



Service • Accountability • Security

## EMPLOYMENT AGREEMENT

**DEBBY CHERNEY, Employee No. H9904** ("Employee") is employed as the Chief Executive Officer with SBCERA effective August 18, 2018. This agreement is amended as of July 11, 2024. The CEO shall work under the direction of the Board of Retirement (Board). The terms and conditions of this employment agreement are stated herein. No oral modifications, express or implied, may alter or vary the terms of this Employment Agreement.

### 1. DUTIES OF THE POSITION

The duties of the position shall be those stated in the Classification Specifications for the position of Chief Executive Officer, which are attached hereto as **Exhibit A**, and incorporated herein by reference and as otherwise directed by the Board. SBCERA, through the Board, may amend this Classification Specification from time to time, as may be appropriate to best serve the needs of SBCERA and its members, as determined by the Board in its sole discretion, and Employee agrees that such amended specifications shall be binding upon the parties hereto.

### 2. SALARY AND PERFORMANCE REVIEW

Employee's base salary as CEO shall be \$406,993.60 (Step 21 on the CEO Range of the SBCERA Salary Schedule). Employee shall be entitled to a Cost of Living Adjustment ("COLA") on the same date and at the same rate as received by all other SBCERA employees. Employee may be entitled to a merit bonus payment of up to ten percent (10%) of base salary based on performance, achievement of goals, and financial condition of SBCERA, at the Board's discretion, following Employee's annual performance review which shall occur in the March to June time frame each year. At the discretion of the employee, this payment may be payable as a one-time bonus payment, payable over 26 pay periods or directed to the employee's 401a.

### 3. BENEFITS

Employee shall receive all benefits provided by SBCERA to management employees including, but not limited to, approved holidays, paid time off, retirement contributions, health benefits, and insurance coverage, subject to the following exceptions and additional benefits:

- a. Automobile Allowance: \$600.00 per pay period
- b. Portable Communication Device Allowance: \$100.00 per pay period

### 4. LEAVE ACCRUALS

Employee shall accrue vacation leave at the rate of 6.15 hours per two week pay period and sick leave at a rate of 3.69 hours per two week pay period. Employee shall receive the same administrative leave allowance as SBCERA management employees.

### 5. AT-WILL EMPLOYMENT

This position is "at will" and Employee serves at the pleasure of the Board. As an "at will" employee, either the Employee or the Board may terminate employment at any time and for any reason or for no reason at all.

### 6. RIGHTS OF TERMINATION

If Employee engages in any of the following activities, SBCERA may dismiss Employee *for cause*, requiring an action of the Board, which will eliminate any further employment or financial responsibility to the Employee by SBCERA. Dismissal *for cause*, in addition to any of its other normally understood meanings in employment agreements, shall include the following:

- a. Any conduct that constitutes moral turpitude, or that would tend to bring public disrespect, contempt, or ridicule upon SBCERA;
- b. A material violation of any significant policy or any governing document of SBCERA, or any local, state, or federal law, which, in the reasonable judgment of the Board, reflects adversely upon SBCERA.
- c. An absence from work of more than ninety (90) days without the Board's consent, except if such absence is attributable to medically documented illness or disability.
- d. Any misappropriation of the funds of SBCERA.
- e. A conviction or guilty, no contest, or Alford plea to a felony.
- f. Any other material violation or neglect of the duties, terms and conditions set forth in the Chief Executive Officer's Classification Specification and this Employment Agreement, or refusal to perform such duties in good faith and to the best of the Employee's ability, any of which are not remedied after thirty (30) calendar days written notice.

In no case shall SBCERA be liable to Employee for the loss of any collateral business opportunities, or any other benefits, perquisites, income, or consequential damages allegedly suffered by Employee because of termination *for cause*.

### 7. SEVERANCE

If Employee is dismissed *without cause*, requiring an action of the Board, the Board shall provide the Employee thirty (30) calendar days written notice. During such notice period, at the Board's sole discretion, it may relieve the Employee of all duties, authority, and access to SBCERA resources, but the Employee shall remain employed and full pay and benefits shall continue throughout the notice period. The day following the final day of employment, as determined by the Board in its sole discretion, shall be the start of severance period. During the severance period, SBCERA will pay Employee, in lieu of any and all legal remedies or equitable relief and upon the Board's receipt of a signed release of all claims, twelve (12) pay periods of base salary and healthcare benefits. Severance, at the Board's sole discretion, will be paid as either salary continuation or in a lump sum.

### 8. EMPLOYEE NOTICE OF RESIGNATION/RETIREMENT

Employee is required to provide sixty (60) days written notice to terminate employment. By resigning, Employee shall irrevocably forfeit any right to severance pay; however, the Board, in its sole discretion, may offer severance.

### 9. CONFLICTS IN THIS EMPLOYMENT AGREEMENT

Employee and employment shall be governed by this Employment Agreement with an effective date of employment of July 11, 2024 and the SBCERA Employee Benefits Guide. No oral modifications, express or implied, may alter or vary the terms of this Employment Agreement. If any provision of those documents conflicts with this Employment Agreement, the

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Employment Agreement shall control, followed by the Employee Benefits Guide.

### 10. ARBITRATION PROVISION

Any and all disputes, claims, or controversies ("Claims") arising out of or relating to this Employment Agreement or the breach, termination, enforcement, interpretation, or validity hereof, or the Employee's employment or its termination, that SBCERA may have against Employee or that Employee may have against SBCERA or its Board members, officers, employees, or agents shall be resolved by binding arbitration as set forth herein.

The Claims to be arbitrated include, but are not limited to: claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for unlawful discrimination or unlawful harassment (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, physical or mental disability or handicap, or medical condition, pregnancy or pregnancy related condition, or any other condition against which discrimination is unlawful under federal, state, or local law, ordinance, or regulation); claims for benefits (except claims under an executive benefit or pension plan that either specifies that its claims procedure shall culminate in an arbitration procedure different from this one, or is underwritten by a commercial insurer which decides claims); and claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance. Nothing in this Employment Agreement shall be construed as precluding Employee from filing a: (i) claim for workers' compensation or unemployment compensation benefits; and (ii) claim with the Equal Employment Opportunity Commission, California Civil Rights Department, or similar fair employment practices agency, or an administrative charge within the jurisdiction of the California Department of Industrial Relations; however, any such administrative claim that cannot be resolved administratively through such an agency shall be subject to this Employment Agreement.

Except as otherwise provided herein, arbitration shall be governed by, proceed in accordance with, and be subject to the provisions of the Federal Arbitration Act; however, to the extent that the Federal Arbitration Act is inapplicable or held not to require arbitration of a particular Claim or Claims, the California Arbitration Act, Title 9 of Part III of the California Code of Civil Procedure (commencing at Section 1280, et seq.), or any successor or replacement statute(s), shall apply.

Except as otherwise provided herein, the arbitration shall be commenced and conducted in accordance with the Employment Arbitration Rules & Procedures of JAMS as in effect at the time of commencement of the Arbitration ("JAMS Rules"). Any arbitration shall be held in San Bernardino County, California. The exact time and location of the arbitration proceeding will be determined by the arbitrator. The parties shall jointly select one arbitrator from the JAMS panel of arbitrators who shall be either a retired judge or an attorney who is experienced in the area of dispute.

Any demand for arbitration shall be in writing and must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based upon such claim, dispute, or other matter would be barred by the applicable statute of limitations.

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The arbitrator shall apply the law of the state of California or federal law, or both, as applicable to the issues asserted and shall be without jurisdiction to apply any different substantive law. The arbitrator shall hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person, as the arbitrator deems advisable. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under California law. The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information.

Although conformity to legal rules of evidence shall not be necessary, the arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant and shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

The arbitrator shall render an award and a written opinion, which will consist of a written statement signed by the arbitrator regarding the disposition of each Claim and the relief, if any, as to each Claim and also contain a concise written statement of the reasons for the award, stating the essential findings and conclusions of law upon which the award is based, no later than thirty days from the date the arbitration hearing concludes or the post arbitration briefs (if requested) are received, whichever is later. The award of the arbitrator, which may include equitable relief, shall be final and binding upon the parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Either party may bring an action in any court of competent jurisdiction to compel arbitration and to enforce an arbitration award.

**Arbitration Costs.** The Party initiating the arbitration will be responsible for paying the initial filing fees with JAMS. To the extent permitted by applicable law, the fees of the arbitrator and costs of arbitration (except the initial filing fee) shall be borne equally by the Parties. Employee acknowledges and agrees that she has the ability to pay for such fees and costs, is knowingly and voluntarily agreeing to this provision, and has been advised to obtain the advice of independent legal counsel and has either done so or voluntarily chosen not to do so. To the extent equally splitting the fees of the arbitrator and the other costs of arbitration are not permitted by applicable law, Employee shall be assessed the arbitration fees and costs in the maximum lawful amount permitted.

**Exclusive Remedy.** Except as set forth below, the Parties understand and agree that the arbitration provisions of this Employment Agreement shall provide each Party with its/her exclusive remedy with respect to this Employment Agreement, and each Party expressly waives any right it might have to seek redress in any other forum, except as otherwise expressly provided in this Employment Agreement. By electing arbitration as the means for final settlement of all claims, the Parties hereby waive their respective rights to, and agree not to, sue each other in any action in a federal or state court with respect to such claims, but may seek to enforce in court an arbitration award rendered pursuant to this Employment Agreement. The Parties specifically agree to waive their respective rights to a trial by jury and further agree that no demand, request, or motion will be made for trial by jury.

**Equitable Relief.** Notwithstanding the above, either Party may file a request with a court of competent jurisdiction for equitable relief and expedited discovery including, but not limited to,

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injunctive relief, pending resolution of any Claim through the arbitration procedure set forth herein; provided, however, in such cases the merits of the Claims will be decided by the arbitrator, who will have the same ability to order legal or equitable remedies as a court of general jurisdiction.

If any provision of this Employment Agreement is held invalid or unenforceable, the remainder, if the remainder fulfills the primary mutually agreed to terms of this Employment Agreement, shall remain in full force and effect.

Employee has read and considered all aspects of this Employment Agreement and understands all of the provisions and is voluntarily agreeing to the terms. Employee has been advised to retain legal counsel to review and advise Employee with respect to this Employment Agreement and has either obtained the advice of legal counsel or voluntarily declined to do so.

SAN BERNARDINO COUNTY  
EMPLOYEES' RETIREMENT  
ASSOCIATION

EMPLOYEE

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MARC BRACCO  
BOARD CHAIR

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DEBORAH CHERNEY  
CHIEF EXECUTIVE OFFICER

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A: CEO - Classification Specifications**