



REQUEST FOR PROPOSAL

San Joaquin County Employees' Retirement Association
6 So. El Dorado Street, Suite 400
Stockton, California 95202
Phone: (209) 468-2163
www.sjcera.org

Request for Proposal No. 2023-01

FINANCIAL AUDITING SERVICES

Proposals must be received no later than 4:00 p.m. PT
Friday, July 21, 2023

KEY DATES

Request for Proposals (RFP) Issued	June 2, 2023
Letter of Intent and Written Questions Due	June 16, 2023, 4 p.m. PT
SJCERA Posts Responses to Questions	No later than June 23, 2023
Due Date for Submission of Proposals	July 21, 2023, 4:00 p.m. PT
Possible Finalist Interview(s)	August 21 - 25, 2023
Estimated Contract Execution	October 11, 2023

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I. INVITATION

The San Joaquin County Employees' Retirement Association (SJCERA) is issuing this RFP to solicit proposals from qualified firms of certified public accountants to audit its financial statements for five years beginning with year-end December 31, 2023.

II. GENERAL INFORMATION

A. Background Information

SJCERA is a tax qualified, contributory defined benefit pension plan established by the San Joaquin County Board of Supervisors effective June 28, 1946. SJCERA provides retirement, disability and survivor benefits to eligible General and Safety members employed by the County of San Joaquin and nine other public employers:

- Lathrop-Manteca Rural Fire Protection District
- Mountain House Community Services District
- San Joaquin County Historical Society and Museum
- San Joaquin County Law Library
- San Joaquin County Mosquito and Vector Control District
- San Joaquin County Superior Court
- San Joaquin Local Agency Formation Commission
- Tracy Public Cemetery District
- Waterloo-Morada Rural Fire Protection District

SJCERA's nine-member Board of Retirement has exclusive control and fiduciary responsibility for administering the benefits and managing the investment of plan assets. The Board oversees the Chief Executive Officer and staff in the performance of their duties in accordance with the County Employees' Retirement Law (CERL), the Internal Revenue Code (IRC), the Public Employees' Pension Reform Act of 2013 (PEPRA) as adopted by the participating employers' Boards and the Board of Retirement, and the bylaws, policies, and procedures adopted by the Board.

The nine-member Board of Retirement includes the County Treasurer-Tax Collector, four trustees appointed by the County Board of Supervisors and four trustees elected by SJCERA members (two general, one safety, one retired), plus one alternate retired member and one alternate safety

member (currently vacant).

As of December 31, 2022, SJCERA's membership included over 9,000 active and inactive members and 6,600 retired members. Net assets totaled approximately \$3.8 billion as of December 31, 2022.

B. Written Questions Related to the RFP

Written questions will be accepted only via e-mail at AuditRFP@sjcera.org. All questions must identify the RFP section and page number to which the question refers. Written questions to the above e-mail address will be accepted until 4:00 p.m. on Friday, June 16, 2023. Questions and responses thereto will be posted on SJCERA's website (www.sjcera.org) no later than June 23, 2023.

C. Notice of Intent

Each interested party must send a Letter of Intent to Propose to this RFP via e-mail to AuditRFP@sjcera.org on or before Friday, June 16, 2023. The Letter must include the title of the RFP, the single point of contact at your firm responsible for the RFP response and the telephone and e-mail information for this individual.

D. No Contact

No contact with SJCERA board members and SJCERA staff regarding the contents of this RFP is allowed during the pendency of this RFP, with the exception of the submitted written questions.

E. No Reimbursement for RFP Expenses

SJCERA will not provide reimbursement for any fees, expenses, or other costs incurred in connection with this RFP, including the costs of preparing the response, providing any additional information or attending an interview(s). All material submitted in response to this RFP will become the sole property of SJCERA. SJCERA expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal patent or proprietary rights.

F. Interviews

Interviews may be conducted at SJCERA's discretion. Proposers selected for interview will be notified of the interview date(s) at least two weeks in advance.

G. Confidentiality

All responses to this RFP become the property of SJCERA and will be kept confidential until such time as a recommendation for award of a contract has been announced. Submittals are subject to public inspection and disclosure under the California Public Records Act. If a Proposer believes that any portion of its submittal is exempt from public disclosure, such portion must be marked "Confidential." SJCERA will use reasonable and legally permissible means to ensure that such confidential information is safeguarded to the extent that SJCERA, in its independent judgment, concludes that the information is in fact exempt from disclosure, but SJCERA will not be liable for inadvertent disclosure of such materials, data and information. If proposals are marked "Confidential" in their entirety, SJCERA will not deny public disclosure of all or any portion of submittals so marked.

By submitting information with portions marked "Confidential", the Proposer represents it has good faith belief that such material is exempt from disclosure under the California Public Records Act and agrees to reimburse SJCERA for, and to indemnify, defend and hold harmless SJCERA, its officers, fiduciaries, employees and agents from and against: any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "claims") arising from or relating to SJCERA's non-disclosure of any such designated portions of a proposal if disclosure is deemed required by law or court order.

III. STATEMENT OF WORK

A. Audit

The auditor will express an opinion on the fair presentation of SJCERA's general purpose financial statements in conformity with generally accepted accounting principles. The auditor shall also perform procedures involving required supplementary information required by the GASB as mandated by generally accepted governmental auditing standards.

B. Auditing Standards

The audit is to be performed in accordance with generally accepted auditing standards (GAAS) as set forth by the American Institute of Certified Public Accountants (AICPA), the standards for financial audits set forth in the U.S. General Accounting Office's Government Auditing Standards (i.e., generally accepted governmental auditing standards, or

GAGAS), and the Minimum Audit Requirements and Reporting Guidelines for Public Retirement Systems, issued by the State of California, Office of the Controller. It is anticipated that the selected Proposer will utilize the applicable sections of the AICPA's Audit and Accounting Guide entitled "Audits of Employee Benefit Plans" to assist in preparing, auditing, and reporting on the basic financial statements of SJCERA.

SJCERA implemented GASB Statement No. 67 and No. 82 and will be subject to GASB No. 96. SJCERA requires Proposers to have direct knowledge and experience in advising and auditing organizations that have implemented new GASB standards and assist SJCERA in the implementation of new accounting pronouncements in effect at the time of the audit.

The selected Proposer shall meet all applicable professional standards when performing the audit and must maintain compliance with the professional standards and applicable federal and state laws and regulations.

C. Scope of Work

The audit will involve review and the performance of appropriate testing of, at a minimum, the following areas:

1. Retirement Contributions
2. Benefit Payments and Calculations
3. Investment Account Balances
4. Investment Expenses
5. Investment Income
6. Administrative Expenses
7. Actuarial Reserves
8. Plan Funding
9. Potential or Pending Liabilities
10. ACFR review

D. Reports to be Issued

Following the completion of the audit of the financial statements, the auditor shall issue one signed electronic copy of the following reports:

Independent Auditor's Report A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles for the current period in relation to the preceding period. The final report is required on or before May 31 of each year covered by the contract.

Letter to Management The auditor shall communicate in a letter to management any reportable conditions to the extent they come to the auditor's attention during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. Reportable conditions that are also material weaknesses shall be identified as such in the report.

Required Supplementary Information including schedule of funding progress on the six years ending December 31, 2023; and schedule of contributions from the employers and other contributions for the six years ending December 31, 2023.

Required Governmental Accounting Standards Board (GASB) Disclosure Statements

Irregularities and Illegal Acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to SJCERA's Chairperson of the Board of Retirement and the Retirement Administrator.

Reporting to the Board of Retirement. Auditors shall assure that the Board of Retirement is informed of each of the following:

1. The auditor's responsibility under generally accepted auditing standards
2. Significant accounting policies
3. Management judgments and accounting estimates
4. Significant audit adjustments
5. Other information in documents containing audited financial statements
6. Disagreements with management
7. Consultation with other accountants
8. Major issues discussed with management

9. Difficulties encountered in performing the audit
10. Fees from management advisory services
11. Independence
12. Other issues deemed necessary by the auditor

E. Government Finance Officers Association Certificate of Achievement

SJCERA will send its Annual Comprehensive Financial Report (ACFR) to the Government Finance Officers Association (GFOA) for review in their Certificate of Achievement for Excellence in Financial Reporting program. The auditor will be required to review each ACFR for consistency and reasonableness and against the guidelines of the GFOA's Certificate of Achievement for Excellence in Financial Reporting program.

F. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by SJCERA of the need to extend the retention period. The auditor will be required to make working papers available, upon request by SJCERA. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

G. Entrance Conferences, Progress Reporting and Exit Conferences

Prior to the start of fieldwork, the auditor will attend an entrance conference at SJCERA's offices to discuss key staff and points of contact during the audit, arrangements for work space and other needs of the audit team, identification of audit issues and scheduling of interim and year-end work to be performed. The auditor shall also provide SJCERA with a detailed audit plan and a list of all schedules to be prepared by SJCERA staff.

During fieldwork, the auditor shall conduct weekly status meetings at SJCERA's office with the accounting division and other SJCERA staff as necessary, to review and discuss the progress of the audit, results of substantive testing, and other audit issues.

The auditor shall attend one or more exit conferences, as determined necessary by SJCERA, to summarize the results of the fieldwork and to review significant findings. The auditor shall discuss findings and

recommendations or make presentations to the Board of Retirement and/or its committees as required.

The final signed report must be delivered to SJCERA electronically.

IV. ASSISTANCE TO AUDITOR

A. Assistance during Fieldwork

The finance division staff and other management and technical personnel will be available during the audit to assist the firm by providing information, documentation and explanations. SJCERA will provide a cover memo for the Auditor to include with its confirmation letters to investment managers, consultants, retirement system members, legal and participating employers. Distribution of the cover memo and confirmation letters will be the responsibility of the Auditor.

B. Statements and Schedules

SJCERA will prepare closing entries, draft financial statements, and documentation necessary to aid in the preparation of required supplementary schedules. As noted in the Statement of Work, Entrance Conferences, Progress Reporting and Exit Conferences, the auditor shall provide SJCERA with a detailed audit plan and a list of all documentation needed from SJCERA staff prior to and during fieldwork.

V. MINIMUM QUALIFICATIONS

A. Minimum Qualifications of Auditor

Proposers must meet all minimum qualifications set forth in the State Controller Guidelines. In addition, the following is a list of minimum qualifications that the Proposer must meet in order to be given further consideration.

1. The Proposer must be an independent public accounting firm licensed by the State of California under the Accountancy Act, Article 4, Section 5070.
2. The Proposer must have conducted audit(s) of at least five (5) defined benefit pension plans similar to SJCERA within the last five (5) years.
3. The Principal/Partner (Engagement Partner) responsible for

SJCERA's account, and the partner who signs the audit opinion (if different), must have at least ten years of public accounting experience. Such experience must include audits of defined benefit pension plans. This person must be a Certified Public Accountant licensed by and in good standing with the State of California.

4. The Audit Manager (Engagement Manager) responsible for SJCERA's account must have at least five years of experience in public accounting. Such experience must include audits of defined benefit pension plans. This person must be a Certified Public Accountant licensed by and in good standing with the State of California.
5. The On-Site Audit Supervisor (Engagement Supervisor) responsible for SJCERA's account must have at least three years of experience in public accounting. Such experience must include audits of defined benefit pension plans. This person must be a Certified Public Accountant licensed by and in good standing with the State of California.
6. The Engagement Manager and Engagement Supervisor must be available for consultations throughout the year.
7. The Proposer, Engagement Partner, Engagement Manager and Engagement Supervisor, must not currently (i) be defendant in any State or federal court action (in the United States or in any country in which the Proposer is doing business) for fraud, malpractice, misrepresentation, or negligence, or (ii) be the subject of any investigation, examination, complaint, disciplinary action or other proceeding before any state or federal government agency (in the United States or in any country in which the Proposer is doing business) licensing or regulating the accounting profession or any profession in which the Proposer's clients are engaged.
8. The Proposer must not be the subject of any investigation, examination, complaint, disciplinary action, judicial, administrative, or other proceeding relating to or affecting the Proposer's ability to perform its duties under contract with SJCERA. Except as otherwise required by law, SJCERA shall maintain the confidentiality of all such information until the investigating entity makes the information public.

VI. PROPOSAL REQUIREMENTS

A. Proposal Requirement

Proposers must electronically submit their proposal **no later than 4 p.m. PT on Friday, July 21, 2023**. Proposals should be sent to:

Greg Frank
RFP Coordinator
AuditRFP@sjcera.org

B. Proposal Form

Proposals shall be bookmarked, the Table of Contents hyperlinked to match the sections and requirements of the RFP, and all pages numbered. The proposal shall be prepared succinctly, providing a straight-forward, concise description of the Proposer's ability to meet the requirements of the RFP.

Proposals and fee schedules shall be valid and binding for 180 days following the proposal due date and will become part of the contract that is negotiated with SJCERA.

Failure to complete any question or request for information, in whole or in part, or any deliberate attempt by the Proposer to mislead SJCERA, may disqualify the Proposer. Each Proposer shall provide the following in addition to describing their qualifications and commitment to providing the required scope of services.

C. Proposal Content

A complete Proposal shall include the following elements:

Section 1: Introduction and statement of understanding: an overall introduction to the proposal response including a statement of the Proposers understanding of the project.

Section 2: General Qualifications:

- i. Organizational structure of the Proposer including organizational charts.
- ii. Any material changes to the organizational structure that has occurred in the last five (5) years.

- iii. Length of time the Proposer has been performing financial auditing services.
- iv. Length of time the Proposer has been performing financial auditing services specifically for defined benefit pension plans.
- v. Size of the firm and size of the firm's governmental audit staff.
- vi. Discuss the Proposer's competitive advantage over other firms in providing financial auditing services.
- vii. For the Proposer's office that will be assigned to SJCERA, complete Exhibit B, listing audit projects for large employee benefit plans, large government units and other services the Proposer deems similar to the financial auditing services described in this RFP.

Section 3: Professional Staff Qualifications and Experience:

- i. Identify the audit team (principal supervisory and management staff, including the engagement partners, managers, supervisory seniors and specialists) who would be responsible for SJCERA's account.
- ii. Provide biography/profile/resume for each person identified above.
- iii. For the audit team assigned to SJCERA, state the length of time these individuals have worked together as a team. Also indicate the number of client engagements to which each team member is currently assigned.

Section 4: Potential Conflicts

- i. Provide details of any potential conflicts of interest related to any other client relationships, SJCERA affiliates, SJCERA trustees or staff, if awarded the engagement.

Section 5: Legal Situations

- i. Provide any information on the circumstances and status of any pending litigation, investigation, examination, complaint, disciplinary action or other proceeding commenced by any state or federal regulatory body or professional organization during the past three (3) years.

Section 6: Fee Schedule

- i. The proposed fee schedule prescribed in Exhibit A must include all costs and expenses related to providing the services described in this RFP, including travel, telephone costs, copying costs, etc.

Section 7: References

- i. The Proposer shall provide at least one former client reference for which the Proposer performed auditing services, similar to those described in this RFP, within the last three (3) years.
- ii. The Proposer shall provide at least three (3) current client references for which the Proposer performs auditing services, similar to those described in this RFP.
- iii. The Proposer shall provide the following information for the references named in 7.i and 7.ii above:

Entity Name	
Entity Address	
Website	
Nature of Business	
Assets Under Management	
Total Plan Members	
Primary Contact Name, Title, Telephone Number, and Email	
Date Range of Service Provided	
Description of Services Provided	

SJCERA reserves the right to contact any of the individuals/agencies provided above.

Section 8: Attachments to Proposal

The following is a list of required Attachments to the proposal:

- Proposer's Financial Information or Audited Financial Statements
- Quality Control Review or Peer Review Report
- Fixed Fee Schedule - Exhibit A
- Listing of Financial Auditing Projects – Exhibit B
- Listing describing any issues or concerns of SJCERA's Sample Contract – Exhibit C

- Additional Materials – materials and information not specifically requested for evaluation, but which the Proposer wishes to submit with the proposal

VII. PROPOSAL SELECTION AND EVALUATION

A. General Information

Each proposal will be judged on its completeness and quality of its content. SJCERA reserves the right to reject any or all proposals and is not liable for any costs the Proposer incurs while preparing the proposal. All proposals will become part of the public file, without obligation to SJCERA. Upon the completion of the evaluations, SJCERA intends to negotiate a contract with the Proposer whose proposal is deemed to be most advantageous to SJCERA.

B. Interview and Presentations

Proposers may be selected to give an oral presentation to SJCERA's Audit Committee. Such presentation shall provide an opportunity for Proposers to clarify their proposal to ensure there is a mutual thorough understanding. SJCERA staff may interview selected Proposers and ask additional questions related to the proposal and the scope of work prior to an oral presentation to the Audit Committee. Interviews and oral presentations are conducted at SJCERA's discretion. Proposers selected for an interview or oral presentation will be notified of the date at least one week in advance. Proposers invited to an interview or oral presentation will be responsible for making and paying for their own travel arrangements.

C. Scoring and Evaluation Criteria

Proposals will be judged on completeness and quality of content. SJCERA is seeking to contract with a Proposer that has the appropriate qualifications using appropriate methodology to ensure delivery of a quality product, and that has extensive demonstration experience with, and an understanding of, similar projects.

SJCERA reserves the right to determine the best qualified Proposer and negotiate a final scope of service and cost, negotiate a contract with another Proposer if an agreement cannot be reached with the selected Proposer, or reject all proposals. The selected Proposer will be required to enter into a professional services contract with SJCERA, which will incorporate the scope of service as part of the agreement.

It is the intention of SJCERA to enter into a long-term relationship with the selected Proposer. Therefore, multiple factors will be weighed to determine the awarded Proposer; price is not the sole criteria in determining the best solution for SJCERA.

VIII. CONTRACT REQUIREMENTS

A. Contract Award

The award of a contract is accomplished by executing a contract with a written agreement that incorporates the entire RFP. Successful Proposers must agree to provide SJCERA with audit access on request during the term of the contract and for seven (7) years thereafter.

SJCERA shall have the right, in the first 12 months, to terminate this agreement upon 30 days written notice to the Proposer. Thereafter, either party shall have the right to terminate the relationship with or without cause upon 30 days written notice to the other party.

B. Contract Requirements

The Proposer must be covered by Workers' Compensation Insurance, which will extend to and include work in California. In addition, the Proposer must also submit documents addressing general liability insurance, errors and omissions, fiduciary liability, cyber liability, automobile liability, and an indication that there is no conflict of interest on the part of the Proposer's submission of a proposal for the services being solicited under this RFP. The Proposer shall demonstrate willingness and ability to provide Certificates of Insurance within ten (10) days of the Notice of Contract Award.

C. Contract Approval

SJCERA's selection of a successful Proposer shall not be binding until it has been approved by SJCERA's Board of Retirement.

EXHIBIT A

SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

REQUEST FOR PROPOSAL NO. 2023-01

FOR

FINANCIAL AUDITING SERVICES

FEE PROPOSAL

NAME OF PROPOSER

The Fee Proposal must be submitted in U.S. dollars in the format prescribed below. The proposed fee must include all costs and expenses related to providing full-service financial auditing services as described in this RFP to SJCERA, including travel. Other unusual or extraordinary expenses may be allowed, but only if requested by the Auditor and authorized by SJCERA in advance. The proposed fee must be guaranteed for the initial five-year term of the contract.

Annual Contract Term	Proposed Fee
Year 1	\$ _____
Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____
TOTAL	\$ _____

Signature

Date

Printed Name

Title

Exhibit B

SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

REQUEST FOR PROPOSAL No. 2023-01

FOR

AUDITING SERVICES

LISTING OF FINANCIAL AUDITING PROJECTS

NAME OF PROPOSER

For the Proposer's office that will be assigned to SJCERA, list auditing projects for large employee benefit plans, large government units and other financial auditing services the Proposer deems similar to the projects described in this RFP.

Name of Entity	Assets Under Management	Total Plan Members	Years of Engagement	Scope of Work	Date(s) Completed

EXHIBIT C SAMPLE CONTRACT FOLLOWS

**SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
AGREEMENT WITH _____ FOR FINANCIAL AUDITING SERVICES**

This Agreement is made and entered into by and between the San Joaquin County Employees' Retirement Association ("SJCERA"), a public retirement system created under the County Employees Retirement Law of 1937, with offices located at 6 El Dorado Street, Suite 400, Stockton, California 95202, and _____ ("Consultant"). The parties to this Agreement may be referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, following issuance of a request for proposals for auditing services and consideration of the responses received, SJCERA desires to enter into an agreement with Consultant; and

WHEREAS, the Agreement shall consist of this document, Attachment A – Scope of Work/Fees, Attachment B – SJCERA Request for Proposal No. 2023-01, and Attachment C – Consultant's Response to SJCERA Request for Proposal No. 2023-01, all of which are attached hereto and incorporated by reference herein. Any conflict in the definition or interpretation of any work, responsibility, services, schedule or contents of a deliverable product between the body of this Agreement and the Attachments shall be resolved by giving precedence first to the body of this Agreement, then to Attachment B, then to Attachment A, then to Attachment C.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the Parties agree as follows:

1. Term

This Agreement shall be effective as of _____ ("Effective Date"), and shall continue in force until _____ ("Expiration Date"), unless otherwise terminated in accordance with Section 6 of this Agreement. The term of this Agreement may be extended beyond the Expiration Date by an amendment in writing executed by both Parties that shall, at a minimum, set the fee schedule for the period of the extension.

2. Consultant Responsibilities

2.1 Work to be Performed. Consultant agrees to perform and deliver professional services in the manner and form as described in the body of this Agreement and in the Attachments.

2.2 Quality of Services. Consultant agrees to discharge its duties under this Agreement and its Attachments with the same standard of care, skill, prudence, and diligence that applies to other professionals practicing in a like enterprise.

2.2.1 Consultant shall use reasonable efforts to correct any errors or omissions in the performance or delivery of its services, at no additional cost or expense to SJCERA, within ten (10) business days after receipt of a written request by SJCERA.

2.2.2 Such opportunity to correct errors or omissions will not affect SJCERA's right to terminate this Agreement in accordance with the terms set forth in Section 6.

3. Contract Administration

- 3.1 The Parties have identified the following individuals to serve as Primary Consultant, Back-Up Consultant, and Contract Manager:

Consultant Primary Consultant Back-Up Consultant	SJCERA Contract Manager Greg Frank Management Analyst III gregf@sjcera.org
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- 3.1.1 The Primary Consultant shall have full authority to act on behalf of Consultant and will act as liaison to SJCERA on all matters related to this Agreement.
- 3.1.2 The Contract Manager shall provide management and coordination of this Agreement and will act as liaison for SJCERA on all matters related to this Agreement, including receipt and delivery of notices.
- 3.2 Consultant shall not remove or replace Primary Consultant or Back-Up Consultant without the prior written consent of SJCERA, and any replacement shall be a full-time partner or employee of Consultant.
- 3.3 Any notice required or permitted by the terms of this Agreement shall be given in writing by first class mail and e-mail and properly addressed as follows:

To SJCERA:
Greg Frank
Management Analyst III
San Joaquin County Employees' Retirement Association
6 S. El Dorado Street, Suite 400
Stockton, California 95202
gregf@sjcera.org

To Consultant:

4. Compensation

- 4.1 Consultant shall be compensated for services in accordance with the fees identified in Attachment A.
- 4.2 Consultant shall submit invoices in arrears to SJCERA no more frequently than monthly. Payment is due within forty-five (45) days of receipt and approval by SJCERA of an accurate, complete invoice and satisfactory receipt of deliverables.
- 4.3 Payments provided for in this Section constitute the entire compensation to which Consultant is entitled for performing the services described in the Attachments, and Consultant shall not be entitled to additional compensation in the event that the cost to Consultant of providing such services exceeds the compensation payable under this Section.
- 4.4 With respect to any special or additional consulting projects or services identified in Attachment A, Consultant will bill such requests either on a fixed-fee basis negotiated in advance or based on Consultant's then-current hourly billing rates, as agreed upon by the Parties.

5. Amendments

This Agreement and its Attachments may be amended only by written amendment executed by both Parties.

6. Termination

- 6.1 Termination for Default. In the event that Consultant, in the judgment of SJCERA, fails to perform in a timely and proper manner any of the services specified in this Agreement, SJCERA may terminate this Agreement by giving Consultant notice in writing of that fact, the reason therefore, and the date of such termination. If the Agreement is so terminated, Consultant shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination. In the event of termination under this Section, all finished or unfinished documents and other materials prepared by Consultant under this Agreement shall become the sole and exclusive property of SJCERA.
- 6.2 Termination for Convenience. SJCERA may terminate this Agreement for any reason by providing thirty (30) days advance written notice to Consultant. If the Agreement is so terminated, Consultant shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination.
- 6.3 Return of Information. Upon termination, Consultant shall transfer all requested information related to SJCERA to such persons or organizations as SJCERA designates in writing.

7. Indemnification

- 7.1 Consultant shall indemnify, defend, and hold harmless SJCERA, its Board, officers, agents, and employees from and against any and all third party claims, liabilities, losses, injuries, suits, costs, charges, judgments, fines, penalties, liens, expenses (including defense costs and reasonable attorneys' fees as awarded by the San Joaquin Superior Court) and claims for damages, for bodily injury, death, personal injury, or tangible property damage (including any workers' compensation suits, liability, or expense or any damage to Consultant's property) to the extent resulting from Consultant's negligence or intentional misconduct under this Agreement.
- 7.2 SJCERA shall give Consultant prompt notice of any claim for which SJCERA is entitled to indemnification.
- 7.3 The terms of this section shall survive the termination of this Agreement.

8. Insurance

Prior to execution of the Agreement, Consultant shall obtain at its own cost and expense, and maintain in force and effect during the term of this Agreement, including all extensions, professional liability insurance in an aggregate amount of \$5 million, general liability insurance (including bodily injury, property damage and automobile liability) in an aggregate amount of \$2 million, cyber liability in an aggregate amount of \$2 million, and Workers' Compensation/Employer's Liability insurance according to California law.

9. Confidentiality and Proprietary Rights

- 9.1 SJCERA's Confidential Information. For purposes of this Agreement, SJCERA's confidential information includes member records and member lists, both of which are protected from public disclosure by law, as well as unpublished business plans and strategies, processes, proposals, knowledge of selection of a Consultant in advance of official announcement, personnel, employee and employment records, financial information, proprietary computer programs including source code and object code, technical or other proprietary manuals, and all other forms of intellectual property, but does not include information that: (i) at the time of the disclosure is, or thereafter becomes, through no fault of Consultant, part of public domain; or (ii) is required to be disclosed by applicable law or regulation, including the California Public Records Act, subpoenas, court orders, and investigations by a governmental authority.
- 9.2 Consultant's Confidential Information. For purposes of this Agreement, Consultant's confidential information includes Consultant's research, know-how, development, software, trade secrets, and business affairs, but does not include information that: (i) can be shown by documentation to have been in SJCERA's possession prior to its disclosure by Consultant; (ii) at the time of the disclosure is, or thereafter becomes, through no fault of SJCERA, part of public domain; (iii) is furnished to SJCERA by a third party without the breach of any duty to Consultant; or (iv) is required to be disclosed by applicable law or regulation, including subpoenas, court orders, and investigations by a governmental authority.

9.3 SJCERA's Proprietary Rights. All completed deliverables, which may include materials, documents, data, reports, and other information developed under this Agreement specifically and exclusively for SJCERA, delivered to SJCERA, excluding items described in Section 9.4 or embodied therein, become the sole property of SJCERA upon payment therefor.

9.3.1 Upon the expiration or earlier termination of this Agreement, Consultant shall promptly deliver to SJCERA all deliverables prepared by Consultant under this Agreement; however, Consultant may retain possession of working papers prepared by Consultant only to the extent such working papers contain confidential information or proprietary rights of Consultant. SJCERA shall have the right during and subsequent to the term of this Agreement to inspect any and all such working papers upon reasonable prior notice and during normal business hours.

9.4 Consultant's Proprietary Rights. Consultant shall retain the exclusive rights to its working papers and the intellectual capital (including, without limitation, methodologies, know-how, models, general skills, expertise, ideas, trade secrets, concepts, techniques, processes, software, materials, tools, other intellectual property or information and any graphic or digitized representation of any of these) developed or possessed by Consultant prior to, or acquired during, the performance of this Agreement and the foregoing shall not be deemed deliverables and Consultant shall not be restricted in any way with respect thereto.

9.5 Protection of Confidential Information and Proprietary Rights.

9.5.1 Both Parties shall maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential.

9.5.2 Both Parties shall use reasonable security measures to protect all material, data, and information received or produced under this Agreement from loss or damage by any cause, including, but not limited to, fire and theft.

9.5.3 Both Parties shall not use or disclose Confidential Information beyond the uses specified in this Agreement and its Attachments.

9.5.4 Consultant shall report to SJCERA any unauthorized access to member lists or member data immediately upon discovery of such access.

9.6 Consultant acknowledges that SJCERA is required to disclose certain records pursuant to the California Public Records Act.

10. Record Retention

10.1 Notwithstanding any other provision of this Agreement, Consultant may retain the data, documentation, and instructions created or received in relation to the services provided in this Agreement ("Data") in electronic format.

- 10.2 Consultant may store Data received in written form (including but not limited to forms, letters, legal documents and other written correspondence) from SJCERA, members, or other third parties, through a process of electronic imaging without retaining the original paper copy of such documents.
- 10.3 Subject to Consultant's right to retain copies of records and data pursuant to the Agreement, Consultant shall provide to SJCERA or its designee a copy of any and all Data provided by SJCERA and retained by Consultant as of the termination or expiration of this Agreement in Consultant's then standard format, and thereafter will have no obligation to maintain such Data.
- 10.4 Consultant may retain SJCERA's information in paper or imaged format and may destroy paper copies if Consultant retains digital images thereof. Notwithstanding the foregoing, or anything to the contrary in this Agreement, Consultant shall be permitted to retain Data to the extent incorporated into Consultant's working papers.

11. Records and Audits

- 11.1 Consultant shall maintain accurate and complete books, records, documents, and other evidence, and accounting procedures and practices sufficient to support all claims for payment made by Consultant to SJCERA, including but not limited to any pertinent transaction, activity, dates, and time spent providing services under this Agreement, invoices billed to SJCERA, and any other records related thereto and created by Consultant in connection with this Agreement. In performing this Agreement, Consultant shall document all work efforts related to the development of any materials prepared specifically and exclusively for SJCERA hereunder.
- 11.2 All such material described in 11.1 above, including, but not limited to, all financial records, work documents, and information in whatever format, electronic or otherwise directly related to this Agreement (collectively, the "Work Records"), shall be kept and maintained by Consultant and information regarding the fees and expenses charged to SJCERA shall be made available to SJCERA during the term of this Agreement and any extension thereof and for a period of seven (7) fiscal years thereafter. Consultant shall work with SJCERA to address any request to extend the retention period. All such material shall be maintained by Consultant at Consultant's expense.
- 11.3 Record Review. Consultant agrees that SJCERA, or any duly authorized representative of SJCERA, including any successor consultant designated by SJCERA, will have the right to request information regarding any Work Records at any time during the term of this Agreement, or at any time for up to seven (7) years after the termination of this Agreement. Any such third party representative or successor shall be subject to reasonable confidentiality restrictions requested by Consultant.
- 11.3.1 SJCERA agrees that any such information request will be conducted in a manner to minimize interference with Consultant's normal business activities and shall be conducted no more than one (1) time during any twelve (12) month period.

11.3.2 Upon reasonable advance notice to Consultant (which in no event be less than ten business days), Consultant shall make information regarding Work Records available for review during normal business hours. Consultant shall make the persons responsible for creating and maintaining the Work Records available to SJCERA during such review for the purpose of responding to SJCERA's reasonable inquiries. SJCERA shall pay all costs associated with such review, other than any costs incurred by Consultant to make personnel available as required by the preceding sentence.

11.4 Audit Settlement. If representatives of SJCERA conduct a review of Consultant regarding the work performed under this Agreement, and if such review finds that SJCERA's dollar liability for such work is less than the payment made by SJCERA, then the difference will be either repaid by Consultant to SJCERA by cash payment upon demand or, at the option of SJCERA, deducted from any amounts otherwise due to Consultant from SJCERA. If such review finds that SJCERA's dollar liability for such work is more than the payments made by SJCERA, then the difference will be paid to Consultant by SJCERA; however, the total payments shall not exceed the maximum amount payable by SJCERA for work performed through the period covered by the audit.

12. Compliance with Laws and Regulations

12.1 In performing under this Agreement, Consultant shall comply with all applicable legal requirements, including all federal, State, and local laws, statutes, ordinances, and regulations applicable to civil rights, non-discrimination in employment, wages, hours of employment, occupational safety, professional licensing and/or certifications, facility management, fire safety, health, sanitation, conflict of interest, and privacy.

12.2 At its own expense, Consultant shall acquire and maintain in force for the duration of this Agreement any and all permits, licenses, certifications and other documentation required for it and its employees to comply with any and all legal requirements applicable to its performance under this Agreement.

13. General Provisions

13.1 Independent Contractor. Consultant's status under this Agreement is that of an independent contractor. Services provided by Consultant pursuant to this Agreement shall be subject to the supervision of the Consultant. In providing such services, neither Consultant nor Consultant's employees or agents shall act as officers, employees, or agents of SJCERA. No partnership, joint venture, or other joint relationship is created hereby.

13.2 Governing Law, Venue. This Agreement shall be governed by the laws of the State of California, and any action brought to enforce the terms of this Agreement shall be filed in San Joaquin County Superior Court.

13.3 Uncontrollable Circumstances ("Force Majeure"). Consultant and SJCERA will be excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any

circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance (collectively, "Force Majeure"), provided that (i) the excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure, and (ii) the non-performing Party uses its best efforts to remedy its inability to perform.

- 13.4 Waiver. The failure of SJCERA or Consultant to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant, or condition.
- 13.5 Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.
- 13.6 Entire Agreement. This Agreement is the entire agreement between the Parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, understandings, and agreements of the Parties relating to the subject matter hereof.
- 13.7 Assignment. This Agreement may not be assigned without the prior written consent of the other Party, and it shall terminate automatically on the occurrence of such assignment without consent. If the Agreement is so terminated, Consultant shall receive equitable compensation for such services as have been satisfactorily performed up to the date of termination.
- 13.8 Survival. The rights, effects, and obligations under Sections 6.3, 7, 9, 11, and 13 shall survive the termination of this Agreement.
- 13.9 Third Parties. This Agreement is not intended to benefit any third party and does not confer any rights on any entity or person not a Party hereto.
- 13.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereby agree to all of the above terms and have executed this Agreement as of the Effective Date.

Consultant Name

Dated: _____

By: _____
Name
Title

San Joaquin County Employees' Retirement Association

Dated: _____

By: _____
Name
Title