



REQUEST FOR PROPOSALS:
Regional Water Demand and Conservation Projections

SUBMITTALS DUE:
By 5pm – February 16, 2024

INTERVIEW DATE (IF NEEDED):
March 8, 2024

RETURN TO:
Bay Area Water Supply & Conservation Agency
155 Bovet Road, Suite 650
San Mateo, CA 94402
(650) 349-3000

TABLE OF CONTENTS

1. Intent of Request for Proposals 3

2. About BAWSCA 3

3. Project Background 4

4. Project Description 5

5. Project Tasks 6

6. Project Schedule 10

7. Required Proposal Format 10

8. Proposal Instructions and Submittal Information..... 12

9. Ex-Parte Communications..... 12

10. Addenda to RFP..... 13

11. Withdrawal of Proposal 13

12. Evaluation of Proposals and Selection Procedure 13

13. BAWSCA Rights 14

14. Confidentiality 14

15. Waiver..... 15

Exhibit A: BAWSCA Standard AgreementA-1

Exhibit B: California Levine Act Statement.....B-1

NOTE: IT IS THE PROPOSER’S RESPONSIBILITY TO EXAMINE THIS “REQUEST FOR PROPOSALS” SOLICITATION IN ITS ENTIRETY PRIOR TO SUBMITTING A PROPOSAL

1. INTENT OF REQUEST FOR PROPOSALS

The Bay Area Water Supply and Conservation Agency (BAWSCA) is soliciting proposals from qualified Consultants to develop long-term regional water demand and conservation projections using a consistent methodology across its member agencies.

BAWSCA is seeking a uniform water demand and conservation projection method that:

- 1) Creates regionally-consistent demand and conservation projections – the model(s) used for projections should include similar types of inputs and outputs in formats that can be easily aggregated to the regional level;
- 2) Provides enough flexibility that each agency model accurately reflects the characteristics of that agency;
- 3) Provides a basis for identifying promising local and regional water conservation measures and programs;
- 4) Supports local and regional water supply planning and project decision making;
- 5) Provides strong support for local and regional project environmental documents;
- 6) Supports local and regional grant applications; and
- 7) Supports agencies and BAWSCA to meet State and other regulations for water supply and conservation planning and reporting (e.g., for the 2025 Urban Water Management Plans).

The BAWSCA 2025 Regional Demand and Conservation Projections Project (herein referred to as “Project” or “Demand Study”) involves developing 28 individual models: 27 models for the 26 BAWSCA member agencies¹ and one regional model for BAWSCA.

The Project is anticipated to be a 12-month effort, aligned with the state’s 2025 Urban Water Management Plan (UWMP) submittal schedule.

2. ABOUT BAWSCA

BAWSCA provides regional water supply planning, resource development, and conservation program services for the benefit of the 16 cities, 8 water districts, and 2 private water suppliers (collectively, Wholesale Customers or member agencies) that provide water to more than 1.85 million residents and 40,000 commercial, industrial, and institutional customers in Alameda, San Mateo, and Santa Clara Counties. BAWSCA’s goals are to ensure a reliable supply of high-quality water at a fair price. BAWSCA is governed by a 26-member Board of Directors.

BAWSCA represents the interests of the Wholesale Customers that purchase water on a wholesale basis from the San Francisco Regional Water System (RWS), which is owned by the City/County of San Francisco and operated by the San Francisco Public Utilities Commission (SFPUC).

BAWSCA manages a Regional Water Conservation Program that is made up of several different programs and initiatives and is designed to support and augment the member agency and customer efforts to use water more efficiently. The Regional Water Conservation Program includes both Core Programs, implemented regionally throughout the BAWSCA service area, and Subscription Programs,

¹ The City of Brisbane and Guadalupe Valley Municipal Improvement District are jointly operated and use a single demand and conservation projection model. Cal Water requires individual models for each of its three service areas).

funded by individual member agencies that elect to participate (Participating Agencies) and implemented through BAWSCA within their respective service areas.

3. PROJECT BACKGROUND

BAWSCA has coordinated regional water demand and conservation projections for its members agencies' since 2002. Since 2015, BAWSCA has completed these projection projects on five-year cycles to support regional planning efforts and to facilitate its member agencies' preparation of UWMPs. The most recent Regional Water Demand and Conservation Projections Project, completed in June 2020 (2020 Demand Study), developed long-term water demand and conservation savings projections for each BAWSCA member agency through the year 2045.

In the final months of the 2020 Demand Study, the COVID-19 global pandemic began and changed patterns in water use throughout the region due to public health requirements that shut down or slowed some parts of the economy, changed how businesses operate, affected population, and shifted some water suppliers' demands between non-residential and residential deliveries. In December 2022, BAWSCA completed the Regional Water Demand and Conservation Projections Update (2022 Demand Study Update) to incorporate new information and sensitivity analyses to assess how a range of influences could impact future demand.

BAWSCA seeks to update the regional demand and conservation projections in preparation for the 2025 UWMP reporting schedule and to support an update to its Long-Term Reliable Water Supply Strategy (Strategy 2050) which is designed to quantify the water needs of the BAWSCA region and identify and implement projects to meet that need.

In addition, BAWSCA is seeking specific enhancements to past demand studies, such as:

- Calculation of each agency's annual Urban Water Use Objective to support compliance with AB 1668 and SB 606 requirements;
- Ability to forecast water demand and conservation savings estimates under a range of hydrologic scenarios;
- Ability to incorporate water use projections for new developments based on land use projections as well as contingencies for parcel-level changes in water use; and
- Sensitivity analysis to better understand which variables may influence future water demand, including effects of population, employment, drought rebound, and climate change.

BAWSCA has a total of 26 member agencies. Two member agencies, the City of Brisbane and Guadalupe Valley Municipal Improvement District, are jointly operated and use a single demand and conservation projection model for combined demand projections. Another member agency, Cal Water, has three districts within the BAWSCA service area with an individual demand and conservation projection model for each district. Therefore, the Project involves updates to, or development of, a total of 27 demand and conservation projection models as well as a roll up of results from each of the individual agency models into a BAWSCA regional Excel document.

Specific studies that may be useful as background information and sources of data include the BAWSCA Regional Water Demand and Conservation Projections Project (June 2020), BAWSCA

Regional Water Demand and Conservation Projections Update (December 2022),² the BAWSCA Annual Survey (FY 2021-22),³ and the BAWSCA Annual Conservation Report (June 2023).⁴

4. PROJECT DESCRIPTION

BAWSCA would like to replicate past success in developing transparent, defensible, and uniform demand and conservation projections that can successfully be used to support regional planning efforts (e.g., Strategy 2050) and individual agency work assignments (e.g., 2025 UWMPs). As mentioned earlier, for each agency, BAWSCA seeks an individual agency demand and conservation projection model. Those models will be used to prepare new demand projections and water conservation savings estimates through the planning horizon (year 2050). Each BAWSCA agency will be engaged in the development of its respective model. Specifically, for each individual agency, BAWSCA seeks to use a common methodology, model, and baseline for the demand projections and a common methodology and model to estimate water conservation savings.

Desired features of the model(s) that will be used to estimate the demands and conservation potential through 2050 include the following:

- User-friendly platform that allows for straightforward data inputs and updates;
- Software that is Microsoft Office compatible;
- Baseline water demand projections that reflect consideration of the weather, economy, water pricing, a range of population projections, and other key factors;
- Presentation of indoor and outdoor water use by customer sector and in aggregate;
- Projected water demands before and after active and passive conservation, by customer sector and in aggregate;
- Cost-benefit analysis of various water conservation measures (including conservation measures currently included in the BAWSCA Water Conservation Database, and approximately 5 to 10 others selected by BAWSCA and the BAWSCA agencies);
- Ability to calculate both actual and projected active and passive conservation savings;
- Capability to perform scenario testing to assess the benefits of different conservation measures and programs; and
- Output results consistent with, at a minimum, 2025 UWMP and SB7x-7 requirements (e.g., summary tables, per capita water use).

The model(s) should have the following qualities:

- User-friendly;
- Transparent;
- Defensible (i.e., all assumptions are relevant and well-sourced);
- Provide a balance of flexibility and rigor. Flexibility is needed to accommodate BAWSCA member agencies' differences such that each resulting model accurately reflects the conditions within an agency's service area. Rigor is important to provide a consistent approach for calculating demands and conservation savings, benefits and costs for all BAWSCA member agencies, and to provide a defensible methodology to outside entities; and

² [https://bawasca.org/uploads/userfiles/files/BAWSCA%202022%20Demand%20Study%20Update%20Final%20Report\(1\).pdf](https://bawasca.org/uploads/userfiles/files/BAWSCA%202022%20Demand%20Study%20Update%20Final%20Report(1).pdf)

³ https://bawasca.org/uploads/userfiles/files/Annual%20Survey_FY21-22_FINAL.pdf

⁴ [BAWSCA Annual Conservation Programs Report FY2021-22_FINAL.pdf](#)

- Provides a quantitative or qualitative means to estimate the water savings impacts from water conservation programs that target behavioral modifications (e.g., incentive programs, education, public outreach, or social norms programs).

5. PROJECT TASKS

Under each task, the Consultant is requested to provide detailed information regarding the work to be completed to meet the Project and individual task objectives. The proposal should identify the recommended model(s) and the specific, critical data that are anticipated to be needed to support the development of the demand and conservation projections.

BAWSCA is willing to consider alternative approaches to the tasks. Proposals should be prepared to align with the approaches described in Section 5, and any alternative approach(es), which should include the reasons for recommending a different approach or task structure and a detailed scope of work to support that approach, should be presented separately in the proposal with a separate cost for BAWSCA's consideration.

The Project will include the following tasks:

1. Data Collection and Review: The Consultant will identify data needs based on the model(s) requirements and submit a data request to BAWSCA for BAWSCA and each of its member agencies. In addition, the Consultant will also gather population and employment projections and other necessary data from other relevant sources (e.g., Association of Bay Area Governments [ABAG]). Once the Consultant collects the requested data from each member agency and BAWSCA, the Consultant will review the data. If further data collection and refinement is needed, the Consultant will alert BAWSCA. As appropriate, BAWSCA will direct the Consultant to follow up with individual member agencies to complete the data collection step.

Based on the results of this task, the Consultant will prepare a Data Collection Technical Memorandum (TM-1), which will include the specific data for each of the 27 agency models and a roll up of results from each of the individual agency models into a BAWSCA regional Excel document.

Task 1 Deliverable

- TM-1 documenting the specific data collected for each of the agency models and aggregate data for BAWSCA.
2. Baseline and Future Demand Analysis: The Consultant will recommend and justify a base year from which to develop projections through 2050. The base year and the resultant projections may be normalized through the application of econometric tools/models that consider weather, water price, drought recovery, customer income, economic recovery, and other elasticities.

The Consultant will develop baseline annual demand projections based on projected population and employment growth, land use planning data, and other relevant information. Within the framework of the model(s), the Consultant will quantify and include impacts of passive conservation, evaluate demand by customer sector, project future agency water use characteristics, and consider impacts of demand rebound.

The Consultant will develop annual demand projections for a range of climate scenarios, including normal year, dry year, and multiple dry year, to facilitate understanding of demand

patterns and the impacts of long-term conservation programs on water shortage contingency plan actions.

The Consultant shall develop a user guide that enables BAWSCA and/or its member agencies to update the demand forecasting model in the future, including data sources and assumptions used in developing the model.

Based on the results of this task, the Consultant will prepare a Demand Analysis Technical Memorandum (TM-2), which will include specific information and results for each of the 27 agency models and aggregate data for BAWSCA. TM-2 will also be integrated into the Final Water Demand and Conservation Report (see Task 8).

Task 2 Deliverable

TM-2 (Demand Analysis TM) which will include specific information and results for each agencies' model and aggregate data for BAWSCA.

3. Calculate Urban Water Use Objective: The Consultant shall use best available information to estimate each agency's Urban Water Use Objective (UWUO), as required by AB 1668 and SB 606. The methodology and complete dataset for formal calculation of the UWUO is anticipated to be available by October 2024. Each agency's model should be configured to allow for user updates and refinement of the annual UWUO calculation on an ongoing basis. Additionally, each agency's model should provide water use projections for (1) indoor residential use, (2) outdoor residential use, and (3) outdoor commercial, institutional, and industrial (CII) use with a dedicated irrigation meter (DIM) so that each agency can anticipate future compliance with the water use efficiency standards and evaluate different conservation measures that may be necessary.

Task 3 Deliverables

- Estimated 2025, 2030, and 2035 UWUO for each agency (to be documented in TM-3 under Task 4)
4. Conservation Program Analysis and Selection: The Consultant will develop a suite of conservation measures and their associated water savings, costs, and other metrics. The 25 measures that are currently integrated into the BAWSCA Water Conservation Database will provide a starting point for consideration. In addition, new water conservation measures, including measures such as rate design and water loss management, may be considered. Overall, 25 measures will be evaluated following consultation with BAWSCA and its member agencies.

The Consultant will configure three distinct programs for each member agency, each program including some combination of the 25 measures, based on general criteria (e.g., most cost-effective) and solicit individual member agency input in approving of the program components. The Consultant will perform a benefit-cost analysis for each measure and for each of the three distinct programs.

Based on the results of this task, the Consultant will prepare individual Water Conservation TMs (Water Conservation TMs) for each agency model to document the results of the three conservation programs.

Additionally, Consultant will prepare a Conservation Program Analysis TM (TM-3) to present the overall results of the agency specific models. The BAWSCA TM-3 will be integrated into the Final Water Demand and Conservation Report (see Task 8).

Task 4 Deliverable

- BAWSCA TM-3 (Model Results TM) summarizing the results of Tasks 3 and 4.
 - Water Conservation TMs: Updated DSS Model for each of the 27 areas agency models and aggregate data for BAWSCA.
5. Member Agency Coordination: BAWSCA member agency input will be vital to the success of this effort; therefore, in its proposal, the Consultant is required to provide a detailed approach and budget for facilitating member agency participation. The Consultant must allot sufficient hours within the overall budget to accommodate this necessary input.

The Consultant will conduct meetings with BAWSCA staff and BAWSCA member agency staff to complete the data collection required for Tasks 2-4. It is anticipated that meetings and/or phone interviews with each of the 25 BAWSCA member agencies will be required to perform this task.

In addition, it is anticipated that at least three workshops with BAWSCA and all BAWSCA member agencies will be required to review deliverables, obtain agency feedback, and provide model training.

Task 5 Deliverables

- Meetings/phone interviews with member agencies.
 - At least three workshops with BAWSCA and member agencies.
6. Stakeholder Engagement: BAWSCA seeks to engage outside stakeholders, such as non-governmental organizations, businesses, and others, in identifying conservation measures to be considered for analysis and selection as part of Task 4, as well as the water demand variables and scenarios to include in the sensitivity analysis as part of Task 7.

The Consultant will conduct two meetings with outside stakeholders identified by BAWSCA. It is anticipated that the first meeting will present the project approach and seek stakeholder feedback on the conservation measures to be analyzed for potential implementation. It is anticipated that the second meeting will present preliminary results of the cost-benefit analysis and demand projections incorporating the recommended suite of conservation measures.

The Consultant will prepare summary materials for stakeholder communication prior to and following each stakeholder meeting. The Consultant will track feedback received from stakeholders as well as actions taken to address comments.

Task 6 Deliverables

- Meeting materials and summary notes for each stakeholder meeting.
7. Sensitivity Analysis: Numerous variables may influence future water demand, including effects of changes in population and employment, drought rebound, and climate change. The Consultant will gather information from the stakeholder meetings to develop appropriate water demand variables for consideration in the analysis. Other variables will be determined in discussions between BAWSCA, its member agencies, and the Consultant. Variables must have a demonstrated statistical significance to water demands, be measurable, and be supported by data (or reasonable estimates). Between 5-7 variables will be used in the sensitivity analysis to understand their impact on water demand. To quantify water demand related to various alternative future conditions, the Consultant will develop and analyze 5-7

scenarios that feature a unique combination of variables. Scenarios will be chosen through input from BAWSCA staff, its member agencies, the Consultant, and the stakeholder meetings.

The Consultant will be responsible for running the sensitivity analysis to understand the effect of the set of variables on water demand under various scenarios. The results generated will be illustrative of a range of overlapping and or parallel future outcomes, such as changes to demand because of various levels of change in climate, population, and employment. Additionally, through the sensitivity analysis, the Consultant is responsible for identifying key drivers in each scenario. For example, identifying that a particular demand variable is a more significant driver as compared to others.

Task 7 Deliverable(s)

- Technical Memorandum 4 (TM-4), including:
 - Detailed tables of data indicating variables included in the sensitivity analysis and their sources
 - Explanation of variables not included in the sensitivity analysis and reasoning why they were not included
 - Water demand graphs representing ranges of each variable in the sensitivity analysis
8. Final Report and Documentation: The Consultant will develop a Final Water Demand and Conservation Projections Report, incorporating the information developed for each TM (TM-1 through 4). For budgeting purposes, the Consultant shall anticipate preparation of two draft reports and incorporation of comments for each. The Consultant will also provide a model User Manual.

Task 8 Deliverables

- Final Report
 - Model User Manual
9. Project Management: To keep the Project on schedule and budget, the Consultant must provide BAWSCA with monthly project status, bills, and budget updates by task. The information can be shared via phone or email in combination with updated Excel spreadsheets detailing budget and schedule status. The Consultant will participate in up to four in-person meetings with BAWSCA (including a kick-off meeting), as well as bi-weekly conference calls.

Task 9 Deliverables

- Monthly status updates by phone or email
 - Monthly Excel spreadsheets detailing budget and schedule status
 - Up to four in-person meetings (including a kick-off meeting)
 - Bi-weekly conference calls
10. Individual Agency Support: During the development of the demand and conservation projections, some agencies may desire additional support from the Consultant, beyond what BAWSCA has included. To facilitate that option, the Consultant must include in its proposal a single unit hourly billing rate to provide technical or other support to member agencies. If a member agency requests additional support from the Consultant and agrees to reimburse BAWSCA for time spent by the Consultant in assisting that agency, then the Consultant will work with the agency directly to provide the additional support.

11. Optional Task – BAWSCA Regional Model: BAWSCA may be interested in a regional model that allows it to analyze results of changing variables on demand and conservation projections. Previously these changes were applied to the individual agency models and results rolled up into a summary document. The BAWSCA regional model would allow BAWSCA to make these changes and conduct these analyses in a single model. The regional model will also support BAWSCA’s work on Strategy 2050. Consultants are invited to propose if or how they would approach such a regional model and what opportunities or challenges it may present. BAWSCA will work with the selected Consultant to determine if this optional task will be initiated. If BAWSCA decides to pursue the regional model, Consultant will prepare a BAWSCA Regional Model Analysis TM (BAWSCA Regional TM-5). The BAWSCA Regional TM-5 will be integrated into the Final Water Demand and Conservation Report (see Task 8).

Task 11 Deliverables

- BAWSCA regional model
- BAWSCA Regional TM-5

6. PROJECT SCHEDULE

BAWSCA anticipates commencing work in July 2024 and proposes the following deliverable dates. The Project must be completed by December 31, 2025.

Deliverable	Proposed Completion Date
TM-1	November 2024
TM-2	January 2025
TM-3 and Water Conservation TMs	March 2025
Individual Agency Models	June 2025
TM-4	September 2025
TM-5	November 2025
Final Report and Model User Manual	December 2025

Proposed completion dates are provided as guidance. BAWSCA requests that the Proposer include a recommended schedule in its response to this RFP. All dates are subject to change at the sole discretion of BAWSCA.

7. REQUIRED PROPOSAL FORMAT

Proposals may be in a letter format. There is no page limitation, but proposers are encouraged to be succinct. Proposers should only include information that is essential for BAWSCA to understand and evaluate proposals. Items not specifically and explicitly related to the RFP and proposal (brochures, marketing material, etc.) will not be considered in the evaluation and should not be submitted. Please submit all requested information, documents, insurance certificates, and applicable licenses with your proposal. Proposers must have a business license, proof of insurance, and key staff with substantial experience in developing demand and conservation projections assigned to the project and identified in their proposal.

Proposals shall include the following components, labeled and ordered exactly as listed below:

A. Project Understanding

Proposals shall provide a brief description of the Consultant’s understanding of the Project, including Consultant’s perspective on the challenges and complexities associated with

completing uniform demand and conservation projections for the 26 BAWSCA member agencies and how to overcome them in a resource-efficient manner. The Consultant shall describe how the Project will be designed to achieve the maximum benefit for each agency, for BAWSCA, and for the region as a whole. The Consultant shall also describe how the Consultant will address any significant discrepancies between projections developed as part of this Project as compared to an agency's previous or concurrent projections.

B. Company Background

Proposals shall identify the prime Consultant and any subcontractors proposed to be used. Proposals shall include a description of the company's organization, number of years in business, and relevant experience. Proposals shall provide names and biographies of key team members that will be committed to the Project. Proposals shall include a project organization chart 1) identifying the key staff who will be assigned to the Project and 2) illustrating the lines of authority and the individual responsible for the completion of each service component and deliverable.

C. Qualifications

Proposals shall include descriptions of similar projects completed and/or experiences and/or qualifications related to this Project completed or undergoing within the last five years. Proposals shall include at least (3) references for key personnel and the project team from projects completed within the past five years that were a similar size and scope to this Project. At least one reference shall be for stakeholder engagement similar to the effort detailed in Task 6 in Section 5. For each reference, proposals shall include a contact name with current phone number and email address and a description of the services performed for each reference.

D. Implementation Plan

Proposals shall describe in detail the methodology for completing the Project as described in Section 5 of this RFP. Proposals shall describe the roles and responsibilities of both BAWSCA and the Consultant during each phase of implementation. Proposals shall address a plan for collaboration with BAWSCA staff and BAWSCA member agencies. Proposals shall include a detailed schedule for completion of all tasks with specific milestone dates for each task.

E. Budget

Proposals shall include an estimated budget for each task and subtask to complete the scope of work. The budget must include the hourly labor rate for all key personnel that will be involved with the Project and their anticipated hours per subtask. Proposals shall list any anticipated reimbursable expenses other than labor. Proposals shall list any optional services as separate budget items. Funding for the Project is contingent on approval of the FY 2024-25 workplan and budget by the BAWSCA Board of Directors.

F. Exceptions to RFP & Standard Agreement

In accordance with Section 16, proposals shall provide a statement that Proposer is prepared to sign the standard Agreement (Exhibit A) without alterations or exceptions or whether it is requesting modifications to the standard Agreement and/or any requirements of this RFP. Any exception taken to the RFP requirements or standard Agreement must be clearly identified and described in the proposal. Failure to specify any exceptions or objection to the requirements, and terms and conditions of this RFP will constitute acceptance of BAWSCA's requirements.

G. Levine Act Statement

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any BAWSCA Board Member from participating in any action related to a contract if he or she receives, from the person or company awarded the contract, any political contributions totaling more than \$250 within twelve months before or after the date a final decision concerning the contract has been made. The Levine Act also requires a member of the BAWSCA Board who has received such a contribution to disclose the contribution on the record of the proceeding. Proposers must complete Exhibit B, California Levine Act Statement, and submit it with their proposal.

8. PROPOSAL INSTRUCTIONS AND SUBMITTAL INFORMATION

Questions regarding the required services, the contents of the proposal, the selection procedures, or any other requirements in this RFP should be submitted in writing no later than **5 PM, January 26, 2024**, Pacific Daylight Time. Questions should be directed to Danielle McPherson, Senior Water Resources Specialist, by e-mail at dmcpherson@bawsca.org. BAWSCA's reply to questions and/or requests for clarification will be provided by February 02, 2024, to all firms that received the RFP package and will be posted to the BAWSCA website.

An electronic copy of proposals must be received by BAWSCA via email by **5 PM, February 16, 2024**. *Late proposals will not be opened, reviewed, or considered by BAWSCA.*

1. All proposals must be responsive to the instructions of this RFP. Proposals that do not meet all RFP requirements and instructions may be rejected at the sole discretion of BAWSCA.
2. Complete the detailed proposal as described in Section 7. The content of the proposals should be ordered and numbered as listed in Section 7.
Submit a searchable electronic copy of the proposal via e-mail to dmcpherson@bawsca.org by the proposal deadline of **5 PM, February 16, 2024**.

To ensure all proposals are received, BAWSCA will respond to all Proposers with an email confirming receipt. If Proposers do not receive the confirmation email, please contact Danielle McPherson by phone at (650) 349-3000. File attachments cannot exceed 100 megabytes. Proposers should contact Danielle McPherson if files exceed this limit.

All proposals will become the property of BAWSCA. Refer to Section 14, Confidentiality.

9. EX-PARTE COMMUNICATIONS

Proposers and Proposers' representatives may not communicate with BAWSCA's Board Members except in writing and/or unless the communication is made public. Proposers and proposers' representatives must communicate in the manner set forth in this RFP. There shall be no communication with any officer, director, employee, or agent of BAWSCA, except as may be reasonably necessary to carry out the procedures specified in this RFP.

Nothing herein prohibits Proposers and their representatives from making oral statements or presentations in public to one or more representatives of BAWSCA during a public meeting.

10. ADDENDA TO RFP

BAWSCA reserves the right to amend this RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. Each prospective Proposer receiving an RFP package will be sent a notification of the posting of clarifications. All addenda issued shall become part of the RFP. If BAWSCA determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that BAWSCA determines will allow Proposers sufficient time to revise their proposals. Any new due date shall be included in the addenda.

11. WITHDRAWAL OF PROPOSAL

Submission of a proposal constitutes a firm offer to BAWSCA for one-hundred (100) days from the deadline for submitting proposals. A Proposer may withdraw its proposal before the date proposals are due by submitting a written request to BAWSCA. BAWSCA reserves the right to reject any and all proposals, the right to accept the proposal it considers most favorable to BAWSCA's interests, and the right to waive irregularities in the proposal or proposal process.

12. EVALUATION OF PROPOSALS AND SELECTION PROCEDURE

By submitting a Proposal, each Proposer agrees that BAWSCA may consider the Proposer's experience, facilities, delivery abilities, conduct and performance under other contracts, financial condition, reputation in the industry, and other factors which could affect the Proposer's performance under this Agreement. Only Proposers who have demonstrated the ability to meet the requirements of this RFP will be considered for selection. BAWSCA reserves the right to determine the highest qualified Proposer to provide the requested services.

Proposals must be prepared and submitted in accordance with the directions specified in Sections 7 and 8. BAWSCA will review proposals and evaluate them based on their relative ranking according to the criteria specified below.

BAWSCA reserves the right to conduct interviews and hold discussions with any individual or qualified firm, but also may award the contract without conducting interviews. If BAWSCA conducts interviews, it will do so only with those Proposers found to be within the "competitive range." BAWSCA requests that Proposers be available for potential interviews.

BAWSCA may request additional information from any Proposer. BAWSCA may also request revised proposals or best and final offers.

The maximum possible total combined score for a proposal is 100 points. Proposals will be evaluated based on the following weighted criteria:

Qualifications and Experience of Firm and Key Personnel (25%)

Proposals will be evaluated based on the qualifications of the firm and its key personnel as related to the specific tasks in Section 5. Particular consideration will be given to the qualifications of the Key Personnel that will specifically be assigned to performing the work on this Project. Proposers who have the experience and qualifications to implement similar projects will be rated higher than Proposers who do not have the relevant experience and qualifications. Refer to Section 7, subsections B and C.

Project Understanding, Approach and Scope of Work (25%)

Proposals will be evaluated based on the Proposer's ability to complete the tasks described in Section 5 and on the overall clarity of the proposal written in the format described in Section 7. Proposals will be evaluated on the proposed approach for accomplishing each task and meeting the overall objective of this Project. Refer to Section 7, subsections A and D.

Ability to Meet Project Timeline (25%)

Proposals will be evaluated based on the Proposer's demonstrated ability to complete all tasks related to the project within the proposed timeline. Refer to Section 7, subsection D.

Cost (25%)

Proposals will be evaluated based on the reasonableness of the price and hourly rates, and the overall value provided to BAWSCA. All proposed costs shall be inclusive of all labor, materials, insurance, overhead, profit, subcontractor costs, warranty, training, taxes, and all other costs to implement the Project (except for optional services.) Refer to Section 7, subsection E.

13. BAWSCA RIGHTS

This RFP does not commit BAWSCA to award an Agreement(s), to pay any costs incurred in the preparation of the proposal for this request, or to procure or contract for services. BAWSCA reserves the right to modify or cancel in whole or in part this RFP, to reject any and all proposals, to accept the proposal it considers most favorable to BAWSCA's interest in its sole discretion, and to waive irregularities or informalities in any proposal or in the proposal procedures. BAWSCA further reserves the right to reject all proposals and seek new proposals when BAWSCA considers such procedure to be in its best interest.

If there is any evidence indicating that two or more Proposers are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the proposals of all such Proposers shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations undertaken by BAWSCA.

14. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code § 7920.000 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between BAWSCA and the Proposer shall be available to the public.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that BAWSCA withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal or any BAWSCA forms as confidential.

If the Proposer requests that BAWSCA withhold from disclosure information identified as confidential, and BAWSCA complies with the Proposer's request, the Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless BAWSCA from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of the Proposer information. The Proposer shall not make a claim, sue or maintain any legal action against BAWSCA or its directors, officers, employees or agents in connection with the withholding from disclosure of Proposer information.

If the Proposer does not request that BAWSCA withhold from disclosure information identified as confidential, BAWSCA shall have no obligation to withhold the information from disclosure and may release the information sought without liability to BAWSCA.

15. WAIVER

By submitting a proposal, the Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work requested in this Request for Proposals; that Proposer has checked its proposal for errors and omissions; that the rates stated in its proposal are correct and as intended by it and are a complete and correct statement of its rates for performing the work requested in this Request for Proposals.

The Proposer waives any claim against BAWSCA for costs incurred in preparing a proposal and responding to this RFP.

16. FORM OF AGREEMENT

The Consultant selected by BAWSCA to perform the services as set forth in this RFP will be required to execute an Agreement with BAWSCA. A sample of BAWSCA's standard Agreement is attached as Exhibit A so that potential Proposers have an opportunity to review the terms and conditions of the Agreement. If a Proposer desires any modifications to the terms of the Agreement or this Request for Proposals, those requested modifications must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted all the terms and conditions included in the form of Agreement and this Request for Proposals.

**Exhibit A:
AGREEMENT**

THIS AGREEMENT is made as of this ____ day of ____ 20__, by and between the **Bay Area Water Supply & Conservation Agency** ("Agency") and _____ ("Consultant").

WHEREAS, Agency desires to obtain professional services to develop long-term regional water demand and conservation projections using a consistent methodology across its member agencies and has issued a Request for Proposals, dated _____, 20__, a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, Consultant desires to perform such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal/agreed to a scope of work, dated _____, 20__, a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES

Consultant will provide Agency the services set forth in Exhibit A, as supplemented by Exhibit B, in accordance with the terms and conditions of this Agreement. Agency may also engage Consultant for additional work as set forth in Section 3 below. In the event of any inconsistency between Exhibit A and Exhibit B, Exhibit A shall control.

2. SCHEDULE AND TERM

Consultant will commence work upon Agency's issuance of a Notice to Proceed and, unless the Agreement is terminated sooner pursuant to Section 19, will complete the work within one year in accordance with the Schedule included in Exhibit A [or B].

3. COMPENSATION

The Consultant agrees to perform all of the services included in Section 1 for the total all-inclusive not-to-exceed amount of \$_____ in accordance with Exhibits A and B. The total all-inclusive sum includes all labor, materials, taxes, profit, overhead, insurance, subcontractor costs and all other costs and expenses incurred by the Consultant.

The not-to-exceed amount is not guaranteed; compensation will be based on services actually rendered and expenses actually incurred. Agency will pay Consultant at the rates set forth in Exhibit B. The agreed-upon rates will include all direct labor, taxes, overhead, administrative fees, insurance, employee benefits, and other costs and expenses incurred by the Consultant necessary for the performance of all the services called for under this Agreement.

The Agency's CEO/General Manager may from time to time request Consultant to perform additional tasks outside the scope of work described in Section 1, and not subject to the not-to-exceed amount described above. At Agency's request, Consultant will provide a proposal for such additional task(s). If engaged, such task(s) will be on a work directive basis and will include a separate not-to-exceed budget for each specific task.

On an annual basis, no later than 60 days before the start of a succeeding Agreement year, Consultant may, upon written request, prospectively adjust the rates of Consultant and its subcontractors, if any. Increases in future rates shall be limited, if requested, to the most recent Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco/Oakland/Hayward, CA

area available to Agency, or up to a maximum of 5 percent escalation, whichever is lower. The effective date of the CPI-U adjustment, if any, will commence either (1) the first day of the second and/or subsequent year(s) of the Agreement, or (2) the date of Consultant's request, whichever event is later. Upon written approval by Agency, the negotiated changes will remain in effect for the subsequent Agreement year. If Consultant does not submit a request at least 60 days before the start of the succeeding Agreement year, Consultant waives any CPI-U increase for that year.

4. MANNER OF PAYMENT

Consultant will submit detailed monthly invoices at the end of each month describing the work performed, the personnel performing the work, and their applicable hourly rates of compensation, which will be consistent with Exhibit B. Invoices will also include total expenditures to date and the remaining balance on the budgeted or not-to-exceed amount. Invoices will be prepared in a format acceptable to Agency.

Agency will pay for work satisfactorily performed within thirty (30) days after receipt of an invoice meeting the requirements of this section. Should Agency dispute the accuracy of any invoice, or deem Consultant's work unsatisfactory, Agency will notify Consultant within 30 days of receipt of such an invoice. Agency will only pay the undisputed portion of any invoice. Resolution of a dispute over an invoice will be pursuant to Section 20.

5. CHANGES

Agency may from time to time make changes to the scope of work by written notice to Consultant. If such changes increase, or decrease, the Consultant's cost of performing the work, or the time required for its completion, an equitable adjustment as mutually agreed will be made to the limit on compensation contained in Section 3, or the Schedule referred to in Section 2, or both. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Consultant will notify the Agency immediately of such condition or contingency. The Consultant will explain the circumstances giving rise to the unforeseen condition or contingency and will suggest the proposed adjustment in schedule or compensation. Consultant will notify the Agency prior to the time that the Consultant performs work or services related to any proposed adjustment. Any agreed-upon changes will be memorialized in a written amendment to the Agreement.

6. CONSULTANT'S STATUS

Consultant is an independent contractor and not a partner or agent of, nor a joint venture with, Agency. Neither Consultant nor any of Consultant's officers or employees are employees of Agency for any purpose. Consultant will determine the means and methods by which the work is performed; Agency may, however, monitor Consultant's performance.

7. ASSIGNMENT

Consultant may not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of Agency.

8. SUBCONSULTANTS

Consultant may not subcontract any work to be performed under this Agreement without the prior written consent of Agency, except for minor administrative services.

The following subcontractor(s) is (are) approved by Agency for the following task(s):

- _____

Consultant will be solely responsible for reimbursing any subcontractors and Agency will have no obligations to them.

9. KEY PERSONNEL

A material consideration in Agency's selection of Consultant is the experience and qualifications of the following persons.

- _____

The Consultant agrees that these personnel will devote their personal attention to the work, as further described in Exhibits A and B. Consultant may substitute Key Personnel only with written approval of the Agency, which approval will not be unreasonably withheld. A request for substitution must demonstrate the replacement person's similar qualifications and experience for a position.

10. STANDARD OF CARE

Consultant will exercise the same degree of care, skill and diligence in the performance of the work as would be exercised by a reasonable professional performing similar work in the San Francisco Bay Area under similar circumstances. Consultant will re-perform, at no cost to Agency, services which fail to meet this standard. In the performance of its work, the Consultant represents that it (1) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (2) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

11. OWNERSHIP OF WORK

A. General

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared for the services to be performed by Consultant, will be and are the property of the Agency. The Agency will be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the Consultant or in the hands of any subconsultant upon completion or termination of the work will be immediately delivered to the Agency. If any materials are lost, damaged, or destroyed before final delivery to the Agency, the Consultant will replace them at its own expense and the Consultant assumes all risks of loss, damage, or destruction of or to such materials. The Consultant may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including without limitation copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the Agency. The Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

The Consultant represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

B. Intellectual Property Provisions *[SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL PREPARE THE MODELS USING CUSTOM SOFTWARE.]*

(1) Definitions.

The term “Consultant Software” means any software reasonably necessary to operate or maintain any portions of the BAWSCA and member agency models (Models) that is a product or application of Consultant that pre-existed the execution of this Agreement.

The term “Consultant Software Customizations” means any software reasonably necessary to operate or maintain any portions of the Models that is a customization, modification, or other change or addition of or to Consultant Software made under this Agreement.

The term “Third Party Software” means any software reasonably necessary to operate or maintain any portions of the Models that does not constitute Consultant Software or Consultant Software Customizations.

The term “Materials” means any recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement—with examples including, but not being limited to: computer software documentation; change logs; engineering drawings; specifications; standards; process sheets; manuals; technical reports; catalog item identifications; and related information—and for clarity, excluding financial, administrative, and cost and pricing information incidental to the work.

(2) Grant of License. The Consultant grants to the Agency a perpetual, unlimited, royalty-free, non-exclusive and irrevocable license for Agency (including without limitation its officers, directors, employees, and agents) to install, use, copy, modify, and maintain the Consultant Software and the Consultant Software Customizations, with no limitation on the number of sites or users.

In providing the Models, the Consultant will use only that Third Party Software that has been expressly approved in writing by Agency. Consultant will procure, maintain, and otherwise be responsible for all licenses for Agency, in Agency's name, for any such Third Party Software reasonably necessary to operate or maintain the System. Consultant will provide to Agency copies of such licenses, along with any related software or license documentation.

To the extent that any other licenses or permissions are reasonably desirable or necessary for Agency to operate or maintain the Models, Consultant hereby grants to Agency to the maximum extent within its rights—or will procure for Agency, in Agency's name, to the maximum extent reasonably negotiable—any such licenses and permissions.

All rights and licenses granted under or pursuant to this Agreement are and will be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to “intellectual property,” as defined under Section 101 of the U.S. Bankruptcy Code. The parties agree that the Agency, as a licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; however, nothing herein will be deemed to constitute a present exercise of such rights and elections.

(3) Patent and Copyright Warranties. The Consultant represents and warrants that any use of the Models (or any portion of the Models) by Agency (or its officers, directors, agents, employees, or users) will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party.

The Consultant further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade-secret, or other intellectual-property or proprietary rights needed for the performance of its obligations under this Agreement—including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by the Agency used on or incorporated in the work under this Agreement. The Consultant assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

In case any such software, materials, equipment, devices, processes, or other materials are held to constitute an infringement and their use enjoined, the Consultant, at Consultant's sole cost and expense will: (a) secure for the Agency the right to continue using the materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses, or (b) replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices, or processes, or (c) modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of the Agency. If the amount of time necessary to proceed with one of these options is deemed excessive by the Agency, the Agency may direct the Consultant to select another option or risk default.

(4) **Source Code.** The Consultant agrees that as a condition of final acceptance, it will deposit the source code for any Consultant Software and Consultant Software Customizations into escrow (including all updates, versions, releases, and upgrades licensed under this Agreement or any related maintenance agreements between Consultant and Agency), with a source code agent capable of providing Level 2 certification/verification. Deposit will be at reasonable periodic intervals based generally on the pace at which the software is being developed or changed and will include any and all subsequent updates, versions, releases, and upgrades licensed under this Agreement or any related maintenance agreements between Consultant and Agency. The source code escrow agreement will remain in place, and source code deposits will be updated and maintained, for as long as the Agency and Consultant have entered into a software maintenance or support agreement. The applicable source code will be released to the Agency (or any contractor acting on its behalf) in the event of Consultant's non-performance or the inability of Consultant to execute or maintain the portion of the Models controlled by or through its applicable software. Such conditions of release include, but are not limited to (1) Consultant's bankruptcy, (2) Consultant's cessation of business, or (3) failure of Consultant to support, execute, maintain or provide enhancements in a timely manner to the portion of the Models controlled by or through its applicable software. Consultant agrees that the Agency (or any contractor acting on its behalf) may use the source code to maintain, fix, or modify the Consultant Software and the Consultant Software Customizations as reasonably necessary to operate or maintain any portions of the Models. Consultant and the Agency will separately document an escrow agreement concurrently with this Agreement. The Consultant will be responsible for any costs related to the escrow.

(5) **Patent Rights.** If any invention, improvement, or discovery of Consultant is conceived or first actually reduced to practice in the course of or under this Agreement, which invention, improvement, or discovery may be patentable under the Patent Laws of the United States or any foreign country, Consultant will immediately notify Agency and provide a detailed report. The rights and responsibilities of Agency, Consultant with respect to such invention will be determined in accordance with applicable federal laws, regulations, policies and any waivers thereof.

(6) **Non-Compete Clauses Waived.** In the event that any of the release conditions set forth in any source code escrow agreement between the parties are satisfied and the source code is released to the Agency, the Agency will have the right to hire Consultant's personnel or subcontractors for any reason related to the maintenance and operation of the Models. The Consultant will not interfere with any such efforts to hire any of Consultant's personnel. Consultant agreements

with personnel and/or subcontractors that restrict employment by the Agency will be waived under such circumstances.

(7) **Precedence.** In the event of any conflict between the provisions of this Section and the provisions of any separate software license, escrow, or otherwise related agreement, this Section will take precedence.

C. **Data Security, Privacy and Cloud Software Provisions.** *[SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL PREPARE THE MODELS USING CLOUD-BASED SOFTWARE AND/OR IF THE CONSULTANT WILL HAVE ACCESS TO PERSONALLY IDENTIFIABLE INFORMATION (PII). Examples of PII include: customer water usage data, private information about staff, sensitive information that should not be released to the public]* Refer to Attachment A, appended hereto, for additional data security, privacy and cloud software requirements.

12. CONFIDENTIALITY

Consultant will hold in confidence any Agency materials to which the Consultant has access, or materials prepared by the Consultant during the course of this Agreement ("Confidential Information"). Consultant will exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees, and agents of the Consultant as necessary to perform services under this Agreement. Consultant, its employees, subcontractors, and agents, may not release any Confidential Information, and any reports or other materials prepared by it under this Agreement, whether deemed confidential or not, without the prior written approval of Agency.

13. INDEMNIFICATION

Consultant will defend, indemnify and hold harmless the Agency, its directors, officers, employees and agents from and against any and all suits, claims or actions arising out of (i) any injury to persons or damage to property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Consultant and caused by the willful misconduct, negligent act or omission by Consultant, its employees, subcontractors or agents; or (ii) any allegation that materials or services provided by the Consultant under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party; *[INCLUDE IF CONSULTANT HANDLING PII: "or (iii) any disclosure or allegation thereof of BAWSCA or Member Agency PII (as defined in Attachment A)."]*

The Consultant further agrees to defend any and all such suits, claims or actions, and pay all reasonable charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against the Agency or any of the other individuals enumerated above in any such action, the Consultant will, at its expense, satisfy and discharge the same. This indemnification will survive the expiration or earlier termination of this Agreement.

14. INSURANCE

A. Types of Insurance

(1) **Workers' Compensation Insurance.** If Consultant employs any person to perform work under this Agreement, Consultant will procure and maintain:

(a) Workers' Compensation Insurance meeting the requirements of the State of California, and

(b) Employer's Liability Insurance with a policy limit of at least One Million Dollars (\$1,000,000) per accident or illness.

The policy will contain a waiver of subrogation in favor of Agency and its directors, officers, employees and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

(2) Commercial General Liability Insurance. Consultant will procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence or claim and a general aggregate limit of at least Two Million Dollars (\$2,000,000). This insurance will include, but not be limited to, premises and operations, contractual liability covering the indemnity provisions contained in this Agreement, personal injury, products and completed operations, and broad form property damage, and include a Cross Liability endorsement. Said Policy will protect the Consultant and the Agency in the same manner as though a separate policy had been issued to each, but nothing in said policy will operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(3) Comprehensive Automobile Liability Insurance. Consultant will procure and maintain Automobile Liability insurance on vehicles used in connection with its business in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence or claim. This insurance will provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

(4) Professional Liability Insurance. Consultant will maintain Professional Liability insurance covering Consultant's performance of this Agreement in an amount not less than One Million Dollars (\$1,000,000) per occurrence or claim.

B. Other Requirements

(1) Insurers. All insurance policies must be issued by a California admitted carrier. Insurance policies issued by surplus lines carriers are not acceptable absent the express written approval of Agency and the carrier is listed on the California DOI LASLI list. Policies must be issued by insurers must have a Best Financial Strength Rating of A- or better, and be in the Best Financial Size Category of VII or larger.

(2) Endorsements

(a) The company (ies) issuing all such policies will agree to give Agency thirty (30) days advance written notice of non-renewal or cancellation.

(b) The Commercial General Liability and Automobile Liability policies (but not the Professional Liability policy) will include Agency, its directors, officers and employees as additional insureds.

(c) The Commercial General Liability and Automobile Liability policies will be primary to and not contributing with any insurance maintained by Agency.

(d) The inclusion of more than one insured on the Commercial General Liability and Automobile Liability policies will not affect the rights of such insureds as against one another; such policies will protect Consultant and Agency as though a separate policy had been issued

to each, but inclusion of more than one insured will not increase the limits of the insurer's liability.

(3) Evidence of Insurance. Before commencing work, Consultant will provide Agency with a certificate or certificates of insurance evidencing the existence of the required insurance policies. Agency may request a duplicate original of such policies and endorsements. The Consultant may not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times will satisfy the requirements of the insurer for the purpose of maintaining the required insurance in effect.

(4) Notice to Agency. If any claim is made by any third person against the Consultant on account of any incident connected to the Agreement, the Consultant will promptly report the fact in writing to the Agency, giving full details of the claim.

(5) Self Insurance, Deductibles, and Retentions. Upon evidence of financial capacity satisfactory to the Agency, and Consultant's agreement to waive subrogation against the Agency respecting any and all claims that may arise, Consultant's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from the Agency. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable. In the event that the policy of the Consultant or any subcontractor contains a deductible or self-insured retention, and in the event that the Agency seeks coverage under such policy as an additional insured, Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of Consultant, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Consultant or subcontractor is not a named defendant in the lawsuit.

(6) Subconsultants. Any person, firm, or corporation that the Consultant authorizes to work pursuant to this Agreement, including any subcontractor, is deemed to be the Consultant's agent and is subject to all applicable terms of this Agreement. Prior to the Consultant's start of the work, the Consultant agrees to require its subcontractors to procure and maintain, at the Consultant's (or its subcontractor's) sole cost and expense (and to prove to the Agency's reasonable satisfaction that it remains in effect throughout the performance of the work under this Agreement), the kinds of insurance described above. Such insurance must remain in effect throughout the term of this Agreement and will be at the sole cost and expense of the Consultant (or its subcontractors).

15. RECORDS

Agency and its authorized representatives, including the California State Auditor, may inspect and make copies of Consultant's books, records and data relating to the Agreement at any reasonable time and may audit and verify invoices submitted by Consultant. Consultant will provide such assistance as may be reasonably required in the course of such inspection and audit.

Consultant will maintain its records relating to this Agreement, and make them available for inspection, for a period of three (3) years after Agency makes final its payment to Consultant.

16. NONDISCRIMINATION

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender

expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Consultant shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions 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. The Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

17. COMPLIANCE WITH LAW

In connection with the performance of this Agreement, Consultant will comply with all applicable federal and state laws, including regulations of federal and state agencies, and with applicable local ordinances.

18. MODIFICATION

This Agreement may be modified or amended only by a written document signed by both parties.

19. TERMINATION

Agency may terminate this Agreement at any time and for any reason by written notice. Upon receiving notice of termination, Consultant will promptly deliver to Agency all materials prepared or obtained in performance of this Agreement and will not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a breach or default by Consultant, Agency will pay Consultant, in accordance with the provisions of Sections 3 and 4, all sums actually due and owing from Agency for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by Consultant to effect such termination. If the Agreement is terminated for breach or default, Agency will pay Consultant for only those services performed and expenses incurred in full accordance with the terms of this Agreement, up to the effective date of termination. Whether terminated for breach or for convenience, the Agency will not in any manner be liable for the Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement.

20. DISPUTE RESOLUTION

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of executives, in a good faith attempt to resolve the dispute. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally. Unless otherwise directed by Agency, Consultant will continue performance under this Agreement while matters in dispute are being resolved.

In the event the parties agree to mediation, the party proposing mediation will provide the other party with the names of three mediators (provided by the American Arbitration Association, JAMS, or other such organization), each of which is acceptable to that party. The other (second) party will select one of the three mediators and notify the first party of its selection within fifteen (15) days after receiving the names of the three mediators. If the second party fails to make a selection within this fifteen (15)

day period, the first party may either select the mediator from among the three it proposed or may pursue its legal and equitable remedies through litigation.

The parties will meet with the mediator within thirty (30) days of his/her selection and will discuss the dispute with the mediator in a good faith effort to reach an agreement. However, nothing in this section requires either party to make a concession or accept an offer. If the mediation does not resolve the matter to the satisfaction of both parties within sixty (60) days after the mediator is selected, either party may pursue its legal and equitable remedies through litigation. Any lawsuit between the parties will be filed and prosecuted in the Superior Court of the State of California. The agreed venue is the County of San Mateo. This section does not limit Agency's right to terminate the Agreement.

21. NOTICE

All notices will be given in writing by personal delivery, or first-class mail, to the parties at the following addresses:

If to Agency: Bay Area Water Supply & Conservation Agency
155 Bovet Road, Suite 650
San Mateo, CA 94402
Attention: Nicole Sandkulla, CEO/General Manager

If to Consultant: _____
Attn: _____

Notice given by mail will be deemed received two days after it is deposited in the United States mail postage prepaid, addressed as provided above.

Day-to-day communications will be between _____ for Agency at (650) 349-3000, and _____ for Consultant at _____.

22. CONFLICT OF INTEREST

The Consultant warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Consultant further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

Depending on the nature of the work performed, the Consultant may be required to publicly disclose financial interests under the Agency's Conflict of Interest Code. The Consultant agrees to promptly submit a Statement of Economic Interest on the form provided by Agency upon receipt.

No person previously in the position of director, officer, employee or agent of the Agency may act as an agent or attorney for, or otherwise represent, the Consultant by making any formal or informal appearance, or any oral or written communication, before the Agency, or any officer or employee of the Agency, for a period of twelve (12) months after leaving office or employment with the Agency if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

23. PUBLICITY

The Consultant, its employees, subcontractors, and agents will not refer to the Agency, or use any logos, images, or photographs of the Agency for any commercial purpose, including, but not limited to, advertising, promotion, or public relations without the Agency's prior written consent. Such written consent will not be required for the inclusion of the Agency's name on a customer list.

24. WAIVER

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the party waiving the requirement. The waiver by either party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

25. INTERPRETATION

Section headings are solely for convenience and are not intended to affect the interpretation of the Agreement. The Agreement will be interpreted reasonably, not in favor of or against either party.

26. ENTIRE AGREEMENT

This Agreement including any exhibits or attachments, constitutes the complete agreement between the parties and supersedes any prior agreements, promises, and understandings whether written or oral. This Agreement may be modified or amended only by written instrument signed by both the Consultant and the Agency. In the event of a conflict between the terms and conditions of this Agreement and any Exhibit, the terms of this Agreement will control.

27. NO THIRD PARTY RIGHTS

The parties do not intend this Agreement to create rights in any third parties and nothing in this Agreement should be construed to do so.

28. SEVERABILITY

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event such provision will be severable and will not affect the validity or enforceability of any other provision.

29. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives.

30. AGENCY WARRANTIES

The Agency makes no warranties, representations, express or implied, beyond such as are explicitly stated in this Agreement.

31. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it will be governed by the laws

of the State of California.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

BAY AREA WATER SUPPLY & CONSERVATION AGENCY

By: _____ Date _____
Chief Executive Officer

[INSERT CONSULTANT NAME] (CONSULTANT)

By: _____ Date _____

Title: _____

Taxpayer ID Number:

ATTACHMENT A

DATA SECURITY, PRIVACY AND CLOUD SOFTWARE REQUIREMENTS

[SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL PREPARE THE MODELS USING CLOUD-BASED SOFTWARE AND/OR IF THE CONSULTANT WILL HAVE ACCESS TO PII]

1. DATA PRIVACY [SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL HAVE ACCESS TO PII]

The Consultant may have access to Personally Identifiable Information ("PII") in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including water usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, payment card information, and BAWSCA member agency customer water usage data.

The Consultant must ensure and maintain the confidentiality, security, safety, and integrity of all BAWSCA and Member Agency PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of BAWSCA and Member Agency PII used or acquired in the performance of this Agreement.

This Section will survive termination or expiration of this Agreement.

2. DATA SECURITY [SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL HAVE ACCESS TO PII]

The Consultant must provide those administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of BAWSCA and Member Agency PII pursuant to the minimum standards of care recommended by the California Attorney General in her February 2016 report (See <https://oag.ca.gov/breachreport2016>).

This Section will survive termination or expiration of this Agreement.

3. NOTICE OF SECURITY BREACH [SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL HAVE ACCESS TO PII]

The Consultant must immediately notify the Agency when it discovers that there may have been a data security incident that has or may have resulted in compromise to BAWSCA and/or Member Agency PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. The Consultant must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability—and must promptly alert the Agency of any such circumstances, including information sufficient for the Agency to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of Agency PII, the Consultant will be liable for paying for the following costs to remediate any such unauthorized disclosure:

- a. The reasonable cost of providing notice of the breach to individuals affected by such breach;
- b. The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
- c. The cost of providing individuals affected by such breach with credit protection services

Attachment A to Sample Agreement-1

- designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and
- d. Any other service required by applicable law.

The Consultant must provide any information and/or support to the Agency in issuing the actual notification and, at the Agency's sole discretion, the Consultant must itself provide actual notification if the Agency desires.

This Section will survive termination or expiration of this Agreement.

4. SERVICE LEVEL AGREEMENT [SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL PREPARE THE MODELS USING CLOUD-BASED SOFTWARE]

The following additional requirements apply the software solution:

- a. **Application Availability.** Consultant must provide 99.99% application availability and maintain logs establishing uptime and downtime for the duration of the Agreement.
- b. **Actual Application Availability %** = (Monthly Minutes (MM) minus Total Minutes Not Available (TM)) multiplied by 100) and divided by Monthly Minutes (MM), but not including Excluded Events
- c. **Service Credit Calculation:** An Outage will be deemed to commence when the Application is unavailable to Agency and end when Consultant has restored availability of the services. Failure to meet the 99.99% Application Availability, other than for reasons due to an Excluded Event, will entitle Agency to a credit as follows:

Actual Application Availability % (as measured in a calendar month)	Service Credit to be applied to the Agency's monthly invoice for the affected month
<99.99% to 99.9%	10%
<99.9% to 99.75%	15%
<99.75% to 98.75%	25%
<98.75 to 97.75%	35%
<97.75%	50%

- d. **"Outage"** means the accumulated time, measured in minutes, during which Agency is unable to access the Application for reasons other than an Excluded Event.
- e. **"Excluded Event"** means any event that results in an Outage and is caused by (a) the acts or omissions of Agency, its employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Consultant or its subcontractors; (c) Force Majeure events, excluding acts resulting in a breach of Confidential Information or Personally Identifiable Information; (d) scheduled or emergency maintenance, alteration or implementation provided during the Maintenance Period defined below; (e) any suspension of the services in accordance with the terms of the Agreement; (f) the unavailability of required Agency personnel, including as a result of failure to provide Consultant with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.
- f. **"Maintenance Period"** means scheduled maintenance periods mutually agreed upon by Agency and Consultant to maintain and update the services, when necessary. During these Maintenance Periods, the Services are available to Consultant to perform periodic maintenance services, which include vital software updates. Consultant will use its commercially reasonable efforts during the Maintenance Period to make the services

available to Agency; however, some changes will require downtime. Consultant will provide notice for planned downtime via an email notice to the primary Agency contact at least one day in advance of any known downtime so planning can be facilitated by Agency.

- g. **“Monthly Minutes (MM)”** means the total time, measured in minutes, of a calendar month commencing at 12:00 am of the first day of such calendar month and ending at 11:59 pm of the last day of such calendar month.
- h. **“Total Minutes Not Available (TM)”** means the total number of minutes during the calendar month that the services are unavailable as the result of an Outage.

5. TRANSITION *[SUBJECT TO FURTHER CUSTOMIZATION/DELETION—TO BE USED IF THE CONSULTANT WILL PREPARE THE MODELS USING CLOUD-BASED SOFTWARE]*

Upon the termination or expiration of this Agreement, the Consultant must cooperate fully with the Agency, and any successor consultant to provide to the Agency, and any successor consultant, electronic copies of all branding materials, logos, reports, designs, drawings, plans, specifications, schedules, information, payment history, payment records, and other materials prepared, or in the process of being prepared for the services to be performed by Consultant (Work Product) to ensure a smooth transition to a new software solution. All BAWSCA and Member Agency PII must be protected, kept secure, and transmitted securely at all times in accordance with the terms of this Agreement. All Work Product must be provided in a format that is usable by the successor consultant, such as latest version of Microsoft WORD and/or EXCEL.

If the Agency terminates the Agreement, the Consultant must begin preparing all Work Product to allow for a smooth transition to a successor Consultant or to permit the Agency to operate a similar software solution in the future. Within 30 calendar days of the Agency's termination of the Agreement, the Consultant must transfer all other Work Product, including written reports, data, and other relevant information, to the Agency and the successor consultant. The Agency will withhold payment of Consultant's final invoice until Consultant has ensured a smooth transition to the successor consultant or transmitted all required documents for the Agency's records, as determined by the Agency in its sole discretion.

Upon expiration of this Agreement, Consultant must transfer all other Work Product, including written reports, data, and other relevant information, to the Agency and the successor consultant (if applicable). The Agency will withhold payment of Consultant's final invoice until Consultant has ensured a smooth transition to the successor consultant or transmitted all required documents for the Agency's records, as determined by the Agency in its sole discretion.

EXHIBIT B: CALIFORNIA LEVINE ACT STATEMENT

California Government Code Section 84308, commonly referred to as the "Levine Act," prohibits any BAWSCA Board Member from participating in any action related to a contract if he or she receives any political contributions totaling more than \$250 within twelve months before or after the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires a member of the BAWSCA Board who has received such a contribution to disclose the contribution on the record of the proceeding.

The names of Board members are stated on BAWSCA's website at: <http://bawasca.org/about/board>

Proposers are responsible for accessing this link to review the names prior to answering the following questions.

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any BAWSCA Board Member in the 12 months preceding the date of the submission of your proposal or the anticipated date of any Board action related to this contract?

☐ YES ☐ NO

if yes, please identify the Board Member(s):

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to any BAWSCA Board Member in the 12 months following any Board action related to this contract?

☐ YES ☐ NO

if yes, please identify the Board Member(s):

Answering yes to either of the two questions above does not preclude the BAWSCA from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Board Member(s) from participating in any actions related to this contract.

Date

Signature of authorized individual

Type or write name of authorized individual

Type or write name of company