



San Bernardino County Employees'
Retirement Association

Request for Proposals for AGREED UPON PROCEDURES REPORTS

Release Date: October 19, 2020

Responses Due: November 5, 2020 by 4:00 p.m. PDT
Via Email only to amcinerny@sbcera.org and dcherney@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 42,000 members and beneficiaries. SBCERA serves 17 employers throughout California and invests more than \$10 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

In July 2020, the SBCERA Board approved an FY 2020-21 Audit Workplan with three specific areas for Agreed Upon Procedures reports to be prepared by an independent accounting firm:

1. Benefits and Customer Service – Accuracy of Member Information
2. Benefits and Customer Service – Death Benefit Processes – Payments to Beneficiaries and Member Death Verification
3. Financial and Investment Operations – Cash management procedures and Wire transfer processes

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 November 5, 2020. 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:

October 19, 2020	Release RFP
October 27, 2020	Deadline to submit questions by 4:00 p.m. PDT. 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.
October 29, 2020	Submitted questions and SBCERA answers in response will be posted on the SBCERA website.
November 5, 2020	RFP Phase I response due via email to: Amy McInerny, Chief Financial Officer amcinerny@sbcera.org Debby Cherney, Chief Executive Officer dcherney@sbcera.org
November 19, 2020	SBCERA Audit Committee Meeting / Consultant Selection Recommendation
December 3, 2020	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 – Accuracy of Member Information**
 - Audit member records for a specific period to evaluate the accuracy and completeness of member records and payroll data submitted by participating employers.
 - Make recommendations for any process improvements.
2. **Benefits and Customer Service – Death Benefit Processes – Payments to Beneficiaries and Member Death Verification**
 - Audit the process for verifying eligibility for survivor benefits, particularly for minor children, for a specific period of time to assess whether the surviving beneficiary eligibility verification process is functioning as designed.
 - Audit member death verification process including updates to member records as a result of enrollment information changes, personal information changes, family changes, and/or death of member or beneficiary for a specific period to assess whether the procedures are functioning as designed.
 - Audit collection process for overpayments resulting from member or beneficiary death.
 - Make recommendations for any process improvements.
3. **Financial and Investment Operations – Cash management procedures and Wire transfer processes**
 - Audit cash management procedures for a specific period of time to assess if the procedures are functioning as designed.
 - Audit wire transfer processes for a specific period of time to assess whether the process is functioning as designed. Test whether internal controls on investment commitments vs. funding are functioning as designed for investment capital calls.
 - Make recommendations for any 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 draft of its specific agreed upon procedures for each of the three Agreed Upon Procedures reports identified in the Scope of Work section above.
3. The firm shall provide a proposed timeline for delivering the reports, which may have staggered delivery dates, as long as completed by May 31, 2021.
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 engagement letter and scope of work will be attached. Firms must identify any exceptions to the proposed template agreement in their response to this RFP. Exceptions may be granted or rejected in SBCERA's sole discretion. Exceptions that substantially alter the terms of the RFP will not be granted, and may render a Proposal non-responsive and subject to rejection.

Binding Offer

The Proposer shall be bound by the information and representations contained in the any proposal submitted. Said proposal is deemed to be a binding offer on the part of the Proposer. Proposer understands and agrees that California law will govern.

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 and Hourly Rates (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 Audit Committee at its November 19, 2020 meeting. If necessary, the staff and the Audit Committee's recommendation will be advanced to the full SBCERA Board at its December 3, 2020 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 non-confidential 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.

Sample Agreement for Services

AGREEMENT FOR

_____ SERVICES

This AGREEMENT FOR _____ 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 Exhibit "A" (the "RFP") and Exhibit B (the "Proposal") (collectively, the "CONSULTANT Services"). Exhibits A and B, including all exhibits and attachments thereto, 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 Exhibit A or B, unless otherwise expressly stated, this Agreement shall be first in the order of precedence, followed by Exhibit A, then Exhibit B. 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 Seminars and Training Programs. In the event CONSULTANT conducts seminars, training sessions, or similar events which are generally made available to CONSULTANT's customers, SBCERA shall be invited to attend upon the same conditions and terms as other customers. In the event CONSULTANT offers to pay the cost of such events and/or the travel or lodging expenses incurred by its customers in connection with attending such events, CONSULTANT will reimburse SBCERA for such expenses on the same basis as CONSULTANT reimburses the expenses to its customers generally.

ARTICLE 2

CONTRACT RESPONSIBILITIES

2.1 SBCERA - RESPONSIBILITIES.

2.1.1 Representative. SBCERA's Representative for

this contract will be:

Chief Executive Officer
(or designee)
San Bernardino County Employees' Retirement Association
348 West Hospitality Lane, Third Floor
San Bernardino, CA 92415-0014
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.

2.1.5 Data Requested by Consultant. In order to provide the services as described in Exhibits A and B attached to this Agreement, CONSULTANT will prepare a detailed information and data request outlining what is necessary to perform its obligations set forth under those Exhibits and this Agreement. SBCERA, the SBCERA Representative and SBCERA staff agree to provide CONSULTANT on a timely basis with any and all information included in such request, along with any other information that CONSULTANT reasonably requests, e.g., financial data required and any other data or information needed to perform the Agreement objectives. SBCERA also agrees to instruct its staff, legal counsel and other service providers ("Other Professionals") to provide CONSULTANT with the requested information and data. Data will be requested in a computer format that is compatible with the computer system of CONSULTANT.

Upon receiving the requested data and information, CONSULTANT will examine it for missing information and internal inconsistency. Notwithstanding the fee schedule as set forth in Exhibit C of this Agreement, CONSULTANT may charge SBCERA at its normal hourly rates if it is necessary to convert data that is not presented in the format requested and for the additional processing time required to reconcile data that contains errors, duplicate records or missing information. SBCERA agrees and acknowledges that CONSULTANT shall have the right to rely on the accuracy of the data and information provided by SBCERA and the Other Professionals and shall have no responsibility for independently verifying this data and information, except that CONSULTANT shall have the duty to advise SBCERA if the data and information appears to be abnormal, unusual, or incorrect. SBCERA agrees that it will promptly notify CONSULTANT (and require the Other Professionals to do so as well) upon gaining knowledge of any material change to any of the information or data provided to CONSULTANT.

2.1.6 Payments for Consultant Services. In consideration of the services rendered in accordance with all terms and conditions and specifications set forth herein and set forth in Exhibits A and B, BOARD shall make payment for CONSULTANT Services to CONSULTANT as set forth in Exhibit C (hereafter, "Fee Schedule"). Any amendments to the fee schedule, Exhibit C, agreed to by both parties shall be set forth in a written modification of the Agreement. The fees set forth in this section shall be the sole compensation owed by or to any person for CONSULTANT's services under this agreement.

2.2 CONSULTANT - RESPONSIBILITIES.

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

[NAME]
[Title]
[Company]
[Address]

Primary: _____
Facsimile: _____
E-Mail: _____

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 effective for a ___ year term, as set forth in Exhibit A. SBCERA reserves the right, at its sole option, to renew the contract for an additional ___ 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) calendar 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 make available for review, 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.

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 one million dollars (\$1,000,000) per occurrence and an annual aggregate of two million dollars (\$2,000,000).

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 \$5,000,000.00 annual aggregate.

6.1.3 Deductibles and Self-Insured Retention. Any deductibles or self-insured retention shall be the sole responsibility of the CONSULTANT.

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 reasonable and documented expenses (including but not limited to attorneys' fees), damages, demands, suits, proceedings, claims, and actions to the extent that it is judicially determined that these are the direct result of the negligent 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.

ARTICLE 7 RECORDS

7.1 Record Retention and Inspection. Subject to any applicable privileges or other legally binding obligations of confidentiality, 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. Access shall be provided by CONSULTANT at the CONSULTANT's place of business.

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) day 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.

SBCERA acknowledges that CONSULTANT may retain an archival copy of all such information to support CONSULTANT's provision of services and in accordance with CONSULTANT's business continuity and document retention policies, subject to CONSULTANT's continued compliance with its confidentiality obligations.

If it is not feasible for CONSULTANT to return or destroy portions of such confidential data or information in its possession, CONSULTANT shall inform the SBCERA as to the specific reasons that make such return or destruction infeasible.

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
MISCELLANEOUS

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

10.2 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.

10.3 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.

10.4 Notices. Notices desired or required to be given hereunder to be 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 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 W. Hospitality Lane, Third Floor
San Bernardino, CA 92415-0014
Attention: Chief Executive Officer
With a copy to:
Attention: Barbara M. A. Hannah, Chief Counsel

Notices shall be sent to CONSULTANT addressed as follows:

[NAME]
[TITLE]
[ADDRESS]

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

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

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10.9 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.

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

[CONSULTANT NAME]

SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: _____

Name: _____

Title: _____

By: _____

DEBORAH CHERNEY

Chief Executive Officer

CONTRACT APPROVED AS TO FORM AND LEGALITY:

San Bernardino County Employees'
Retirement Association

By: _____

BARBARA M.A. HANNAH

Chief Counsel

Dated: _____