



San Bernardino County Employees'  
Retirement Association

## Request for Proposals for Contracted Election Provider

**Release Date:** May 17, 2021

**Responses Due:** June 4, 2021 by 4:00 p.m.

Via Email only to [cjames@sbcera.org](mailto:cjames@sbcera.org) and [dcherney@sbcera.org](mailto:dcherney@sbcera.org)

### RFP Administrator:

Debby Cherney, Chief Executive Officer  
San Bernardino Employees' Retirement Association  
348 W. Hospitality Lane, Suite 100  
San Bernardino, CA 92408  
[dcherney@sbcera.org](mailto:dcherney@sbcera.org)

### Background

The San Bernardino County Employees' Retirement Association (SBCERA) is an independent, award-winning multiple-employer defined benefit plan. SBCERA administers service retirement, disability retirement, and death benefits on behalf of nearly 43,000 members and beneficiaries. SBCERA serves 17 employers throughout California and invests more than \$12 billion in assets. SBCERA was established on January 1, 1945 under the California County Employees Retirement Law of 1937 (CERL) following a vote by the people of the County on May 16, 1944. For more than 75 years, SBCERA has been providing the promised benefits to its members and beneficiaries while ensuring the plan remains solid and secure.

### Request for Proposal Scope Summary

**SBCERA is requesting proposals to conduct all aspects of elections of the Board of Retirement for the following:**

December 2021:	Election of General Member, Safety Member and Alternate Safety Member
December 2022:	Election of General Member, Retired Member and Alternate Retired Member
December 2024:	Election of General Member, Safety Member and Alternate Safety Member
December 2025:	Election of General Member, Retired Member and Alternate Retired Member

Additional information on the needs of SBCERA is included in the Scope of Work section below.

## **Official RFP Notices/Addenda**

To ensure that no firm is provided an advantage over another, all requirements are specified in this Request for Proposals (RFP). Any changes to the requirements will be posted as an addendum to the RFP on the SBCERA website. Firms are solely responsible for monitoring the website for and adhering to any RFP addenda. SBCERA reserves the right to withdraw this RFP at any time without prior notice and to reject any and all responses to this RFP. The rejection of any or all responses to this RFP shall not render SBCERA liable for costs or damages.

## **Prohibited Communications**

Except as noted below regarding questions or clarifications to the RFP, from the RFP release date until a contract for these services is fully executed, firms are prohibited from communicating with Board Members or staff concerning this specific RFP or the resulting contract at any time through June 4, 2021. Any communications could be considered as attempts to lobby or market services and are prohibited. Firms will be disqualified from contract consideration if this prohibition is not honored.

## **Timeline**

Key dates for this solicitation are:

May 17, 2021	Release RFP
May 24, 2021	Deadline to submit questions. Please submit all questions by email to <a href="mailto:dcherney@sbcera.org">dcherney@sbcera.org</a> and <a href="mailto:cjames@sbcera.org">cjames@sbcera.org</a> . Questions from all firms and SBCERA answers in response to those questions will be posted on the SBCERA website <a href="http://www.SBCERA.org/RFP">www.SBCERA.org/RFP</a> , as per the solicitation timeline.
May 26, 2021	Submitted questions and SBCERA answers in response will be posted on the SBCERA website.
June 4, 2021	Proposals due via email to:  Debby Cherney, Chief Executive Officer <a href="mailto:dcherney@sbcera.org">dcherney@sbcera.org</a>  Christa James, Executive Assistant <a href="mailto:cjames@sbcera.org">cjames@sbcera.org</a>
June 17, 2021	SBCERA Administrative Committee Meeting / Consultant Selection Recommendation
July 1, 2021	SBCERA Board Meeting to Approve Contracts, if needed

## **Scope of Work**

SBCERA conducts its election in accordance with the County Employees Retirement Law of 1937 (CERL) and General Board Policy No. 006 - Board of Retirement Elections (the Policy). A copy of the Policy is attached to this Request for Proposals as Exhibit B. As noted in the Policy, because the CERL does not prescribe procedures for nominating and electing candidates, filling vacancies, or conducting recall elections, and does not incorporate the California Elections Code, the guidelines contained in the Policy provide clear direction for the election process.

The election shall be held on the first Tuesday in December of the election years. A schedule for each election year is incorporated in the Policy. Where the "Responsible Party" is noted as the Registrar of Voters, the Contracted Election Provider shall be substituted as the entity responsible for conducting the election.

Specific services required include:

- a. Manage all election and production processes.
- b. Perform candidate filing.
- c. Process and review balloting materials.
  - i. Design/layout of all balloting materials.
  - ii. Produce official return envelopes.
  - iii. Prepare, assemble and mail balloting materials.
  - iv. Produce and provide replacement balloting materials as needed.
- d. Process voter files from SBCERA, with each voter and corresponding ballots having a unique ID:
  - i. General member election: Estimated at 22,000 eligible voters
  - ii. Safety member election: Estimated at 3,000 eligible voters
  - iii. Retired member election: Estimated at 14,000 eligible voters
- e. Tabulate qualified ballots, tracking returns by voter and ballot type.
- f. Challenge ballots if necessary.
- g. Process undeliverable mail ballot packets, and notify SBCERA of undeliverable ballot packets.
- h. Extract ballots for ballot scanning.
- i. Prepare ballot audit report and tabulation results.
- j. Prepare statement of votes/final certified election results
- k. Maintain records.

SBCERA has traditionally only conducted its elections via paper ballot. SBCERA is interested in comprehensive proposals that provide costs for (a) a traditional paper ballot election; and (b) a hybrid paper/electronic system that would allow for paper or secure online balloting. While the current Policy does not yet have provisions for secure online balloting, the Board of Retirement may explore changes to the Policy. Proposers should review the schedule incorporated in the Policy and identify changes to the schedule that may be appropriate should SBCERA choose to update its policy to adopt a hybrid paper/electronic system.

Proposals should provide separate cost breakdowns for the two types of elections.

## **Submission of Proposals**

1. All costs and expenses associated with responding to this RFP are at the sole expense of the proposer. SBCERA is not obligated to the proposers in any manner and will not reimburse or pay any cost incurred by proposers.

2. Proposals must be submitted in 8½" x 11"-page format.
3. All proposal pages must be numbered.
4. All proposals must include a cover letter signed by an authorized officer of the company.
5. Proposals should be concisely written and free from jargon or excessive boilerplate.

## **Request for Proposals Requirements**

1. The firm shall state its qualifications to perform the Contracted Election Services.
2. The firm shall provide a scope of work, and schedule of rates and expenses for:
  - a. A paper ballot election; and
  - b. A hybrid paper/electronic ballot election\*.

\*If the firm does not have the capability to conduct a hybrid election, SBCERA will accept a proposal that only includes the traditional paper ballot election.

3. The firm shall provide provide at least three references for similar Contracted Election Services, with name, phone number and email address.

## **Professional Services Agreement**

**Agreement for Services:** Upon final selection and prior to appointment, the selected firm shall enter into an Agreement for Services in substantially similar form to the template attached as Exhibit A, to which their proposal will be attached and incorporated by reference. Firms must identify any exceptions to the proposed template agreement in their response to this RFP.

**Term:** The term of the agreement shall be for five years.

## **Overall Scoring Criteria**

Proposals will be scored based upon:

- Quality of Proposal
- Quality and Relevance of Firm Experience
- Value of Fee Estimate (The evaluation of the relative cost and value for each firm based upon its submission of the proposed fee schedule. This evaluation will also consider cost on a qualitative basis, not necessary solely on a quantitative basis.)

## **Recommendation**

A recommendation will be made based on the RFP responses to the SBCERA Administrative Committee at its June 17, 2021 meeting. The Administrative Committee's recommendation will be advanced to the full SBCERA Board at its July 1, 2021 meeting.

## **Notice to Proposers Regarding the Public Records Act**

The California Public Records Act, Government Code Sections 6250, et seq., provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state. Public records are defined as any writing relating to the conduct of the public's business and are open to inspection during normal business hours.

Responses to this RFP become the exclusive property of SBCERA. At such time as the evaluation committee recommends a proposer to the Board, and such recommendation appears on a public agenda, all proposals submitted shall be regarded as public records, subject to disclosure upon request. Exceptions will be those elements in each proposal, which are defined by law as business or trade secrets and otherwise exempt from disclosure under the Public Records Act, and are so reasonably and conspicuously marked as "TRADE SECRETS", "CONFIDENTIAL", or "PROPRIETARY" in red ink within the proposal. SBCERA shall not in any way be liable or responsible for the disclosure of any such records including, without limitations, those so marked, if disclosure is deemed to be required by law or by an order of a court of competent jurisdiction. The proposer shall indemnify SBCERA for any and all attorney's fees awarded against SBCERA based on SBCERA's refusal to disclose those elements of the proposal marked by the proposer with a restrictive legend. Proposers shall not mark their entire proposal as confidential. Such an attempted designation is not valid and will not be honored, and will instead result in the entire proposal being treated as a nonconfidential public record.

Submission by a vendor constitutes a complete waive of any claims whatsoever against SBCERA, and/or its agents, officers, or employees, that SBCERA has violated a vendor's right to privacy, disclosed trade secrets, or caused any damage by allowing the proposal to be inspected.

## Exhibit A | Sample Agreement for Services

### **AGREEMENT FOR ELECTION SERVICES**

This AGREEMENT FOR ELECTION SERVICES (hereinafter referred to as "Agreement") is made and entered into as of \_\_\_\_\_, in San Bernardino, California, by and between the SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (hereinafter referred to as "SBCERA") and \_\_\_\_\_, (hereinafter referred to as "CONSULTANT").

WHEREAS, SBCERA was created pursuant to the County Employees Retirement Law of 1937 (hereinafter referred to as the "'37 ACT") and is administered by the Board of Retirement (hereinafter referred to as the "BOARD"); and

WHEREAS, CONSULTANT has proposed to perform, and SBCERA has selected CONSULTANT to perform, services pursuant to this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises, the terms, covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

### **ARTICLE 1** **DESCRIPTION OF SERVICES**

1.1 Delegation and Acceptance of Duties. The BOARD hereby delegates to CONSULTANT the duties and CONSULTANT hereby accepts and assumes responsibility to provide the services described in SBCERA's Request for Proposal for CONTRACTED ELECTION PROVIDER (Exhibit A); CONSULTANT's Response to San Bernardino County Employees' Retirement Association's RFP for CONTRACTED ELECTION PROVIDER (Exhibit B); and, Statement of Work and Fees (Exhibit C), as incorporated herein by reference (collectively, the "CONSULTANT Services"). Exhibits A, B and C are hereby incorporated into and made a part of this Agreement as if fully set forth herein. In the event of any inconsistency between this Agreement and Exhibits A, B and C, unless otherwise expressly stated, this Agreement shall be first in the order of precedence, followed by Exhibits A, B and C. The performance of any services, other than CONSULTANT Services by CONSULTANT to SBCERA will, unless authorized in a writing approved by the BOARD or its designee pursuant to BOARD authority, and specifying separate compensation or reimbursement, will be deemed to be a gratuity to SBCERA and will not give rise to any obligation by SBCERA to make any payment to CONSULTANT or any other person.

1.2 Ownership and License. SBCERA will have all titles, rights and interests in materials developed during the course of any Project performed under this Agreement. SBCERA hereby grants to CONSULTANT in consideration of CONSULTANT entering into this Agreement an irrevocable license to use in the sole discretion of CONSULTANT copies or derivatives of works based on the materials created during any Project provided that any confidential or identifying information be redacted before distribution. All Work Product by CONSULTANT will be owned by SBCERA; however, because CONSULTANT's Work Product for SBCERA may be a derivative of work from other SBCERA projects, SBCERA does grant CONSULTANT the ability to re-use any non-sensitive materials for other, subsequent SBCERA projects.

### **ARTICLE 2** **CONTRACT RESPONSIBILITIES**

#### 2.1 SBCERA - RESPONSIBILITIES.

2.1.1 Representative. SBCERA's Representative for this contract will be:

Chief Executive Officer – Deborah S. Cherney  
(or designee)  
San Bernardino County Employees' Retirement Association  
348 West Hospitality Lane, Third Floor  
San Bernardino, CA 92408  
Telephone: (909) 885-7980; Facsimile: (909) 885-7446

The SBCERA Chief Executive Officer (CEO), or designee, will be SBCERA's Representative with respect to the administration of this Agreement and CONSULTANT will, on a regular basis, interface with and report to the SBCERA Representative so as to keep such Representative fully apprised and up-to-date on the status of the CONSULTANT Services being performed. The identity of the SBCERA Representative and the address at which the Representative is to receive notices may change from time to time by written notice to CONSULTANT given pursuant to this Agreement. The SBCERA Representative may, from time to time, delegate portions of his or her responsibility for the administration of this Agreement to other persons employed or retained by SBCERA, and CONSULTANT agrees to cooperate with such persons in the performance of their duties.

2.1.2 Authority of SBCERA's Representative. The SBCERA Representative for this contract will provide direction to CONSULTANT in the areas of policy, information requirements, and procedural requirements, consistent with the terms of this Agreement. If actions specifically require the prior approval or consent of SBCERA under this Agreement, CONSULTANT may rely upon the written direction of the SBCERA Representative as binding on SBCERA. The SBCERA Representative is not authorized to make any changes in the terms and conditions of this Agreement, and, except as specifically provided above, is not authorized to obligate SBCERA in any respect whatsoever beyond the terms of this Agreement. While the SBCERA Representative will attempt to be reasonably accessible to and to respond, where appropriate, with reasonable promptness to CONSULTANT's communications, CONSULTANT, where practicable, should schedule its affairs so as to allow the SBCERA Representative not less than fifteen (15) business days to review and consider any such communications.

2.1.3 Authorized SBCERA Contacts. The SBCERA Representative may furnish from time to time a list of designated persons who will be permitted to contact CONSULTANT on behalf of SBCERA. CONSULTANT agrees not to furnish any information, written or oral, to any person not specifically named on such list.

2.1.4 No Personal Liability. In no event will the SBCERA Representative or any other person delegated responsibility for the administration of this Agreement have any personal liability to CONSULTANT or any of its officers, directors, partners, agents, employees, or contractors for any action taken or not taken by such individual while acting or purporting to act as the SBCERA Representative or as his or her designee.

2.2 CONSULTANT - RESPONSIBILITIES.

2.2.1 Representative. The CONSULTANT's Representative for this contract will be:

Name and Title  
Address  
Telephone:  
Email:

The CONSULTANT's Representative will be responsible for the CONSULTANT's day-to-day activities under this Agreement, and will be the CONSULTANT's Representative with respect to the administration of this Agreement. CONSULTANT will, on a regular basis, interface with and report to the SBCERA Representative so as to keep such Representative fully apprised and up-to-date on the status of the

CONSULTANT Services being performed. CONSULTANT will endeavor to notify SBCERA's Representative prior to replacing the CONSULTANT Representative.

**ARTICLE 3**

**CONSULTANT'S REPRESENTATIONS, WARRANTIES,  
COVENANTS, AND CERTIFICATIONS**

3.1 CONSULTANT'S Representations, Warranties, and Covenants. CONSULTANT acknowledges, represents, warrants, and agrees that:

3.1.1 It has complied with and, when required, will comply with, all regulations, registrations, filings, approvals, authorizations, consents, or examinations required by any governmental authority having jurisdiction over its activities or the acts contemplated by this Agreement to the extent applicable to the Services under this Agreement;

3.1.2 The personnel of CONSULTANT who will be responsible for carrying out 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 nolo contendere or agreed to any consent decree with respect to any matter involving breach of trust or fiduciary duty, fraud, securities law violations, bankruptcy law regulations, or any act or omission involving moral turpitude;

3.1.3 CONSULTANT will promptly notify SBCERA in the event of any publicly known or non-confidential anticipated or finalized actual material change in the ownership, membership, or management control of CONSULTANT, including, to the extent possible, key personnel responsible for the account within their organization.

3.1.4 CONSULTANT will promptly notify SBCERA in the event that any of the foregoing acknowledgments, representations, warranties, or agreements have been breached or are no longer true, and of the initiation of any formal or informal investigation or regulatory inquiry by any governmental entity with regulatory oversight over CONSULTANT.

3.1.5 The foregoing acknowledgments, representations, warranties, and agreements are understood to be relied upon by SBCERA and the BOARD and to constitute a material inducement to the decision of SBCERA and the BOARD to enter into this Agreement.

3.2 Gratuities. CONSULTANT warrants that no gratuities in the form of entertainment, gifts, or otherwise, were offered or given by CONSULTANT, or any agent or representative of CONSULTANT, to any officer, fiduciary, advisor, or employee of SBCERA with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or the making of any determination with respect to this Agreement. CONSULTANT covenants that no such gratuities will be given to any such person with a view towards securing favorable treatment with respect to the making of any determination with respect to the performance, termination, and/or continuation of this Agreement. CONSULTANT shall review and become familiar with the conflict of interest and reporting provisions applicable to SBCERA, including but not limited to those contained in California Government Code Sections 1090 to 1097 inclusive, 31528, 82030, and 87100 to 87103.

3.3 Certification Concerning Financial Contacts or Solicitation. CONSULTANT represents and warrants that to the best of its knowledge no employee of SBCERA or fiduciary whose position in SBCERA 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 the CONSULTANT herein, or does or will have any direct or indirect financial interest in this Agreement.

**ARTICLE 4**

**CONFLICTS OF INTEREST AND PERMITTED DEALINGS**

4.1 Conflict of Interest. It is understood that the CONSULTANT performs services for various other clients. The CONSULTANT and its officers may act and continue to act as CONSULTANT and/or service



provider for other clients, and nothing in this Agreement shall in any way be deemed to restrict the right of CONSULTANT to perform services for any other client, so long as such services can be and are in fact performed without violating or adversely affecting CONSULTANT's duties and obligations to SBCERA under this Agreement.

4.2 Permitted Dealings. Under no circumstances will CONSULTANT recommend any person, contract, or transaction in which CONSULTANT, the CONSULTANT's Representative, or any of their affiliates or associates, or to the best of their knowledge and belief any client of any of the above has any interest, without full written disclosure of the nature and extent of such interest and certification that such interest has had no effect upon CONSULTANT's recommendations.

## **ARTICLE 5**

### **TERM AND TERMINATION**

5.1 General. The term of this Agreement shall be as set forth in this Article. The term of this agreement shall be for 5 years. CONSULTANT or SBCERA may terminate this Agreement for any reason, including without limitation the convenience of the parties. Termination will be effected by delivery to the other party of a written Notice of Termination specifying the date upon which such termination becomes effective, which will not be less than thirty (30) days following the giving of such notice. During the period of time between the giving of the written Notice of Termination and the effective date of termination, this Agreement will remain in full force and effect and the parties will continue to execute their rights and obligations under this Agreement. Upon termination by either party, CONSULTANT shall continue to provide such CONSULTANT services as SBCERA may reasonably require, in the manner provided herein, for such period as is reasonably necessary to accommodate SBCERA's selection of and transition to a successor CONSULTANT, and CONSULTANT shall be entitled to compensation for such services according to the terms of this Agreement.

#### **5.2 Remedies.**

5.2.1 In the event that either party gives Notice of Termination under Section 5.1, above, SBCERA may immediately suspend CONSULTANT's authority to perform any/or all of the acts and services described in this Agreement. Such notice of suspension may be included in the Notice of Termination. Notwithstanding the suspension of services, SBCERA will remain liable for such fees as CONSULTANT may have earned or may have been entitled to receive under this Agreement through the effective date of termination.

5.2.2 In no event will the termination of this Agreement pursuant to Section 5.1, above, be deemed a waiver of either party's rights to make a claim against the other as provided for in Section 5.2.3, below.

5.2.3 The rights and remedies of the parties provided in this Article 5 will not be exclusive and are in addition to any other rights and remedies provided at law, in equity or under this Agreement.

## **ARTICLE 6**

### **INSURANCE AND INDEMNIFICATION**

6.1 Insurance. Without limiting CONSULTANT's duties regarding indemnification, CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. SBCERA shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the reasonable opinion of SBCERA the insurance provisions in these requirements do not provide adequate protection for SBCERA and its members, SBCERA and CONSULTANT shall meet to discuss insurance coverage, sufficient in form and amount to provide adequate protection.

6.1.1 Verification of Coverage. CONSULTANT shall furnish evidence of insurance to the SBCERA Representative or his designee prior to the commencement of this agreement. SBCERA reserves the right to require that CONSULTANT provide complete certified copies of any policy of insurance offered in compliance with these specifications. The evidence of insurance shall specifically identify this

Agreement, and shall identify SBCERA as an additional named insured if such endorsement is available. As an alternative to insurance certificates, CONSULTANT's insurer may voluntarily provide complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these specifications.

6.1.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Commercial General Liability. This policy shall name SBCERA as an additional insured and be primary and not contributory to any policy maintained by SBCERA. Such policy shall cover liability for bodily injury and property damage arising out of CONSULTANT's services under this Agreement. Such policy shall include endorsements for property damage, premises-operations, products/completed operations, contractual, and personal injury with a limit of \_\_\_\_\_ per occurrence and an annual aggregate of \_\_\_\_\_.

2. Workers' Compensation. This policy shall cover CONSULTANT's employees for injuries arising in connection with services provided under this Agreement. The amount will be sufficient to meet all applicable statutory requirements to cover CONSULTANT's employees.

3. Professional Liability. This policy shall provide coverage for the CONSULTANT's alleged professional errors and omissions in an amount not less than \$\_\_\_\_\_ annual aggregate.

6.1.3 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to and approved by SBCERA's Representative. At the option of SBCERA's Representative, either: the insurer shall reduce or eliminate such deductibles or self-insured retention with respect to SBCERA, its officers, agents, employees, and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6.1.4 Acceptability of Insurers. Such insurance will be provided by insurer(s) rated not less than Best's Financial Class X and Best's Policy Holder Rating A- or otherwise approved in writing by SBCERA.

6.2. Indemnification; Acknowledgements. CONSULTANT shall indemnify, hold harmless and defend SBCERA, all present, future, and former members of the BOARD of SBCERA for actions during their term which coincides with the term of this Agreement, and all of its officers, employees, agents, members and beneficiaries from and against any and all liability, loss, costs, and expenses (including but not limited to attorneys' fees), damages, demands, suits, proceedings, claims, and actions arising out of or in any way whatsoever related to or connected with the performance of services by CONSULTANT under this Agreement (including but not limited to CONSULTANT's acts or omissions that are negligent, constitute bad faith, or willful misconduct, involve a breach by CONSULTANT of this Agreement, or a breach of CONSULTANT's Standard of Care). If it is subsequently determined by a court of competent jurisdiction that SBCERA was not entitled to indemnification from CONSULTANT, SBCERA will reimburse CONSULTANT for all reasonable damages, costs, and expenses incurred in providing a defense and indemnification for SBCERA. For this indemnification to apply, SBCERA shall, no later than thirty (30) days after receipt of notice of commencement of any action, suit, proceeding, or receipt of a written demand or claim against SBCERA in respect of which indemnification may be owed, notify CONSULTANT in writing of the commencement of such action, suit, proceeding, demand, or claim, enclosing a copy of all papers served or provided. The foregoing notice requirement shall be deemed to have been satisfied if CONSULTANT shall have received notice of the commencement of such action, suit, or proceeding or claim from any source whatsoever within such thirty (30) day period. Notwithstanding the foregoing, the failure to give such notification shall not affect the indemnification to be provided hereunder except to the extent the CONSULTANT shall have been actually prejudiced as a result of such failure. In any such action, suit, proceeding, demand, or claim, CONSULTANT shall participate in and assume the defense thereof at its sole expense, with counsel reasonably satisfactory to SBCERA. More than one counsel shall be required to represent SBCERA or CONSULTANT if the parties reasonably believe there is a conflict of interest. SBCERA shall have the right, in its sole discretion, to participate in or lead any defense of a claim against SBCERA without waiving its right to indemnification including but not limited to attorneys' fees.

6.3. Indemnification Remedy; Limitations. Notwithstanding anything to the contrary in this Agreement, except with respect to the matters covered by Section 5.2.1, covered by insurance policies specified in Section 6.1 or to the extent an party may be entitled to injunctive relief under this Agreement, the sole and exclusive remedies of the SBCERA for any and all liability, loss, costs, and expenses (including but not limited to attorneys' fees), damages, demands, suits, proceedings, claims, and actions arising out of or in any way whatsoever related to or connected with this Agreement are the indemnification obligations set forth in Section 6.2. Further, the total aggregate liability of the Consultant on any claim or cause of action brought under Section 6.3 of this Agreement will be limited to the aggregate sum paid by the SBCERA to the Consultant hereunder.

## **ARTICLE 7**

### **RECORDS AND CONFIDENTIALITY**

7.1 Record Retention and Inspection. CONSULTANT will furnish to SBCERA and its authorized representatives, on reasonable notice (which in no event need ever be more than five (5) business days) and during ordinary business hours, full access to those records maintained by CONSULTANT with respect to this Agreement. CONSULTANT will retain any and all records in its possession with respect to this Agreement for a minimum period of five (5) calendar years, or any longer period required by law, from the date the records were created. CONSULTANT will give SBCERA sixty (60) days' notice of its intent to dispose of any such records following the expiration of such retention period. SBCERA will have the right within such sixty (60) days period to take possession of any and all such records. CONSULTANT will reasonably cooperate with SBCERA in the implementation of such change in possession. The provisions of this Section will survive termination of this Agreement for a period of five (5) years; provided that the obligation of the CONSULTANT to give SBCERA notice of its intention to dispose of records, permits SBCERA to take possession of records and the obligation of CONSULTANT to cooperate with SBCERA in such regard shall also survive the termination of this Agreement for a period of seven (7) years.

7.2 Confidentiality. CONSULTANT acknowledges that in performing the Services as contemplated herein, CONSULTANT may acquire Confidential Information and trade secrets of great value to SBCERA concerning its business and operations of SBCERA, the use or disclosure of which could materially adversely affect SBCERA. CONSULTANT shall not, at any time or in any manner, directly or indirectly, disclose such Confidential Information to any person or entity, or use such Confidential Information other than in furtherance of the purposes of SBCERA.

7.3 Ownership of Confidential Information. SBCERA agrees to grant CONSULTANT access to any such Confidential Information as required in order to fulfill the duties detailed in the Statement of Work. CONSULTANT agrees that all Confidential Information obtained or acquired is the exclusive property of SBCERA, irrespective of whether such information was created or prepared by CONSULTANT.

7.4 Return or Destruction. Upon termination of this Agreement as provided in Article 5, CONSULTANT will, as requested in writing by SBCERA, return to SBCERA or destroy all Confidential Information of SBCERA, including any written or electronic memorial of, or documents relating to, the Confidential Information described herein.

## **ARTICLE 8**

### **GOVERNMENTAL PROVISIONS**

8.1 Governing Law and Venue. This Agreement will be construed in accordance with and governed by the laws of the State of California. Should either party file a lawsuit over any matter arising out of this Agreement, said lawsuit will be filed and prosecuted in the Superior Court for the County of San Bernardino, State of California, and all parties hereto hereby consent to such venue and the personal jurisdiction of said court.

8.2 Assurance of Compliance with Civil Rights Laws. CONSULTANT hereby agrees and represents that it is an equal opportunity employer and has adopted policies to implement the purpose and

provisions of the Civil Rights Act of 1964, 42 USC § 2000(e), et seq., to assure that no person is denied employment on the basis of race, creed, color, sex, or national origin in connection with its performance of this Agreement.

8.3 Affirmative Action. The CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

8.4 Independent Contractor. CONSULTANT will at all times be acting in the capacity of independent contractor. This Agreement is not intended, and will not be construed, to create the relationship of agent, servant, employee, partner, joint venture, or association, as between SBCERA and CONSULTANT. CONSULTANT understands and agrees that all persons furnishing services to SBCERA pursuant to this Agreement are employees solely of CONSULTANT and not of SBCERA. CONSULTANT will bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person performing services to CONSULTANT for injuries arising from or connected with services provided to SBCERA pursuant to this Agreement. All services performed with respect to the work will be performed by CONSULTANT with its own forces, except with the written approval of SBCERA Representative. No performance of this Agreement or any portion thereof may be contracted by CONSULTANT without the express written consent of SBCERA Representative. CONSULTANT will be solely liable and responsible for any and all payments and other compensation to any contractor, and SBCERA will have no direct liability to any contractor.

8.5 Interpretation. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters dealt with in this Agreement. Each party has had a full opportunity to have this Agreement reviewed by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including, without limitation, California's Civil Code Section 1654) or legal decisions that would require interpretation of any ambiguities in this Agreement against the party that has drafted it shall not be applicable and are hereby waived. The provisions of the Agreement shall be interpreted in a reasonable manner to effectuate the purpose of the parties and this Agreement.

## **ARTICLE 9**

### **STANDARD OF CARE**

CONSULTANT shall perform all services hereunder with the care, skill, diligence, and responsibility of a professional CONSULTANT familiar with such matters and acting in a like capacity in the conduct of an enterprise of like character and with like aims (herein, "Standard of Care"). The Standard of Care shall apply to all services CONSULTANT performs (or does not perform) as provided hereunder and shall be adhered to by CONSULTANT at all times. Notwithstanding any other provision in this Agreement, The Standard of Care is incorporated in and applies to each and every provision of this Agreement setting forth the services to be performed by CONSULTANT and each and every such provision is subject to the Standard of Care.

## **ARTICLE 10**

### **FEES AND EXPENSES**

10.1 Fees and Expenses. SBCERA shall pay the fees CONSULTANT sets forth in Exhibit C. Fees are in US Dollars (USD) unless expressly stated otherwise.

## **ARTICLE 11**

### **MISCELLANEOUS**

11.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

11.2 Successors and Assigns. Neither this Agreement nor CONSULTANT's rights or duties hereunder may be assigned, transferred, or delegated by CONSULTANT, including as a consequence of any merger, acquisition, or other corporate transaction, without the prior written consent of SBCERA, which may be withheld for any reason or no reason at all in the sole and absolute discretion of SBCERA.

11.3 Article and Paragraph Headings. The article and paragraph titles of this Agreement are inserted for convenience of reference. They constitute no part of this Agreement and are not to be considered in its construction.

11.4 Notices. Notices desired or required to be given hereunder to the effective will be in writing and will be deemed to have been given if made by hand delivery with signed receipt (or proof of service executed by an independent process server) or on the fourth (4<sup>th</sup>) business day after posting when mailed within the United States by first class registered or certified mail, postage prepaid, addressed to SBCERA and CONSULTANT at their respective addresses designated below, or to such other person or at such other address. Notices shall be sent to SBCERA to:

San Bernardino County Employees' Retirement Association  
348 West Hospitality Lane, Third Floor  
San Bernardino, CA 92408  
Attention: Chief Executive Officer

With a copy to:  
Attention: Barbara M. A. Hannah, Chief Counsel

Notices shall be sent to CONSULTANT addressed as follows:

Attention:

Either party may change the address for notices upon written notice received by the other party.

11.5 Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

11.6 Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of said provision or any other provision of this Agreement. No waiver will be enforceable unless it is a written agreement executed by the party granting the waiver, making specific reference to this Agreement and reciting the parties' intention that it constitutes a waiver. Failure of either party to enforce at any time, or from time to time, any provisions of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

11.7 Attorney Fees. In the event of any litigation regarding this Agreement, the prevailing party as determined by the appropriate court shall be entitled to recover reasonable attorney's fees.

11.8 CONSULTANTS and Managers. CONSULTANT agrees to cooperate with such other CONSULTANTS, advisors, actuaries, consultants, managers, and others as SBCERA may retain from time to time to assist SBCERA.

11.9 Merger. This Agreement, and the Exhibits attached hereto, will constitute the complete and exclusive statement of understanding between the parties, superseding all previous agreements, written or oral, and all other previous communication between the parties relating to the subject matter of this Agreement.

11.10 Changes and Amendments. SBCERA and CONSULTANT reserve the right to amend any such terms and conditions of this Agreement which may become necessary. Any revisions hereto will be accomplished by written agreement executed by both of the parties making specific reference to this Agreement and reciting the parties' intention that it constitutes an amendment.

11.11 Governing Law; Arbitration. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without giving effect to its conflicts of laws principles. Either Party may request injunctive relief to remedy any actual or threatened dispute arising out of this Agreement.

## SBCERA Request for Proposals

Page 14

11.12 Notices. Any notice, demand, consent, amendment, approval, request, or other communication (collectively, a "Notice") required or permitted under this Agreement must be in writing and delivered personally, sent by certified mail, postage prepaid, return receipt requested, or sent by recognized overnight delivery services to the addresses set forth in section 11.4 above. Any Party may modify the information set forth in section 11.4 above by sending a Notice in the manner provided herein.

11.13 Other Agreements; Statute of Limitations. CONSULTANT and SBCERA are free to enter into similar agreements with others. The parties respectively agree not to bring a legal action against the other after more than one year from the date after the cause of action arose.

11.14 Non-Solicitation. During the period of this Agreement and for a period of six (6) months following its termination, SBCERA agrees not to solicit for employment nor to contract for services any CONSULTANT Resource who has performed work under this Agreement within the six (6) month period prior to such solicitation or the Services, without prior express approval in writing from CONSULTANT.

EXECUTED AND AGREED TO by the parties as of the date first written above by their duly authorized representatives:

ELECTION PROVIDER.

SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION

By: \_\_\_\_\_

NAME

TITLE

By: \_\_\_\_\_

DEBORAH CHERNEY

Chief Executive Officer

CONTRACT APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_

BARBARA M. A. HANNAH

SBCERA Chief Counsel

Dated: \_\_\_\_\_

## **Exhibit B** | Board of Retirement Election Policy

[View the Board of Retirement Policy](#)