



San Bernardino County Employees'
Retirement Association

Request for Proposals for Agreed Upon Procedures Reports

Release Date: February 15, 2024

Responses Due: March 11, 2024 by 4:00 p.m.
Via Email only to amcinerny@SBCERA.org

RFP Administrator:

Amy McInerny, Chief Financial Officer
San Bernardino Employees' Retirement Association
348 W. Hospitality Lane, Suite 100
San Bernardino, CA 92408
amcinerny@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 48,000 members and beneficiaries. SBCERA serves 17 employers throughout California and invests more than \$14 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 nearly 80 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

In July 2023, the SBCERA Board approved an FY 2023-24 Audit Workplan with three specific areas for Agreed Upon Procedures reports to be prepared by an independent accounting firm:

1. **Benefits and Customer Service – Death Benefit Processes – Payments to Beneficiaries and Member Death Verification**
2. **Financial Operations – Accounts Payable**
3. **Financial Operations – Payroll Process**

More information on these three areas is described further in the Scope 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 March 11, 2024. 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:

February 15, 2024	Release RFP
February 27, 2024	Deadline to submit questions relative to this RFP and the services needed by SBCERA. Please submit all questions by email to amcinerny@SBCERA.org . Questions from all firms and SBCERA answers in response to those questions will be posted on the SBCERA website www.SBCERA.org/RFP , as per the solicitation timeline.
March 1, 2024	Submitted questions and SBCERA answers in response will be posted on the SBCERA website.
March 12, 2024	RFP response due via email to: Amy McInerny, Chief Financial Officer amcinerny@SBCERA.org
March 21, 2024	SBCERA Audit Committee Meeting / Consultant Selection Recommendation
April 4, 2024 or May 2, 2024	SBCERA Board Meeting to Approve Contracts, if needed

Scope of Work

Three Agreed Upon Procedures reports shall be prepared in the following areas:

1. **Benefits and Customer Service – Death Benefit Processes – Payments to Beneficiaries and Member Death Verification**
 - Audit the process for death verification and notification, specifically, that entries are made timely and proper procedures are followed.
 - Audit the process for issuing payments to survivors and continuance beneficiaries after death notification, specifically, that actions are timely and proper procedures are followed.
 - Make recommendations for internal control and process improvements.
2. **Financial Operations – Accounts Payable**
 - Audit the process for recording and paying vendors timely and accurately, and that proper procedures are followed.
 - Make recommendations for internal control and process improvements.
3. **Financial Operations – Payroll Process**
 - Audit the process for SBCERA payroll, specifically, that payments are accurate and timely and proper procedures are followed.
 - Make recommendations for internal control and process improvements.

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 Agreed Upon Procedures reports approved by the SBCERA Board, including biographies/experience summaries for each of the professionals proposed to be staffed on the engagement.
2. The firm shall provide a scope of work, and schedule of rates and expenses for each of the three Agreed Upon Procedures reports identified in the Scope of Work section above. The firm may propose on one, two, or all Agreed Upon Procedures reports.
3. The firm shall provide a proposed timeline for delivering the reports, which may have staggered delivery dates, as long as completed by July 31, 2024.

4. The firm shall provide a schedule of its hourly rates and expenses for those professionals proposed to be staffed on the engagement.
5. The firm shall provide a fee estimate for each report, which shall not be exceeded unless agreed upon with SBCERA in writing.

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. In addition, the Firm will be required to enter into a Data Confidentiality Agreement in the form of the template attached as Exhibit B.

Please be advised that SBCERA reviews its Professional Services Agreement from time to time and terms appearing in the attached Agreement may be updated. The selected Firm will be provided an updated version of the Professional Service Agreement.

Overall Scoring Criteria

Proposals will be scored based upon:

- Quality of Proposal
- Quality and Relevance of Firm Experience
- Quality and Experience of Personnel Assigned to Engagement
- Proposed scope of services description for each Agreed Upon Procedures report
- 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 for Award

A recommendation will be made based on the RFP responses to the SBCERA Audit Committee at its March 21, 2024 meeting. The Audit Committee's recommendation will be advanced to the full SBCERA Board at either its April 4, 2024 or May 2, 2024 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. When 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 waiver 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

This AGREEMENT FOR PROFESSIONAL SERVICES (hereinafter referred to as "Agreement") is made and entered into as of [date] in San Bernardino, California, by and between the SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (hereinafter referred to as "SBCERA") and [NAME] (hereinafter referred to as "SERVICE PROVIDER").

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");

WHEREAS, SBCERA's Chief Executive Officer has authority, pursuant to Administration Policy No. 011, to procure services and execute contracts that do not exceed \$25,000 in any given fiscal year; and

WHEREAS, SERVICE PROVIDER is a [description of services].

WHEREAS, SERVICE PROVIDER has proposed to perform, and SBCERA has selected SERVICE PROVIDER to perform, services pursuant to this Agreement and as described in Exhibit A, specifically for the SBCERA's Human Resources Department.

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 Acceptance of Duties. SERVICE PROVIDER hereby accepts and assumes responsibility to provide the services described in the **Statement of Work** ("Statement of Work") attached to this Agreement as Exhibit "A" (collectively, the "SERVICE PROVIDER Services"). Exhibit A, is 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 Exhibit A, unless otherwise expressly stated, this Agreement shall be first in the order of precedence, followed by Exhibit A. The performance of any services, other than SERVICE PROVIDER Services by SERVICE PROVIDER to SBCERA, unless authorized in a writing approved by SBCERA's Chief Executive Officer (CEO) or designee pursuant to the CEO's 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 SERVICE PROVIDER or any other person.

ARTICLE 2 **CONTRACT RESPONSIBILITIES**

2.1 **SBCERA - RESPONSIBILITIES.**

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

Deborah S. Cherney
Chief Executive Officer
(or designee)

San Bernardino County Employees' Retirement Association
348 West Hospitality Lane, Suite 100
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 SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER 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, SERVICE PROVIDER may rely upon the written direction of the SBCERA Representative as binding on SBCERA. While the SBCERA Representative will attempt to be reasonably accessible to and to respond, where appropriate, with reasonable promptness to SERVICE PROVIDER's communications, SERVICE PROVIDER, 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 SERVICE PROVIDER on behalf of SBCERA. SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER - RESPONSIBILITIES.

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

[Name]

[Organization]

[Address]

[Address]

[Telephone: | Facsimile: Website: | Email:]

The SERVICE PROVIDER's Representative will be responsible for the SERVICE PROVIDER's day-to-day activities under this Agreement, and will be the SERVICE PROVIDER's Representative with respect to the administration of this Agreement. SERVICE PROVIDER 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 SERVICE PROVIDER Services being performed. SERVICE PROVIDER will endeavor to notify SBCERA's Representative prior to replacing the SERVICE PROVIDER Representative.

ARTICLE 3
SERVICE PROVIDER'S REPRESENTATIONS, WARRANTIES,
COVENANTS, AND CERTIFICATIONS

3.1 Service Provider's Representations, Warranties, and Covenants. SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER, including, to the extent possible, key personnel responsible for the account within their organization.

3.1.4 SERVICE PROVIDER 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 SERVICE PROVIDER.

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. SERVICE PROVIDER warrants that no gratuities in the form of entertainment, gifts, or otherwise, were offered or given by SERVICE PROVIDER, or any agent or representative of SERVICE PROVIDER, 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. SERVICE PROVIDER 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. SERVICE PROVIDER 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. SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER performs services for various other clients. The SERVICE PROVIDER and its officers may act and continue to act as SERVICE PROVIDER and/or service provider for other clients, and nothing in this Agreement shall in any way be deemed to restrict the right of SERVICE PROVIDER to perform services for any other client, so long as such services can

be and are in fact performed without violating or adversely affecting SERVICE PROVIDER's duties and obligations to SBCERA under this Agreement.

4.2 Permitted Dealings. Under no circumstances will SERVICE PROVIDER recommend any person, contract, or transaction in which SERVICE PROVIDER, the SERVICE PROVIDER'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 SERVICE PROVIDER's recommendations.

ARTICLE 5 **CHANGE ORDERS**

5.1 If SBCERA/SERVICE PROVIDER wishes to change the scope or performance of the Services, it shall submit details of the requested change to SBCERA/SERVICE PROVIDER in writing in accordance with the notice provisions in Section 12.4. SERVICE PROVIDER shall, within a reasonable time (not to exceed 30 days) after receiving a SBCERA-initiated request, or at the time that SERVICE PROVIDER initiates a change request, provide a written estimate to SBCERA of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the fees and other charges for the Services arising from the change;
- (c) the likely effect of the change on the Services;
- (d) any other impact the change might have on the performance of this Agreement; and
- (e) any other information [reasonably] requested by the Customer.

5.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 12.10.

ARTICLE 6 **TERM AND TERMINATION**

6.1 Term. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under the Statement of Work unless sooner terminated pursuant to this Section 6.

6.2 Termination for Convenience. Either party, in its sole discretion, may terminate this Agreement or Statement of Work, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party.

6.3 Termination for Cause. Either party may terminate this Agreement or Statement of Work, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party:

(a) breaches this Agreement, and such breach is incapable of cure or, with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; or

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within thirty (30) business days or is not dismissed or vacated within thirty (30) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

6.4 Remedies.

6.4.1 In the event that either party gives Notice of Termination under Section 6.1 – 6.3, above, SBCERA may immediately suspend SERVICE PROVIDER'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 SERVICE PROVIDER may have earned or may have been entitled to receive under this Agreement through the effective date of termination.

6.4.2 In no event will the termination of this Agreement pursuant to Section 6.1 – 6.3, above, be deemed a waiver of either party's rights to make a claim against the other as provided for in Section 6.4.3, below.

6.4.3 The rights and remedies of the parties provided in this Article 6 will not be exclusive and are in addition to any other rights and remedies provided at law, in equity or under this Agreement.

6.5 Effects of Termination. Upon expiration or termination of this Agreement for any reason:

(a) SERVICE PROVIDER shall (i) promptly deliver to SBCERA all documents, work product, and other materials (Deliverables) (whether complete or incomplete) for which SBCERA has paid and all SBCERA documents, data, know-how, methodologies, software, and other materials (Materials) in its possession, (ii) promptly remove any SERVICE PROVIDER equipment located at SBCERA's premises, (iii) provide reasonable cooperation and assistance to SBCERA [upon SBCERA's written request in transitioning the Services to a different Service Provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services not performed or Deliverables not provided.

(b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information, (ii) permanently delete all of the other party's Confidential Information from its computer systems, and (iii) certify in writing to the other party that it has complied with the requirements of this clause; provided, however, that SBCERA may retain copies of any Confidential Information of SERVICE PROVIDER incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services and any Deliverables.

(c) In no event shall SBCERA be liable for any Service Provider Personnel termination costs arising from the expiration or termination of this Agreement.

6.6 Survival. The rights and obligations of the parties set forth in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

ARTICLE 7 **RECORDS**

7.1 Record Retention and Inspection. SERVICE PROVIDER 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 SERVICE PROVIDER with respect to this Agreement. SERVICE PROVIDER 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. SERVICE PROVIDER 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. SERVICE PROVIDER 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 SERVICE PROVIDER to give SBCERA notice of its intention to dispose of records, permits SBCERA to take possession of records and the obligation of SERVICE PROVIDER 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. SERVICE PROVIDER acknowledges that in performing the Services as contemplated herein, SERVICE PROVIDER 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. SERVICE PROVIDER 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 SERVICE PROVIDER access to any such Confidential Information as required in order to fulfill the duties detailed in the Statement of Work. SERVICE PROVIDER agrees that all Confidential Information obtained or acquired is the exclusive property of SBCERA, irrespective of whether such information was created or prepared by SERVICE PROVIDER.

7.4 Return or Destruction. Upon termination of this Agreement as provided in Article 6, SERVICE PROVIDER 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 Indemnification. SERVICE PROVIDER will indemnify, defend, and hold harmless SBCERA and the trustees, officers, contractors, agents and employees of SBCERA with respect to any and all costs, claims, demands, actions, liabilities, losses, damages, injuries, and expenses (including, without limitation, reasonable attorneys' fees and defense costs) (collectively, "Losses") in any manner related to, arising out of and/or resulting from: (i) any decision or other action taken, omitted or suffered by the SERVICE PROVIDER, its officers, owners, partners, members, principals, affiliated entities, controlling persons, employees, agents or subcontractors that was not in good faith, or was not authorized by or within the discretion or right or powers conferred upon it by this Agreement, or that constituted gross negligence, willful misconduct or a breach of its fiduciary duties; (ii) any material breach of any representation or warranty made by the SERVICE PROVIDER in this Agreement or any related documents; (iii) the material breach of any instrument contemplated by this Agreement due to the SERVICE PROVIDER's gross negligence; (iv) any material misrepresentation contained in any statement or certificate furnished by the SERVICE PROVIDER pursuant to this Agreement; and (v) Losses arising from any claims that are asserted against SBCERA, the SERVICE PROVIDER and each other Fund and account managed by the SERVICE PROVIDER that participated in such Investment as a result of any action taken by the SERVICE PROVIDER. This indemnification shall survive the termination of this Agreement.

8.2 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.

8.3 Compliance with Laws. SERVICE PROVIDER shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be included in this Agreement are incorporated by this reference. SERVICE PROVIDER shall indemnify and hold SBCERA harmless from any loss, damage or liability resulting from a violation by SERVICE PROVIDER of any such laws, rules, regulations, ordinances, and directives.

8.4 Assurance of Compliance with Civil Rights Laws. SERVICE PROVIDER 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.

8.5 Affirmative Action. The SERVICE PROVIDER 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.

8.6 Independent Contractor. SERVICE PROVIDER 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 SERVICE PROVIDER.

SERVICE PROVIDER understands and agrees that all persons furnishing services to SBCERA pursuant to this Agreement are employees solely of SERVICE PROVIDER and not of SBCERA. SERVICE PROVIDER will bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person performing services to SERVICE PROVIDER 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 SERVICE PROVIDER 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 SERVICE PROVIDER without the express written consent of SBCERA Representative. SERVICE PROVIDER 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.

8.7 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**

9.1 Standard of Care. SERVICE PROVIDER shall perform all services hereunder with the care, skill, diligence, and responsibility of a professional SERVICE PROVIDER 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 SERVICE PROVIDER performs (or does not perform) as provided hereunder and shall be adhered to by SERVICE PROVIDER 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 SERVICE PROVIDER and each and every such provision is subject to the Standard of Care.

ARTICLE 10 **PAYMENT FOR SERVICES**

10.1 Payment for Services. SBCERA agrees to pay SERVICE PROVIDER according to the Statement of Work attached as Exhibit A for performing the Services. SERVICE PROVIDER's expenses are included in the compensation described in Exhibit A and therefore SERVICE PROVIDER is not entitled to any separate reimbursement for any expenses incurred by it in discharging its duties under this Agreement, unless otherwise agreed by SBCERA.

ARTICLE 11 **INSURANCE**

11.1 Insurance. Without limiting SERVICE PROVIDER's obligations to indemnify SBCERA, SERVICE PROVIDER will provide and maintain at its own expense during the term of this Agreement the programs of insurance programs specified in this Agreement. Such insurance will be primary and not contributing with any other insurance of self-insurance programs maintained by SBCERA, and SERVICE PROVIDER agrees to provide and maintain such insurance at its own cost and expense.

11.1.1 Certificate(s) or other evidence of coverage satisfactory to SBCERA shall be delivered to prior to commencing services under this Agreement and annually thereafter to:

SBCERA – Legal Services
348 W. Hospitality Lane, Suite 100

San Bernardino, CA 92408

11.2 Certificate of Insurance. Such certificates or other evidence shall:

11.2.1 Specifically identify this Agreement.

11.2.1.1 Clearly evidence all coverage's required in this Agreement.

11.2.1.2 Contain the express condition that SBCERA is to be given written

notice by mail at least 45 days in advance of cancellation for all policies, or, alternatively, in the event the insurers that otherwise provide satisfactory insurance hereunder do not assume third-party notification provisions, SERVICE PROVIDER hereby agrees to notify SBCERA at least 45 days in advance of any cancellation of any of the policies provided for herein.

11.2.1.3 Include copies of the additional insured endorsement to the commercial general liability policy, adding that SBCERA, its trustees, officers and employees as insureds for all activities arising from this Agreement.

11.2.1.4 Self-Insured Retentions must be declared to and approved by the SBCERA. SBCERA may require SERVICE PROVIDER to purchase coverage with no retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention will be satisfied by the named SERVICE PROVIDER. SBCERA reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

11.3 Insurer Financial Ratings. Insurance is to be provided by an insurance company acceptable to SBCERA with an A.M. Best rating of not less than A-, X, unless otherwise approved by SBCERA.

11.4 Failure to Maintain Coverage. SERVICE PROVIDER's failure to maintain the required insurance, or to provide evidence of insurance coverage acceptable to SBCERA, shall constitute a material breach of the Agreement upon which SBCERA may immediately terminate or suspend this Agreement. SBCERA, at its sole option, may obtain damages from SERVICE PROVIDER resulting from said breach.

11.5 Compensation for SBCERA Costs. In the event that SERVICE PROVIDER fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to SBCERA, SERVICE PROVIDER shall pay full compensation for all costs incurred by SBCERA.

11.6 Cooperation Regarding Insurance. SBCERA may elect to procure insurance against loss or damage it may sustain in connection with SERVICE PROVIDER's performance under this Agreement. SERVICE PROVIDER will promptly cooperate with any reasonable request for information regarding SERVICE PROVIDER which is required to obtain such insurance.

11.7 Survival of Obligations. SERVICE PROVIDER's obligations under this Section 11 shall survive expiration or termination of this Agreement.

11.8 Commercial General Liability. SERVICE PROVIDER shall provide and maintain a Commercial General Liability insurance policy, which names SBCERA as additional insured. Such policy shall cover legal liability for bodily injury and property damage arising out of SERVICE PROVIDER 's business operations and services that SERVICE PROVIDER provides pursuant to this Agreement. Such policy shall include, without limitation, endorsements for Property Damage, Premises-Operations, Products/Completed Operations, Contractual, and Personal/Advertising Injury with a limit of at least \$1,000,000 per occurrence and an annual aggregate of at least 2,000,000. If such insurance is written on a Claims Made Form, such insurance shall be endorsed providing an extended reporting period of not less than five (5) years following termination or expiration of this Agreement.

11.9 Auto Liability. SERVICE PROVIDER shall provide and maintain a comprehensive auto liability insurance policy endorsed for all "owned", "non-owned", and "hired" vehicles, or coverage for any "auto", with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident. Workers' Compensation. SERVICE PROVIDER shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to SERVICE PROVIDER 's employees for injuries arising from or connected with any services provided to SBCERA under this Agreement. SERVICE PROVIDER shall provide and maintain a program of Workers' Compensation, in an amount and form to meet all applicable statutory requirements. In all cases,

worker's compensation insurance also shall include Employer's Liability Insurance with limits of not less than \$1,000,000, each accident, and \$1,000,000, disease, covering all of SERVICE PROVIDER 's employees.

11.10 Errors and Omissions. SERVICE PROVIDER shall provide and maintain insurance covering liability arising from any error, omission, negligent or wrongful act of the SERVICE PROVIDER, its officers, employees or Agents, with limits of at least \$1,000,000 per claim and an annual aggregate of at least \$2,000,000. The coverage also shall provide an extended one-year reporting period commencing upon termination or cancellation of this Agreement.

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ARTICLE 12
MISCELLANEOUS

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

12.2 Successors and Assigns. Neither this Agreement nor SERVICE PROVIDER's rights or duties hereunder may be assigned, transferred, or delegated by SERVICE PROVIDER, 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.

12.3 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.

12.4 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 (4th) business day after posting when mailed within the United States by first class registered or certified mail, postage prepaid, addressed to SBCERA and SERVICE PROVIDER 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, Suite 100
San Bernardino, CA 92408
Attention: Deborah S. Cherney, Chief Executive Officer

With a copy to:

Attention: Barbara M.A. Hannah, Chief Counsel

Notices shall be sent to SERVICE PROVIDER addressed as follows:

[Name]
[Organization]
[Address]
[Address]

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

12.5 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.

12.6 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.

12.7 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.

12.8 Service Providers and Managers. SERVICE PROVIDER agrees to cooperate with such other SERVICE PROVIDERS, advisors, actuaries, SERVICE PROVIDERS, managers, and others as SBCERA may retain from time to time to assist SBCERA.

12.9 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.

12.10 Changes and Amendments. SBCERA and SERVICE PROVIDER 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.

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

[NAME/ORGANIZATION]

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION

By: _____

[Name]

By: _____

DEBORAH CHERNEY
Chief Executive Officer

CONTRACT APPROVED AS TO FORM AND LEGALITY:

SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: _____

BARBARA M. A. HANNAH
SBCERA Chief Counsel

Dated: _____

Exhibit B: Data Confidentiality Agreement

VENDOR AND VISITOR CONFIDENTIALITY AGREEMENT GOVERNING THE ACCESS AND USE OF SBCERA'S CONFIDENTIAL INFORMATION

This Confidentiality Agreement (the "Agreement"), dated as of _____ ("Effective Date"), is between San Bernardino County Employees' Retirement Association (SBCERA), a retirement system governed by the laws of the State of California, located at 348 W. Hospitality Lane, San Bernardino, California 92408 ("SBCERA"), and _____, located at _____ ("Recipient"). SBCERA and Recipient may be referred to collectively as the Parties.

WHEREAS, SBCERA is a county public retirement association created pursuant to the County Employees' Retirement Law of 1937 and is administered by the SBCERA Board of Retirement;

WHEREAS, Recipient is [Insert description of Recipient, i.e. "a corporation formed under the laws of the State of California that provides consulting services."];

WHEREAS, Recipient is under consideration by SBCERA to provide certain services that are more fully described in the [Title of document describing services, i.e. Request for Proposals, Scope of Work, etc.] (Purpose);

NOW, THEREFORE, in consideration of the above-stated, the Parties agree as follows:

Purpose

By way of this Agreement, SBCERA is permitting access to SBCERA's Confidential Information. In connection with the Purpose, SBCERA may disclose to Recipient, and Recipient may receive access to, Confidential Information (as defined below). Recipient shall use the Confidential Information solely for the Purpose and, subject to Section 3, shall not disclose or permit access to Confidential Information other than to its employees and officers (collectively, "Representatives") who: (a) need to know such Confidential Information for the Purpose; (b) know of the existence and terms of this Agreement; and (c) are bound by written confidentiality agreements no less protective of the Confidential Information than the terms contained herein.

Confidential Information

"Confidential Information" means all non-public, proprietary, or confidential information as defined by SBCERA's policies and governing law relating to SBCERA, irrespective of form or medium whether oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as "confidential," concerning member data, business, operation and/or assets of SBCERA. However, Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Recipient's or its Representatives' act or omission; (b) is obtained by Recipient or its Representatives on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; (c) was in Recipient's possession, as established by documentary evidence, before SBCERA's disclosure hereunder; or (d) was or is independently developed by Recipient or its Representatives, as established by documentary evidence, without using any Confidential Information. Confidential Information also includes the fact that the parties are in discussions regarding the Purpose, that Confidential Information has been disclosed, and any terms, conditions or arrangements discussed by the Parties in connection with accomplishing the Purpose.

Use and Non-Disclosure Confidential Information

Recipient agrees that use of the Confidential Information is solely in connection with the Purpose and that the Confidential Information will be kept confidential. Recipient agrees not to use any Confidential Information of SBCERA for any purpose other than fulfilling the Purpose stated herein and not disclose any such Confidential

Information to any third party. Recipient shall use at least the same reasonable care with respect to the Confidential Information that SBCERA uses to maintain the confidential information. Recipient is required to advise each Representative, before such Representative receives access to Confidential Information of the obligations under this Agreement, and to the extent that each Representative is not already bound by the terms of their employment, specifically require each such Representative to comply with such obligations hereunder. Such obligation extends to any Confidential Information that Recipient may have acquired or may acquire during the course of its association with SBCERA, whether in oral, written or electronic form and regardless of (1) the manner in which access was obtained, (2) whether the Confidential Information came into Recipient's custody, possession, or knowledge, or was developed, compiled, prepared or used by Recipient before or after the date of this Agreement, and (3) whether the Confidential Information has been published or has become a part of the public domain, or has been put in Recipient's possession or knowledge by a third person not acting on behalf of SBCERA, or was in Recipient's possession or knowledge prior to Recipient being permitted access to SBCERA's Confidential Information. Recipient and/or Recipient's Representative shall promptly notify SBCERA of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further use or disclosure. Recipient will be responsible for any breach of this Agreement caused by its Representatives.

Disclosure Required by Law

If Recipient or its Representative(s) is required by applicable law or a valid legal order to disclose any Confidential Information, Recipient shall, before such disclosure, notify SBCERA of such requirements so that SBCERA may seek a protective order or other remedy, and Recipient shall reasonably assist SBCERA in obtaining a protective order. If Recipient remains legally compelled to make such disclosure, it shall: (a) only disclose that portion of the Confidential Information that, in the written opinion of SBCERA's legal counsel is required to disclose; and (b) use reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.

Return of Confidential Information

Upon SBCERA's request or upon the expiration of this Agreement, all copies of the Confidential Information shall be returned within 5 days to SBCERA or destroyed, and Recipient shall certify in writing to SBCERA the destruction of such Confidential Information. Destruction of Confidential Information shall conform to NIST 800-88 or its successor standards.

Obligation

SBCERA has no obligation under this Agreement to (a) disclose any Confidential Information or (b) negotiate for, enter, or otherwise pursue the Purpose. SBCERA provides all Confidential Information without any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information, and SBCERA will have no liability to Recipient or any other person relating to Recipient's use of any of the Confidential Information or any errors therein or omissions therefrom.

SBCERA retains its entire right, title, and interest in and to all Confidential Information, and no disclosure of Confidential Information hereunder will be construed as a license, assignment, or other transfer of any such right, title, and interest to Recipient or any other person. Nothing in this Agreement is intended to grant rights or title, or interest to Recipient of SBCERA's Confidential Information.

Term

The rights and obligations of the parties under this Agreement survive after the Purpose of this agreement has been fulfilled, and the obligations under this Agreement are in addition to, and not exclusive of, all other obligations and duties to SBCERA, whether express or implied, in fact or in law.

Breach and Remedies

Recipient acknowledges and agrees that any breach of this Agreement will cause injury to SBCERA for which money damages may be an inadequate remedy, and in addition to remedies at law, SBCERA is entitled to equitable relief as a remedy for any such breach, including, without limitation, specific performance by the breaching party, temporary restraining order, or temporary or permanent injunction.

Governing Law

This Agreement and all matters relating hereto are governed by, and construed in accordance with, the laws of the State of California, without regard to the conflict of laws. Each party hereto irrevocably and unconditionally submits to the exclusive jurisdiction for Any legal suit, action, or proceeding relating to this Agreement must be instituted in the state courts located in City of San Bernardino, San Bernardino County, California and of United States District Court Central District of California. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. With respect to any such Proceeding, each party hereto hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, (i) any objection which it may now or hereafter have to venue, and (ii) the defense of an inconvenient forum.

Notice

All notices must be in writing and addressed to the relevant party at its address set out in the preamble. All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective on actual receipt.

Assignment

This Agreement shall inure to the benefit of and be binding upon each of the parties and their respective successors and permitted assigns, provided, however, that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party without the prior written consent of the other party, and no assignment of any right, interest or obligation shall release any such assigning party from the terms of this Agreement unless the other party has consented to such release in writing specifically referring to the right, interest or obligation from which such assigning party is to be released.

No Partnership or Joint Venture.

This Agreement is not intended to, and shall not be deemed to, create any partnership, joint venture, joint enterprise, or business relationship between the Parties, or to authorize or empower either party to act on behalf of or obligate or bind the other party. Nothing in this Agreement, expressed or implied, is intended to confer on any third party any rights or remedies under or by reason of this Agreement.

Entire Agreement

This Agreement is the entire agreement of the parties regarding its subject matter and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, whether written or oral, regarding such subject matter. This Agreement may only be amended, modified, waived, or supplemented by an agreement in writing signed by both Parties.

Severability

The provisions of this Agreement shall be severable, and the invalidity, illegality or unenforceability of any provisions of this Agreement shall not in any way affect, impair, or render unenforceable the remaining provisions of this Agreement, all of which shall remain in full force and effect. If any provision of this Agreement is adjudicated by a court of competent jurisdiction as invalid, illegal, or otherwise unenforceable, but such provision may be made enforceable by a limitation or reduction of its scope, the Parties agree to abide by such limitation or reduction as may be necessary so that said provision shall be enforceable to the fullest extent permitted by law.

Counterparts; Facsimile Signatures

This Agreement may be signed in counterparts, and delivered by facsimile, electronic transmission, or .pdf, and such facsimile, electronic transmission or .pdf counterparts are valid and binding on parties hereto with the same effect as if original signatures had been exchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the Effective Date.

CONSULTANT/VENDOR

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION

Name:

By: _____

By: _____

Name:

DEBORAH CHERNEY

Title:

Chief Executive Officer

AGREEMENT APPROVED AS TO FORM AND LEGALITY:

SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: _____

BARBARA M. A. HANNAH
SBCERA Chief Counsel

Dated: _____