property Sections
- Fresno Economic Development Corporation, Board Member
- Leadership Fresno Alumni Organization (Class XI)
- The Economic Development Corporation Serving Fresno County
- Legal and Political Commentator, KGPE Channel 47 Fresno



Fig Garden Financial Center 5260 N Palm Ave, Fourth Floor Fresno, CA 93704 559.432.5400 kprice@bakermanock.com

Education

- 2002 Juris Doctor with Honors, Loyola Law School, Loyola Marymount University
- 1991 Bachelor of Arts, University of California, Davis

- State Bar Number 225114
- State Bar of California, 2003
- United States District Court, Eastern District



ATTORNEYS AT LAW

LAUREN D. LAYNE

Areas of Expertise

Ms. Layne is an associate attorney with Baker Manock & Jensen and a member of the firm's Public Agency and Reclamation and Water Law Practice Groups. She has a background in farming and her law practice focuses on water law, public agency law, agricultural business issues, eminent domain, condemnation, and various transactional matters.

Professional Experience

- Baker Manock & Jensen, Associate (January 2011-Present)
- The Honorable Ronald B. Robie, California Court of Appeal, Third Appellate District, Judicial Extern (Fall 2009)
- Herum Crabtree, Summer Associate (2009)
- California Farm Bureau Federation, Natural Resources & Environmental Division, Summer Intern (2008)

Professional and Civic Organizations

- Fresno County Bar Association, Member
- Fresno County Young Lawyers, Member
- Fresno County Women Lawyers, Member
- California State Bar Business Law Section Agribusiness Committee Member
- California State Bar, Public Law, Business, Real Property, and Environmental Law Sections, Member
- American Bar Association, Member
- California Women for Agriculture, Central Valley Chapter, Treasurer (2014-Present), Member (2012-Present)
- Fresno County Farm Bureau, Member
- Cal Poly Alumni Association—Regional Director, Central Valley (July 2014-Present)
- Cal Poly Alumni Association—Fresno Chapter, Past-President (2014), President (2011-Jan. 2014)
- Cal Poly Alumni Association—Modesto Chapter, Treasurer & Activities Coordinator (2008-2010)
- Justice Anthony M. Kennedy American Inn of Court, Student Associate (2009-2010)



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Education

- 2010 Juris Doctor with Distinction, University of the Pacific, McGeorge School of Law
- 2006 Bachelor of Science, Soil Science, California Polytechnic State University, San Luis Obispo

- State Bar Number 273627
- State Bar of California, 2010
- United States District Court, Eastern District



ATTORNEYS AT LAW

CRAIG W. ARMSTRONG

Areas of Expertise

Mr. Armstrong is an associate at Baker Manock & Jensen and a member of the firm's Business Department and Public Agency practice group. He has experience assisting both public and private clients on various business matters such as creating corporate policies and procedures, drafting complex memorandums of understanding, and enforcing contract and lease provisions. Mr. Armstrong is familiar with the requirements of the California Government Claims Act and has experience both responding to and making requests under the California Public Records Act.

A native of Fresno, Mr. Armstrong has strong ties to the local comnunity. Prior to his law career, Mr. Armstrong taught English at Fresno City College and College of the Sequoias. He also worked as a charter school administrator at a high-performing Fresno charter school. Additionally, Mr. Armstrong worked for several years helping local nonprofits implement and utilize sophisticated fundraising and development programs.

Mr. Armstrong received his B.A. and J.D. degrees from the University of California, Berkeley. He also holds an M.A. degree from California State University, Fresno. While in law school, Mr. Armstrong was a member of the *Berkeley Technology Law Journal*. He also played for the Cal Ice Hockey Team

Professional Experience

- Baker Manock & Jensen, Associate, 2015-Present
- Lindquist & Vennam, Summer Associate 2012, 2013

Professional and Civic Organizations

- Fresno County Bar Association, Member
- Fresno County Young Lawyers, Member
- California State Bar, Member
- American Bar Association, Member
- Fresno Housing Education Corps, Board Member

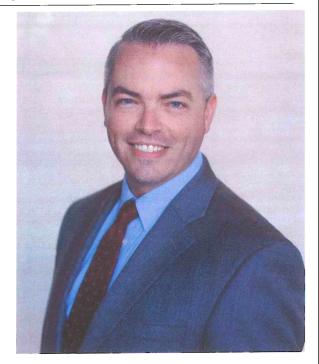


Fig Garden Financial Center 5260 N Palm Ave, Fourth Floor Fresno, CA 93704 559.432.5400 carmstrong@bakermanock.com

Education

- 2014 Juris Doctor, Boalt Hall School of Law, University of California, Berkeley
- 2007 M.A. with Distinction, California State University, Fresno
- 2004 B.A., University of California State University, Berkeley
- 2002 A.A. with Highest Honors, Ohlone College

- State Bar Number 299541
- State Bar of California, 2014



ATTORNEYS AT LAW

MATTHEW E. HOFFMAN

Areas of Expertise

Mr. Hoffman, a member of the three-person Management Committee of Baker Manock & Jensen and head of its Transactional Department, has practiced law for nearly 20 years. His law practice has focused upon the formation of corporations, partnerships and limited liability companies. He routinely handles the purchase and sale of businesses. He is also experienced in corporate, partnership and individual income tax matters, and estate and gift tax issues. He regularly assists his clients in a wide variety of financing, real estate transactions, and the review and drafting of commercial contracts of all different forms.

Professional Experience

 Baker Manock & Jensen, Associate and Shareholder, 1994-Present

Professional and Civic Organizations

- Fresno County Bar Association, Business and Real Property Sections, Member of Steering Committee for both sections
- State Bar of California, Business, Taxation and Real Property Sections
- American Bar Association, Business, Taxation and Real Property Sections
- Greater Fresno Chamber of Commerce, Director



Fig Garden Financial Center 5260 N Palm Ave, Fourth Floor Fresno, CA 93704 559.432.5400 mhoffman@bakermanock.com

Education

- 1994 Juris Doctor cum laude, Order of the Coif, Hastings College of the Law, University of California
- 1990 Bachelor of Science in Business Administration, summa cum laude, University of California, Riverside

- State Bar Number 172541
- State Bar of California, 1994
- United States Tax Court, 1995
- United States District Court, Eastern District, 1994
- Fresno County Bar, 1994
- Los Angeles County Bar, 1994



ATTORNEYS AT LAW

PETER ZEITLER

Areas of Expertise

Mr. Zeitler's legal career began with Jones Day where he worked in the Dallas and Cleveland offices. He then joined Bingham McCutcheon in San Francisco, before moving to Fresno in 1989.

With Baker Manock and Jensen, Mr. Zeitler practices in the areas of commercial finance, corporate law and real estate, with an emphasis on transactional matters. His expertise includes mergers and acquisitions, commercial and real estate lending, real estate acquisitions, troubled debt restructure, creditor's rights, tax-exempt bond finance, business restructure, and general business transactions.

Mr. Zeitler is active in the local county bar, where he has served as the hairman of the Central Valley Real Property Roundtable, the Fresno County Bar Association Real Property Law Section, and the Fresno County Bar Association Business Law Section.

Recent Professional Experience

- Baker Manock & Jensen, 2015-Present
- Fishman, Larsen, Chaltraw & Zeitler, 2004-2015
- Lang, Richert & Patch, 1989-2003

Representative Professional and Civic Organizations

- Fresno County Bar Association, Member
- California State Bar, Member Business Law and Real Property Section
- Central Valley Real Property Roundtable and Real Property Law Section, Fresno County Bar Association, Co-Chairman 1995-1997
- Business Law Section, Fresno County Bar Association, Co-Chairman 2007-2009
- Fresno Art Museum Board of Trustees, 2005-2011; 2013-2014
 - Rotary Club of Fresno, 1994—Present
- Rotary Playland & Storyland Board of Directors, 2002-2008



Fig Garden Financial Center 5260 N Palm Ave, Fourth Floor Fresno, CA 93704 559.432.5400 pzeitler@bakermanock.com

Education

- 1982 Juris Doctor (Cum Laude), University of Michigan, Ann Arbor, Michigan
- 1977 M.A. Human Genetics, Order of the Coif, Michigan Law Review, University of Michigan, Ann Arbor, Michigan
- 1976, B.A., Albion College, Albion Michigan

- State Bar Number 118706
- State Bar of California, 1985
- State of Ohio, 1983
- State of Texas, 1982



ATTORNEYS AT LAW

STEVEN M. CRASS

Areas of Expertise

Mr. Crass is a partner of Baker Manock & Jensen and chairs the firm's Employment Law practice group. Mr. Crass has extensive legal experience both in the public and private sector and currently represents employers in a broad range of employment litigation matters, including discrimination, harassment, wrongful termination, wage and hour and other fair employment practice matters. He counsels employers on day-to-day issues including discipline and termination, medical leaves and other matters. Mr. Crass represents clients in from of the Equal Employment Opportunity Commission, the Department of Fair Employment Opportunity Commission, the Department of Fair Employment, Department and Labor Standards Enforcement and Housing as well as state and federal courts. In addition to Mr. Crass' civil litigation experience, he honed his trial skills as a District Attorney, a Navy Judge Advocate, and an Assistant United States Attorney.

Professional Experience

- Baker Manock & Jensen, Shareholder, November 2011-Present
- Littler Mendelson 2008-2011
- United States Attorney's Office, Eastern District of California 2006-2007
- United States Navy, JAG Corps, Lieutenant 2001-2006 8

Professional and Civic Organizations

- Fresno County Bar Association, Member
- Human Resource Association of Central California



Fig Garden Financial Center 5260 N Palm Ave, Fourth Floor Fresno, CA 93704 559.432.5400 scrass@bakermanock.com

Education

- 2000 Juris Doctor, University of San Diego School of Law
- 1996 Bachelor of Arts, University of California, San Diego

- State Bar Number 209873
- State Bar of California, 2000
- Navy and Marine Corps Court of Appeals, 2001
- The Court of Appeal for the Armed Forces, 2004
- Supreme Court of the United States, 2005
- Ninth Circuit of Appeals, 2006
- United States District Court, Eastern District, 2006
- United States District Court, Northern District, 2007



ATTORNEYS AT LAW

ROBERT D. WILKINSON

Areas of Expertise

Mr. Wilkinson is a Partner with Baker Manock & Jensen and is a member of the firm's Business Litigation Practice Group and its White Collar Criminal Defense Practice Group. He has more than 32 years of legal experience and is A-V rated, the highest rating awarded by one of the most respected attorney rating services, Martindale-Hubbell. He was selected as a Super Lawyer in 2013 and 2014. Mr. Wilkinson has extensive trial experience and represents clients in the areas of civil rights, general business litigation, eminent domain and condemnation, and white collar crime. Since joining Baker Manock & Jensen 26 years ago, he has represented physicians, attorneys, businesses and business owners, and local, state and federal government employees and entities. He appears in state and federal courts as well as before a variety of administrative agencies such as the United States Department of Agricultural, the California Medical Board and the California State Bar. Mr. Wilkinson speaks to industry groups about civil litigation and what to do if a professional or business is under criminal investigation.

Professional Experience

- Baker Manock & Jensen, Shareholder/Director, 1991-Present
- Baker Manock & Jensen, Associate, 1988-1991
- Fresno County Public Defender's Office, 1984-1987
- California Rural Legal Assistance, 1982-1984
- Comiskey & Robinson, 1981-1982

Professional and Civic Organizations

- Fresno County Bar Association, Board of Directors, 2010-2012
- Federal Bar Association, San Joaquin Valley Chapter, Board of Directors, 1991-2001 and 2005-Present, National Council Representative, 1993-1999 and 2008-Present
- Association of Business Trial Lawyers, San Joaquin Valley, Board of Governors, 2000-2003
- National Association of Criminal Defense Lawyers, Member
- American Bar Association, Member White Collar Crime Committee

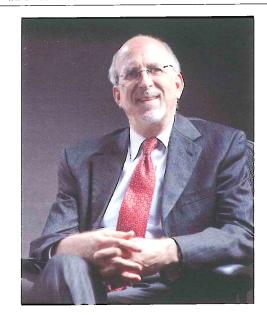


Fig Garden Financial Center 5260 N Palm Ave, Fourth Floor Fresno, CA 93704 559.432.5400 rwilkinson@bakermanock.com

Education

- 1981 Juris Doctor UC Davis School of Law
- 1977 Bachelor of Arts, *summa cum laude*, California State University, Chico

- State Bar Number 100478
- State Bar of California, 1981
- United States Supreme Court, 2001
- United States Court of Appeals for the Ninth Circuit, 1995
- United States District Court for the Eastern District of California, 1983
- United States District Court for the Northern District of California, 1981
- United States District Court for the Central District of California, 2000
- United States District Court for the Southern District of California, 2005

APPENDIX B – Annual Financial Report.

Annual Financial Report

Baker Manock & Jensen is financially strong. However, we are unable to provide to the Fresno County Employees' Retirement Association a copy of our firm's annual financial report. However, we would be happy to provide and arrange for an on-site inspection of Baker Manock & Jensen's financial documents to confirm our firm's financial health. Please contact Mr. Price directly to arrange this inspection. We will act promptly to arrange the visual inspection as soon as possible.

APPENDIX C – Sample Agreement.

September 18, 2015

Re: Confirmation of Our Engagement

Dear:

You have asked this office to represent ** with respect to ** ***. Because it is essential to a good client-attorney relationship that fee arrangements and other agreements are clearly understood at the very beginning of an engagement, and pursuant to the requirements of Business and Professions Code Section 6148, we ask that you read and sign this letter as confirmation of this understanding. This letter will be our agreement in connection with this engagement.

Fees

Our firm's fees will be based upon time spent on behalf of ** at our normal hourly rates including, for example, time spent preparing documents, legal research, negotiations, conferences, telephone calls, travel time and any time in court or before any government agency. Our current hourly rates vary from \$______ to \$_____ for paralegals and from \$______ to \$_____ for attorneys. My rate is currently \$______. While our rates are subject to change, we normally change them only annually. We will notify you in advance of any increase in rates.

The total fees for our professional services will be based on the time we believe in our professional judgment is required to perform the services rendered, and will be computed on the basis of the usual hourly charges of the attorneys rendering service. In general, we do not advance costs. Costs can include, by way of example, transportation costs, photocopying, facsimiles, telephone calls and similar costs, administrative filing fees, court filing fees, subpoena costs, deposition costs, investigator's fees, fees for preparing transcripts, expert witness fees, accounting fees, consulting fees, appraisal fees and actuarial costs. Under some circumstances, we may be required to, or we may in our discretion agree to, advance costs. Should we do that, costs which are advanced by our office will be additional charges to **. These costs advanced will be reflected separately in our regular billing to **. Telephone and postage costs are computed on a basis of \$2.00 for each hour worked.

Any discussion or cursory estimate given by us regarding fees and costs is only an estimate. The fees and costs may be greater than any certain amount mentioned. The number of hours expended, and resulting fees and costs, vary greatly depending on working relationships, the opposing party, and opposing counsel. In addition, over the course of the action, attitudes can greatly change and legal and factual issues can become more complex. These factors,

among others, make it impossible to estimate an ultimate fee and cost amount with any reasonable accuracy.

Scope of Services

We will provide services with respect to the matter described above. Should ** engage us to perform any other services, and in the absence of a separate written fee agreement for any such other engagement, those other engagements will also be subject to the terms of this agreement.

Retainer

We normally require a retainer to assure the availability of our services in a matter. The retainer will be held in trust and applied to the final billing in this matter. It is, in other words, a security deposit against our bill. You will be billed each month for our services. We will expect you to pay each such billing in a timely manner even though we have the retainer on deposit. We have agreed to a retainer in the amount of \$###. We reserve the right at any time to ask for an additional retainer to assure the availability of our services in this matter should changes in circumstances warrant.

Billing

We will render monthly statements to **. The account shall be payable when billed. A late payment charge of 1-1/2% per month from the billing date will be assessed on all amounts thirty days or more past due.

Cooperation of Client

We ask that ** ** and its employees ** comply with all reasonable requests for information and assistance made in connection with this engagement. This assistance can include participation in meetings and, in a litigation case, appearances at depositions, hearings, and/or trials.

Withdrawal of Attorney

This firm may withdraw from the representation with regard to the matter covered by this Agreement within a reasonable time after giving notice of such withdrawal to **. There is no reason to assume this would happen, but we do reserve the right to withdraw in situations where attorneys' fees are not timely paid or where there exist other grounds for withdrawal recognized by our state's Rules of Professional Conduct. Notwithstanding our withdrawal, ** will remain obligated to pay us at the agreed rates for all services previously provided, and to reimburse us for all costs advanced before the withdrawal.

Discharge of Attorney

** may discharge us at any time by written notice effective when received by us. Unless specifically agreed between ** and this firm, we will provide no further services and advance no further costs on behalf of ** after receipt of the notice. If we are ** ** attorneys of record in any proceeding, ** agrees to execute and return a substitution-of-attorney form immediately on its receipt from us.

Notwithstanding the discharge, ** will remain obligated to pay us at the agreed rates for all services provided and to reimburse us for all costs advanced.

Fee Disputes

** has the right to arbitrate the dispute through the local Bar's Fees Arbitration Procedures (Business & Professions Code Section 6200, et seq.).

No Warranty or Prediction of Results

Our firm cannot warrant or predict the results in your case. Any expressions regarding the potential results of your case are only that attorney's opinion, intention, or hope. We will, however, attempt at all times to render to ** faithful and diligent service to the best of our abilities.

If ** agrees to the terms of this letter, please date and sign this letter and return it to this office in the enclosed self-addressed envelope. The enclosed copy is for your records.

We look forward to working with you in this important matter.

Very truly yours,

Kenneth J. Price BAKER MANOCK & JENSEN, PC

KJP:TLW

September	18,	2015
Page 4		

agreement con Jensen, PC.	I have read, understand, and hereby cerning engagement of professional	y agree to the terms and conditions of this letter I services to be performed by Baker Manock &
	Date:	
		** **
		** By ###, its **

RFP - Pricing

Proposed Fee Schedule

The collective experience of Baker Manock & Jensen's attorneys enables us to provide cost-effective legal services in specialty areas in addition to those traditionally served by general counsel. Mr. Price will ensure that all legal matters will be staffed with attorneys with varying and appropriate levels of experience to make certain that services are rendered in the most efficient manner and at the most cost-effective rate.

a. Hourly Rates

Our rates are billed in 1/10th of an hour increments. Baker Manock & Jensen invoices its clients on a monthly basis with itemized statements showing the time billed, the rate, the particular service for each time entry, and the attorney who performed the service Our discounted hourly rates for Fresno County Employees' Retirement Association are as follows:

Board Counsel:	Kenneth J. Price	Hourly Rate \$235.00
Team Attorneys:	Lauren D. Layne	\$210.00
	Craig W. Armstrong	\$195.00
	Robert D. Wilkinson	\$250.00
	Matthew E. Hoffman	\$250.00
	Peter N. Zeitler	\$250.00
	Steven M. Crass	\$250.00
Other:	Senior Associates (4-7 years exp.)	\$210.00
	Junior Associates (< 4 years exp.)	\$195.00
	Paralegals/Non-Legal Consultants	\$165.00

b. Cost of Expenses

Photocopy charges and scanning would be billed at \$.10 per page. Telecopier charges would be billed at \$.50 per page. Telephone costs and postage are at no charge. Travel would be charged at the current IRS rate, although Mr. Price will not charge mileage to and from Association meetings. All other costs, including overnight delivery, certified mail, courier services, travel expenses, outside copy services, court reporter, transcripts, deposition fees, and all other costs charged by third parties and advanced by the firm on the Fresno County Employees' Retirement Association's behalf, will be charged at their actual costs. Word processing and clerical services would not be charged to the Association.

c. Retainer Basis

Baker Manock & Jensen knows that public agencies have varying needs for legal services. Typically, during some months, the cost for legal services can be modest and other months can require more intensive legal services. Generally, it has been our experience that a

monthly retainer will end up costing the Fresno County Employees' Retirement Association more money. However, if the Association desires a fixed monthly retainer, we are happy to work with the Association. In order to accurately prepare an estimate, we would request historical information from the Fresno County Employees' Retirement Association with respect to the provision of legal services to help us analyze in more detail the Association's use of legal counsel.

Without the historical information requested above, we could only roughly estimate an anticipated annual service commitment of \$82,720.00 based on an average of the hours provided in the Request for Proposal.



Fresno County Employees' Retirement Association

Request for Proposal

To Perform Board Legal Counsel Services

September 2, 2015

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١.

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 on 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.

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If Proposer is:

I declare under penalty of perjury that the foregoing is true and correct. Name of Proposer: ☐ Individual doing business under own name *Type of Business: □ Corporations ☐ Individual doing business using a firm name □ Partnership □ Joint Venture (Please attach Joint Venture Agreement) Business Address: _____ City, State, Zip Code: (Signature) (Print Initials) (Type or Print Name) Email Address: Telephone Number: _____ Fax Number : _____. *To be signed by authorized corporate officer or partner or individual submitting the proposal. **EXAMPLE**

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

2. An individual using a firm nameJohn Doe, an individual doing business as Blank Company

3. A Partnership......John Doe and Richard Roe, partners doing business as

Sign:

Blank Company, By John Doe, partner

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	<u> 2015-09</u>	<u>-04</u> .	
		<u>Gen.</u> Liab.	<u>Auto</u>	Wrkrs. Comp	<u>E & O</u>	
The correct proposer name is listed						
 NAIC # of insurers is provided on the certificate 	te					
 Policy limits of insurance meet requirements 	in the agreement	t 🗆				
 Deductibles are declared and approved or wa 	ived by FCERA					
 Expiration date of policy is 6 months or more 	into the future					
 30 - day notice of cancellation included 						
 Certificate Holder is "Fresno County Employed Association" (FCERA) (Note: "Fresno County – example is not acceptable) 						
 Endorsement naming "Fresno County Employ Association" (FCERA) as "Additional Insured" 						
 Waiver of Subrogation endorsement included 	l (Worker's Comp	ensation only)				
Carrier is admitted/licensed to issue insurance						
Best's rating of no less than A-, and Financial S (for all "Insurers" listed on Certificate; Standard Methods (Standard Methods) (Standard Meth	ate Fund is okay/a	an exception)	□ est%27s+F	□ Ratings		
Comments:						
					<u>.</u>	
					·	
					<u> </u>	

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 multiemployer 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. <u>Board Legal Counsel Services</u>

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

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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. <u>Proposal Content and Quantity</u>

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. <u>Form Agreement; Exceptions and Alternatives.</u>

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 an 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.

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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. <u>Protest and Appeal Procedures</u>

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. <u>Definitions</u>

- 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. <u>Protest Procedure</u>

- 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.

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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. <u>Cost of Preparation of Proposal</u>

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. <u>Public Records Act</u>

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'

Board Legal Counsel Services Request For Proposal 2015-09-04 Page 11 of 20

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. <u>Modification to Service Requirements</u>

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. <u>Insurance Provisions</u>

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 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. <u>Submission of Proposals</u>

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. <u>Proposal Elements</u>

The "PROPOSAL" response has two (2) elements as noted above - Proposal statements and RFP-Pricing. Each of the proposal elements, shall be proceeded 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. <u>Conflicts of Interest:</u>

- (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. <u>Insurance and liability:</u>

- (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.

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- (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.

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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 = (lowest fees/hourly rates) X% = (lowest fees/hourly rates / next lowest fees/hourly rates) 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:

Evaluation Categories	Maximum Weight Possible
Proposal Response	5
General Qualifications	25
California Public Retirement Experier	nce 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:

(Aggregate proposal weight + pricing weight) = 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

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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.