

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: CEO-Risk Management Division

BOARD AGENDA # \*B-3

Urgent

Routine

AGENDA DATE September 16, 2014

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of a Professional Services Agreement between Stanislaus County and the Hyas Group, LLC for Deferred Compensation Consulting Services

STAFF RECOMMENDATIONS:

1. Approve the professional services agreement between Stanislaus County and the Hyas Group for deferred compensation consulting services.
2. Authorize the County Purchasing Agent to sign the professional services agreement, and amendments to the agreement, with the Hyas Group.

FISCAL IMPACT:

The County recently completed a Request for Proposal (RFP) process to seek proposals from qualified and experienced organizations to provide comprehensive consulting services for the County's Deferred Compensation Program. The RFP was initiated as a result of the County approaching the end of a multi-year contract with Arnerich Massena & Associations, Inc. (Arnerich). The RFP was issued on

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2014-476

On motion of Supervisor Monteith, Seconded by Supervisor Withrow  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: Elizabeth A. King  
ELIZABETH A. KING, Assistant Clerk

File No.

**FISCAL IMPACT: (Continued)**

April 10, 2014, and through an extensive evaluation process, the Hyas Group was selected as the most qualified proposer.

The proposed professional services agreement with the Hyas Group supports the County Deferred Compensation Committee (Committee) in making fiduciary decisions regarding the administration of the Stanislaus County Deferred Compensation Plan and is included in the Risk Management – Other Employee Benefits Budget, an Internal Service Fund. The proposed agreement with the Hyas Group provides for an initial term from September 16, 2014 through June 30, 2017. Thereafter, the parties, by mutual written agreement, may renew the agreement for two one-year terms, but in no case shall the renewal extend beyond June 30, 2019. The costs associated with each year of the agreement are outlined in the following table:

<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>TOTAL</b>
\$30,875	\$41,000	\$43,000	\$45,000	\$47,000	\$206,875

Under Exhibit A of the agreement, the compensation provision provides for payments to be on a tri-annual fiscal year basis, which corresponds with Committee meetings. The first payment is prorated to account for a September 16, 2014 start date, which adjusts the first year amount of the contract to \$30,875. Funds for the first year of the agreement (Fiscal Year 2014-2015) were included in the current budget. Funding for future years of this agreement will be budgeted on an annual basis. Further, there is an additional cost of up to \$35,000 if the County utilizes the Hyas Group to manage a Request for Proposal (RFP) process for deferred compensation plan provider services. All costs for Deferred Compensation Consulting Services will continue to be reimbursed through the use of administrative investment fees provided by the deferred compensation provider Mass Mutual. There is no General Fund impact to the recommended contract as proposed.

**DISCUSSION:**

The Committee is responsible for administering the County’s Deferred Compensation Plan, which consists of approximately \$153,013,036 in total plan assets and over 3,800 plan participants as of the date of this report. Currently, the Committee is comprised of the following members:

- Stan Risen – Chief Executive Officer
- John Doering – County Counsel
- Jody Hayes – Assistant Executive Officer
- Lauren Klein – Auditor / Controller
- Donna Riley – General Services Agency Assistant Director

Approval of a Professional Services Agreement between Stanislaus County and the Hyas Group, LLC for Deferred Compensation Consulting Services

Page 3

To support the Committee with its administrative and fiduciary responsibilities over the Deferred Compensation Plan, the County contracts with a qualified and experienced Deferred Compensation Consultant. Arnerich Massena served as the Committee's consultant from January 1, 2009 to June 30, 2014 with an annualized contract value of \$35,200 per year in the last year of the agreement.

In anticipation of the expiration of this contract, the General Services Agency Purchasing Division (GSA) issued Request for Proposal 14-31 MP Consultant Services for Deferred Compensation Committee (RFP). The RFP was issued on April 10, 2014 and sent electronically to 39 vendors, 23 of which downloaded the RFP.

The RFP closed on April 21, 2014 and GSA received complete responses from 2 vendors, listed below.

- Hyas Group, LLC of Portland Oregon; and
- Milliman, Inc., of San Francisco, California.

Both of the proposers met the minimum qualifications set forth in Phase I of the Evaluation Phase, which included a financial review. A committee of three evaluators was selected to further evaluate the proposals. The Evaluation Committee included a member of the Deferred Compensation Committee and representatives from the County Auditor's office and County Risk Management department.

Phase II, completed by the Evaluation Committee, consisted of a review and evaluation of each proposer's response, qualification and general understanding of the project with a total of 100 points possible. Proposers needed to score at least 75 of the 100 available points in order to pass on to Phase III. The scores of each member of the Evaluation Committee were averaged to determine the actual Phase II score for each finalist. Both proposers scored above 75 and passed on to Phase III.

In Phase III, the pricing proposals submitted by each proposer were evaluated by GSA. Price was evaluated based upon a weighted average, with the lowest price assigned 100% of the 100 points possible. In Phase IV, the Evaluation Committee conducted reference checks for both proposers. A minimum score of 25 of the 35 available points were needed in order to pass on to the final phase of the evaluation process. The scores of each member of the Evaluation Committee were averaged to determine the actual Phase IV score for each finalist, and both proposers passed on to Phase V.

Interviews and oral presentations were conducted in Phase V of the evaluation process, with a total of 65 points available. The Evaluation Committee interviewed the two proposers and the scores of each member of the Evaluation Committee were averaged to determine the actual Phase V score for each finalist.

Approval of a Professional Services Agreement between Stanislaus County and the Hyas Group, LLC for Deferred Compensation Consulting Services

Page 4

The award of the contract was made to the vendor whose proposal best met the criteria set forth in the RFP and provides the best value to the County, with price and all other factors considered. The Evaluation Committee made this determination by adding the scores from Phases II through V for both proposers. The final scores are as follows:

<b>Evaluation Phase</b>	<b>Total Points Available</b>	<b>Hyas Group</b>	<b>Milliman</b>
Phase I	Pass/Fail	Pass	Pass
*Phase II	*100	89.7	78.7
Phase III	100	100.0	71.3
**Phase IV	**35	34.3	29.0
Phase V	65	62.7	54.3
<b>Total Points</b>	<b>300</b>	<b>286.7</b>	<b>233.3</b>

*\* Needed 75 of 100 points to pass*

*\*\*Needed 25 of 35 points to pass*

As shown above, Hyas Group, LLC received the highest combined score with 286.7 points out of a total possible 300 points. On July 2, 2014 GSA issued a Notice of Intended Award to the Hyas Group, LLC and Notices of Non-Award to the other proposer. No letter of protest was received during the five-day protest period of the RFP process.

The proposed agreement provides for an initial three year term from September 16, 2014 through June 30, 2017. Thereafter, the parties, by mutual written agreement, may renew the agreement for two one-year terms, but in no case shall the renewal extend beyond June 30, 2019. The costs associated with each year of the agreement, including the two one-year extensions, and any RFP services are outlined in the Financial Impact section of this report for a total cost of \$241,875.

**POLICY ISSUE:**

Approval of the professional services agreement between Stanislaus County and the Hyas Group, LLC for deferred compensation consulting services supports the Board's priority of Efficient Delivery of Public Services.

**STAFFING IMPACT:**

There are no staffing impacts associated with this report. Staff from the Chief Executive Office, Risk Management Division, and the Deferred Compensation Committee will continue to work closely with contracted Deferred Compensation Consultants to provide ongoing management and oversight of the County's Deferred Compensation Program.

**CONTACT PERSON:**

Paul Loehr, Benefits Manager. Telephone: (209) 525-5718.

**AGREEMENT  
FOR  
PROFESSIONAL SERVICES**

This Agreement for Professional Services is made and entered into by and between the County of Stanislaus ("County") and the Hvas Group, an Oregon Limited Liability Corporation (LLC), ("Consultant"), as of September 16, 2014 (the "Agreement").

**Introduction**

WHEREAS, the County has a need for qualified and experienced deferred compensation consultant services;

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services; and

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

**Terms and Conditions**

1. **Scope of Work**

1.1 The Consultant shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant and not the County.

## 2. Consideration

2.1 The Consultant shall be compensated on either a time and materials basis or a lump sum basis, as provided in Exhibit A attached hereto.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the County with a tri-annual statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

## 3. Term

3.1 The terms of this Agreement shall be from September 16, 2014 through June 30, 2017 unless terminated pursuant to sections 3.2, 3.3, or 3.4 of this Agreement. This Agreement will not automatically renew but may be renewed for two (2) one-year terms by mutual written agreement of the parties. In no case shall the renewal extend beyond June 30, 2019.

3.2 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.

3.3 The County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

#### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant 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 Consultant at no expense to the County.

#### 5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

#### 6. Insurance

6.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. 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 Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents or representatives 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 and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by applicable law.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant 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 Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

6.4 The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees.

6.6 The Consultant'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.

6.7 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 County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County 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.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-:VII; 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.

6.9 Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. 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 County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Consultant or Consultant'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, Consultant's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

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

7.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

## 8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Consultant. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this

Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. 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 Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.7 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

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

8.9 Proxy Voting. Consultant does not exercise proxy voting authority over client securities. The obligation to vote client proxies at all times rests with Client. However, Client is not precluded from contacting Consultant for advice or information about a particular proxy vote. However, Consultant will not be deemed to have proxy voting authority as a result of providing such advice to Client. Should Consultant inadvertently receive proxy information for a security held in the Plan's account, Consultant will immediately forward such information to Client, but will not take any further action with respect to the voting of such proxy. Upon termination of this Agreement, Consultant will make a good faith and reasonable attempt to forward proxy information inadvertently received by Consultant on Client's behalf to the forwarding address provided by Client.

8.10 Risk. Client recognizes that there may be loss or depreciation of the value of any investment due to the fluctuation of market values. Client represents that no party to this Agreement has made any guarantee, either oral or written, that the Plan's investment objectives will be achieved. Consultant will not be liable for any error in judgment and/or for any investment losses in the absence of malfeasance, negligence or violation of applicable law. Nothing in this Agreement will constitute a waiver or limitation of any rights which Client may have under applicable state or federal law, including without limitation state and federal securities laws.

8.11 Acknowledgement of Receipt of Part 2 Form ADV. Client acknowledges that it has received and has had an opportunity to read Consultant's firm brochure (Form ADV, Part 2A) and applicable brochure supplements (Form ADV, Part 2B) prior to, or at the time of, entering into this Agreement.

8.12 Acknowledgement of Receipt of Privacy Notice. Client acknowledges that it has received and has had an opportunity to read Consultant's privacy notice prior to, or at the time of, entering into this Agreement.

## 9. Records and Audit

9.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, 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.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

During the performance of this Agreement, Consultant 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 disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant 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 County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

## 12. Assignment

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

## 13. 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.

14. 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 Consultant or County 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 County: Stanislaus County Purchasing Agent  
1010 10<sup>th</sup> Street, Suite 5400  
Modesto, CA 95254

To Consultant: The Hyas Group, LLC  
108 NW 9<sup>th</sup> Avenue, Suite 203  
Portland, OR 97209

15. Conflicts

Consultant agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. 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 county 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.

17. Amendment

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

18. 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.

19. 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.

20. 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.

21. Governing Law and Venue

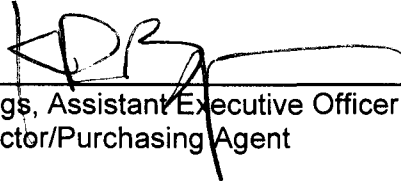
This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

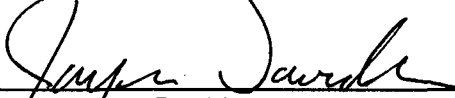
*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties or their duly authorized representatives have executed this Agreement on the day and year first hereinabove written.

**COUNTY OF STANISLAUS**

**HYAS GROUP, LLC**

By:   
Keith D. Boggs, Assistant Executive Officer,  
GSA Director/Purchasing Agent

By:   
Name: Jayson Davidson  
Title: Managing Partner, Director of Consulting  
Services

"County"


"Consultant"

APPROVED: BOS Resolution # 2014-476

APPROVED AS TO CONTENT:  
Chief Executive Office, Risk Management Division

By:   
Jody Hayes, Assistant Executive Officer

APPROVED AS TO FORM:

By:   
John P. Doering, County Counsel

V:\DATA\PUBLIC\Counsel\CONTRACT\PROF-SERV Agmt.wpd

## EXHIBIT A

### A. SCOPE OF WORK

The Consultant shall provide the following services under this Agreement at the direction of County staff. The Deferred Compensation Committee ("Committee") will make decisions regarding the amount of time spent performing any particular task, with regard to any specific deferred compensation Plan Provider.

1. Consultant will provide periodic Plan and Investment reviews that will include a broad range financial market overview, and an explanation regarding how general financial market conditions can impact the County's 457 Deferred Compensation Plan, or any other plan under Committee oversight.
2. Consultant will assist the Committee by evaluating all investment offerings within the County's 457 Deferred Compensation Plan, or any other plan under Committee oversight, relative to the performance of available investment options and replacement options in the market.
3. Consultant will provide the Committee with reports of investment funds to determine if they meet the minimum standards of investment performance as outlined in the Stanislaus County Deferred Compensation Plan Investment Policy Statement. Consultant shall also identify those investment funds that do not satisfy the retention criteria based on the standards set forth in the Plan Investment Policy. Further, the Consultant shall explain the reason why the Committee should consider retaining or replacing a given investment option based upon both quantitative and qualitative data relative to both existing investments and replacement alternatives.
4. Consultant will monitor and evaluate Plan Providers and their investment offerings with regard to the following items: ongoing investment services including, but not limited to, fees, commissions, revenue sharing, and charges for each investment option selected; monitor all investment strategies to assure that all funds adhere to stated strategy and asset allocation structure, fund performance, and employee education.
5. Consultant may assist the County from time to time in selecting new plan providers; providing plan auditing services; and providing other necessary services including but not limited to preparing specifications; obtaining quotes and proposals; evaluating proposals; negotiating rates; and other services deemed necessary through County's Request for Proposal process.
6. Consultant will review and recommend changes to the Stanislaus County Deferred Compensation Plan Investment Policy Statement and charter, as required.
7. The Consultant will evaluate, apprise, and address questions raised by the Committee or County staff regarding any legislative changes affecting Deferred Compensation, or any other plan under Committee oversight, and the retirement planning market place. Further, the Consultant will make recommendations regarding the impact of legislation on plan documents and administrative guidelines as needed.



8. Consultant will offer information regarding “best practices” from other jurisdictions regarding deferred compensation plan designs and investment selection guidelines. Further, Consultant will make recommendations based on industry “best practices” and assist staff in revising and interpreting County documents related to deferred compensation.
9. Provide other consulting services as needed or requested in connection with the County’s 457 Deferred Compensation Plan, or any other plan under the Committee’s oversight including retirement accounts with Public Agency Retirement Services.
10. Consultant will attend meetings with the Committee at least three times each year. Additional meetings may be necessary as determined by the Committee, by the issues being considered by the Committee, and by other market conditions. Consultant also shall be available for consultation by telephone or email.

**B. COMPENSATION**

1. The Consultant shall be compensated for the services provided under this Agreement as follows:

<b><u>Invoice Due Date:</u></b>	<b><u>Period Covered:</u></b>	<b><u>Payment Amount:</u></b>
11/1/2014	9/16/2014 – 10/31/2014	\$ 4,875.00
3/1/2015	11/1/2014 – 2/28/2015	\$ 13,000.00
7/1/2015	3/1/2015 – 6/30/2015	\$ 13,000.00
11/1/2015	7/1/2015 – 9/30/2015	\$ 13,666.67
3/1/2016	10/1/2015 – 2/29/2016	\$ 13,666.67
7/1/2016	3/1/2016 – 6/30/2016	\$ 13,666.66
11/1/2016	7/1/2016 – 9/30/2016	\$ 14,333.33
3/1/2017	10/1/2016 – 2/28/2017	\$ 14,333.33
7/1/2017	3/1/2017 – 6/30/2017	\$ 14,333.34
*11/1/2017	7/1/2017 – 9/30/2017	\$ 15,000.00
*3/1/2018	10/1/2017 – 2/28/2018	\$ 15,000.00
*7/1/2018	3/1/2018 – 6/30/2018	\$ 15,000.00
*11/1/2018	7/1/2018 – 9/30/2018	\$ 15,666.67
*3/1/2019	10/1/2018 – 2/28/2019	\$ 15,666.67
*7/1/2019	3/1/2019 – 6/30/2019	\$ 15,666.66

*\*Denotes payment for optional renewal period*

2. If the County utilizes the Hyas Group to manage an RFP process during the terms of this agreement, the County agrees to pay additional compensation as follows:

<b>*RFP Scope of Work</b>	<b>*Payment Amount:</b>
Pre RFP Data Request	\$1,000
Create and distribute the RFP document	\$11,000
Analyze and summarize RFP responses	\$13,000
Work with the Committee on selecting finalists, including attending finalist interviews.	\$6,000
Review contract of winning vendor.	\$2,000
Transition planning with winning vendor.	\$3,000

*\* If all of the RFP Scope of Work is performed by the Hyas Group, the total cost to perform the services is \$35,000 instead of the individual total of \$36,000.*

3. The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$114,875 during the initial three-year term, and \$92,000 during the two optional one-year renewal terms, with the exception of any RFP services, as stated in this agreement, that if performed collectively shall not exceed \$35,000, for an overall contract maximum of \$241,875 including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.

**C. PERFORMANCE GUARANTEE**

Consultant has provided performance guarantees with respect to response time and satisfaction as follows:

	<b>Standard</b>	<b>\$ at Risk</b>
Lead consultant response time	Less than 24 hours	\$4,000 per occurrence
Back-up consultant response time	Less than 24 hours	\$4,000 per occurrence
Analytics response time	Less than 24 hours	\$4,000 per occurrence
Report delivery	Agreed-upon delivery date	\$2,000 per occurrence
Annual satisfaction review	Satisfactory or better	\$7,500 if deemed necessary

**D. DESIGNATED PERSONNEL AND CONSULTANT STAFF**

A material covenant of this Agreement is that the Consultant shall assign the individuals designated below to oversee and perform the functions designated so long as they continue to be employed by the Consultant. The designated individuals shall, so long as their performance continues to be acceptable to County, remain in charge of the services provided by Consultant under this Agreement from beginning through completion of services.

- Vincent Galindo, Lead Consultant; and
- Jayson Davidson, Co-Consultant

**E. REPRESENTATIVES**

The parties' respective Project Managers shall be:

<b>For County:</b>
Paul Loehr, Employee Benefits Manager, (or designee)
Stanislaus County Chief Executive Office
Risk Management Division
1010 10 <sup>th</sup> Street, Suite 5900
Modesto, CA 95354

<b>For Consultant:</b>
Vincent Galindo, Lead Consultant, (or designee)
Hyas Group, LLC
108 NW 9 <sup>th</sup> Avenue, Suite 203
Portland, OR 97209