



FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

REQUEST FOR PROPOSAL INVESTMENT COUNSEL LEGAL SERVICES

Issue Date: November 3, 2023

Closing Date: January 10, 2024, at 5:00 PM (Pacific)

All Questions and Responses must be electronically submitted to Donald Kendig at
dkendig@fresnocountyca.gov

For assistance, you may contact Donald Kendig at (559) 457-4400

PROPOSER TO COMPLETE

Undersigned agrees to furnish the commodity or service stipulated in the attached at the prices and terms stated in this Proposal.
Proposal must be signed and dated by an authorized officer or employee.

COMPANY

CONTACT PERSON

ADDRESS

CITY

STATE

ZIP CODE

()

TELEPHONE NUMBER

E-MAIL ADDRESS

AUTHORIZED SIGNATURE

PRINT NAME

TITLE

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OVERVIEW

The Fresno County Employees' Retirement Association (FCERA) invites proposals from experienced attorneys and law firms in response to this Request for Proposal (RFP) to provide investment counsel legal services.

FCERA was established in 1945 as a contributory defined benefit plan established and governed under the provisions of the 1937 County Employees Retirement Law (1937 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 provides lifetime benefits upon retirement, death, or disability of members. FCERA is a cost-sharing, multiple-employer plan that includes substantially all full-time employees and permanent part-time employees who work 50% or more for the pension plan sponsors, including the County of Fresno, Superior Court of California-County of Fresno, Clovis Veterans Memorial District, Fresno Mosquito and Vector Control, and the Fresno-Madera Area Agency on Aging.

FCERA is an independent governmental entity, separate and distinct from the County of Fresno. FCERA is governed by a nine-member Board of Retirement. FCERA collects, deposits, invests, and manages the plan's retirement trust funds solely in the best interest of, and for the exclusive purpose of providing the following benefits to FCERA members and their beneficiaries: Service Retirement Benefits, Disability Benefits, Survivors' Benefits, Cost of Living Benefits, and Supplemental Retirement Benefits.

The plan is funded from three sources: employer contributions, employee contributions, and investment earnings. As of June 30, 2023, the FCERA trust fund had approximately \$6.1 billion in assets, invested in the following asset classes: Domestic Equity, International Equity, Domestic Fixed Income-Core Bonds, Domestic Fixed Income-High Yield, Domestic Fixed Income-Asset Backed Loans, International Fixed Income, Emerging Market Debt, Private and Alternative Markets, Real Estate, Infrastructure, Cash, and Cash Equivalents.

The FCERA Board is responsible for all investments of FCERA and, in conjunction with FCERA staff, oversees the investment activities of ten custodied separately managed accounts, two comingled accounts and eighty investment advisors and partnerships. FCERA utilizes the services of a custodial bank, which holds all publicly traded assets of FCERA, excluding real estate, private equity, private credit, infrastructure, certain co-mingled investment funds, and funds held and managed by the County Treasurer as part of the County Treasurer's Pooled Funds. FCERA retains an investment consultant to assist the FCERA Board and staff in carrying out its investment responsibilities.

FCERA staff, under the general supervision of the FCERA Board, is responsible for the daily operations of the plan, including the administration of benefits, accounting functions, and systems management. In certain cases, such services are performed by the appropriate department of the County of Fresno pursuant to an ongoing working relationship with FCERA. FCERA employs a staff of 38, which includes a Retirement Administrator who serves as the Chief Executive Officer of FCERA.

FCERA currently administers retirement benefits for approximately 7,500 active and 4,900 deferred members and 6,600 retired members and beneficiaries. The active and deferred membership is composed of general and safety classifications, each with multiple tiers. Member contribution rates are established based on the member's age at the time of employment.

FCERA's Board of Retirement annually adopts the operating budget for the administration of FCERA. The administrative expenses are funded by employee and employer contributions.

FCERA employs outside counsel for investment, fiduciary, board, and general counsel. These attorneys provide legal advice to the Board in a variety of areas, handle litigation, and address issues regarding plan interpretation, meeting procedures, policy development, contract review, and management of the trust.

KEY DATES

RFP Issue Date:	November 3, 2023 on or before 5:00PM*
Written Questions for RFP Due:	November 20, 2023, by 12:00 PM* <i>Questions must be electronically submitted to Donald Kendig at dkendig@fresnocountyca.gov</i>
Posting of Answers to Questions:	November 30, 2023, on or before 5:00 PM*
RFP Closing Date:	January 2, 2024, at 5:00 PM* <i>Proposals must be electronically submitted to Donald Kendig at dkendig@fresnocountyca.gov</i>
Finalist(s) Presented to Board:	February 7, 2024
Estimated Contract Commencement:	March 6, 2024

* FCERA is in the Pacific time zone. All times listed are Pacific time. Plan accordingly.

FCERA will make a good faith effort to follow the above timeline but reserves the right to amend it. Any amendments to the RFP will be posted on the FCERA website. Proponents are solely responsible for checking the website for any amendments to the RFP.

GENERAL REQUIREMENTS & CONDITIONS

TERM: It is FCERA's intent to contract with the successful bidder for a term of three years with the option to renew for up to two additional one-year periods based on mutual written consent.

FCERA reserves the right to terminate any resulting contract upon written notice.

AWARD: The award will be made to the vendor offering the proposal that is deemed to be the most advantageous to FCERA. Past performance (FCERA contracts within the past seven years) and references may factor into awarding of a contract. FCERA will be the sole judge in making such determination. FCERA reserves the right to reject any and all proposals. Award notices are tentative. Acceptance of an offer made in response to this RFP shall occur only upon execution of an agreement by both parties. After award, all proposals shall be open to public inspection. FCERA assumes no responsibility for the confidentiality of information offered in a proposal.

By submitting a proposal, the vendor expressly agrees to be bound to FCERA's standard contractor terms. FCERA will not entertain material modifications to its standard contractor agreement, or other contracting requirements, which is attached in form to this RFP as Exhibit A and incorporated herein by reference. If vendor cannot accept the material provisions in this agreement, vendor is encouraged to not submit a proposal.

Vendors submitting proposals understand and agree that FCERA shall have no financial responsibility for any costs incurred by the vendors in preparing their response to this RFP and shall not be liable for any costs incurred until the successful bidder has executed a contract with FCERA and has been authorized in writing to proceed.

FCERA reserves the right to terminate this RFP prior to award. By submitting a proposal, vendor shall be deemed to have investigated and understands, to its satisfaction, the conditions to be encountered, the quality and scope of work to be performed, the contractual requirements of FCERA, and the applicable state, federal, local, and industry regulations and standards.

Award will require approval by the FCERA Retirement Board.

CONFIDENTIALITY: Services performed by the bidder shall be in strict conformance with all applicable Federal, State of California and/or local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, California Government Code, Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

The bidder shall submit to FCERA's monitoring of said compliance.

The bidder may be a Business associate of FCERA, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a HIPAA Business Associate, vendor may use or disclose protected health information ("PHI") to perform functions, activities, or services for or on behalf of FCERA, as specified by FCERA, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to FCERA, as the "Covered Entity" under HIPAA's Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

The bidder shall not use or further disclose PHI other than as permitted or required by FCERA, or as required by law. The bidder shall ensure that any agent, including any subcontractor, to which vendor provides PHI received from, or created or received by the vendor on behalf of FCERA, shall comply with the same restrictions and conditions with respect to such information.

SELF-DEALING TRANSACTION DISCLOSURE: Contractor agrees that when operating as a corporation (a for-profit or non-profit corporation), or if during the term of the agreement the Contractor changes its status to operate as a corporation, members of the vendor's board of directors shall disclose any self-dealing transactions that they are a party to while Contractor is performing services under an agreement with FCERA. A self-dealing transaction shall mean a transaction to which the Contractor is a party and in which one or more of its directors has a material financial interest. Members of the board of directors shall disclose any self-dealing transactions that they are a party to by completing and signing a FCERA Self-Transaction Disclosure Form and submitting it to FCERA prior to commencing with the self-dealing transaction or immediately thereafter.

LOCAL VENDOR PREFERENCE: Local vendor preference **does not** apply to this RFP.

CONFLICT OF INTEREST: FCERA shall not contract with, and shall reject any bid or proposal submitted by the persons or entities specified below, unless the FCERA Board of Retirement finds that special circumstances exist which justify the approval of such contract:

1. Employees of any FCERA Plan Sponsor or any public agencies for which the governing body of the sponsor is the governing body of the public agency.
2. Profit making firms or businesses in which employees described in Subsection (1) serve as officers, principals, partners, or major shareholders.
3. Persons who, within the immediately preceding twelve (12) months, came within the provisions of Subsection (1), and who 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.
4. Profit making firms or businesses in which the former employees described in Subsection (3) serve as officers, principals, partners, or major shareholders.
5. No FCERA employee, whose position at FCERA enables him or her to influence the selection of a contractor for this RFP, or any competing RFP, and no spouse or economic dependent of such employee, shall be employees in any capacity by a bidder, or have any other direct or indirect financial interest in the selection of a contractor.
6. In addition, no FCERA employee will be employed by the selected vendor to fulfill the vendor's contractual obligations to FCERA.

DISCLOSURE: The bidder is required to disclose if, within the three-year period preceding the proposal, their owners, officers, corporate managers, and partners have been convicted of, or had a civil judgment rendered against them for:

- fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- violation of a federal or state antitrust statute;
- embezzlement, theft, forgery, bribery, falsification, or destruction of records; or,
- false statements or receipt of stolen property.

The bidder must also disclose if, within a three-year period preceding their proposal, they have had a public transaction (federal, state, or local) terminated for cause or default.

FRESNO COUNTY ORDINANCE 3.08.135 – POST-SEPARATION EMPLOYMENT PROHIBITED: No officer or employee of FCERA who separates from FCERA service shall for a period of one year after separation enter into any employment, contract, or other compensation arrangement with any FCERA consultant, vendor, or other FCERA provider of goods, materials, or services, where the officer or employee participated in any part of the decision-making process that led to FCERA's relationship with the consultant, vendor or other FCERA provider of goods, materials, or services.

Pursuant to Government Code section 25132(a), a violation of the ordinance may be enjoined by an injunction in a civil lawsuit or prosecuted as a criminal misdemeanor.

TIE BIDS: In the event of a tie score between two or more proposals at the completion of the evaluation process, the evaluation team will break the tie by re-evaluating the proposals and coming to a consensus on which proposal(s) to award. Additional information or interviews may be requested from bidders with the tied proposals.

DATA SECURITY: Individuals and/or agencies that enter into a contractual relationship with FCERA for the purpose of providing services must employ adequate controls and data security measures, both internally and externally to ensure and protect the confidential information and/or data provided to contractor by FCERA, preventing the potential loss, misappropriation or inadvertent access, viewing, use or disclosure of FCERA data including sensitive or personal client information; abuse of FCERA resources; and/or disruption to FCERA operations.

Individuals and/or agencies may not connect to or use FCERA networks/systems via personally owned mobile, wireless, or handheld devices unless authorized by FCERA for telecommuting purposes and provide a secure connection; up to date virus protection and mobile devices must have the remote wipe feature enabled. Computers or computer peripherals including mobile storage devices may not be used (FCERA or Contractor device) or brought in for use into the FCERA's system(s) without prior authorization from FCERA's Retirement Administrator and/or designee(s).

No storage of FCERA's private, confidential, or sensitive data on any hard-disk drive, portable storage device or remote storage installation unless encrypted according to advance encryption standards (AES of 128 bit or higher).

FCERA will immediately be notified of any violations, breaches or potential breaches of security related to FCERA's confidential information, data and/or data processing equipment which stores or processes FCERA data, internally or externally.

FCERA shall provide oversight to Contractor's response to all incidents arising from a possible breach of security related to FCERA's confidential client information. Contractor will be responsible to issue any notification to affected individuals as required by law or as deemed necessary by FCERA in its sole discretion. Contractor will be responsible for all costs incurred as a result of providing the required notification.

AUDITS & RETENTION: The Contractor shall maintain in good and legible condition all books, documents, papers, data files and other records related to its performance under this contract. Such records shall be complete and available to FCERA, the State of California, the federal government, or their duly authorized representatives for the purpose of audit, examination, or copying during the term of the contract and for a period of at least three (3) years following FCERA's final payment under the contract or until conclusion of any pending matter (e.g., litigation or audit), whichever is later. Such records must be retained in the manner described above until all pending matters are closed.

PAYMENT: FCERA will make partial payments for all purchases made under the contract and accumulated during the month. Terms of payment will be net forty-five (45) days.

DISPUTE RESOLUTION: The ensuing contract shall be governed by the laws of the State of California.

Any claim which cannot be amicably settled without court action will be litigated in the U.S. District Court for the Eastern District of California in Fresno, CA or in a state court for Fresno County.

ASSIGNMENTS: The ensuing proposed contract will provide that the vendor may not assign any payment or portions of payments without prior written consent of FCERA.

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 a zero tolerance for discrimination, implied or expressed, and wants to ensure that policy continues under this RFP. The vendor must also guarantee that services, provided will be performed in compliance with all applicable local, state, or federal laws and regulations pertinent to the types of services, of the nature required under this RFP. In addition, the vendor may be required to provide evidence substantiating that their employees have the necessary skills and training to perform the required services or work.

LICENSES AND CERTIFICATIONS: Any license(s) and/or certification(s) required in this RFP must be obtained by the bidder prior to submitting a proposal and must be active and in good standing. Proposals submitted without the proper license(s) and/or certification(s) will be deemed non-responsive.

INSURANCE REQUIREMENTS

Without limiting FCERA's right to obtain indemnification from vendor or any third parties, vendor, at its sole expense, shall maintain in full force and effect, the following insurance policies, or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

- A. Commercial General Liability: Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis.
- B. Automobile Liability: Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.
- C. Professional Liability: If Contractor employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate. This coverage shall be issued on a per claim basis. Contractor agrees that it shall maintain, at its sole expense, in full force and effect for a period of three years following the termination of this Agreement, one or more policies of professional liability insurance with limits of coverage as specified herein.
- D. Worker's Compensation: A policy of Worker's Compensation insurance as may be required by the California Labor Code.

Additional Requirements Relating to Insurance:

Contractor shall obtain endorsements to the Commercial General Liability insurance naming FCERA, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. 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 Contractor's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to FCERA.

Contractor hereby waives its right to recover from FCERA, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. Contractor is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but Contractor's waiver of subrogation under this paragraph is effective whether or not Contractor obtains such an endorsement.

Within thirty (30) days from the date Contractor executes this Agreement, Contractor shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to Fresno County Employees' Retirement Association, **Donald Kendig, 7772 N. Palm Ave. Fresno, CA 93711**, stating that such insurance coverage have been obtained and are in full force; that the FCERA, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the Fresno County Employees' Retirement Association, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this 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 Contractor's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to FCERA.

In the event Contractor 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 this Agreement upon the occurrence of such event.

All policies shall be with 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.

PROPOSAL INSTRUCTIONS

- All prices and notations must be typed or written in ink.
- Unless otherwise noted, prices shall remain firm for 180 days after the closing date of the RFP.
- Proposals must be electronically submitted on the forms provided in this RFP with all pages numbered.
- Additional material may be submitted with the proposal as attachments. Any additional descriptive material that is used in support of any information in your proposal must be referenced by the appropriate paragraph(s) and page number(s).
- Bidders must electronically submit their proposal in Portable Document Format (.pdf) format to dkendig@fresnocountyca.gov no later than the RFP closing date and time as stated on the front of this document. FCERA will not be responsible for and will not accept late proposals due to slow internet connection or incomplete transmissions.
- FCERA will not be held liable for any costs incurred by vendors in responding to this RFP.
- Bidders are instructed not to submit confidential, proprietary, and related information within the request for proposal. If you are submitting trade secrets, it must be electronically submitted in a separate PDF file clearly named "TRADE SECRETS" and marked as Confidential, see Trade Secret Acknowledgement section.
- If a bidder finds any discrepancies or has any questions, submit all inquiries through email to dkendig@fresnocountyca.gov before the Written Questions for RFP Due deadline. The questions and answers will be published on the FCERA website (<https://fresnocountyretirement.org/>) no later than the Posting of Answers to Questions deadline. Any change in the RFP will be made only by written addendum issued by the FCERA. FCERA will not be responsible for any other explanations or interpretations.
- Failure to respond to all questions or to not supply the requested information could result in rejection of your proposal. Merely offering to meet the specifications is insufficient and will not be accepted. Each bidder shall submit a complete proposal with all information requested.
- Proposals received after the closing date and time will NOT be considered.
- Proposals will be evaluated by an evaluation team led by the FCERA. If a proposal does not respond adequately to the RFP or the bidder is deemed unsuitable or incapable of delivering services, the proposal may be eliminated from consideration. Upon review and evaluation, the evaluation team will make the final recommendation to the Retirement Board.
- Appeals must be submitted in writing within seven (7) working days after notification of proposed recommendations for award. A "Notice of Award" is not an indication FCERA's acceptance of an offer made in response to this RFP. Appeals shall be submitted to Fresno County Employees' Retirement Association, Attention: Retirement Administrator, 7772 N. Palm Ave, Fresno, CA 93711 and in Microsoft Word format to dkendig@fresnocountyca.gov. Appeals should address only areas regarding RFP contradictions, procurement errors, proposal rating discrepancies, legality of procurement context, conflict of interest, and inappropriate or unfair competitive procurement grievance regarding the RFP process.

FCERA will provide a written response to the complainant within seven (7) working days unless the complainant is notified more time is required. If the appealing bidder is not satisfied with the decision of the Retirement Administrator, bidder shall have the right to appeal to the FCERA Board of Retirement.

- All communication regarding this RFP shall be directed to Donald Kendig, Retirement Administrator. His contact information is located on the cover page, he should be the primary point of contact for discussions or information pertaining to the RFP. Contact with any other FCERA representative, including member of the Retirement Board, for the purpose of discussing this RFP, its content, or any other issue concerning it, is prohibited unless authorized by the Retirement Administrator. Violation of this clause, by the vendor having unauthorized contact (verbally or in writing) with such other representatives, may constitute grounds for rejection of the vendor's proposal.

The above stated restriction on vendor contact with FCERA representatives shall apply until FCERA has awarded a contract to a vendor, except as follows. First, in the event that a vendor initiates a formal appeal against the RFP, such vendor may contact the Retirement Administrator who manages that appeal. Second, in the event a public hearing is scheduled before the Board of Retirement to hear testimony prior to its approval of a contract, any vendor may address the Board at scheduled Board Meeting.

SCOPE OF WORK

FCERA is seeking a qualified firm with substantial experience advising and representing public pension boards and pension administrations with respect to investment issues. Legal counsel will be expected to provide advice and counsel regarding the matters set forth in Section A, **Investment Matters**, listed in this RFP. A summary of FCERA's investments for the year ended June 30, 2023, is attached as **Attachment A**.

The selected firm is expected to provide services in investment related areas, including but not limited to the following:

A. **Investment Matters:**

- Review, negotiate, and assist in drafting and/or restricting alternative investment agreements, including but no limited to, agreements related to private equity, private credit, real estate direct funds, fund-of-funds, subscription agreement, general partnership agreements, limited partnership agreements, and other comingled fund arrangements.
- Draft and negotiate agreements for public market investments, transition managers, custodial bank, benefit distribution providers, and other miscellaneous investment-related matters.
- Advise, draft, and negotiate investment advisory agreements, supplemental or secondary agreements, and side letter agreements.
- Advise on the legal structure of investment funds, fund-of-funds, limited partnerships, and on-show and off-shore investments.
- Advise FCERA and the Board regarding SEC, CFTC, and other domestic, state, international and foreign regulatory agencies with compliance and oversight responsibilities in each of the above investment categories.
- Review amendments to investment agreements when a legal opinion is required.
- Provide advice and counsel regarding standard and non-standard terms, and which terms should be accepted or negotiated.
- Advise staff regarding Most Favored Nation (MFN) elections.
- Advise staff on Federal, State, and investment policy compliance issues.
- Provide legal counsel as requested for other investment-related matters, including any disputes that might arise out of FCERA's investments, which may include litigation.
- Appear at Board meetings and make presentations to the Board, as needed and when requested by staff.

The firm selected will perform legal due diligence and will work with FCERA's general counsel and other legal representatives and advisors in connection with projects assigned by the Retirement Administrator. The selected firm will also work with FCERA's investment consultants and FCERA staff to ensure appropriate legal review of all investments and work with counsel practicing in the investment jurisdiction to ensure compliance with local regulations and foreign government regulations. FCERA will require the selected firm to prepare and deliver hard budgets to FCERA in advance of all legal work that will result in fees of FCERA of more than \$20,000.

SCOPE OF WORK PROPOSAL REQUIREMENTS

Pursuant to instructions included in this RFP, Proposal Content Requirements, a bidder's proposal shall include a response to the following: Proposers are required to submit their fees. Fees, as submitted must include all costs associated with the consulting services, including reporting, communications, travel, etc. If awarded a contract as a result of this RFP, the successful proposer's fees as proposed shall remain firm for 180 days after the closing date of the RFP and shall be **guaranteed** for the first three years of the contract. If an extension is granted, fees will be subject to renegotiation annually. It is essential that all responding Bidders include and clearly detail all costs, categorization of line items, and/or other related costs associated with your proposal.

FEE PROPOSAL

Please include a Fee Proposal for your services. Fee Proposals must contain the following:

1. For each attorney identified in your response, list the attorney's proposed hourly rate for the three-year period.
2. For each applicable category of billable, non-attorney personnel who will be assigned to the FCERA account, list the proposed hourly rate for the three-year period.
3. Please list your rates for any other potential costs that might be incurred during the term of the contract (e.g., travel fees, research fees, copying fees, etc.).
4. Provide a statement agreeing the billing rates identified in your responses to the preceding questions will be fixed for the three-year term.
5. Acknowledge in writing you have read and understand the FCERA Billing Guidelines, attached to this RFP as **Attachment B**.
6. FCERA expects the lowest rate charged by your firm for its governmental and non-profit clients. If for any reason your firm is unable or unwilling to charge the lowest rate, please provide a response explaining why.

The bidder is welcome to state any special considerations or unique advantages with respect to billing, charging of fees (e.g., "not to exceed" capped fee project budget proposal options), and/or expenses that may differentiate their firm's services from other proposals.

AWARD CRITERIA

All proposals will be evaluated using the same criteria. While cost is important, other factors are also significant, and FCERA may not select the lowest cost proposal. The objective is to choose the proposal that offers the highest quality services and will best achieve FCERA's goals and objectives within a reasonable budget. Evaluations will be based on the criteria listed below:

COST

- As submitted under the "FEE PROPOSAL" section.

CAPABILITY AND QUALIFICATIONS

- Do the service descriptions address all the areas identified in the RFP? Will the proposed services satisfy FCERA's needs and to what degree?
- Does the bidder demonstrate knowledge or awareness of the problems associated with providing the services proposed and knowledge of laws, regulations, statutes, and effective operating principles required to provide this service?
- The amount of demonstrated experience in providing the services desired in a California Retirement Association.

MANAGEMENT PLAN

- Is the organizational plan and management structure adequate and appropriate for overseeing the proposed services?

PROPOSAL CONTENT REQUIREMENTS

It is required that the vendor submit his/her proposal in accordance with the format and instructions provided under this section.

1. RFP PAGE 1 AND ADDENDUM(S) PAGE 1: completed and signed by participating individual or agency.
2. COVER LETTER: A one-page cover letter and introduction including the company name and address of the bidder and the name, address and telephone number of the person or persons to be used for contact and who will be authorized to make representations for the bidder.
 - A. Whether the bidder is an individual, partnership or corporation shall also be stated. It will be signed by the individual, partner, or an officer or agent of the corporation authorized to bind the corporation, depending upon the legal nature of the bidder. A corporation submitting a proposal may be required before the contract is finally awarded to furnish a certificate as to its corporate existence, and satisfactory evidence as to the officer or officers authorized to execute the contract on behalf of the corporation.
3. TABLE OF CONTENTS
4. CONFLICT OF INTEREST STATEMENT: The Contractor may become involved in situations where conflict of interest could occur due to individual or organizational activities that occur within the County of Fresno or FCERA. **The Contractor must provide a statement addressing the potential, if any, for conflict of interest and indicate plans, if applicable, to address potential conflict of interest.** This section will be reviewed by FCERA Board Counsel for compliance with conflict of interest as part of the review process. The Contractor shall comply with all federal, state, and local conflict of interest laws, statutes, and regulations.
5. TRADE SECRET:
 - A. Sign where required.
6. CERTIFICATION – DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS
 - A. Sign where required.
7. REFERENCES: Include a completed Reference List with five (5) clients to serve as a reference for your firm, preferably public pension plans. By providing this information, you consent to and hereby release FCERA from any liability that may arise from contacting your references, communicating with them about your prior engagements, and soliciting an opinion regarding the work performed for them.
8. EXCEPTIONS: This portion of the proposal will note any exceptions to the requirements and conditions taken by the bidder. If exceptions are not noted, FCERA will assume that the bidder's proposals meet those requirements. The exceptions shall be noted as follows:
 - A. Exceptions to General Conditions.
 - B. Exceptions to General Requirements.
 - C. Exceptions to Specific Terms and Conditions.
 - D. Exceptions to Scope of Work and/or Scope of Work Proposal Requirements.
 - E. Exceptions to Proposal Content Requirements.
 - F. Exceptions to any other part of this RFP.

9. VENDOR COMPANY DATA: This section should include:
- A. Identify the firm's background, size, and history pertinent to the requested services.
 - B. Within the last three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? If so, please describe.
 - C. List the names and State Bar numbers of the attorneys who would be assigned to FCERA's account. At least one lead attorney must be licensed in California. Attach as **Addendum A** the curriculum vitae, a short biography, and a summary of each attorney's experience working with public sector clients, particularly public pension funds or retirement systems, and the scope of services the attorney will provide. Indicate the attorneys' state(s) of licensure and associated bar number(s), include a statement that each attorney is currently in good standing with their State Bar.
 - D. List any public pension plan clients that you have gained and public pension plan clients that have terminated within the last five (5) years:
 1. Who the client was
 2. Date of original contract
 3. Contact person and telephone number for agency
 - E. Describe all COMPANY lawsuit(s) or legal action(s) that are currently pending; and any lawsuit(s) or legal action(s) that have been resolved within the last five (5) years:
 1. Location filed, name of court and docket number
 2. Nature of the lawsuit or legal action
 - F. A narrative which demonstrates the vendor's basic familiarity or experience with problems associated with this service/project.
10. SCOPE OF WORK:
- A. Bidders are to use this section to describe the essence of their proposal.
 - B. This section should be formatted as follows:
 1. A general discussion of your understanding of the project, the Scope of Work proposed and a summary of the features of your proposal.
 2. A detailed description of your proposal as it relates to each item listed under the "Scope of Work Proposal Requirements" section of this RFP. Bidder's response should be stated in the same order as are the "Scope of Work Proposal Requirements" items. Each description should begin with a restatement of the "Scope of Work Proposal Requirements" item that it is addressing. Bidders must explain their approach and method of satisfying each of the listed items.
 - C. When reports or other documentation are to be a part of the proposal a sample of each must be submitted. Reports should be referenced in this section and submitted in a separate Addendum entitled "REPORTS."
 - D. A complete description of any alternative solutions or approaches to accomplishing the desired results.

11. FEE PROPOSAL: Quotations should be prepared in the format described in the FEE Proposal section of the RFP. Include details and rates/fees for all services, materials, equipment, etc. to be provided or optional under the proposal.
12. CHECK LIST

QUIET PERIOD

FCERA Policy prohibits direct contact between prospective service providers and FCERA Board members, consultants, or staff during this RFP process, except through the point of contact named herein as a part of the question and answer process. This does not include communication with any of FCERA's incumbent service providers for normal business not related to this RFP selection process. From the date of release of this RFP until a firm is selected and a contract is awarded, all contacts and communications regarding this RFP are restricted to the question and answer process. Exceptions include 1) communications with FCERA staff during negotiations, presentations, contract award and execution, or 2) cordialities should paths cross at events where attendance by potential service providers and FCERA Board members can be expected.

Violation of these conditions may result in rejection of a firm's proposal.

TRADE SECRET ACKNOWLEDGMENT

Each proposal submitted is public record under the California Public Records Act (Cal. Gov. Code, secs. 7920.000 and following) and is therefore open to inspection by the public as required by Section 7922.525 of the California Government Code. Any contract resulting from this RFP will also be open to public inspection under Section 7922.525. This section generally states that "every person has a right to inspect any public record". FCERA will not exclude any proposal or portion of a proposal from treatment as a public record except information that it is properly submitted as a "trade secret" as defined under the law and determined by FCERA to be a "trade secret" (if not otherwise subject to disclosure, as stated below). Notwithstanding the forgoing, FCERA makes no representation, warranty, or guarantee that it will withhold from disclosure any information submitted by a vendor, whether or not the vendor marks such information as "trade secret," and FCERA retains the full right to determine, in its sole discretion, whether or not information is disclosed or not disclosed in response to a request from the public. Information submitted as "proprietary", "confidential" or under any other terms that might state or suggest restricted public access will not be excluded from treatment as public record.

Information marked as "trade secret" by a vendor must be submitted in a separate PDF file named "Trade Secret" and marked as "Confidential". Bidders must include a clear and concise statement that sets out the reasons for confidentiality in accordance with the legal definition of "trade secret." Examples of information not considered trade secrets are pricing, cover letter, promotional materials, references, and the like.

In the event FCERA receives a request, demand, or becomes party to a legal action by any person or entity seeking access to information marked as "trade secret" by a vendor, FCERA will inform the bidder of such request, demand, or legal action, and the bidder shall defend, indemnify, and hold harmless FCERA, including its officers and employees, against any and all claims, liabilities, damages, or costs or expenses, including attorney's fees and costs, relating to such request, demand or legal action, seeking access to the "trade secret" information. The provisions of this paragraph are effective upon vendor's submission of a proposal to FCERA in response to this RFP and shall survive the expiration or termination of this RFP and remain effective without regard to whether or not vendor is awarded a contract by FCERA.

FCERA shall not in any way be liable or responsible for the disclosure of any proposals or portions thereof.

Bidders are advised that FCERA does not wish to receive trade secrets and that bidders are not to supply trade secrets unless they are absolutely necessary.

I have read, understand, and agree to the above "Trade Secret Acknowledgment."

BIDDER MUST CHECK ONE OF THE FOLLOWING:

Has bidder submitted certain bid information that is a "trade secret," as defined by State law, and in compliance with requirements of this Trade Secrets Acknowledgment?

By marking "NO", bidder does not claim any confidentiality of any bid information submitted to the FCERA.

YES NO

ACKNOWLEDGED AND AGREED BY BIDDER:

Signature

Date

Print Name

Title

DISCLOSURE – CRIMINAL HISTORY & CIVIL ACTIONS

In their proposal, the bidder is required to disclose if any of the following conditions apply to them, their owners, officers, corporate managers, or partners (hereinafter collectively referred to as “Bidder”):

1. Within the three-year period preceding the proposal, they have been convicted of, or had a civil judgment rendered against them for:
 - A. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
 - B. Violation of a federal or state antitrust statute;
 - C. Embezzlement, theft, forgery, bribery, falsification, or destruction of records; or,
 - D. False statements or receipt of stolen property.
2. Within a three-year period preceding their proposal, they have had a public transaction (federal, state, or local) terminated for cause or default.

Disclosure of the above information will not automatically eliminate a Bidder from consideration. The information will be considered as part of the determination of whether to award the contract and any additional information or explanation that a Bidder elects to submit with the disclosed information will be considered. If it is later determined that the Bidder failed to disclose required information, any contract awarded to such Bidder may be immediately voided and terminated for material failure to comply with the terms and conditions of the award.

Any Bidder who is awarded a contract must sign an appropriate Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Additionally, the Bidder awarded the contract must immediately advise FCERA in writing if, during the term of the agreement: (1) Bidder becomes suspended, debarred, excluded or ineligible for participation in federal or state funded programs or from receiving federal funds as listed in the excluded parties list system (<http://www.sam.gov>); or (2) any of the above listed conditions become applicable to Bidder. The Bidder will indemnify, defend, and hold FCERA harmless for any loss or damage resulting from a conviction, debarment, exclusion, ineligibility, or other matter listed in the signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this proposal, the prospective primary participant is providing the certification set out below:

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the association's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the association determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
3. The prospective primary participant shall provide immediate written notice to the association if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

CERTIFICATION

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it, its owners, officers, corporate managers, and partners:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature: _____

Date: _____

(Printed Name & Title)

(Name of Agency or Company)

REFERENCE LIST

VENDOR MUST COMPLETE AND RETURN WITH REQUEST FOR PROPOSAL

Firm: _____

Provide a list of at least five (5) customers for whom you have recently provided similar services. If you have held a contract for similar services with FCERA within the past seven (7) years, list FCERA as one of your customers. Please list the person most familiar with your contract. Be sure to include all requested information.

Reference Name: _____ Contact: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone No.: (_____) _____ Project Date: _____
 Service Provided: _____

Reference Name: _____ Contact: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone No.: (_____) _____ Project Date: _____
 Service Provided: _____

Reference Name: _____ Contact: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone No.: (_____) _____ Project Date: _____
 Service Provided: _____

Reference Name: _____ Contact: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone No.: (_____) _____ Project Date: _____
 Service Provided: _____

Reference Name: _____ Contact: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone No.: (_____) _____ Project Date: _____
 Service Provided: _____

Failure to provide a list of at least five (5) customers may be cause for rejection of this RFP.

CHECKLIST

This Checklist is provided to assist vendors in the preparation of their RFP response. Included are important requirements the bidder is responsible to submit with the RFP package in order to make the RFP compliant.

Check off each of the following (if applicable):

1. _____ Signed cover page of the Request for Proposal (RFP)
2. _____ Check <https://fresnocountyretirement.org/> for any addenda
3. _____ Signed cover page of each Addendum
4. _____ Provide a Conflict of Interest Statement
5. _____ Signed *Trade Secret Form* as provided with this RFP (Trade Secret Information, if provided, must be electronically submitted in a separate PDF file and marked as Confidential)
6. _____ Signed *Criminal History Disclosure Form* as provided with this RFP
7. _____ The completed *Reference List* as provided with this RFP
8. _____ Indicate all bidder exceptions to FCERA's requirements, conditions, and specifications as stated within this RFP
9. _____ Bidder's proposal, in PDF format, electronically submitted to Donald Kendig at dkendig@fresnocountyca.gov

Return Checklist with your RFP response.

ATTACHMENT A – FCERA INVESTMENTS SUMMARY

As of June 30, 2023

	Percentage of Portfolio	Market Value
Domestic Equity	28.0%	\$1,705,279,719
Northern Trust MSCI US Index	16.1%	\$982,142,366
MSCI Factor Mix Index	3.2%	\$195,202,072
T. Rowe Price Large Cap Growth	3.0%	\$183,302,823
PIMCO StocksPLUS Small Fund	5.7%	\$344,614,888
International Equity	19.6%	\$1,196,267,119
Northern Trust MSCI World Ex-US Index	6.5%	\$393,991,782
Artisan International Growth	3.7%	\$226,849,135
PIMCO RAE International	4.2%	\$253,940,979
Mondrian Emerging Markets	2.6%	\$160,165,837
Baillie Gifford Emerging Markets	2.6%	\$161,319,386
Fixed Income	20.9%	\$1,270,921,872
Western Asset Management Core Bond	10.3%	\$629,589,322
PGIM Strategic Credit	5.4%	\$326,504,682
HPS Institutional Credit	4.3%	\$261,275,273
RBC Access Capital	0.9%	\$52,767,818
Real Estate	8.9%	\$542,152,709
Invesco Core Real Estate	3.2%	\$194,538,676
Harrison Street	2.1%	\$125,265,146
Kennedy Wilson Real Estate Fund V	0.0%	\$1,315,307
Gerding Edlen Green Cities III	0.2%	\$13,096,566
Invesco Value-Add Fund V	0.5%	\$30,841,561
Kennedy Wilson Real Estate Fund VI	0.3%	\$18,838,681
Ares US Real Estate Opportunity Fund III	0.7%	\$43,104,089
Oaktree Real Estate Opportunities Fund VIII, L.P.	0.8%	\$46,001,251
PCCP Equity IX	0.6%	\$34,603,953
Invesco Real Estate VI	0.4%	\$21,465,108
Ares US Real Estate Fund X	0.2%	\$13,082,371
Infrastructure	4.9%	\$299,746,498
IFM Infrastructures	4.9%	\$299,746,498
Private Credit	7.4%	\$450,398,982
EQT European Special Situations Debt	0.3%	\$15,357,573
OSHA Strategic Credit Fund II	0.4%	\$21,388,846
TSSP Adjacent Opportunities Partners	0.4%	\$26,755,762
GSO European Senior Debt	0.2%	\$10,256,680
CVI Credit Value Fund III	0.1%	\$5,824,063
Colony Distressed Credit III	0.0%	\$2,931,637
Oaktree Opportunities IX	0.2%	\$12,337,655
KKR Mezzanine Partners	0.1%	\$4,799,250
Lone Star Fund IV	0.0%	\$72,971
TCG BDC II - Carlyle	0.3%	\$20,268,009
CPC V - Carlyle	2.9%	\$174,097,710
AlpInvest FC Credit Fund - Carlyle	0.9%	\$55,667,111
ACORE Capital Special Situations	0.3%	\$20,265,869
Arbour Lane Credit Opportunity Fund III (A)	0.3%	\$16,163,825
Barings Global Private Loan Fund 4 SCSp	0.5%	\$30,566,681
Fortress Lending Fund III (D)	0.3%	\$17,917,490
ICG Senior Debt Partners 5-D (US Leveraged) SCSp	0.0%	\$1,446,989
Whitehorse Liquidity Partners V LP	0.2%	\$9,705,187

	Percentage of Portfolio	Market Value
Private Equity	8.2%	\$497,676,052
Blackstone Capital Partners IV, L.P.	0.0%	\$67,384
Hamilton Lane Private Equity Fund IX L.P.	1.4%	\$84,076,805
Hamilton Lane Private Equity Fund VI, LP	0.1%	\$7,306,048
Horsley Bridge XI Growth Buyout L.P.	0.6%	\$36,368,181
Landmark Equity Partners XIV, L.P.	0.0%	\$2,043,517
New Mountain Partners III, L.P.	0.0%	\$716,643
NMP III Continuation Fund, L.P.	0.0%	\$2,928,178
Warburg Pincus Equity Partners, L.P.	0.0%	\$86,385
Warburg Pincus Private Equity X, L.P.	0.0%	\$457,656
Warburg Pincus Private Equity XII, L.P.	0.5%	\$33,006,702
Altaris Health Partners V, L.P.	0.1%	\$6,155,646
Aurora Equity Partners VI, L.P.	0.1%	\$6,444,825
Avista Capital Partners IV, L.P.	0.1%	\$5,973,360
Avista Capital Partners V, L.P.	0.2%	\$12,149,887
Avista Healthcare Partners VI, L.P.	0.0%	\$632,030
Bridgepoint Development Capital IV, L.P.	0.0%	\$2,999,694
Cinven Seventh Fund	0.1%	\$8,194,370
CVC Capital Partners VIII, L.P.	0.1%	\$6,159,270
Gridiron Capital Fund IV, L.P.	0.3%	\$17,390,112
Gridiron Capital Fund V, L.P.	0.0%	\$2,532,351
H.I.G. Growth Buyouts & Equity Fund III, L.P.	0.1%	\$4,744,050
Hamilton Lane Secondary Fund IV, L.P.	0.7%	\$40,062,740
HGGC Fund IV, L.P.	0.1%	\$6,839,912
Insight Partners XI, L.P.	0.2%	\$14,301,334
Insight Partners XII, L.P.	0.2%	\$13,038,670
JFL Equity Investors V, L.P.	0.2%	\$12,686,189
K4 Private Investors, L.P.	0.1%	\$7,749,430
K5 Private Investors, L.P.	0.1%	\$6,001,376
Keensight Nova VI SLP	0.0%	\$2,866,015
Kelso Investment Associates X, L.P.	0.2%	\$12,032,843
NewQuest Asia Fund IV, L.P.	0.2%	\$9,837,077
Oak Hill Capital Partners V, L.P.	0.2%	\$12,212,194
Oak Hill Capital Partners VI, L.P.	0.0%	\$2,034,942
Platinum Equity Capital Partners V, L.P.	0.2%	\$13,574,365
Platinum Equity Capital Partners VI, L.P.	0.0%	\$902,070
Platinum Equity Small Cap Fund, L.P.	0.2%	\$9,457,147
SK Capital Partners Fund V, L.P.	0.2%	\$12,447,677
SK Capital Partners VI, LP	0.1%	\$5,655,620
Sterling Group Foundation Fund, L.P.	0.0%	-\$118,179
Sterling Group Partners V, L.P.	0.1%	\$6,258,203
STG Allegro Fund, L.P.	0.0%	\$1,032,201
STG VI, L.P.	0.2%	\$9,216,521
Stripes VI, LP	0.1%	\$4,614,014
TCV XI, L.P.	0.1%	\$4,574,848
The Resolute Fund V, L.P.	0.3%	\$19,935,483
Thomas H. Lee Equity Fund VIII, L.P.	0.1%	\$6,303,457
TPG Partners VIII, L.P.	0.2%	\$12,038,224
Verdane Capital X AB	0.2%	\$10,091,034
Verdane Capital XI	0.0%	\$792,112
Verdane Edda III	0.0%	\$31,195
ZMC III, L.P.	0.1%	\$5,806,043
Custodied Cash	1.3%	\$78,256,135
County Cash	0.1%	\$5,305,158
Transition	0.0%	\$30,024
Parametric Overlay	0.7%	\$43,756,117
Total Fund	100.0%	\$6,089,790,386

ATTACHMENT B – FCERA BILLING GUIDELINES

By responding to this RFP, Investment Counsel ultimately retained by FCERA agrees to comply with the following billing guidelines:

1. **Monthly Invoices:** The Firm shall send FCERA a monthly invoice, setting forth the fees for services performed and other expenses incurred during the previous billing period, except for “not to exceed” (capped fee) projects, which may be billed upon completion.
2. **Staffing:** The Firm agrees that, in most instances, only those attorneys and other non-attorney staff members who have been identified in the Firm’s RFP response as being assigned to the FCERA account (FCERA Team) and who have been approved by FCERA shall incur expenses for work on the FCERA account. FCERA reserves the right to continued approval of the composition of the FCERA Team and to withdraw or withhold consent to any existing or proposed FCERA Team member.
3. **Hourly Increments:** Firm shall charge hourly rates in increments of one-tenth (.1) of an hour.
4. **Duplicate Billing:** The Firm will not charge for, and FCERA will not be responsible to pay for, duplicate work performed by staff at the same professional level. The Firm will make the most efficient use of its personnel to minimize charges incurred on FCERA’s behalf. For example, the Firm should not have two attorneys appearing on the same matter, reviewing the same documents, or reviewing each other’s work without prior consent of FCERA. FCERA will allow reasonable expenses for a senior attorney’s review of less experienced counsel or non-lawyer staff over which the attorney must exercise supervision.
5. **Itemization of Charges Billed:** The Firm will itemize each service performed separately. Group itemization is not acceptable. Each itemized billing shall contain the following in support of the amount charged.
 - a. The identity of the person performing the work;
 - b. The amount of time expended for such work; and,
 - c. A sufficient description of the work performed to allow FCERA to identify the scope of the work and the reasonableness of the charges.
6. **Out of Town Travel:** All out of town travel and estimated expenses therefore must be approved by FCERA in advance. FCERA will only be charged and is only responsible to pay for reasonable costs of transportation, meals, lodging and other necessary out-of-town travel expenses incurred by the Firm’s personnel for travel approved by FCERA.
7. **Cost and Expenses:** FCERA will pay reasonable “overhead” costs and expenses incurred by the Firm at the rate identified in the Firm’s RFP response, except to the extent that the Firm has indicated such overhead costs are a component of its hourly fee. Such overhead costs and expenses commonly include long distance phone calls, messenger overnight mail and other similar delivery fees, and postage. FCERA will not pay costs and expenses incurred for items other than reasonable overhead costs unless FCERA has pre-approved such costs and expenses.

INVESTMENT COUNSEL LEGAL SERVICES AGREEMENT

THIS INVESTMENT COUNSEL LEGAL SERVICES AGREEMENT (this “**Agreement**”) is made and entered into on _____, 2024 (the “**Effective Date**”), by and between the FRESNO COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION, a local public agency (“**FCERA**”), and _____, a law firm with offices in _____ and operations within the state of California (“**LAW FIRM**”). FCERA and LAW FIRM are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. WHEREAS, FCERA is formed, operates, and organized pursuant to the County Employees Retirement Law of 1937 (Gov. Code, § 31450 et seq.), and FCERA is administered by the Board of Retirement (“**Board**”);

B. WHEREAS, FCERA engaged a competitive procurement to retain a law firm or law firms to perform investment counsel legal services for FCERA, and LAW FIRM provided a proposal to FCERA in response to such procurement, which is attached hereto and incorporated herein as **Exhibit A**; and,

C. WHEREAS, as a result of this procurement and by this Agreement, FCERA and the Board desire to engage LAW FIRM to perform investment counsel legal services on behalf of FCERA, and LAW FIRM desires to perform such services on behalf of FCERA, and has represented to FCERA that it is qualified to perform the aforesaid legal services.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions set forth in this Agreement, including the above Recitals which are incorporated into and are part of this Agreement, the Parties hereby agree as follows:

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

(a) “**Agents**” means any employees, agents, or representatives of LAW FIRM acting in connection with this Agreement.

(b) “**Agreement**” has the meaning given in the preamble of this Agreement.

(c) “**Effective Date**” has the meaning given in the preamble of this Agreement.

(d) “**Board**” has the meaning given in the Recitals of this Agreement.

(e) “**LAW FIRM**” has the meaning given in the preamble of this Agreement.

(f) “**LAW FIRM’s Project Manager**” has the meaning given in Section 5(a) of this Agreement.

(g) “**Covered Persons**” means FCERA, its trustees, directors, officers, and employees.

(h) “**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.

(i) “**FCERA**” has the meaning given in the preamble of this Agreement.

(j) “**FCERA’s Project Director**” means Donald Kendig, FCERA’s Retirement Administrator, or any successor to the position of FCERA Retirement Administrator, or any individual acting with due authority as the designee of the Retirement Administrator.

(k) “**FCERA Records**” has the meaning given in Section 14(a) of this Agreement.

(l) “**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.

(m) “**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.

(n) “**Scope of Work**” has the meaning giving in Section 2(a) of 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 B** (the “**Scope of Work**”), attached hereto and incorporated herein by reference.

(b) FCERA may request additional services than those set forth in **Exhibit B** from time-to-time during the term of this Agreement. Such requests, and LAW FIRMS’s response to such requests, shall be in writing, signed by both Parties, and shall be subject to the terms and conditions of this Agreement. Each such request and response shall identify, as fully as possible, the scope of the additional services requested by FCERA, including as appropriate, but not limited to, the final deliverables, appropriate time frames in which the deliverables are to be complete, the fees and costs for the deliverables, and the location for the performance of the services.

(c) 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 for a law firm doing business in the legal 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.

(d) Quality of Services. LAW FIRM’s services will meet the requirements and standards set forth in this Agreement, including but not limited to the standards described in **Exhibit B**. 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.

(e) LAW FIRM's Availability. LAW FIRM and FCERA's Project Director will agree in advance on LAW FIRM's availability to perform the Scope of Work. Services and work provided by the LAW FIRM at FCERA's request under this Agreement and **Exhibit B** 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 Scope of Work set forth in **Exhibit B**. 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.

(f) 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. FCERA's Project Director. FCERA's Project Director, shall, on a regular basis, interface with LAW FIRM's Project Manager. FCERA's Project Director is responsible for:

(i) Providing overall management and coordination of this Agreement acting as liaison for FCERA;

(ii) Providing coordination of the provisions and objectives of this Agreement;

(iii) Approving invoices submitted prior to payment for work performed and deliverables delivered in accordance with this Agreement, which approval will not be unreasonably withheld;

(iv) Providing direction to LAW FIRM in all matters relating to policy, information requirements, and procedural requirements; and,

(v) Providing or making sure data, information and materials requested by LAW FIRM are provided to LAW FIRM on a timely basis.

5. LAW FIRM's Project Manager and Personnel.

(a) LAW FIRM's Project Manager is _____ ("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:

(i) Is responsible for the LAW FIRM's day-to-day activities related to the work to be performed under this Agreement and **Exhibit B**;

(ii) Has full authority to act for LAW FIRM on all matters relating to the daily operation of this Agreement; and,

(iii) 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.

(b) **Additional Law Firm Personnel.** 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. 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.

6. Compensation and Payment.

(a) **Compensation.** FCERA shall compensate LAW FIRM for services rendered under this Agreement as set forth in **Exhibit C** (Compensation), attached hereto and incorporated herein by reference. Such compensation may be made as part of an agreed upon hourly charge or using a "not-to-exceed" pricing structure expressly agreed to in advance by FCERA, as discussed below in Section 6(b).

(b) **Alternative Compensation.** In lieu of a traditional hourly billing arrangement, FCERA and LAW FIRM may negotiate a not-to-exceed pricing structure for certain investments. The not-to-exceed fee will include all necessary professional legal services with respect to FCERA's investments, including but not limited to the services listed below.

(i) Review all fund documents.

(ii) Review all memoranda from FCERA's investment consultant regarding the proposed investment.

(iii) Prepare a briefing memorandum highlighting the key terms as set forth in the fund documents.

(iv) Confer as often as needed with FCERA's staff and investment consultant.

(v) Review FCERA's investment guidelines and analyze the fund's appropriateness in light of them.

(vi) Draft a side letter which seeks to bind the proposed investment manager/general partner to FCERA's investment standards.

(vii) Negotiate the final terms of the side letter with the proposed investment manager and/or general partner and its outside counsel.

Under this alternative compensation structure, before beginning work on an engagement, LAW FIRM will provide a quote based on the particulars of the investment. The price quote may also address other investment structures (e.g., separately managed accounts which use FCERA's model agreement). If LAW FIRM anticipates exceeding an agreed-upon estimate, LAW FIRM shall advise FCERA of that fact and shall not exceed the estimate without FCERA's written consent to the cost increase.

(c) 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, unless otherwise provided for in **Exhibit C**. LAW FIRM's expenses are included in the compensation 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.

(d) Additional Compensation. Except as expressly provided in **Exhibit B** and **Exhibit C**, LAW FIRM shall neither be entitled to nor receive from FCERA any additional consideration in any form.

(e) 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.

(f) Invoices and Payment. All invoices are to be submitted to FCERA's Project Director as defined in Section 1(j), FCERA, 7772 N Palm Ave, Fresno, CA 93711.

(g) Non-Compensable Services. If LAW FIRM performs any work outside the Scope of Work without FCERA's prior written consent, FCERA shall be under no obligation to compensate LAW FIRM for such work and Likewise LAW FIRM will have no claim against FCERA for such work.

7. **Term and Termination.**

(a) General Term. Subject to the termination provisions in this Section, the term of this Agreement begins on the Effective Date and based on successful completion of the immediate past year's services shall continue for three (3) years from the Effective Date. Upon mutual agreement of the Parties, the Parties may extend this Agreement twice for up to one (1) year per extension. In no event, however, shall this Agreement be effective for more than five (5) consecutive years from the Effective Date without the express approval of the Board. 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 herein, subject to any applicable setoffs. FCERA's termination of this Agreement under this Section 7 shall not be construed as 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: (i) bankruptcy or insolvency of either Party; (ii) sale of LAW FIRM's business; (iii) cancellation of insurance required under the terms of this Agreement; (iv) 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; (v) if LAW FIRM materially breaches any of the obligations contained in Sections 11 and 20; (vi) 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 (vii) 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 acts of God, acts of a 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 beyond the control and without the fault or negligence of LAW FIRM that causes LAW FIRM to fail to perform its obligations hereunder. In every case of force majeure the failure to perform must be beyond the control and without the fault or negligence of LAW FIRM.

(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.

(i) Recovery of Reasonable Damages Upon Default. If FCERA terminates this Agreement in whole or in part for default, FCERA is entitled to recover from LAW FIRM all reasonable damages resulting from such default.

(ii) Payment when Terminated for Convenience. If FCERA terminates this Agreement for convenience, FCERA will pay LAW FIRM for work already performed and authorized by FCERA but for which LAW FIRM has not been compensated through the Effective Termination Date.

(iii) 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.

(iv) 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 this Agreement.

8. 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 B 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.

9. Office Space, Supplies, Equipment, Etc. 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 B 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.

10. 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:

(i) General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). 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. If written on a claims form, LAW FIRM will continue to name FCERA as an additional insured or provide an extended two (2) year reporting period commencing upon termination or cancellation of this Agreement.

(ii) 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 (\$1,000,000.00) per incident or occurrence.

(iii) 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.

(iv) Professional Liability. Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) annual aggregate. This insurance shall include liability coverage covering LAW FIRM's liability arising from errors and omissions made directly or indirectly during the duration of this Agreement. This coverage shall be issued on a per claim basis. LAW FIRM 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 this Agreement, one or more policies of professional liability insurance with limits of coverage as specified herein.

(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: (i) 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; (ii) services, products and completed operations of LAW FIRM; (iii) premises owned, occupied or used by LAW FIRM; and (iv) 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) 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.

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

11. Defense and Indemnification.

(a) To the fullest extent permitted by law, LAW FIRM shall indemnify, hold harmless and defend FCERA, its Board and its agents, trustees, directors, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with negligence and/or willful misconduct by LAW FIRM directly or indirectly related to its performance of this Agreement or by 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, trustees, directors, 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.

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

12. 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) 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.

(e) LAW FIRM EXPERIENCE. 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.

(f) RFP. LAW FIRM acknowledges that FCERA is expressly relying on the RFP submitted by LAW FIRM as part of the procurement, and the representations made by LAW FIRM's agents during any oral presentation made before the Board.

13. 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 B, 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 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) 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.

14. 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 (6) 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.

15. Confidentiality; Proprietary Rights

(a) Records. LAW FIRM acknowledges that FCERA is a public agency subject with 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.

16. 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.

17. 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.

18. 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.

19. 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:

Fresno County Employees' Retirement Association
Attention: Retirement Administrator
7772 Palm Ave.
Fresno, CA 93721
Email: FCERAInvestments@fresnocountyca.gov

To LAW FIRM:

Name: [Legal Name]
Attention: [Name]
Address:
City/State/Zip.:
Email(s):

20. 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.

21. 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.

22. Amendment. This Agreement and its exhibits may be modified, amended, changed, added to or subtracted from only with the mutual consent of the Parties hereto and only 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.

23. 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.

24. 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.

25. 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.

26. 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 the Parties consent to such venue and the personal jurisdiction of such courts.

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

28. Partial Invalidity. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall be held—by a court of competent jurisdiction—to be invalid, illegal, or unenforceable, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction is deemed unreasonable by a court of competent jurisdiction.

29. 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.

30. Authority to Execute. Attachments: The following is a list of the attachments incorporated into this Agreement:

Exhibit A – Request for Proposal and LAW FIRM’s Proposal

Exhibit B – Scope of Work

Exhibit C – Compensation

31. 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.

“FCERA”

“LAW FIRM”

Fresno County Employees’ Retirement Association

[Legal Name]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

LAW FIRM'S PROPOSAL