



7772 N. Palm Ave.
Fresno, CA 93711
(559) 457-0681 p.
(559) 457-0318 f.
FresnoCountyRetirement.org

DATE: June 19, 2019

TO: Board of Retirement

FROM: Donald C. Kendig, CPA,
Retirement Administrator

Staff Contact: Doris L. Rentschler, CFP
Assistant Retirement Administrator

SUBJECT: Consideration of Fiduciary Counsel RFP – APPROVE

Recommended Action

1. Approve the issuance of the Request for Proposal for Fiduciary Counsel and delegate the initial screening to Staff.

Fiscal and Financial Impacts

Fiscal and financial impacts will depend on the firm selected and the services rendered. The Board will select a firm based on response to the RFP which includes the fee schedule. The Board will approve the resulting engagement or contract. Actual costs are dependent on volume and complexity of the issues assigned to fiduciary counsel.

Background and Discussion

Board Fiduciary Counsel is a primary service provider under the Board of Retirement Charter that places the responsibility to appoint and terminate primary service providers with the Board. FCERA has not issued an RFP for Fiduciary Legal Counsel in quite some time. Back in 2006, the Board decided to move from representation with Steefel, Levitt & Weiss to Reed Smith, to continue FCERA’s relationship with Harvey Leiderman and Jeffrey Rieger who both transitioned from Steefel, Levitt and Weiss to Reed Smith.

The Board has expressed an interest in providing specific terms in all engagement and contracts. The current Reed Smith contract does not specify a term. Due to the length of time since the last RFP for fiduciary counsel, staff recommends the issuance of an RFP that include the length of the engagement term.

Attachments

1. Fiduciary Counsel RFP



Request for Proposal for Fiduciary Counsel

JUNE 21, 2019

Table of Contents

Introduction	2
Purpose and Scope of Services	2
Minimum Qualifications, Duties and Essential Functions	3
Requirements	3
General Provisions and Information	5
Proposal Completion and Submission Procedures	8
Evaluation Criteria	11
Appendix I – Sample Contract	12

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Request for Proposal for Fiduciary Counsel

Issued: June 21, 2019

The Fresno County Employees' Retirement Association (FCERA) is seeking to contract with a private law firm to service as fiduciary counsel to the FCERA Board of Retirement. FCERA invites you to submit a proposal.

Introduction

FCERA is a multiple employer, defined benefit, pension plan serving approximately 18,000 employees and retirees of five participating government or agency employers. Located in Fresno, California, FCERA is established and governed under applicable federal law, the provisions of the County Employees' Retirement Law of 1937 (the '37 Act, California Government Code, §§ 31450-31898), the California Pension Protection Act of 1992 (California Constitution, Article 16, § 17), and the California Public Employees' Pension Reform Act of 2013 (PEPRA, California Government Code, §§ 7522-7522.74).

FCERA is administered by a Board of Trustees. The Board is composed of nine members and one alternate. Four of the nine trustees are appointed by the County's governing body. The County Treasurer is an ex-officio member and the remaining four trustees, and the alternate trustee, are elected by plan members. As provided by statute and California State Constitution, the Board has exclusive management responsibility for the control and investment of plan assets. The Board operates under the "prudent person" rule, as defined in California Government Code section 31595. The Board is advised by external counsel. FCERA does not manage any funds internally. The fund is advised/managed by external investment consultants and over 40 external investment managers responsible for investing about \$5 billion in assets.

The role of FCERA is to ensure financial security to plan participants by providing secure retirement and disability benefits, quality information concerning those benefits, and prompt, professional and courteous service that meets the highest standards of excellence. In carrying out that role, the Board of Retirement and staff are committed to act for the exclusive benefit of the plan and its participants, manage the assets in a prudent manner, and administer benefits with impartiality.

Purpose and Scope of Services

FCERA is seeking a qualified law firm that has provided fiduciary counsel services to public or private pension funds for at least the past five years.

External fiduciary counsel responds to opinion requests from the FCERA Board and staff, usually directed through FCERA Retirement Administrator. FCERA pays external counsel for actual work performed, in arrears, subject to budgets set by either the Retirement Administrator or the Board of Trustees or their designee.

External fiduciary counsel is called upon to provide advice and recommendations on a variety of

matters pertaining to their offices and meeting their fiduciary responsibilities, including issues involving the application of Article 16 section 17 of the California Constitution, trust law principles generally, County Employees Retirement Law of 1937 (CERL), the California Public Employee's Pension Reform Act of 2013 (PEPRA), and other sections of the Government Code and California law applicable to CERL systems.

Fiduciary Counsel may draft contracts, resolutions, opinions and other documents. Fiduciary Counsel may also oversees the handling of various legal matters, including, but not limited to certain California Public Records Act requests, litigation, subpoenas and discovery; provide analysis of state and federal legislation.

In all cases, the Fiduciary Counsel will offer advice to FCERA as legal counsel and subject to the attorney-client privilege. A sample standard engagement contract may be found in Appendix I. Please note that FCERA shall have no obligations to make material modifications to the standard engagement contract. By submitting a proposal to FCERA, the proposing firm is accepting the terms in the attached engagement contract.

Minimum Qualifications, Duties and Essential Functions

To be considered for the position of fiduciary counsel to the FCERA Board of Retirement, the proposer must meet the following minimum qualifications to be given further consideration. Failure to satisfy each of the minimum qualifications will result in the immediate rejection of the proposal.

1. At the time of submission, the proposing firm must have been in continuous operation in the United States for at least five (5) years. Alternately, if the proposing firm has undergone a merger or acquisition, at least one of the predecessor firms must have been in continuous operation in the United States for at least five (5) years.
2. The lead attorney who will have primary responsibility for providing legal services to FCERA and the Board of Retirement must have current membership in the California State Bar.
3. The firm and lead attorney must have experience in providing fiduciary advice to boards of public or private pension funds for at least the last five (5) years.
4. The firm must have, and agree to, carry insurances as in the Section V. General Provisions and Information.

Requirements

Submit a complete cover letter, which will be considered part of the proposal and must be signed by the individual(s) who is/are authorized to contractually bind the proposing firm. The cover letter must indicate that the signer is so authorized and must indicate the title or position, which the signer holds in the proposing firm. An unsigned cover letter shall cause the proposal to be rejected. The cover letter must include all of the following:

1. Brief history of the firm, including ownership structure, key principals and number of years in business as a law firm.
2. State the address of your corporate office. What office will serve FCERA's account: How is that office staffed? What is/are the specialty(ies), area(s) focus of the staff in that office?
3. The Federal Employer Identification Number and Corporate Identification number, if applicable.

FCERA Fiduciary Counsel RFP

June 21, 2019

4. The name, title and phone number of the individual signing the cover letter.
5. The name, title and phone number of the lead attorney for the proposal, if different than the individual signing the cover letter.
6. A statement to the effect that the proposal is a firm irrevocable offer. The proposal should be prepared in language making the performance of the work contemplated by the offering firm mandatory subject to the engagement contract (e.g. "The Firm shall...") and suitable for use as an attachment to any engagement contract so as to legally bind the offering firm to performance of the specific work being proposed.
7. A statement expressing the proposing firm meets all the minimum requirements for serving as FCERA's external fiduciary counsel.
8. Certify that neither proposer nor its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, any California State agency, or any local government agency.
9. A representation and warranty that all information and statements in the proposal are true and complete. Any statement found to be incomplete, misleading or false will be grounds for immediate disqualification or dismissal.
10. Acknowledge and agree to be a fiduciary to FCERA with the same prudence as imposed upon FCERA pursuant to Section 31595 of the 1937 Act in performance of all services rendered pursuant to any contract resulting from this RFP.

In addition, the information set forth below must be included in separate exhibits to the cover letter,

Exhibit A – General information about your firm, including a promotional brochure, if any, office locations, areas of practice, number of attorney's etc. Include detailed resumes describing the educational and professional experience and qualifications of the attorneys who would be assigned to perform the services required. Also describe any additional relevant resources of the firm that will be available to FCERA (e.g. firm-sponsored seminars/training, newsletters, etc.)

Exhibit B – Provide a proposed work plan for handling FCERA's needs described in the RFP and also include a *brief* discussion of the following:

1. The extent to which the lead attorney will be available to handle FCERA's fiduciary business (e.g., current and future workload issues and how the lead attorney will resolve conflicting demands on his/her time from multiple clients, the lead attorney's availability to attend FCERA Board/Committee meetings (if needed), participate in conference calls, and take on sensitive projects);
2. The attorney(s) who will serve as primary back-up in the event the lead attorney is unavailable, along with a brief summary of their qualifications to efficiently and effectively step into that role;
3. Future fiduciary issues that public employee pension plans might face in the next five years and how OCERS should be prepared to deal with them; and
4. Whether the firm is willing to prepare and provide training to OCERS legal staff. The statement should include: (i) the number of training hours that the firm would provide per calendar year at no charge, and (ii) the number of training hours that the firm would provide per calendar year at a discounted hourly rate (and include your proposed discounted hourly rate).

Exhibit C – Provide the following reference and engagement information:

1. A list of public and private pension plan funds that you represented as fiduciary counsel within the past five (5) years.
2. Client references in the area of fiduciary counsel, include all County Employee's Retirement Law of 1937 Act clients. List contact's name and firm, address, telephone number, and email address for each contact person.
3. Provide a list of public sector clients that have terminated or not renewed their working relationship with you in the past three (3) years, and a brief statement of your understanding of their reasons for doing so. List contact's name and firm, address, telephone number, and e-mail address for each contact person.

Exhibit D – the limits of coverage for malpractice, errors and omissions insurance and any other fiduciary or professional liability insurance your firm carries. List the insurance carriers supplying the coverage.

Exhibit E – Identify all malpractice claims filed against the firm, or any attorney proposed to perform services in response to the RFP, arising from the type of services FCERA is seeking and indicate the nature and status of each claim.

Exhibit F – Identify any attorney in your firm who may be part of the team that provides services to FCERA who has been disciplined or censured by any regulatory body with a description of the principal facts.

Exhibit G – Provide a statement, including citations, for each portion of your submission that you have marked as "Trade Secrets," "Confidential," or "Proprietary," if any, regarding the reasons why such portion(s) should be so treated under the law by FCERA. See **Notice regarding the California Public Records Act and Open Meeting Laws**.

Exhibit H – In a separate sealed envelope, submit a pricing proposal that details the costs to FCERA, including the duration of the billing rates and schedule for, and proposed amounts of future increases), and any alternate billing arrangements you wish to propose, for the proposal being submitted. **Please submit pricing using both hourly rates, and on a retainer basis, identifying the total number of hours included under each pricing option.**

General Provisions and Information

Term of Contract

It is the intent of the RFP to enter into a contract for fiduciary services. The contract term is a three (3) year contract with annual optional extension for up to two years, subject to: (a) the annual review and recommendation of the Retirement Administrator; (b) the approval of the FCERA Board of Retirement; and (c) the satisfactory negotiation of professional fees.

Assurances

Any contract awarded under this RFP must be carried out in full compliance with The Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, their subsequent amendments, and any and all other laws protecting the rights of individuals and agencies. FCERA has zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this RFP. The Proposer must also guarantee that services, or workmanship, provided will be performed in compliance with all applicable local, state, or federal laws and regulations

pertinent to the types of services, or project, of the nature required under this RFP. In addition, the Proposer may be required to provide evidence substantiating that their employees have the necessary skills and training to perform the required services or work.

Substitution of Personnel

The proposer acknowledges that FCERA's agreement to enter into a contract with the Proposer is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) identified and/or described in the proposer's proposal. FCERA agrees that partners, managers and other personnel assigned may be changed if those personnel leave the firm, are promoted or assigned to another office. The proposer agrees that these personnel may change for other reasons with the express prior permission of FCERA. In all cases, however, the proposer agrees that any change or substitution of personnel must meet or exceed the qualifications originally proposed, and that FCERA retains the right to approve or reject replacement personnel, provide that such approval shall not be withheld unreasonably.

Insurance

Without limiting FCERA's right to obtain indemnification from the Proposer or any third parties, the Proposer, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of any agreement between the Proposer and FCERA:

Commercial General Liability

- A. Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Five Million Dollars (\$5,000,000). This policy shall be issued on a per occurrence basis. FCERA may require specific coverages including contractual liability or any other liability insurance deemed necessary because of the nature of the Proposer's agreement with FCERA.

Automobile Liability

- A. Comprehensive Automobile Liability Insurance with limits for bodily injury or property damages of not less than One Million Dollars (\$1,000,000) per accident. Coverage shall include owned and non-owned vehicles used in connection with any agreement between the Proposer and FCERA.

Professional Liability

- A. Professional Liability Insurance with limits not less than Ten Million Dollars (\$10,000,000) per claim.
- B. This insurance shall include liability coverage covering the Proposer's liability arising from errors and omissions made directly or indirectly during the duration of any agreement between the Proposer and FCERA. This coverage shall be issued on a per claim basis.
- C. The Proposer agrees that it shall maintain, at its sole expense, in full force and effect for a period of three (3) years following the termination of any agreement resulting from this RFP, one or more policies of professional liability insurance with limits of coverage as specified herein.

Worker's Compensation

- B. A policy of Worker's Compensation Insurance as may be required by the California Labor Code or other applicable law.

Within Thirty (30) days from the date the Proposer executes any agreement with FCERA, the Proposer shall provide certificates of insurance and endorsements as stated above for all of the foregoing policies, as required herein, to FCERA, Donald C. Kendig, Retirement Administrator, 7772 N Palm Ave, Fresno, CA 93711, stating that such insurance coverages have been obtained and are in full force; that such Commercial General Liability insurance names FCERA, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under the agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by FCERA, its officers, agents and employees, shall be excess only and not contributing with insurance provided under the Proposer's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice to FCERA.

In the event the Proposer fails to keep in effect at all times insurance coverage as herein provided, FCERA may, in addition to other remedies it may have, suspend or terminate its agreement with the Proposer upon the occurrence of such event.

All policies shall be admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

Conflicts of Interest

FCERA shall not contract with, and shall reject any proposal submitted by a Proposer who is one of the persons or entities specified below, unless the Board finds that special circumstances exist that justify the approval of such contract:

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

Security Procedures

Finalists in the proposal evaluation process shall demonstrate to FCERA that sufficient security procedures and data recovery capabilities exist to protect customer information and resume normal business functions in the event of a disaster or other emergency. Proposer shall provide adequate personnel and documentation to discuss with FCERA staff the security measures, access software, back-up/recovery procedures and business resumption plans currently in use by Proposer.

Applicable Laws and Courts

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of California, and any litigation with respect thereto shall be brought in the Superior Court of Fresno County, California, and shall not be brought in, nor subject to removal to, any other court. The Proposer shall comply with all applicable federal, state and local laws, rules and regulations.

Proposal Completion and Submission Procedures

One original and three (3) copies of the proposal and three (3) copies of the pricing proposal must be received in the FCERA offices by 5:00 p.m. PST on August 2, 2019. The proposal must be in a sealed envelope, box or appropriate package, with the name and address of the proposing party clearly marked on the outside. In addition, an electronic PDF version of the service proposal and pricing proposal must be submitted with the proposal.

The submission of a proposal is a two-phase process. Proposal shall consist of two (2) separately sealed envelopes, one marked "RFP 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, the proposal and pricing documents will be received by FCERA. However, only the RFP Proposal document will be opened at that time. The sealed pricing document will remain so, until the staff evaluates and scores the Proposals. Upon completion of scoring, the sealed pricing documents will be opened and the RFP Pricing results will be calculated. The final evaluation results and a recommendation will be submitted to the Board of Retirement.

In Phase Two, the Board of Retirement shall consider the recommendation, proposals and pricing. The Board may invite firms for finalist interviews or may select the firm(s) that is/are considered to be the most effective and is/are in the best interest of FCERA.

PROPOSALS RECEIVED AFTER THIS DEADLINE WILL BE REJECTED REGARDLESS OF THE POSTMARK DATE.

The copies of the proposal must be mailed or delivered to:

Fresno County Employees' Retirement Association
7772 N. Palm Ave.
Fresno, CA 93711-5731
Attention: Doris Rentschler
Email: drentschler@fresnocountyca.gov

Pricing Proposal

Submit a separate sealed envelope with a document that details the costs to FCERA for the proposal being submitted. **Please submit pricing using both hourly rates, and on a retainer basis, identifying the total number of hours included under each pricing option.**

Inquires

Questions regarding this RFP or the proposal process must be received by email on or before 5:00 p.m. PST, July 5, 2019. Please identify the subject line of your email message with the words: "QUESTIONS – FIDUCIARY COUNSEL RFP." Telephone questions will not be accepted. Respondents should direct questions to:

Doris Rentschler, Assistant Retirement Administrator

Email: drentschler@fresnocountyca.gov with a copy to FCERA@fresnocountyca.gov

All questions will be consolidated into a single Q&A document. The source of the question will not be disclosed. The Q&A document, with FCERA's responses, will be posted on FCERA's website not later than July 22, 2019.

Right to reject all proposals and Reservation of rights

It is FCERA's policy to solicit proposals with a bona fide intention to award a contract. However, FCERA reserves the right to reject any or all proposals, to waive defects, to alter or modify the requirements of this RFP, and to award no contract.

Errors and Omissions

If you discover an ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify Doris Rentschler, at drentschler@fresnocountyca.gov and request clarification or modification of the document.

If it deems necessary, FCERA may modify this RFP. Notice of modification will be given by written notice to all applicants who have furnished a proposal or a Notice of Intent to Propose.

If a Proposer fails to notify FCERA of a known error that reasonably should have been known before the final filing date for submission, the Proposer assumes the risk. If awarded an agreement, the Proposer will not be entitled to additional compensation or time by reason of the error or its late correction.

Communication with FCERA (Quiet Period, No Ex Parte Contacts)

FCERA policy prohibits contact between prospective service providers and FCERA Board members, consultants, or staff during the RFP process. This does not include communication with a FCERA incumbent service provider for normal business not related to this selection process. From the date of release of this RFP until a vendor is selected and a contract awarded, all contacts and communications regarding this RFP are restricted to the Q&A process. Exceptions include communications with FCERA staff during negotiations, presentations, and contract award and execution. Violation of these conditions may result in rejection of a vendor's proposal.

All vendors who submitted a proposal will be notified of the Board's decision after the final selection has been made. This notice of final selections may be the only communication between the Plan and the proposers.

Timeline and Contact information

A proposal under this RFP will not be considered complete unless it contains all items described herein. To the extent achievable, FCERA plans to follow the schedule below with respect to the review and evaluation of proposals and awarding of a contract. However, FCERA reserves the right to modify the dates below in accordance with its review process.

Notice of Intent to Propose

If a firm anticipates submitting a proposal in response to this RFP, you are strongly encouraged (but not required) to submit an email to FCERA stating your intent (a "Notice of Intent to Propose"). FCERA will use this information to notify potential proposers of any changes FCERA determines are necessary to the RFP prior to the submission deadline. The Notice of Intent to Propose should be submitted by

email and must be received before July 5, 2019. Please include your name and email in the Notice of Intent to Propose and submit to drentschler@fresnocountyca.gov

No reimbursement for RFP expenses

FCERA will not reimburse any expense incurred in responding to this RFP, including but not limited to the costs of preparing the response, providing any additional information, or attending an interview or interviews.

Estimated Completion Date	Activity
June 21, 2019	Issuance of the Request for Proposal
July 5, 2019	Deadline for questions regarding the Proposal
July 22, 2019	Posting of responses to questions
August 2, 2019	Deadline for Submission of Proposals
August 5-23, 2019	Evaluation of Responses
September 4, 2019	Recommendation & Selection of Successful Proposer or
September 18, 2019	Finalist Interviews and Selection of Successful Proposer

PROPOSALS RECEIVED AFTER THIS DEADLINE WILL BE REJECTED REGARDLESS OF THE POSTMARK DATE.

Notice regarding the California Public Records Act and Open Meeting Laws

The proposal submitted in response to this RFP will be subject to the California Public Records Act (Cal. Gov. Code, § 6250 et. Seq.; the “Act”). The Act provides that all records relating to a public agency’s business are open to public inspection and copying, unless an exception applies. In addition, if FCERA chooses to hire, recommend for hire or places proposer on a short list of proposers to be considered for hiring, the entire proposal may appear in a publicly posted agenda packet for a public meeting in accordance with the Ralph M. Brown Act (Cal. Gov. Code, § 54950 et. Seq.). Once received by FCERA, proposals may not be exempt from public disclosure.

If a request is made pursuant to the Act for materials submitted, FCERA will determine, in its sole discretion, whether the material is subject to public disclosure. If FCERA determines that the materials requested are not subject to disclosure under the Act, FCERA will notify you and you may (i) seek a protective order at your own cost or expense and/or (ii) FCERA will deny disclosure of those materials. If FCERA denies disclosure at your request, then by submitting a proposal, proposer agrees to reimburse FCERA for, and to indemnify, defend, save, and hold harmless FCERA, its officers, trustees, fiduciaries, employees, and agents from and against any and all claims, damages, losses, liabilities, suits, judgements, fines, penalties, costs and expenses including, without limitation, attorney’s fees, expenses, and court costs of any nature whatsoever (collectively, “Claims”) arising from or relating to FCERA’s non-disclosure. By submitting a proposal, you also agree to indemnify, save, and hold FCERA harmless from and against any and all Claims arising from or relating to FCERA’s public disclosure of any portion of the proposal if FCERA determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdictions.

Agreement Approval and Period

FCERA’s selection of one or more successful Proposers will not be binding until it has been formally approved and executed by authorized Staff, Committee, and/or the Board.

FCERA Fiduciary Counsel RFP

June 21, 2019

The successful Proposer will be required to enter into a final contract with FCERA that incorporates this RFP, the Proposer's response to this RFP (including any authorized revision to the response), and any other negotiated terms and conditions agreed to by FCERA and the successful Proposer. In the event of any conflict between the final contract, the RFP and the Proposer's response to the RFP, the final contract will govern first, then the RFP will govern. However, FCERA reserves the right to clarify any contractual provision in writing with the concurrence of the contractor, and such written clarification shall govern in case of conflict with the applicable requirements state it he RFP or the responsive proposal.

Any change in the contract, including the scope of work described herein, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by and between the contractor and FCERA. Any such amendment shall specify an effective date, any increases or decreases in the amount of the contractor's compensation if applicable, entitled as an "Amendment," and signed by the parties identified in the preceding sentence. The contractor expressly agrees that no other method and/or no other document, including correspondence, acts, and oral communication by or from any person, shall be used or construed as an amendment to the contract.

Either party may, in its sole discretion, terminate any agreement resulting from this RFP at any time, subject to California law or other applicable state or federal law, including ethical obligations to protect FCERA's interests in the process of withdrawing.

Evaluation Criteria

All timely and properly formatted proposals will be evaluated and scored by FCERA staff. It is likely that finalist will be invited to appear before the Board of Retirement or a committee thereof. FCERA's Retirement Administrator has authority to engage the law firm that the Board selects, subject to successful negotiations. If a satisfactory retainer agreement cannot be negotiated with the selected firm, FCERA may at its sole discretion terminate such negotiations.

The initial screening by staff to determine finalist will be based upon the weighted criteria set forth below.

Relevant experience of the firm and the individual attorneys proposed for FCERA	35%
Proposed work plan, soundness of approach and understanding of the needs of FCERA	15%
Demonstrated ability to perform the services referred to in the RFP	25%
References and recommendations of other clients	10%
Fees and the value they represent for the services to be provided	15%

Appendix I – Sample Contract

Fresno County Employees' Retirement Association
7772 N Palm Ave, Fresno, CA 93711
Phone: (559) 457-0681
Fax: (559) 457-0318

**SAMPLE AGREEMENT
FOR
FIDUCIARY LEGAL SERVICES**

This Agreement for Fiduciary Legal Services (the "Agreement") is made and entered into by and between the Fresno County Employees' Retirement Association ("FCERA") and _____ ("LAW FIRM") on _____, 2019 ("Agreement Date").

Recitals

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

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

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

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

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

Terms and Conditions

1. Definitions.

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

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

"Agreement" means this Agreement for Legal counsel Services. Services entered into by

and between FCERA and LAW FIRM, including the Exhibits and Attachments attached hereto.

“Agreement Date” means the date shown in the preamble of this Agreement.

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

“Covered Persons” means FCERA, its trustees, officers, and employees.

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

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

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

“FCERA’s Project Director” means Donald Kendig, FCERA’s Retirement Administrator.

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

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

2. Description of Services

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

3. FCERA's Proprietary Rights.

All documents, drawings and written work product prepared or produced by the LAW FIRM under this Agreement, 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.

f

4. Project Responsibility.

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

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

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

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

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

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

C. Additional Law Firm Personnel.

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

5. Compensation and Payment.

- A. Compensation.** FCERA shall compensate LAW FIRM for services rendered under this Agreement as set forth in the Pricing Proposal, Exhibit B of the firm's proposal, 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 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 Doris L. Rentschler, Assistant Retirement Administrator, FCERA, 7772 N. Palm Ave., Fresno, CA 93711.
- F. Non-Compensable Services.** LAW FIRM agrees that should work be performed outside the **Scope of the Work** described in the Request for Proposal, without the prior written consent of FCERA in accordance with the Section 21 "Amendments" to this Agreement, such work will be deemed to be a gratuitous effort on the part of LAW FIRM, and LAW FIRM will have no claim against FCERA for such work, and FCERA will have no obligation to pay for such work.

6. Term and Termination.

- A. General Term.** Subject to the termination provisions in this Section, the term of this Agreement begins on the Agreement Date and based on successful completion of the immediate past year's services shall continue for three (3) years through _____. Upon mutual agreement of parties, the Agreement may be renewed annually for up to

three (3) additional years. Any extensions shall be in written form as amendments to this Agreement.

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

services similar to those terminated, and LAW FIRM will be liable to FCERA for any excess cost of such similar services.

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

7. Required Licenses, Certificates and Permits.

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

8. Office Space, Supplies, Equipment, Etc.

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

and obligation of LAW FIRM.

9. Insurance

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

(1) General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than Five Million Dollars (\$5,000,000) per incident or occurrence.

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

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

(2) Automobile Liability Insurance

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

(3) Workers' Compensation Insurance

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

Agreement.

(4) Professional Liability.

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

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

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

LAW FIRM's officers, employees, agents, representatives or subcontractors.

10. Defense and Indemnification.

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

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

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

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

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

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

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

12. Independent Contractor Status.

- A. All acts of LAW FIRM and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of LAW FIRM relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of FCERA. LAW FIRM, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of FCERA. Except as expressly provided in Exhibit A, LAW FIRM has no authority or responsibility to exercise any rights or power vested in the FCERA. No agent, officer or employee of the FCERA is to be considered an employee of LAW FIRM. It is understood by both LAW FIRM and FCERA that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship, partnership, servant or a joint venture, or association.
- B. At all times during the term of this Agreement, the LAW FIRM and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of FCERA.
- C. LAW FIRM shall determine the method, details and means of performing the work and services to be provided by LAW FIRM under this Agreement. LAW FIRM shall be responsible to FCERA only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to FCERA's control with respect to the physical action or activities of LAW FIRM in fulfillment of this Agreement. LAW FIRM has control over the manner and means of performing the services under this Agreement. LAW FIRM is permitted to provide services to others during the same period service is provided to FCERA under this Agreement. If necessary, LAW FIRM has the responsibility for employing other persons or firms to assist LAW FIRM in fulfilling the terms and obligations under this Agreement.
- D. If in the performance of this Agreement any third persons are employed by LAW FIRM, such persons shall be entirely and exclusively under the direction, supervision and control of LAW FIRM. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the LAW FIRM.
- E. It is understood and agreed that as an independent LAW FIRM and not an employee of FCERA, the LAW FIRM and the LAW FIRM's officers, employees, agents, representatives or subcontractors do not have any entitlement as a FCERA employee, and do not have the right to act on behalf of the FCERA in any capacity whatsoever as an agent, or to bind the FCERA to any obligation whatsoever.
- F. It is further understood and agreed that LAW FIRM must issue W-2 forms or other forms

as required by law for income and employment tax purposes for all of LAW FIRM's assigned personnel under the terms and conditions of this Agreement.

- G. As an independent LAW FIRM, LAW FIRM hereby indemnifies and holds FCERA harmless from any and all claims that may be made against FCERA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

13. Records and Audit

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

14. Confidentiality; Proprietary Rights

- A. **FCERA's Proprietary Rights.** All reports under this Agreement become the sole property of FCERA. Both parties hereto acknowledge that LAW FIRM retains the right to use its experience, expertise and knowledge on similar projects for other clients, so long as LAW FIRM protects FCERA's interests in all of its confidential records and property.

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

15. Nondiscrimination

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

16. Assignment

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

17. Waiver of Default

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

18. Notice

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

To FCERA: FCERA

Attention: Retirement Administrator
7772 N. Palm Ave.
Fresno, CA 93711

To LAW FIRM: Name
 Attention:
 Address
 City State

19. Conflicts and Disqualification

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

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

20. Severability

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

21. Amendment

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

22. Entire Agreement

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

23. Advice of Attorney

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

24. Construction

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

25. Governing Law and Venue

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

26. Time of the Essence

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

27. Execution in Counterparts

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

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 ASSOCIATION **[LAW FIRM]**

By: _____
Nathan Magsig
Chair, Board of Retirement
"FCERA"

"LAW FIRM"

APPROVED AS TO FORM:
Donald Kendig
Retirement Administrator

By: _____
Donald Kendig
Retirement Administrator

EXHIBIT A – Services/Scope of Work

[INSERT RFP AND PROPOSAL]

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

EXHIBIT B – Compensation, Fees, and Payments

COMPENSATION

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

[INSERT FEE/PRICING PROPSAL]