



**REQUEST FOR PROPOSALS:**  
**Landscape Rebate Online System**

**SUBMITTALS DUE:**  
By 5pm – February 10, 2020

**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 Budget and Funding Structure.....	7
6. Project Schedule .....	7
7. Required Proposal Format.....	8
8. Proposal Instructions and Submittal Information .....	10
9. Ex-Parte Communications .....	10
10. Addenda to RFP .....	11
11. Withdrawal of Proposal.....	11
12. Evaluation of Proposals and Selection Procedure.....	11
13. BAWSCA Rights .....	12
14. Confidentiality .....	12
15. Waiver .....	13
16. Form of Agreement.....	13
Attachment A: System Requirements.....	A-1
Attachment B: BAWSCA Standard Agreement.....	B-1

**NOTE: IT IS THE VENDOR'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 hereby soliciting competitive proposals from qualified service providers to provide an online rebate program and rebate support as outlined in this Request for Proposals (RFP). The qualified service provider will develop and maintain a user-friendly Landscape Rebate System for BAWSCA and its member agencies. The online landscape water conservation rebate application and processing system (Rebate System) would be for BAWSCA's landscape rebate program, which includes lawn replacement rebates and expanded rainwater capture rebates (rain barrels, cisterns, etc.).

The Rebate System should meet the specifications and requirements set forth in this Request for Proposals (RFP), as supplemented by the successful proposal. Through this RFP process, BAWSCA is interested in selecting a single vendor (Contractor) to develop and implement this system and to provide ongoing customer support services for this system.

## **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 providers that provide water to over 1.8 million residents and thousands of 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 Water Conservation Programs***

BAWSCA manages a Regional Water Conservation Program that is made up of several different programs and initiatives, and it supports and augments its member agencies' and customers' efforts to use water more efficiently. These efforts:

- Extend limited supplies of water that are available to meet both current and future water needs;
- Increase drought reliability of the existing water system; and
- Save money for both the member agencies and their customers.

BAWSCA manages two water conservation rebate programs on behalf of its member agencies on a subscription basis (Subscription Programs). Each Subscription Program is fully funded by the individual agencies that elect to participate, with costs assigned based on each individual agency's participation level (e.g. number of rebates issued). BAWSCA's Subscription Programs currently include the following:

- Lawn Be Gone (LBG) rebates
- Rain Barrel rebates

Participation in the Subscription Programs varies among BAWSCA member agencies. Currently, 8 agencies participate in BAWSCA's LBG rebate program and 17 agencies participate in BAWSCA's Rain Barrel rebate program. Member agencies may adjust their participation in each program from year to year. In addition, the rebate amounts and program qualification criteria may vary among participating agencies, which poses a challenge in communicating program information to interested customers (e.g. for the LBG program, the rebate amounts available to customers could be \$1 per sq. ft., \$2 per sq. ft., or \$4 per sq. ft. depending on which member agency provides the customer's water service).

### **3. PROJECT BACKGROUND**

BAWSCA and its member agencies are seeking to implement a new Rebate System by: 1) improving and simplifying the application process for customers and 2) enhancing the efficiency of BAWSCA and member agency staff in the administration, tracking, and implementation of conservation programs. BAWSCA seeks to implement a Rebate System that provides convenient access to information, services and access to financing in a seamless or one-stop-shop model to eliminate many of the barriers that existing customers face when seeking to participate in the rebate programs.

The challenges facing BAWSCA and its member agencies include:

- Increased workload associated with the California drought and the implementation of statewide water use restrictions.
- Need to effectively communicate relevant conservation program information to each member agency's customers where conservation program offerings and terms vary among the BAWSCA member agencies.
- Increased time spent on administration of each conservation program due to significant program growth.

In order to effectively serve our water agencies and their customers, BAWSCA is seeking to establish:

- An online stackable rebate platform
- The necessary processing tools and services to validate and approve/reject rebates
- A database to secure and track rebate data
- A rebate support call center

The rebate database will also allow program partners to check the status of rebates in their respective service areas, view details of issued rebates, and track the general progress of the program in their service areas.

#### ***Existing Rebate Systems***

BAWSCA currently has two databases supporting its conservation programs:

- The Rebate Center, which stores rebate records for individual customer rebates issued through BAWSCA's rebate programs and serves as the platform for submittal of online rebate application.

- A Water Conservation Database, which stores annual, summary data on conservation programs for each member agency (e.g., number of rebates issued in a year, number of audits performed, etc.).

BAWSCA seeks to expand its existing Rain Barrel rebate program to a more comprehensive Rainwater Capture rebate program and combine its two existing rebates into one program to enable customers to apply for multiple rebates simultaneously. BAWSCA is looking to replace the existing Rebate Center with a new Rebate System specifically for this purpose.

Currently, the Rebate Center serves the following functions for BAWSCA's Rain Barrel and LBG programs:

- Facilitates online rebate application submittals.
- Stores rebate application data input from hard copy and online applications received by BAWSCA for each rebate program.
- Stores (1) rebate approval/denial, and (2) payment information input by BAWSCA member agencies.
- Function as a data source for rebate payment information files exported to complete grant reporting and invoicing requirements for BAWSCA's monetary grants.

#### **4. PROJECT DESCRIPTION**

##### **SCOPE OF WORK**

The overall task of the awarded Contractor is to support the deployment of the stackable Rebate System by creating and maintaining an online rebate platform and database that will allow flow of information from customers to BAWSCA and its partner agencies. The scope of work for this includes:

- Online Rebate Program website interface development
- Online rebate application development and maintenance
  - Necessary processing tools and services to validate and approve/reject rebates for the Rainwater Capture and LBG programs
  - Create platform that will allow customers to search for resources (e.g., plants, products, and templates that qualify for rebates).
- Rebate program master database development and maintenance to secure and track rebate data, including rebate approval/denial and rebate payment information, so BAWSCA can export data to complete grant reporting and invoicing requirements for its monetary grants
- Rebate verification
- Call center development and services
- Preparation of a manual on system use
- Training
- Ongoing maintenance and support services

BAWSCA desires to implement a single modular system in order to (1) simplify administration for both BAWSCA and member agency staff and (2) facilitate future system expansion to

include additional capabilities for use by all BAWSCA agencies as described in further detail below.

### ***Rebate System***

The Rebate System will be used by all BAWSCA member agencies that participate in BAWSCA's Subscription Programs (approximately 15 member agencies). The system would replace and expand the functions of BAWSCA's current Rebate Center for the Rain Barrel and LBG programs.

BAWSCA's seeks to implement a Rebate System with the following capabilities and attributes:

- Improves the customer experience with the rebate application process
- Provides for an online rebate application submittal
- Provides the customer with specific rebate and program information for their water provider in an accessible and comprehensible format
- Provides the customer with educational information to complete the application and understand the necessary steps to qualify for the rebate
- Streamlines the agency rebate application review process in order to reduce staff time associated with each rebate application.
- Improves the rebate application completion rates and increases the overall number of rebate applications for the LBG and Rainwater Capture program.
- Stores (1) rebate approval/denial, and (2) payment information input by BAWSCA member agencies.
- Provides data source for rebate payment information files exported to complete grant reporting and invoicing requirements for BAWSCA's monetary grants.

Comprehensive minimum system requirements for the Rebate System are provided in Attachment A.

BAWSCA also plans to expand its conservation programs in FY 2020-2021 and subsequent years and the system developed by the Contractor will need to be easily expandable to incorporate these new programs into the Rebate System as they are launched.

### ***Training and Ongoing Support Services***

The Contractor must be fully capable of meeting and corresponding regularly with BAWSCA and member agency staff, either via phone/email or in person, during the development of the online system. BAWSCA and member agency staff will provide input during the system development process and test system capabilities as developed.

Following system implementation and final acceptance, Contractor must provide two training sessions: one to BAWSCA staff on how to use the system and a second training session for member agencies using the Rebate System. The Contractor must also be capable of providing ongoing maintenance and support services to BAWSCA for a minimum of five (5) years, via email/telephone/web. This support includes but is not limited to trouble-shooting, content development, development of additional reporting capabilities, software maintenance and support, and system expansion to incorporate additional conservation programs. Maintenance

and support fees and response times must be outlined in the Cost Proposal. Any customer maintenance and support agreements should also be included in the Proposer's response.

## **5. PROJECT BUDGET AND FUNDING STRUCTURE**

The Rebate System development will be funded by BAWSCA, and per-agency setup and maintenance costs will be reimbursed to BAWSCA by member agencies participating in BAWSCA rebate programs through the annual subscription fees. Each BAWSCA member agency will have the option to implement the Rebate System, and those agencies that opt to obtain the system will reimburse BAWSCA for the associated costs through separate agreements with BAWSCA.

To facilitate clear allocation of costs among BAWSCA and its member agencies, it is essential that a project budget be provided in a manner that clearly states the anticipated upfront costs and the ongoing fees in order to allow for transparent allocation of costs among BAWSCA and its member agencies. BAWSCA requires that each Proposer's Cost Proposal includes all labor, materials, taxes, profit, overhead, insurance, software licensing, warranty, training, maintenance and support services, subcontractor costs and all other costs and expenses incurred by the Contractor. The Cost Proposal must outline both initial fees and ongoing fees including:

- Initial Rebate Center design, programming, configuration, testing and acceptance costs;
- Per-agency system installation and configuration costs;
- Training
- Warranty
- Ongoing (for a minimum of 5 years) monthly or annual system hosting, user support, and technical support costs (for both BAWSCA and per member agency).

The Cost Proposal must clearly differentiate the basis for assigning costs (for instance, per member agency in which a member agency participates). The Cost Proposal must also clearly differentiate between general design and setup costs for the Landscape Rebate Center and per-agency setup and customization costs. Cost Proposal should also indicate any breakpoints for discounts to overall pricing (e.g. percent discount if a specified number of agencies implement the Landscape Rebate Center).

## **6. PROJECT SCHEDULE**

BAWSCA anticipates commencing work immediately following Contractor selection and adhering to the below implementation schedule.

Proposers should provide an overall schedule with key milestones for system development and a projected launch date for a member agency that is prepared to begin the implementation process immediately upon contract award.

Proposers should be fully capable of adhering to this schedule, though BAWSCA reserves the right to adjust the schedule based on its needs.

January 10, 2020	Request for Proposals Released
January 20, 2020	Requests for Clarification Due
February 10, 2020	Proposals Due
February 24, 2020	Notify Proposers of Results of RFP
March 23, 2020	Begin Design of Systems
June 1, 2020	Complete Design of Systems
June 15, 2020	Staff Training on Systems
June 30, 2020	New Systems to Go Live

All dates are subject to change at the sole discretion of BAWSCA.

## 7. REQUIRED PROPOSAL FORMAT

The response to this RFP may be in a letter format. There is no page limitation, but proposals should be succinct. Only that information that is essential to understanding and evaluating the proposal should be submitted. Items not specifically and explicitly related to the RFP and proposal (e.g. brochures, marketing material, etc.) will not be considered in the evaluation. Please submit all requested information, documents, insurance certificates, and applicable licenses with your proposal. Proposers must have a business license, proof of insurance (refer to Sample Agreement for insurance requirements), and a minimum of three (3) years' experience in developing and supporting conservation program management software.

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

- A. Company Background  
Include a description of your organization, number of years in business, and relevant experience. Provide names and biographies of all key staff that would be involved in the Project.
- B. References and Samples  
Include the names of at least two utilities currently using Proposer's online conservation system. For each reference, provide a contact name with current phone number and email address. Provide samples – either in print form or links to websites – of the system developed for each reference as well as a description of the services performed.
- C. System Design  
Describe your company's proposed Rebate System. Provide a detailed description of the proposed system components, basic features, and potential (optional) features. Include screen shots and/or flow charts depicting system processes where applicable. Demonstrate compliance with the minimum System Requirements set forth in Attachment A.



D. Implementation Plan

Describe in detail how your company will proceed with the development of the Rebate System. Address how your company will meet/collaborate with BAWSCA and member agency staffs to receive/respond to input. Please identify deliverables and milestones that demonstrate your approach to completing the project implementation, including the testing and acceptance process, within BAWSCA's identified timeline. Upon Final Acceptance of the Rebate System, a 30-day warranty period will commence, after which ongoing maintenance/support shall commence.

E. Hosting Requirements & Data Portability

Describe the minimum hosting requirements and associated fees for web hosting and maintenance. Describe how, at what frequency, and in what format(s) agency data can be exported from the proposed solution.

F. Training

Describe how and where you propose to train BAWSCA and member agency staffs to use the Rebate System. For the purposes of cost budgeting, assume a total of two training sessions: one training sessions with BAWSCA, one training session for member agencies using the Rebate System.

G. Customer Support

Describe the process for system modifications and customization by BAWSCA staff and member agency staff. Provide examples of system components that can be customized by BAWSCA and agency staff

Describe the methods you will use to support BAWSCA staff once the implementation is complete. Please state your maximum response time for responding to customer support inquiries. Any associated customer support fees should be described in Section H.

H. Budget and Deliverables Based Payment Schedule

See section 5 for additional information. Provide budgets for the Rebate System and a Cost Proposal. Please list any optional features as separate budget items. Describe your company's preferred deliverables-based payment schedule and corresponding percentage compensation payments and a tentative payment schedule (if applicable) for system design and implementation services. Please also specify as separate budget items:

- Initial Rebate System design, programming, configuration, testing and acceptance process costs;
- Per-agency Rebate System installation and configuration costs;
- Applicable customer training fees;
- Ongoing monthly or annual system licensing, hosting, maintenance and support services including user and technical support costs (per member agency) – for a minimum five (5) year period;
- Optional system expansion for new rebate programs;
- Hourly rates for each technical staff level for future enhancement services such as custom coding for additional modules; and

- Warranty.

- I. Exceptions to BAWSCA's standard Agreement (if any)  
See section 16 for additional information.

## **8. PROPOSAL INSTRUCTIONS AND SUBMITTAL INFORMATION**

Proposals shall be submitted to the BAWSCA office via mail or in person by 5:00 pm, February 10, 2020. *Late proposals will be returned unopened. Postmarks will not be accepted. No faxed or e-mailed proposals will be accepted.*

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 8. The content of the proposals should be ordered and numbered as listed in Section 8.
3. Submit three identical copies of the detailed proposal, as well as one electronic copy. Electronic copy of the proposal may be provided on a searchable USB drive or e-mailed to [ajohnson@bawasca.org](mailto:ajohnson@bawasca.org). *Submittal of the electronic proposal does not substitute for the hard copy proposals. Hard copy proposals must be received by the proposal deadline of 5:00 pm on February 10, 2020.*

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 January 20, 2020 by 5:00 p.m., Pacific Standard Time. Questions should be directed to Negin Ashoori, Water Resources Engineer, by e-mail at [nashoori@bawasca.org](mailto:nashoori@bawasca.org). BAWSCA's reply to questions and/or requests for clarification will be provided by January 27, 2020 to all firms that received the RFP package.

Please send proposals to:

Bay Area Water Supply & Conservation Agency  
Attention: Negin Ashoori, Water Resources Engineer  
155 Bovet Road, Suite 650  
San Mateo, CA 94402

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 if 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 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 ninety (90) 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 capabilities, 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.

Responses must be prepared and submitted in accordance with the directions specified in Section 8 above. BAWSCA will review proposals and evaluate them based on their relative ranking in each area of the proposal, 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 may request additional information from any Proposer. BAWSCA may also request revised proposals or best and final offers.

Final selection will be based on the highest relative ranking of each proposal. BAWSCA reserves the right to determine the highest qualified Proposer to provide the requested services.

Proposals will be evaluated based on the following 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. 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.

***Project Understanding, Approach and Proposed System Capabilities (25%)***

Proposals will be evaluated based on the Proposer’s ability to meet the Scope of Work described in Appendix A and on the overall clarity of the proposal, written in the format described in Section 8 above. Proposals will be evaluated on the proposed approach for accomplishing each task and meeting the overall objective of this Project. Refer to Section 8 for specific proposal information concerning design, implementation, hosting, support, and training.

***Ability to Meet Project Timeline (25%)***

Proposals will be evaluated based on the Proposer’s proven ability (references will be integral to this criteria) to complete all tasks related to the pilot program implementation within the proposed timeline.

***Cost (25%)***

All proposed costs shall be inclusive of all design, labor, materials, insurance, overhead, profit, subcontractor costs, licensing, training, 30-day warranty, hosting, maintenance and support services, and all other costs to implement the Project (with the exception of optional services.)

**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 § 6250 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 Cost Proposal or entire proposal as confidential and BAWSCA will not honor such designations.

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 Contractor 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 Appendix B so that potential Proposers have an opportunity to review the terms and conditions of the Agreement. If a Proposer desires any modifications to the form of Agreement, 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.

# Attachment A: System Requirements

## ***Rebate System***

### **Website Interface:**

Website users will be able to access rebates on a single application from the related informational pages on the program website. The program website will include:

- Online rebate program application that allows retail account holders to enter their rebate case applications
- User friendly interface with clear options and steps for completing the rebate application process
- Program portals for a variety of users with varying levels of interactions including:
  - Program management by BAWSCA staff
  - Member agencies
  - Third-party contractor(s) providing inspection services
  - Customer interaction
- Customize the portal depending on the user
- Customer validation capabilities to confirm that an applicant is a participating agency account holder before the application form is completed
- Customized customer and agency access for each BAWSCA member agency participating in BAWSCA rebate programs
- Modular system for easy expansion to incorporate additional BAWSCA conservation rebate, voucher, and/or giveaway programs as these programs are launched
- Complete rebate application process that includes submissions, tracking and program documentation
- Ability to track and manage, at a minimum, the following information for each customer application:
  - Unique rebate case ID
  - Applicant name and full contact information
  - Water agency name
  - Water agency customer account number
  - Address of service
  - Date of application
  - Square footage replaced (for LBG rebates)
  - Device purchase date
  - Device installation date

- File containing scan of purchase receipt
- File containing site plans and plant list (for LBG rebates)
- File containing photo and video documentation
- Rebate status (New, Approved, Payment Sent, Rejected, Cancelled)
- Denial reason for denied rebates
- Customer service logs
- Ability to track budget and expenditures and provide notifications to BAWSCA and member agency staff regarding the percent of budget expended and projected expenditures from rebates in process and scheduled pre- and post-inspection costs.
- Report generation in MS Excel (.xlsx or .csv formats), matching templates that have previously been developed, for:
  - Reports required by the Department of Water Resources for grant invoicing
  - Internal reports
  - Reports for the member agencies
  - Data files for the member agencies
- Ability to automatically share data to and from member agencies.
- Utilization of automatic triggers incorporated at key points along the rebate process to send e-mail notifications to customers, the inspection Proposer, member agencies, and BAWSCA staff.
- Downloadable program tools including:
  - Design templates
  - Eligible device/plant lists
  - Program checklist
- Integration of BAWSCA's existing tools and resources, such as [www.bayareagardening.org](http://www.bayareagardening.org) and the BAWSCA landscape class registration, into the resources highlighted for the customer.
- Addition of new resources for the customer
  - Video tutorials
  - Landscape design assistance program registration
    - Program description
    - List of eligible landscapers
    - Instructions on program eligibility
- Modular system for easy expansion to incorporate additional rebate programs
- Ability to track, at a minimum, the following information for each case:
  - Account and Property Information

- Account Number, Type, Class, Status etc.
  - Property ID, Type, Address, etc.
- Contacts, each with full contact information
  - Account holder
  - Property owner
  - Applicant or participant
- Case status
- Case dates
  - Start date
  - Complete date
  - Current status date
  - Last change date
- A complete history of previous rebates on the same account OR property

## ***General Rebate Application/Website Interface Requirements***

### **The Rebate Application Platform must:**

- The Rebate Website must function and be compatible with all major operating systems required for the main website(s) for commercial and residential programs.
- Must be housed at the identified main webpage(s) and must not be a separate site.
- Rebate applications must be available in paper and electronic forms.
- Database and processing structures must support both electronic and hard-copy submittals.
- Easily verify and aggregate information and data.
- Provide user registration and login for homeowners, business owners, and rebate service vendors applying on behalf of the home or business owner.
- Provide secure access to application and status information through a user login.
- Provide an applicant the ability to save a partially complete rebate application and resume the application at a later date.
- Be easily modified by BAWSCA or the Rebate Contractor in both online and mail document versions.
- Capture all rebate application data in a master database.
- Be simple to use and access.
- Successfully complete a defined acceptance test prior to launch.
- Have a help feature for applicants to use when necessary.



- Time stamp when the application was received and provides a unique ID to each application.
- If applying online, a confirmation email must be sent to the applicant on information how to access their application, the next required step for the applicant (if applicable), the ID number for their application, expected time for check to be received and how to contact the call center for more information if necessary.
- Adhere to the following technical requirements and expectations:
  - Avoid the use of proprietary systems.
  - Awarded Rebate Contractor or third party will provide the server and hosting.
  - BAWSCA will own all data and content.
- Search feature which provides the ability to search by:
  - Account type
  - Account number
  - Account holder name
  - Service address
  - Customer number
  - Past conservation cases
  - Case number
  - Case dates

## **Attachment B: BAWSCA Standard Agreement**

THIS AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_ 2020, by and between the **Bay Area Water Supply & Conservation Agency** ("Agency") and \_\_\_\_\_ ("Contractor").

WHEREAS, Agency desires to obtain a rebate online management system and has issued a Request for Proposals, dated January 10, 2020, a copy of which is attached and incorporated as Exhibit A, and

WHEREAS, Contractor 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 \_\_\_\_\_, 2020, a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

### **1. SCOPE OF SERVICES**

Contractor 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 Contractor 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**

Contractor 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 rebate system design and implementation work within \_\_\_\_\_ calendar days thereafter/in accordance with the Schedule included in Exhibit B.

Upon issuance of Agency's Final Acceptance of the system, a 30-day warranty period shall commence.

Ongoing licensing, maintenance and support services shall commence upon expiration of the warranty period. The initial term of the rebate online management system support services shall be one year. Thereafter, the Agency may, in its sole discretion, exercise four one-year option terms to extend the support services. Agency will provide Contractor a minimum 30 days' notice of its intent to exercise such option(s).

### **3. COMPENSATION**

The Contractor agrees to perform all of the rebate system design and implementation services included in Section 1 for the cost in accordance with Exhibit B. The total all-inclusive sum includes all labor, materials, taxes, profit, overhead, insurance, training, subcontractor costs and all other costs and expenses incurred by the Contractor.

This is a requirements contract and in no event will Agency pay for more services than specified in the Applications to Participate, including any modifications thereto. Compensation will be based on services rendered and accepted by Agency. Agency will pay Contractor

according to the following Milestone Payment Schedule during system implementation *[to be finalized by the parties after selection of a Contractor]*.

**Milestone Payment Schedule**

1	Design system specifications and interface	
2	Develop Online Rebate Program website interface (including rebate application, necessary processing tools, and customer resources)	
3	Develop rebate program master database (including manual on system use)	
4	Training/User Testing	
5	Final Acceptance	Minimum of 10% of total compensation
6	Completion of Warranty Period	Minimum of 5% of total compensation
7	Ongoing maintenance and support services	

Upon Final Acceptance of the Rebate System, a 30-day warranty period will commence, after which ongoing maintenance/support shall commence, in accordance with the rates set forth in Exhibit B and will reimburse Contractor for out of pocket expenses reasonably and necessarily incurred in the performance of the work.

The Agency's Chief Executive Officer and General Manager may from time to time request Contractor 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, Contractor will provide (1) a proposal for such additional task(s) and (2) a proposed rate schedule and the parties shall negotiate in good faith whether such work should take place under this Agreement or a separate agreement. 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.

**4. MANNER OF PAYMENT**

For the rebate system design, implementation, testing, acceptance, and warranty services, invoices shall be submitted to the Agency by Contractor based on the completion of the milestones set forth in Section 3. Each invoice shall specify the completed task number, describe with specificity the tasks completed for which payment is being requested and state the amount of payment requested. Agency shall pay approved invoices within 30 days of their receipt.

Contractor shall only submit invoices for services performed and costs incurred in accordance with the above Milestone Payment Schedule, not for advance costs.

Upon the expiration of the warranty period, Contractor will submit invoices on the last day of each month, for ongoing software licensing, hosting, maintenance and support services at the amounts set forth in Exhibit B with any applicable Uptime Credits (defined below) deducted from the total.

For any additional optional services, Contractor 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 Contractor's work unsatisfactory, Agency will notify Contractor 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 Contractor. If such changes increase, or decrease, the Contractor'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 Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Contractor will notify the Agency immediately of such condition or contingency. The Contractor will explain the circumstances giving rise to the unforeseen condition or contingency and will suggest the proposed adjustment in schedule or compensation. Contractor will notify the Agency prior to the time that the Contractor performs work or services related to any proposed adjustment. Any agreed-upon changes will be memorialized in a written amendment to the Agreement.

## **6. CONTRACTOR'S STATUS**

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

## **7. ASSIGNMENT**

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

## **8. SUBCONTRACTORS**

Contractor 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):

- [TBD]

Contractor 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 Contractor is the experience and qualifications of the following persons.

- [TBD]

The Contractor agrees that these personnel will devote their personal attention to the work, as further described in Exhibit B. Contractor 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**

Contractor 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. Contractor will re-perform, at no cost to Agency, services which fail to meet this standard. In the performance of its work, the Contractor 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 & USE OF SOFTWARE**

### **A. General**

All reports, plans and any other materials prepared, or in the process of being prepared, by Contractor under this Agreement are the property of Agency. Agency will be entitled to access to and copies of these materials during the progress of the work. Upon completion of the work, or earlier termination of this Agreement, all such materials in the possession of Contractor or any subcontractor will be delivered to Agency. Contractor may retain a copy of all materials produced under this Agreement, subject to the provisions of Section 12.

Any copyrightable work created by Contractor under this Agreement will be deemed a "work made for hire" for purposes of copyright law. Contractor agrees to execute any additional documents which may be necessary to evidence the assignment of all rights of copyright to Agency.

The Contractor 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.

### **Use of Software**

Contractor grants to Agency and all of its participating member agencies the right to access and use the software and associated services in accordance with this Agreement.

To the extent that any other licenses or permissions are reasonably desirable or necessary for Agency to access or use the software, Contractor 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.

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

The Contractor 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 Contractor 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 Contractor, at Contractor'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 Contractor to select another option or risk default.

## **12. CONFIDENTIALITY**

Contractor will hold in confidence any Agency materials to which the Contractor has access, or materials prepared by the Contractor during this Agreement ("Confidential Information"). Contractor will exercise all reasonable precautions to prevent the disclosure of Confidential Information to anyone except the officers, employees, and agents of the Contractor as necessary to perform services under this Agreement. Contractor, 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. DATA PRIVACY**

The Contractor 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. 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, account number, and water usage data. Agency Personally Identifiable Information, or Agency PII, means any PII relating to the Agency's customers or the Agency's member agencies' customers.

Agency PII is and shall remain the sole and exclusive property of the Agency and its member agencies, including but not limited to any intellectual rights in Agency PII.

The Contractor must ensure and maintain the confidentiality, security, safety, and integrity of all 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 Agency PII used or acquired in the performance of this Agreement. Notwithstanding the generality of the foregoing requirements, Contractor will adhere to the following requirements concerning Agency PII:

- The Contractor may not, except as authorized or required by law, reveal or divulge to any person or entity any Agency PII that becomes known to it during the term of this Agreement. The Contractor may not use or attempt to use any such information in any manner that may injure or cause loss, either directly or indirectly, to the Agency.
- The Contractor must maintain policies and programs that prohibit unauthorized disclosure of Agency PII and promote training and awareness of information security policies and practices. The Contractor must comply, and must cause its employees, representatives, agents, and subcontractors to comply, with such commercially and operationally reasonable directions as the Agency may make to promote the safeguarding or confidentiality of Agency PII.
- The Contractor must conduct background checks for employees or Subcontractors that have access to Agency PII or host Agency PII.
- The Contractor must limit access to computers and networks that host Agency PII, including without limitation through user credentials and strong passwords, data encryption both during transmission and at rest, firewall rules, and network-based intrusion detection software.
- The Contractor agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et. seq.) and Civil Code Section 1798.81.5(b) by entering into this

Agreement with the Agency. In addition, the Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to the handling and confidentiality of Agency PII, including the terms and conditions contained in this Section.

This Section will survive termination or expiration of this Agreement.

#### **14. DATA SECURITY**

The Contractor must provide those administrative, physical, and technical safeguards for protection of the security, confidentiality, integrity, and availability of 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>). In particular:

- The Contractor agrees to properly secure and maintain any computer, hardware and software applications, or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied to secure Agency PII that may be used, transmitted, or stored on such software in the performance of this Agreement.
- The Contractor, its employees, agents, Subcontractors, and consultants may not download or otherwise store any Agency PII onto any Contractor computer, desktop, laptop, thumb drives, disks, or other portable memory device without such data being encrypted.
- The Contractor represents that its hosting environment is built upon a secure infrastructure, which undergoes examinations from an independent auditor in accordance with the minimum standards of care recommended by the California Attorney General in her February 2016 report (see above). For added security, the Contractor will use multi-factor authentication when accessing the infrastructure. In addition to the independent audit, Agency will have the right at any time, upon reasonable notice, to audit and inspect: (i) Contractor's facilities where the Agency PII is stored or maintained; (ii) any computerized software used to share, disseminate or otherwise exchange Agency PII; and (iii) Contractor's security practices and procedures, data protection, business continuity and recovery facilities, resources, plans and procedures related to software where the Agency PII is shared, disseminated or otherwise exchanged. The audit and inspection rights hereunder will be for the purpose of verifying Contractor's compliance with this Agreement, and all applicable laws.
- The Contractor must process and store all Agency PII in a single-tenant environment and at no time will Agency PII be commingled with data of independent third-party users of Contractor's services.
- The Contractor must have vulnerability management programs to identify and minimize threats and risks on any software used to store or transmit Agency PII.
- The Contractor represents that the Contractor's management access to the hosting infrastructure is limited to authorized support staff. The security architecture has



been designed to control appropriate logical access to the infrastructure to meet industry standards that meet or exceed the Trust Services Criteria and Principles for Security, Availability, Integrity, and Confidentiality established by the AICPA.

- Notwithstanding anything to the contrary in this Agreement, the Contractor agrees to retain Agency PII for no longer than three days after the completion date of this Agreement and the Agency's confirmation that the Contractor may proceed with such deletion. At the conclusion of this retention period, the Contractor agrees to use U.S. Department of Defense ("DoD") –approved method and removal of Agency PII from any files, with said service being included in the total cost of this Agreement. Discarded Agency PII will be unavailable and unrecoverable following the purge on any storage media including, but not limited to, magnetic disk, optical disk, and memory chips ("Storage Media"). The Contractor agrees to destroy hard-copy documents containing Agency PII by means of a cross-cut shredding machine. The Contractor also agrees to use DoD—approved methods, or an alternate Agency-approved method, to sanitize any Storage Media prior to discarding or when useful life has ended, whichever comes first. At the conclusion of the performance period of this Agreement, the Contractor will submit a certification to the Agency's Project Manager that all electronic or hard-copy format Agency PII has been destroyed in accordance with the Agreement.
- The Contractor is responsible for the security of the cardholder data the service providers possess or otherwise store, process or transmit on behalf of the Agency's customers, and to the extent that it could impact the security of the customer's cardholder data environment. The Contractor must at all times remain in compliance with the Payment Card Industry (PCI) Data Security Standard (DSS) requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with PCI DSS, in each case, at the Contractor's sole cost and expense.

This Section will survive termination or expiration of this Agreement.

## **15. NOTICE OF SECURITY BREACH**

The Contractor 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 Agency PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. The Contractor 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 Contractor will be liable for paying for the following costs to remediate any such unauthorized disclosure:

- The reasonable cost of providing notice of the breach to individuals affected by such breach;

- The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;
- The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and
- Any other service required by applicable law.

The Contractor must provide any information and/or support to the Agency in issuing the actual notification and, at the Agency's sole discretion, the Contractor must itself provide actual notification if the Agency desires. This Section will survive termination or expiration of this Agreement.

**16. SERVICE LEVEL AGREEMENT**

The following additional requirements apply the software solution:

**Application Availability.** Contractor must provide 99.99% application availability and maintain logs establishing uptime and downtime for the duration of the Contract.

**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

**Service Credit Calculation:** An Outage will be deemed to commence when the Applications are 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:

<b>Actual Application Availability % (as measured in a calendar month)</b>	<b>Service Credit to be applied to the Agency's monthly invoice for the affected month</b>
<99.75% to 99.9%	10%
<99.75% to 98.75%	15%
<98.75% to 97.75%	25%
<97.75 to 96.75%	35%
<96.75%	50%

**"Outage"** means the accumulated time, measured in minutes, during which Agency is unable to access the Applications for reasons other than an Excluded Event.

**"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 Contractor or its subconsultants; (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 Contract; (f) the unavailability of required Agency personnel, including as a result of failure to provide Contractor with accurate, current contact information; or (g) using an Application in a manner inconsistent with the product documentation for such Application.

**“Maintenance Period”** means scheduled maintenance periods mutually agreed upon by Agency and Contractor to maintain and update the services, when necessary. During these Maintenance Periods, the Services are available to Contractor to perform periodic maintenance services, which include vital software updates. Contractor will use its commercially reasonable efforts during the Maintenance Period to make the services available to Agency; however, some changes will require downtime. Contractor 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.

**“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.

**“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.

## **17. INDEMNIFICATION**

Contractor will 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 Contractor and caused by the willful misconduct, negligent act or omission by Contractor, its employees, subcontractors or agents; (ii) any allegation that materials or services provided by the Contractor under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party; or (iii) any disclosure or allegation thereof of Agency PII.

The Contractor 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 Contractor will, at its expense, satisfy and discharge the same. This indemnification will survive the expiration or earlier termination of this Agreement.

## **18. TRANSITION**

Upon the termination or expiration of this Agreement, the Contractor 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 Contractor (Work Product) to ensure a smooth transition to a new software solution. All 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 Contractor 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 Contractor 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 Contractor's final invoice until Contractor 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, Contractor 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 Contractor's final invoice until Contractor 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.

## **19. INSURANCE**

### **A. Types of Insurance**

(1) Workers' Compensation Insurance. If Contractor employs any person to perform work under this Agreement, Contractor 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.

(2) Commercial General Liability Insurance. Contractor 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 Contractor 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. Contractor 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. Contractor will maintain Professional Liability insurance covering Contractor'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 will include Agency, its directors, officer 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 will not affect the rights of such insureds as against one another; such policies will protect Contractor 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, Contractor 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 Contractor 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 Contractor on account of any incident connected to the Agreement, the Contractor 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 Contractor's agreement to waive subrogation against the Agency respecting any and all claims that may arise, Contractor's obligation hereunder

may be satisfied in whole or in part by adequately funded self-insurance. Contractor shall be responsible for payment of any deductible or retention on Contractor'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 Contractor 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, Contractor 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 Contractor, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if Contractor or subcontractor is not a named defendant in the lawsuit.

(6) Subcontractors. Any person, firm, or corporation that the Contractor authorizes to work pursuant to this Agreement, including any subcontractor, is deemed to be the Contractor's agent and is subject to all applicable terms of this Agreement. Prior to the Contractor's start of the work, the Contractor agrees to require its subcontractors to procure and maintain, at the Contractor'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 Contractor (or its subcontractors).

## **20. RECORDS**

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

Contractor 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 Contractor.

## **21. NONDISCRIMINATION**

In connection with the performance of this Agreement, Contractor will not discriminate against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, gender identity, and denial of family care leave. Contractor and subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors will comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference

and made a part hereof as if set forth in full. Contractor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

## **22. COMPLIANCE WITH LAW**

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

## **23. MODIFICATION**

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

## **24. TERMINATION**

Agency may terminate this Agreement at any time and for any reason by written notice. Upon receiving notice of termination, Contractor 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 Contractor, Agency will pay Contractor, 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 Contractor to effect such termination. If the Agreement is terminated for breach or default, Agency will pay Contractor 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 Contractor's actual or projected lost profits had the Contractor completed the services required by this Agreement.

## **25. 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, Contractor 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.

**26. 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: Chief Executive Officer and General Manager

If to Contractor: \_\_\_\_\_

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 Contractor at (\_\_\_\_) \_\_\_\_\_

**27. CONFLICT OF INTEREST**

The Contractor 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 Contractor 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 Contractor may be required to publicly disclose financial interests under the Agency's Conflict of Interest Code. The Contractor 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 Contractor 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.

**28. PUBLICITY**

The Contractor, 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.

**29. 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.

**30. 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.

**31. 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 Contractor 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.

**32. 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.

**33. 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.

**34. 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.

**35. AGENCY WARRANTIES**

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

**36. 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: \_\_\_\_\_

Title: \_\_\_\_\_

**CONTRACTOR**

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

Title: \_\_\_\_\_

Taxpayer ID Number: \_\_\_\_\_