



San Bernardino County Employees'
Retirement Association

Request for Qualifications for COMPREHENSIVE CYBERSECURITY ASSESSMENT AND SERVICES

Release Date: April 15, 2025

Responses Due: May 27, 2025 by 3:00 p.m. PST
Via Email only to ISRFP@sbcera.org

PART 1

PURPOSE AND SCOPE OF SERVICES

A. PURPOSE

The San Bernardino County Employees' Retirement Association ("SBCERA") is issuing this Request for Proposals ("RFP") to evaluate firms ("Firm") to provide cybersecurity assessment and services. SBCERA seeks Firms with experience performing comprehensive cybersecurity evaluations, including compliance assessments, penetration and security testing, purple team exercises, and retesting of remediated findings. The selected Firm will enter into a contract for an initial three-year term, with two options to extend for an additional two years each.

Additionally, SBCERA seeks to establish a strategic partnership with the selected Firm to provide ongoing cybersecurity consultation services. This partnership will be separate from the audit contract and focus on continuous security improvements, risk advisory services, and strategic cybersecurity guidance tailored to SBCERA's needs.

B. BACKGROUND

SBCERA was established in 1945 under the provisions of the County Employees Retirement Law of 1937 ('37 Act or CERL). It is a cost-sharing, multiple-employer defined benefit public pension plan that operates under CERL, the California Public Employees' Pension Reform Act of 2013 (PEPRA)(California Government Code Section 7522, et seq.), and other applicable law. SBCERA administers service retirement, disability retirement, and death benefits on behalf of over 50,000 members and beneficiaries. SBCERA serves 17 employers throughout California. Oversight of SBCERA is through an independent Board of Retirement (Board), which serves as the fiduciary charged with policy oversight of the administration and investment of the Plan. The Board consists of nine members and three alternate members. The Chief Executive Officer and senior staff administer day-to-day management of the Plan. Internal and external legal counsel advises SBCERA.

The SBCERA Information Services Department has recently implemented Palo Alto ZTNA and SASE solutions to support its hybrid work environment. SBCERA is in the middle of a multi-year cloud-first initiative. Our cloud-first initiative involves reviewing and assessing our current on-premises systems and services and strategically migrating those systems to the Cloud to provide high availability and ensure continued member support and collaboration.

Further information about SBCERA is available from its website at www.sbcera.org.

C. CHALLENGE

Pension systems are complex in both their governance and operation. Our membership expects the same level of service they would receive from large commercial systems, though we are a fraction of the size and have limits on how funds are spent. SBCERA is working to expand its services to its membership while providing staff with greater tools and means of support and collaboration. We strive to accomplish this while maintaining the highest level of security.

With the rapid evolution of AI, the strive to move to the cloud, and the ability to provide staff and our members access to data anytime and anywhere while ensuring we are keeping everything secure and in compliance is an identified challenge and core focus of the next several audits.

D. SCOPE OF SERVICES

The selected Firm shall provide the following scope of services:

- **Deliverables**
 - On-premises and remote work arrangements to be negotiated based on the needs of SBCERA and the proposing Firm.
 - A detailed plan outlining the audit approach, methodology, tools, and timeline.
 - Periodic updates on the audit process, including preliminary findings for high-priority risks.
 - A comprehensive report including:
 - **Executive Summary:** Key findings and a summary of audit results.
 - **Detailed Findings:** Vulnerabilities, risks, and compliance gaps identified during the audit.
 - **Risk Assessment:** Categorization of risks based on severity and potential impact.
 - **Recommendations:** Actionable steps for improving security practices.
 - **Remediation Plan:** A prioritized remediation plan with timelines and responsible parties for addressing identified issues.
 - In-person presentation to the Board or its appointed Committee at their regularly scheduled meeting summarizing the key findings, risks, and recommendations for improvement.
- **Compliance Assessment:**

- Evaluation of the organization's compliance with applicable NIST frameworks, such as NIST 800-53, NIST 800-171, or NIST Cybersecurity Framework (CSF).
- Evaluation adherence to relevant regulations such as GDPR, HIPAA, or ISO 27001.
- Identification of gaps and weaknesses in security controls.
- Development of a roadmap for achieving and maintaining compliance.
- **Cybersecurity Penetration and Security Assessment:**
 - Conduct thorough penetration testing, including external, internal, and web application assessments.
 - Perform network security assessments to identify vulnerabilities and weaknesses.
 - Social engineering testing, including phishing simulations and awareness training recommendations.
 - Wireless security assessments to evaluate risks in corporate and guest wireless networks.
 - Cloud security assessments focusing on cloud infrastructure, applications, and configurations.
- **IT Governance & Risk Management**
 - Evaluate IT governance structure, decision-making processes, and alignment with business goals.
 - Assess the organization's risk identification, assessment, and mitigation processes, ensuring effective controls and monitoring.
 - Assess the effectiveness of the organization's incident response and disaster recovery plans, ensuring they are aligned with business continuity objectives.
 - Review the effectiveness of internal controls over critical IT systems, including access management, data protection, and system integrity.
 - Evaluate how senior management monitors, reports, and reviews IT governance and risk management activities to ensure continuous improvement.
- **Data Protection and Privacy**

- Ensure sensitive data is properly identified and protected based on its classification
- Evaluate encryption for data in transit and at rest, ensuring secure algorithms (e.g., AES, TLS) are used.
- Verify that data retention policies are followed and that secure methods are used for data deletion.
- Review access controls to ensure only authorized users can access sensitive data, with appropriate data masking or tokenization where necessary.
- **AI Security Audit:**
 - Assessment of AI and machine learning systems for vulnerabilities and security risks.
 - Review of AI governance frameworks and ethical AI practices to ensure compliance with industry standards.
 - Examination of AI-powered threat detection and response mechanisms.
 - Identification of biases, adversarial risks, and potential AI model exploits.
 - Recommendations for securing AI systems and ensuring responsible AI deployment.
- **Purple Team Exercise:**
 - Design and execute collaborative security testing that integrates offensive (red team) and defensive (blue team) operations.
 - Conduct real-world attack simulations to evaluate the effectiveness of security monitoring, detection, and response capabilities.
 - Provide detailed reporting with insights and recommendations for improving defensive strategies.
 - Develop and deliver training for internal security teams based on exercise outcomes.
- **Retest of Remediated Findings:**
 - Conduct follow-up testing to validate the remediation of previously identified vulnerabilities.
 - Provide updated reports with status updates on resolved, partially resolved, or unresolved findings.

- Offer additional guidance and recommendations for addressing persistent security weaknesses.
- **Additional Services (if applicable):**
 - Security awareness training and phishing campaign simulations.
 - Incident response readiness assessments and tabletop exercises.
 - Secure software development lifecycle (SDLC) reviews and code security analysis.
 - Compliance gap analysis for regulatory frameworks such as GDPR, PCI-DSS, and ISO 27001.
 - Assistance with policy and procedure development, ensuring compliance with applicable standards and regulations.
 - Assess authentication controls and role-based access.
 - Evaluate incident response plans and continuity strategies.

The scope of services defined in any final contract between SBCERA, and the Firm will supersede this section of the RFP if different from the scope of services defined here.

E. COSTS OF SERVICES

The costs for each audit year's identified Scope of Services will be fixed. Additional services and consulting services can be hourly or negotiated at a fixed price. All hourly proposals must include an estimated number of hours to complete.

- Hourly prices are to be listed within the proposal.
- If fixed-price services may be subject to escalators in future years, those escalators' averages and maximums must be outlined within the RFP.

F. SELECTION CRITERIA

Proposals will be evaluated based on the following criteria and their corresponding weights.

- Firm's Experience and Expertise
 - Demonstrated experience conducting cybersecurity audits similar in scale and complexity.
 - Proven capability to assess, identify, and mitigate cybersecurity risks.
- Clarity and Comprehensiveness of Audit Methodology
 - Clear explanation of the proposed approach and methodology.

- Detailed steps and phases for conducting the audit.
- Effectiveness and thoroughness of proposed testing techniques and tools.
- Qualifications of Proposed Audit Team
 - Certifications and professional credentials (CISA, CISSP, CEH, etc.).
 - Experience and technical competence of key personnel assigned to the project.
- Pricing Structure
 - Cost-effectiveness of the proposed fee structure.
 - Transparency and completeness in pricing, including any potential additional fees or expenses.
- Value-Added Services
 - Availability of supplementary services that provide additional value, such as training, ongoing monitoring, and consultation services.

PART 2

ADMINISTRATIVE INFORMATION

A. INSTRUCTIONS FOR SUBMITTING RFP

1. Firms responding to this RFP must provide answers to the questions posed in Appendix C of this RFP.
2. Firms submitting qualifications should provide a cover letter stating that the Firm meets all the minimum requirements listed in Appendix A of this RFP and that the Firm is able to deliver on the scope of work outlined in Part 1. An officer of the Firm or a designated agent empowered to bind the Firm in a contract shall sign the cover letter. The Firm must also identify in the cover letter any sections of the Submission that they consider confidential.
3. Submission answers should follow the order of questions in Appendix C of this RFP. Please follow the directions in Appendix C and complete the questionnaire in word or PDF format.
4. Firm must clearly reference supporting material to the appropriate question. Please do not use information and materials that are strictly promotional in nature.
5. **RFP evaluation timeline is outlined in Part 4 of this RFP.**

Firms must e-mail a complete electronic version of its Submission to ISRFP@sbcera.org. Please submit documents in Word or PDF format.

B. REJECTION OF SUBMISSIONS

1. Firms responding to this RFP should restrict their Submission to the structure specified in this RFP. Alternate or substitute structures will be rejected.
2. SBCERA reserves the right to reject any or all Submissions in whole or in part for any reason. SBCERA will not pay for any information requested in this RFP, nor is it liable for any costs incurred by the submitting Firms.
3. After evaluation of the Submissions, selection, and approval by SBCERA, all Firms will be notified of the outcome by SBCERA.
4. SBCERA reserves the right to not hire or to defer the hiring of a Firm for these consulting services.

C. FIRM OBLIGATIONS

The contents of this RFP, Submission and any clarifications thereto submitted by the successful Firm may become part of the contractual obligation and may be incorporated by reference into the ensuing contract.

D. DISPOSITION OF SUBMISSIONS

All Submissions become the property of SBCERA and will not be returned to the Firm.

E. SIGNATURE OF FIRM'S AGENT

Any offer made by the Submission and any clarifications to that Submission shall be signed by an officer of the Firm or a designated agent empowered to bind the Firm in a contract.

F. AWARD OF PROJECT

SBCERA reserves the right to award this contract to the Firm which will provide the best match to the requirements of the RFP. The successful Firm will be determined in accordance with the evaluation criteria defined by SBCERA.

G. EVALUATION OF SUBMISSIONS

SBCERA will evaluate the Submissions. SBCERA may conduct finalist interviews and may conduct office visits/virtual meetings with some candidate Firms. Determination of whether to conduct interviews and which Firms to interview is at the sole discretion of SBCERA.

PART 3

CONTRACTUAL REQUIREMENTS

Any contract between SBCERA and the successful Firm may incorporate the terms of this RFP but may also differ after further discussion with the selected Firm. The form of the contract is provided in Appendix D. Any material changes to the proposed contract must be made during this RFP process [see Part 5 section B].

PART 4

TIMETABLE FOR RFP EVALUATION

SCHEDULE OF EVENTS (all subject to change at discretion of SBCERA):

April 15, 2025	RFP is posted on SBCERA's website
May 9, 2025	INQUIRIES – Inquiries and requests for interpretation or clarification of the RFP from Firms will be accepted via email. Requesting that all inquiries be received no later than 3:00 pm Pacific, May 9, 2025. Inquiries received after that time will not be accepted. Email inquiries to ISRFP@sbcera.org .
May 12, 2025	RESPONSE TO INQUIRIES - Responses to and addenda resulting from requests for interpretation shall be posted to SBCERA's website at https://www.sbcera.org/about , no later than May 12, 2025.
May 27, 2025	QUALIFICATIONS DUE – Firm responses should be received by SBCERA electronically by 3:00 pm Pacific. Late submissions will not be accepted.
June 2, 2025	EVALUATION AND SELECTION – Notifications will be provided by SBCERA.

PART 5

FORM OF SUBMISSIONS

Any Submission that does not adhere to the following format and does not address each specification and requirement within the RFP and the applicable forms may be eliminated from further consideration:

- A.** Each Submission shall contain an index or table of contents near the front of the Submission listing the materials included in the Submission. Each Submission must be submitted in 8 ½" x 11"- page format and all pages must be numbered.

Firms shall complete, sign and attach to the Submission a completed and signed Signature Page (Appendix B). This page must be signed by a signatory with the authority to bind the Firm. The Signature Page must contain the following statement: "By signing this Signature Page, the undersigned representative has the authority to bind the Firm, and by submitting a Submission the Firm agrees to perform the services required by such RFP and to accept and comply with all requirements, specifications, terms and conditions of the RFP if selected. Firm further agrees to be bound by this Submission for a minimum of 12 months from the date the RFP was issued." Additionally, by signing the Signature Page contained in Appendix B, the Firm agrees to accept and comply with all the terms and conditions of the RFP.

Any Submissions not bearing the appropriate signatures on the Signature Page contained in Appendix B will not meet the minimum qualification requirements of the RFP and will not be considered further in the evaluation process.

- B.** The Firm may attach such other supplementary material to explain its Submission and, in this section, identify any material contractual term changes and conditions that the Firm requests.
- C.** The California Public Records Act, Government Code sections 7920.000, 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. Records are open to inspection during normal business hours, and records may be made available to requesting parties via email, mail, or common carrier upon request. See Appendix B for additional details.
- D.** Responses to this RFP become the exclusive property of SBCERA. At such time SBCERA recommends a Firm to the Board, and such recommendation appears on a public agenda, all Submissions submitted shall be regarded as public records, subject to disclosure upon request. Exceptions will be those elements in each Submission, 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 Submission. 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 Firm shall indemnify SBCERA for any and all attorney's fees awarded against SBCERA based on SBCERA's refusal to disclose those elements of the Submission marked by the Firm with a restrictive legend. Firms shall not mark their entire Submission as confidential. Such an attempted designation is not valid and will not be honored and will instead likely result in the entire Submission being treated as a non-confidential public record.

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

APPENDIX A

Request for Qualifications

CYBERSECURITY ASSESSMENT AND SERVICES

Information Services Department

MINIMUM QUALIFICATIONS COMPLIANCE

Each Firm must certify that it meets all the following minimum qualifications as of the date its Submission is provided to SBCERA. To certify, the Firm shall complete and submit all forms required by this RFP and sign the Signature Page contained in Appendix B.

Firm must affirm the following minimum requirements:

1. The Firm complies with and will comply with all relevant State and Federal regulations.
2. The Firm recognizes SBCERA may opt to make changes to the scope of work based on the response to the RFP process.
3. The Firm recognizes SBCERA may opt to pause, discontinue, or cancel the RFP process.
4. The Firm has at least 5 years of experience performing each of the scopes of services. AI does not require 5 years but must demonstrate experience.
5. The Firm can guarantee the assigned team will include professionals with relevant certifications.
6. All qualifications have been performed recently, with no qualification having more than a twelve (12) month gap in service performed.
7. The Firm can demonstrate experience with IT security frameworks and regulations.
8. The Firm's lead consultant assigned to SBCERA must have at least 10-years of relevant experience.
9. The Firm's resources are sufficient to engage with SBCERA for the proposed services.
10. The Firm meets SBCERA's Cost of Services requirements.

APPENDIX B

Request for Qualifications
CYBERSECURITY ASSESSMENT AND SERVICES
Information Services Department

1. MINIMUM QUALIFICATIONS COMPLIANCE

The Firm hereby certifies that it meets all the minimum qualifications detailed in Appendix A.

2. CALIFORNIA LAW

The Firm acknowledges that it has reviewed and is familiar with California Government Code §31595(b). And, acknowledges the following:

(i) SBCERA is a public agency subject to state laws, including, without limitation, (A) the Ralph M. Brown Act (California Government Code Sections 54950 et seq.), which governs meetings for local legislative bodies; and (B) the California Public Records Act (California Government Code sections 7920.000 et seq.) (the "Act"), which provides generally that all records relating to a public agency's business, including reports of transactions and proceedings, constitute "public records or files," and are open to public inspection, disclosure, and copying in the manner provided in the Act, unless specifically exempted under the Act; and (ii) the Firm will not make any claim against SBCERA if SBCERA makes available to the public any report, notice or other information it receives from the Firm which SBCERA, in good faith, determines is not exempt from public disclosure under applicable law, including, without limitation, the Act; and (iii) notwithstanding any provisions to the contrary SBCERA shall be entitled to disclose any other information required or permitted to be disclosed under the Act. In the event any information is required or permitted to be disclosed under the Act SBCERA shall, unless prohibited by law, rule, regulation or court order, use reasonable efforts to promptly notify the Firm, in writing, of the information required to be disclosed, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and, to the extent not prohibited by applicable law, SBCERA shall use reasonable efforts to cooperate with the Firm in the event the Firm takes action to preserve the confidentiality of such information consistent with applicable law.

3. TECHNOLOGY CONSULTING AGREEMENT

Should SBCERA and the Firm mutually agree to enter into a consulting agreement, the form of that agreement will be SBCERA's standard services agreement. Any material edits to the agreement must be made during the RFP submission process [See Part 5 section B]

APPENDIX B
Request for Qualification
Cybersecurity Assessment and Services

SIGNATURE PAGE

FIRM NAME: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

TELEPHONE #: _____

FACSIMILE #: _____

FEDERAL EMPLOYER IDENTIFICATION #: _____

CONTACT PERSON FOR FIRM: _____

By signing this Signature Page, through the undersigned representative who has the authority to bind the Firm, and by submitting a Submission in response to this RFP, the Firm agrees to perform the services required by such RFP and to accept and comply with all requirements, specifications, terms and conditions of the RFP if selected. Firm further agrees to be bound by this Submission for a minimum of 12 months from the date the RFP was issued.

SIGNED BY: _____

Name: _____

Title: _____

Date: _____

APPENDIX C

Request for Qualification

Cybersecurity Assessment and Services

QUESTIONNAIRE

Instructions:

Please return this questionnaire in word or PDF format.

Submittals should include the following items, along with other material to demonstrate the Consultant's expertise and capability:

1. A brief written description of the Firm's approach to the project.
2. Please describe the firm's typical approach to similar projects.
3. Please provide a written description of the Firm's approach to the challenge and scope of work provided in Part 1.
4. The team's expertise assembled by the Firm to carry out the work.

Please provide a list of key personnel that would be available for this project. For those listed, please add a brief description of their general qualifications with specific attention to relevant experience and a listing of key personnel that would be available to work on this project.

5. Please summarize five similar projects in progress or completed in the last 3-years.

The summaries should be written in case study format:

- a. Identify the key problems and issues from the client
 - b. Establish background information, relevant facts, and the most important issues.
 - c. What solutions did the Firm create
6. Please describe the Firm's overall capability in cybersecurity auditing.
 7. Please provide fixed fee pricing for services determined in scope and an hourly fee schedule for all other services.

APPENDIX D

Request for Qualification

Cybersecurity Assessment and Services

Consulting Services Contract

SBCERA requires the use of their Professional Services Agreement and Confidentiality Agreement. The Professional Services Agreement and Confidentiality agreement are attaches herein.



San Bernardino County Employees'
Retirement Association

**Professional Services Agreement
between**

SBCERA and _____

for

Contract # _____

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SBCERA’s RFP for _____

[Exhibit B](#) – Order Form

AGREEMENT FOR PROFESSIONAL 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], a [State] [type of entity] (hereinafter referred to as "AUDITOR/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");

WHEREAS, AUDITOR/CONSULTANT/SERVICE PROVIDER is a [describe type of business/services of cybersecurity auditor];

WHEREAS, AUDITOR/CONSULTANT/SERVICE PROVIDER has proposed to perform, and SBCERA has selected AUDITOR/CONSULTANT/SERVICE PROVIDER to perform, [type of services] pursuant to this Agreement and as described in Exhibit A for SBCERA; and

WHEREAS, the Board has determined that it would be in the best interest of the SBCERA if AUDITOR/CONSULTANT/SERVICE PROVIDER were to be retained to provide [type of services] set forth in Exhibit A and, accordingly, has voted on [date board approved], to approve 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 Acceptance of Duties. The SBCERA BOARD OF RETIREMENT (“BOARD”) hereby delegates to AUDITOR/CONSULTANT/SERVICE PROVIDER the duties and AUDITOR/CONSULTANT/SERVICE PROVIDER hereby accepts and assumes responsibility to provide [type of services] described in Exhibit A (the “RFP”) and Exhibit B (the “Proposal”) (collectively, the “AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES”) with regard to [services type]. 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 included Exhibits. The performance of any services, other than AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES by AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 CEO, or designee, will be SBCERA's Representative with respect to the administration of this Agreement and AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER at the address provided by AUDITOR/CONSULTANT/SERVICE PROVIDER. 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 AUDITOR/CONSULTANT/SERVICE PROVIDER agrees to cooperate with such persons in the performance of its duties.

2.1.2 Authority of SBCERA's Representative. The SBCERA Representative for this contract will provide direction to AUDITOR/CONSULTANT/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, AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER's communications, AUDITOR/CONSULTANT/SERVICE PROVIDER, where practicable, should schedule its affairs 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 AUDITOR/CONSULTANT/SERVICE PROVIDER on behalf of SBCERA. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER's Representative for this contract will be:

[Name]
[Title]
[Business Name]
[Business Address]
[City, State, Zip Code]
Telephone: (____) ____-____; Facsimile: (____) ____-____
E-mail: [email address]
Website: [website]

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

ARTICLE 3

**SERVICE PROVIDER'S REPRESENTATIONS, WARRANTIES,
COVENANTS, AND CERTIFICATIONS**

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

3.1.4 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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. AUDITOR/CONSULTANT/SERVICE PROVIDER warrants that no gratuities in the form of entertainment, gifts, or otherwise, were offered or given by AUDITOR/CONSULTANT/SERVICE PROVIDER, or any agent or representative of AUDITOR/CONSULTANT/SERVICE PROVIDER, to any Board member, 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. AUDITOR/CONSULTANT/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. AUDITOR/CONSULTANT/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.

AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER herein or does or will have any direct or indirect financial interest in this Agreement.

3.4 No Infringement. AUDITOR/CONSULTANT/SERVICE PROVIDER represents and warrants that: (a) none of the Services, Deliverables, and Pre-Existing Materials, or the AUDITOR/CONSULTANT/SERVICE PROVIDER 's use thereof or other exercise of its rights or license under this Agreement, does or will infringe, misappropriate, dilute, or otherwise violate any Intellectual Property Right of any Person, and (b) as of the date hereof, there are no pending or, to AUDITOR/CONSULTANT/SERVICE PROVIDER 's knowledge, threatened claims, litigation, or other proceedings against AUDITOR/CONSULTANT/SERVICE PROVIDER by any third party based on an alleged violation of such Intellectual Property Rights.

ARTICLE 4

CONFLICTS OF INTEREST AND PERMITTED DEALINGS

4.1 Conflict of Interest. It is understood that the AUDITOR/CONSULTANT/SERVICE PROVIDER performs services for various other clients. The AUDITOR/CONSULTANT/SERVICE PROVIDER and its officers may act and continue to act as AUDITOR/CONSULTANT/SERVICE PROVIDER and/or AUDITOR/CONSULTANT/SERVICE PROVIDER for other clients, and nothing in this Agreement shall in any way be deemed to restrict the right of AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER's duties and obligations to SBCERA under this Agreement.

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

ARTICLE 5

CHANGE ORDERS

5.1 If SBCERA or AUDITOR/CONSULTANT/SERVICE PROVIDER wishes to change the scope or performance of the AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES, the request shall include details of the requested change in writing in accordance with the notice provisions in Section 12.4. AUDITOR/CONSULTANT/SERVICE PROVIDER shall, within a reasonable time (not to exceed 30 days) after receiving a SBCERA-initiated request, or at the time that AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES arising from the change;
- (c) the likely effect of the change on the AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES;
- (d) any other impact the change might have on the performance of this Agreement; and
- (e) any other information [reasonably] requested by AUDITOR/CONSULTANT/SERVICE PROVIDER.

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 AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES [Exhibit A] [Exhibits A and B], [through DATE, with the option to extend additional ___ years at the discretion of the Chief Executive Officer] unless sooner terminated pursuant to this Section 6.

6.2 **Termination for Convenience.** Either party, in its sole discretion, may terminate this Agreement for AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES, 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.** SBCERA may terminate this Agreement effective upon written notice to the AUDITOR/CONSULTANT/SERVICE PROVIDER (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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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) AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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, including costs incurred which reasonably could have been avoided.

(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 AUDITOR/CONSULTANT/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 the event of termination due to failure of AUDITOR/CONSULTANT/SERVICE PROVIDER to satisfactorily perform in accordance with terms of this Agreement, SBCERA may withhold an amount that would otherwise be payable as an offset to, but not in excess of the AUDITOR's/CONSULTANT's/SERVICE PROVIDER's damages caused by such failure. In no event shall any payment by SBCERA pursuant to this Agreement constitute a waiver of SBCERA of any breach of this Agreement which may then exist on the part of the AUDITOR/CONSULTANT/SERVICE PROVIDER, nor shall such payment impair or prejudice any remedy available to SBCERA with respect to the breach.

(d) In no event shall SBCERA be liable for any AUDITOR/CONSULTANT/SERVICE PROVIDER Personnel termination costs arising from the expiration or termination of this Agreement.

6.6 Breach. Upon any breach of this Agreement by the AUDITOR/CONSULTANT/SERVICE PROVIDER, SBCERA may (i) exercise any right, remedy (in contract, law or equity) or privilege which may be available to it under applicable laws of the State of California; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for breach the Agreement.

6.7 Nonperformance. The AUDITOR/CONSULTANT/SERVICE PROVIDER shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the AUDITOR/CONSULTANT/SERVICE PROVIDER and without its fault or negligence such as, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The AUDITOR/CONSULTANT/SERVICE PROVIDER shall notify the Chief Executive Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in the connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Chief Executive Officer of the cessation of such occurrence.

6.8 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 AND DATA BREACH

7.1 Record Retention and Inspection. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER with respect to this Agreement. AUDITOR/CONSULTANT/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 unless otherwise required by law or SBCERA regulations or policy. AUDITOR/CONSULTANT/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) day period to take possession of such records. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER to give SBCERA notice of its intention to dispose of records, permits SBCERA to take possession of records and the obligation of AUDITOR/CONSULTANT/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. AUDITOR/CONSULTANT/SERVICE PROVIDER acknowledges that in performing the Services as contemplated herein, AUDITOR/CONSULTANT/SERVICE PROVIDER may acquire Confidential Information and trade secrets of great value to SBCERA concerning the business and operations of SBCERA, the use or disclosure of which could materially adversely affect SBCERA. AUDITOR/CONSULTANT/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.

AUDITOR/CONSULTANT/SERVICE PROVIDER shall follow reasonable security practices and standards that meet or exceeds industry norms when accessing or auditing SBCERA's systems. Service shall ensure that personnel accessing systems are trained, supervised, and bound by written confidentiality obligations. In the vent of unauthorized access or data breach, AUDITOR/CONSULTANT/SERVICE PROVIDER shall immediate notify SBCERA and cooperate in any required remediation, investigation, or notification procedures in compliance with California Civil Code.

All SBCERA data accessed or generated during the course of this Agreement shall be stored, transmitted, and processed using industry standard encryption. Service provider shall not use removable media or cloud storage to transfer or store SBCERA data unless explicitly authorized in writing.

7.3 Ownership of Confidential Information. SBCERA agrees to grant AUDITOR/CONSULTANT/SERVICE PROVIDER access to any such Confidential Information as required in order to fulfill the duties detailed in the AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER. The AUDITOR/CONSULTANT/SERVICE PROVIDER shall not permit the reproduction or use thereof of any Confidential Information.

7.4 Return or Destruction. Upon termination of this Agreement as provided in Article 6, AUDITOR/CONSULTANT/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.

7.5 Data Breach. Upon discovery or reasonable belief of any Data Breach, AUDITOR/CONSULTANT/SERVICE PROVIDER shall notify SBCERA via telephone by calling (909) 925-0330 and also in writing by email sent to the following SBCERA Representatives:

Deborah S. Cherney, Chief Executive Officer – dcherney@sbcera.org

Joseph Michael, Chief Information Officer – jmichael@sbcera.org

Barbara Hannah, Chief Counsel – bhannah@sbcera.org

AUDITOR/CONSULTANT/SERVICE PROVIDER shall provide notification within 24 hours after AUDITOR/CONSULTANT/SERVICE PROVIDER reasonably believes there has been such a Data Breach. AUDITOR/CONSULTANT/SERVICE PROVIDER shall identify:

- (a) The nature of the Data Breach;
- (b) The Data accessed, used or disclosed;
- (c) The person(s) who accessed, used, or disclosed and/or received Data (if known);
- (d) What AUDITOR/CONSULTANT/SERVICE PROVIDER has done or will do to quarantine and mitigate the Data Breach; and,
- (e) What corrective action AUDITOR/CONSULTANT/SERVICE PROVIDER has taken or will take to prevent future Data Breaches.

7.5.1 AUDITOR/CONSULTANT/SERVICE PROVIDER will provide daily updates, or more frequently if required by SBCERA regarding findings and actions performed by AUDITOR/CONSULTANT/SERVICE PROVIDER until the Data Breach has been effectively resolved to SBCERA's satisfaction.

7.5.2 AUDITOR/CONSULTANT/SERVICE PROVIDER shall quarantine the Data Breach, ensure secure access to Data, and repair any services as needed in accordance with the applicable AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES. Failure to do so may result in SBCERA exercising its options for accessing damages or other remedies under the Agreement.

7.5.3 Notwithstanding anything to the contrary in this Agreement, in performing services, and to the extent authorized by SBCERA in the applicable AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES, AUDITOR/CONSULTANT/SERVICE PROVIDER may be permitted by SBCERA to use systems, or may be granted access to SBCERA's systems, which store, transmit or process SBCERA' owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code section 1798.29 subdivision (g). If AUDITOR/CONSULTANT/SERVICE PROVIDER causes or knowingly experiences a breach of the security of such Data, AUDITOR/CONSULTANT/SERVICE PROVIDER shall immediately report any breach of security of such system to SBCERA following discovery or notification of the breach in the security of such Data. SBCERA's Chief Executive Officer and Chief

Information Officer, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of SBCERA or any person or entity under the control of SBCERA, AUDITOR/CONSULTANT/SERVICE PROVIDER shall bear any and all costs associated with SBCERA's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) or as otherwise required by law as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by SBCERA and AUDITOR/CONSULTANT/SERVICE PROVIDER in the applicable AUDITOR/CONSULTANT/SERVICES PROVIDER SERVICES. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.

7.5.4 AUDITOR/CONSULTANT/SERVICE PROVIDER shall conduct an investigation of the Data Breach and shall share the report of the investigation with SBCERA. SBCERA and/or its authorized agents shall the right to lead (if required by law) or participate in the investigation. AUDITOR/CONSULTANT/SERVICE PROVIDER shall cooperate with SBCERA, its agents, and law enforcement.

7.6 Disaster Recovery/Business Continuity. If applicable, AUDITOR/CONSULTANT/SERVICE PROVIDER will implement and maintain a disaster recovery and business continuity procedures that are reasonably designed to recover data processing system, data, communications facilities, information data, and other business-related function of SBCERA in a manner and time frame consistent with legal, regulatory, and business requirements applicable to SBCERA.

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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 Compliance with Laws. AUDITOR/CONSULTANT/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. AUDITOR/CONSULTANT/SERVICE PROVIDER shall indemnify and hold SBCERA harmless from any loss, damage or liability resulting from a violation by AUDITOR/CONSULTANT/SERVICE PROVIDER of any such laws, rules, regulations, ordinances, and directives.

8.3 Assurance of Compliance with Civil Rights Laws. AUDITOR/CONSULTANT/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.

8.4 Affirmative Action. The AUDITOR/CONSULTANT/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, national origin, or veteran status. 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.

8.5 Independent Contractor. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER. AUDITOR/CONSULTANT/SERVICE PROVIDER understands and agrees that all persons furnishing services to SBCERA pursuant to this Agreement are employees solely of AUDITOR/CONSULTANT/SERVICE PROVIDER and not of SBCERA. AUDITOR/CONSULTANT/SERVICE PROVIDER will bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person performing services to AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 subcontracted by AUDITOR/CONSULTANT/SERVICE PROVIDER without the express written consent of the SBCERA Representative. AUDITOR/CONSULTANT/SERVICE PROVIDER will be solely liable and responsible for any and all payments and other compensation to any subcontractor, and SBCERA will have no direct liability to any subcontractor.

8.6 Permits and Licenses. AUDITOR/CONSULTANT/SERVICE PROVIDER shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with all federal, state, city and county laws, rules or regulations affecting services under this Agreement. AUDITOR/CONSULTANT/SERVICE PROVIDER shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement. If AUDITOR/CONSULTANT/SERVICE PROVIDER is either a foreign or domestic corporation or limited liability company, it must be in good standing and be qualified to do business in California as of the effective date and throughout the terms of this Agreement.

8.7 Interpretation. This Agreement has been negotiated at arm's length by 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. AUDITOR/CONSULTANT/SERVICE PROVIDER shall perform all services hereunder with the care, skill, diligence, and responsibility of a professional AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER performs (or does not perform) as provided hereunder and shall be adhered to by AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER according to [Exhibit A] [Exhibits A and B] for performing the AUDITOR/CONSULTANT/SERVICE PROVIDER SERVICES. All AUDITOR/CONSULTANT/SERVICE PROVIDER’s expenses including, but not limited to, travel, personnel, insurance, equipment, premises leases, and operating costs, are included in the compensation described in [Exhibit A] [Exhibits A and B] and therefore AUDITOR/CONSULTANT/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 AND INDEMNIFICATION

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

11.1.1 Certificate(s) or other evidence of coverage satisfactory to SBCERA shall be delivered to SBCERA 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, AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/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. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER resulting from said breach.

11.5 Compensation for SBCERA Costs. In the event that AUDITOR/CONSULTANT/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, AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER's performance under this Agreement. AUDITOR/CONSULTANT/SERVICE PROVIDER will promptly cooperate with any reasonable request for information regarding AUDITOR/CONSULTANT/SERVICE PROVIDER which is required to obtain such insurance.

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

11.8 Commercial General Liability. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER 's business

operations and services that AUDITOR/CONSULTANT/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. AUDITOR/CONSULTANT/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.

11.10 Workers' Compensation. AUDITOR/CONSULTANT/SERVICE PROVIDER shall bear sole responsibility and liability for furnishing Workers' Compensation benefits to AUDITOR/CONSULTANT/SERVICE PROVIDER 's employees for injuries arising from or connected with any services provided to SBCERA under this Agreement. AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER 's employees.

11.11 Errors and Omissions. AUDITOR/CONSULTANT/SERVICE PROVIDER shall provide and maintain insurance covering liability arising from any error, omission, negligent or wrongful act of the AUDITOR/CONSULTANT/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.

11.12 Indemnification; Acknowledgement. AUDITOR/CONSULTANT/SERVICE PROVIDER will indemnify, defend, and hold harmless, SBCERA and all present, future, and former trustees, officers, 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:

(a) any decision or other action taken, omitted or suffered by the AUDITOR/CONSULTANT/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;

(b) any material breach of any representation or warranty made by the AUDITOR/CONSULTANT/SERVICE PROVIDER in this Agreement or any related documents;

(c) the material breach of any instrument contemplated by this Agreement due to the AUDITOR/CONSULTANT/SERVICE PROVIDER's gross negligence;

(d) any material misrepresentation contained in any statement or certificate furnished by the AUDITOR/CONSULTANT/SERVICE PROVIDER pursuant to this Agreement; and

(e) Losses arising from any claims that are asserted against SBCERA, the AUDITOR/CONSULTANT/SERVICE PROVIDER and each other Fund and account managed by the AUDITOR/CONSULTANT/SERVICE PROVIDER that participated in such Investment as a result of any action taken by the AUDITOR/CONSULTANT/SERVICE PROVIDER.

This indemnification shall survive the termination of this Agreement.

11.13 Cyber Insurance. Cyber Insurance. In addition to insurance required under this Agreement, AUDITOR/CONSULTANT/SERVICE PROVIDER shall at its sole cost and expense procure and maintain through the term of the Agreement and for two (2) years following the termination or expiration of the Agreement cyber/network privacy insurance with limits of \$5,000,000 per claim/in aggregate. Such policy shall provide coverage for disclosures and/or breaches of SBCERA data arising out of or relating to AUDITOR/CONSULTANT/SERVICE PROVIDER Services. Such policy shall also include coverage for the costs associated with restoring lost or damaged SBCERA data, sending breach notifications to affected individuals, public relations expenses, fines and penalties. Such policy shall not contain exclusions for the acts or omissions of either AUDITOR/CONSULTANT/SERVICE PROVIDER or SBCERA or their respective employees, agents, subcontractors or volunteers, whether intentional or unintentional, resulting in or relating to any use of SBCERA data not expressly permitted by this Agreement or any breach of

SBCERA data. AUDITOR/CONSULTANT/SERVICE PROVIDER must notify SBCERA at least thirty (30) days prior to the cancellation or modification of such policy.

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 AUDITOR/CONSULTANT/SERVICE PROVIDER's rights or duties hereunder may be assigned, transferred, or delegated by AUDITOR/CONSULTANT/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 in order 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 AUDITOR/CONSULTANT/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 AUDITOR/CONSULTANT/SERVICE PROVIDER addressed as follows:

[Business Name]
[Address]
[City, State, Zip Code]
Attention: [Name, Title]

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 Cooperation with Other Service Providers. SERVICE PROVIDER agrees to cooperate with such other auditors, advisors, actuaries, consultants, 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. This Agreement shall consist of the following, all of which are hereby expressly incorporated herein:

(a) The terms of the main body of this Agreement together with any attached Addenda, and including any amendment to the foregoing;

(b) Any applicable Statement of Works, Letter of Engagement and/or Service

Level Agreement (Exhibit A);

(c) All Exhibits to this Agreement, attachments, and any other attached documents, including any amendments to the foregoing;

(d) SERVICE PROVIDER's Order Form or Fees (Exhibit B);

(e) Request for Proposal, if any;

(f) AUDITOR/CONSULTANT/SERVICE PROVIDER's Response dated _____, which is expressly incorporated herein; and

(g) Any other provisions, terms, or materials expressly incorporated herein.

12.10 Changes and Amendments. SBCERA and AUDITOR/CONSULTANT/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.

12.11 No Third-Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any right or interests in this Agreement benefit or flow to the interest of any third parties.

12.12 LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SBCERA BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

12.13 Signature Authorization. The person signing on behalf of AUDITOR/CONSULTANT/SERVICE PROVIDER hereby warrants that he/she is an agent of AUDITOR/CONSULTANT/SERVICE PROVIDER and is duly authorized to enter into this Agreement on behalf of the AUDITOR/CONSULTANT/SERVICE PROVIDER.

12.14 Transparency Law. The AUDITOR/CONSULTANT/SERVICE PROVIDER acknowledges that SBCERA is a public agency subject to state laws, including without limitation, the Ralph M. Brown Act (Cal. Gov. Code Sections 54950 et seq.) and any regulations promulgated thereunder, which governs meetings for local legislative bodies; and the California

Public Records Act (Cal. Gov. Code Sections 7920.000 et. seq.) (the "Act"), which provides generally that all records relating to a public agency's business, including reports of transactions and proceedings, constitute "public records or files," and are open to public inspection, disclosure and copying in the manner provided in the Act, unless specifically exempted under the Act. The AUDITOR/CONSULTANT/SERVICE PROVIDER hereby agrees that it will not make any claim against SBCERA if SBCERA makes available to the public any business record, notice or other information it receives from the AUDITOR/CONSULTANT/SERVICE PROVIDER, which SBCERA, in good faith, determines is not exempt from public disclosure under applicable law.

12.14.1 For the avoidance of any doubt, the AUDITOR/CONSULTANT/SERVICE PROVIDER acknowledges and agrees that any written information which is distributed at an SBCERA public meeting is subject to be disclosed under the Act.

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

[BUSINESS NAME]

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION

By: _____
[NAME]
[Title]

By: _____
DEBORAH S. 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 A **RFP**

Request for Proposals for [Type of Services]

EXHIBIT B **Proposal**

Proposal for [Type of Services]
in response to SBCERA's
Request for Proposals for [Type of Services]



San Bernardino County Employees'
Retirement Association

Confidentiality Agreement

Governing the Access and Use of SBCERA's Confidential Information

By and Between

SBCERA and _____

Contract # _____

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CONFIDENTIALITY AGREEMENT
GOVERNING 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 individually as a “Party” or 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, Professional Services Agreement etc.] (“**Purpose**”);

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

1. **Purpose**: By way of this Agreement, SBCERA is permitting access to SBCERA's Confidential Information (as defined below). In connection with the Purpose, SBCERA may disclose to Recipient and Recipient may receive access to Confidential Information. Recipient shall use the Confidential Information solely for the Purpose outlined herein and the fully executed Professional Services Agreement [or title of document describing services],

incorporated herein by reference, and, subject to Section 3, shall not disclose such Confidential Information other than to its affiliates and its employees, officers, directors, partners, members, managers, agents, contractors, and attorneys (collectively, “**Representatives**”) who: (a) need access to such Confidential Information for the Purpose; (b) are informed of its confidential nature; and (c) are bound by confidentiality obligations no less protective of the Confidential Information than the terms contained herein. Recipient shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the same degree of care as the Recipient would use to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. Recipient will be responsible for any breach of this Agreement caused by its Representatives. Recipient agrees to notify SBCERA in writing within five (5) days of any misuse, misappropriation, or unauthorized disclosure of the Confidential Information of SBCERA that may come to Recipient's attention.

2. **Confidential Information**: “**Confidential Information**” means all non-public, proprietary, or confidential information including, but not limited to, any trade secrets, member records and data, investment information, data security, business records of SBCERA, whether in oral, visual, written, electronic, or other tangible or intangible form, whether or not marked or designated as "confidential," and all notes, analyses, summaries, and other materials prepared by Recipient or any of its Representatives that contain, are based on, or otherwise reflect, to any degree, any of the foregoing (“**Notes**”). 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.

3. **Use of 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.

4. **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.

5. **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 five (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.

6. **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.

7. **Ownership:** 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.

8. **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 of and to the Parties, whether express or implied, in fact or in law.

9. **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.

10. **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. Any legal suit, action, or proceeding relating to this Agreement must be instituted in the state courts located in the City of San Bernardino, San Bernardino County, California or 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.

11. **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 a nationally recognized courier or certified or registered mail and are effective on actual receipt.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

[RECIPIENT]

SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

By: _____
[Name]
[Title]

By: _____
DEBORAH S. 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: _____