



**REQUEST FOR PROPOSALS:**

**BAWSCA “Making Conservation a Way of Life” Strategic Plan – Phase 1**

**SUBMITTALS DUE:**

By 5pm – August 8, 2017

**INTERVIEW DATE (IF NEEDED):**

August 22, 2017

**RETURN TO:**

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

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**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 service providers to support BAWSCA member agencies in meeting the new water use efficiency targets expected to be established by the State of California<sup>1</sup>. The BAWSCA “Making Conservation a Way of Life” Strategic Plan (Plan) is anticipated to be a multi-year effort, phased over the next three fiscal years to align with the state’s proposed schedule for implementing new water use efficiency targets and regulations. This request for proposal (RFP) is for the first phase (Phase 1) of that multi-year work effort. Phase 1 of the Plan, to be completed in FY 2017-18, includes: a) an assessment of member agency existing data and technical capabilities to comply with the anticipated state requirements; and b) development of a roadmap for compliance with the proposed state requirements that identifies the roles for BAWSCA and its member agency, respectively.

## **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 that provide water to over 1.78 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 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, funded by individual member agencies that elect to participate and implemented within their respective service areas.

## **3. PROJECT BACKGROUND**

On April 7, 2017, the state released the “Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16” Final Framework Report. The report addressed the long-term water use efficiency requirements called for in Governor Brown’s executive orders and provided information to the legislature and other interested parties on the proposed framework.

While legislation to implement the “Making Conservation a Way of Life” framework has not been adopted as of the date of this RFP, several pieces of legislation have passed through the Assembly and are awaiting Senate actions. It is anticipated that the legislation will be

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<sup>1</sup> The state’s proposed approach for new water use efficiency targets is described in the “Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16” final report (April 2017): <http://www.water.ca.gov/wateruseefficiency/conservation/>

adopted in FY 2017-18 and that accompanying state regulations detailing requirements for water suppliers will also be developed during this period.

The BAWSCA “Making Conservation a Way of Life” Strategic Plan is anticipated to be a multi-year effort, phased over the next three fiscal years to align with the state’s proposed schedule for implementing the new water conservation targets. Phase 1 will provide critical information to assist BAWSCA in representing the interests of the BAWSCA member agencies with regard to proposed state regulations. In particular, Phase 1 will determine the feasibility of implementing the state’s proposed approach to assigning long-term conservation targets and the cost impacts to BAWSCA member agencies. Phase 1 will also inform the BAWSCA Work Plan and Operating Budget development for FY 2018-19 and subsequent years.

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

BAWSCA seeks to select a firm (Contractor) to complete Phase 1 of BAWSCA's “Making Conservation a Way of Life” Strategic Plan (Plan) to align with the state’s new “Making Conservation a California Way of Life” long-term water conservation targets as dictated by the Governor’s Executive Orders B-37-16 and B-40-17. It is anticipated that new long-term regulations will be developed in FY 2017-18 and that the regulations will require a range of actions by BAWSCA and its member agencies to calculate and ultimately achieve each respective agency’s conservation target.

As the new state long-term targets are still in development, BAWSCA anticipates that adjustments to the scope of work, within the total project budget, may be required to align the Project with final legislation and regulations. The Phase 1 effort will also include development of a multi-year roadmap which will set forth options for complying with “Making Conservation a Way of Life” requirements. BAWSCA and the member agencies will independently evaluate these options to determine how to implement the roadmap going forward.

The Project will include the following tasks:

1. Review “Making Conservation a Way of Life” Regulations and Existing Conservation Efforts: Contractor will review legislation and regulations related to “Making Conservation a Way of Life” long-term water conservation targets and associated actions that will be required of water suppliers to calculate and report on these targets.

Contractor will review BAWSCA and member agency existing conservation efforts and planning documents, including the Drought Report (BAWSCA, 2017), the BAWSCA FY 2015-16 Annual Conservation Report, and the Regional Demand and Conservation Projections Report (BAWSCA, 2014).

2. Assess Outdoor Landscape Area Measurements Existing Capabilities and Best Practices: Contractor will assess the existing capabilities and practices of each BAWSCA member agency regarding the collection, management, and use of

landscape area measurements. Contractor will also research and evaluate water industry best practices for developing landscape area measurements. The deliverable for this task will be Technical Memorandum #1 (TM-1) detailing the results.

As part of this task, Contractor will determine, at a minimum:

- Whether each BAWSCA member agency has measured irrigated and/or irrigable landscape area within its service area for (a) large landscapes and or (b) residential properties
- What methods were used to conduct and verify landscape area measurements, and what level of accuracy was found if verification was conducted
- What each agency used as criteria for determining whether to measure landscape area
- Whether each agency maintains parcel level data for its service area (e.g. lot size, installation date, landscape installation date, etc.) and, if so, how this data is obtained, how it is tracked, and how often it is updated
- Whether BAWSCA member agencies have conducted any studies or pilots on landscape area measurement
- What platform each agency uses for maintaining landscape area measurement data, if applicable
- What challenges agencies have encountered in the past regarding conducting or managing landscape area measurements
- What existing investments BAWSCA member agencies have made in landscape area measurements
- What are the current Industry best practices for conducting landscape area measurements, including a comparison of options and costs

#### Task 2 Deliverable

- TM-1 summarizing the results of Task 2.

3. Assess CII Account Classification Capabilities and Best Practices: Contractor will assess the existing capabilities and practices of each BAWSCA member agency regarding classification of CII accounts. Contractor will also determine existing BAWSCA member agency practices for sub-metering CII accounts to separate landscape water use from indoor use. Additionally, Contractor will assess existing CII audit programs.

As part of this task, Contractor will determine, at a minimum:

- Existing practices for each BAWSCA member agency regarding sub-metering of landscape water use for CII accounts, including criteria for determining whether to separately meter landscape water use and the associated costs
- Existing practices and capabilities for each BAWSCA member agency for classifying accounts within the CII sector, including classification system used and level (degree of detail) of the data collected

- Triggers and process for each BAWSCA member agency for updating CII account classifications, if applicable
- Platform used by each agency for tracking CII account classifications, or capability of agency's existing billing system to track CII account classifications
- Existing or planned programs for each BAWSCA member agency for developing knowledge related to CII water use or promoting reductions in CII water use
- Industry best practices for CII account classifications, including a comparison of options and costs
- Industry best practices for CII water audits, including a comparison of options and costs

Task 3 Deliverable

- TM-2 summarizing the results of Task 3.

4. Evaluate Water Loss: Contractor will assess current practices of each BAWSCA member agency regarding water auditing and water loss accounting and will evaluate water industry best practices for water audit data management and water loss control.

As part of this task, Contractor will, at a minimum:

- Compile results from the AWWA Water Audits completed by BAWSCA member agencies per SB 555 requirements
- Inventory each BAWSCA member agency's existing water auditing practices and water loss control practices
- Determine, in conjunction with BAWSCA and member agencies, goals and timeline for improving water audit data and water loss control activities
- Develop a water loss control program roadmap scoping tasks and timeline for implementation of further water loss assessment and intervention needs

Task 4 Deliverable

- TM-3 summarizing the results of Task 4.

5. Meetings and Workshops: BAWSCA member agency input will be vital to the success of this effort; therefore, Contractor is required to provide a detailed approach and budget for facilitating member agency participation. Contractor must allot sufficient hours within the overall budget to accommodate this necessary input.

Contractor 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 2 workshops with BAWSCA and all BAWSCA member agencies will be required to review Phase 1 goals and deliverables and to determine the preferred approach for compliance with the adopted regulations.

6. Develop Roadmap for Compliance: Contractor will develop a multi-year roadmap for complying with “Making Conservation a Way of Life” requirements. The roadmap will include:
  - Identification of gaps between current BAWSCA member agency capabilities and practices and the capabilities and practices that will be needed to comply with the requirements of the adopted regulations
  - An evaluation of options that BAWSCA agencies may take to develop and implement, the expertise and/or staff capabilities as needed for compliance with the adopted regulations, including an estimate of the associated costs and benefits related to the options available, as well as the recommended preferred approach
  - Identification of actions that may be taken by BAWSCA to support member agency compliance, including a timeline of actions and whether each action will be part of BAWSCA’s Core or Subscription program
  - Identification of actions that may be taken by BAWSCA member agencies to achieve compliance, including a timeline of actions

At the completion of the above exercise, Contractor will develop a Final Report incorporating the results of the work performed up through and including Task 6 work. For budget and schedule purposes, Contractor should plan to prepare two drafts and incorporate comments received for each draft: one draft for BAWSCA review and a second draft for BAWSCA member agency review. BAWSCA will provide a compiled set of comments from member agencies.

Task 6 Deliverable

- Final Report

7. Project Management: To keep the project on schedule and budget, Contractor must provide BAWSCA with monthly status 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.

## **5. PROJECT SCHEDULE**

BAWSCA anticipates commencing work in September 2017, and proposes the following deliverable dates. Proposals should include a detailed schedule demonstrating Contractor’s proposed approach for meeting these milestones.

Tasks and Deliverables	Schedule
Technical Memorandums Complete	March 2018
Draft Report Complete	May 2018
Final Report Complete	June 2018

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

## 6. REQUIRED PROPOSAL FORMAT

The response to this RFP may be in a letter format. There is no page limitation, but proposals are encouraged to be succinct. Proposers should only include information that is essential to understand and evaluate proposals. 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, and key staff assigned to the project and identified in their proposal with substantial experience in water use efficiency program planning and evaluation.

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

A. Project Understanding

Proposals shall provide a brief description of the Contractor's understanding of the Project, including (1) Contractor's perspective on the challenges and complexities associated with planning for implementation of the proposed state requirements for the 26 BAWSCA member agencies, and (2) Contractor's approach to develop an effective plan in a resource-efficient manner.

B. Company Background

Proposals shall identify the prime Contractor 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. 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 detail in Section 4 in as much detail as necessary. Proposals shall describe the roles and responsibilities of both BAWSCA and the Contractor during each phase of implementation. Proposals shall address plan for collaboration with BAWSCA staff and BAWSCA member agencies. Proposal shall include a detailed schedule for completion of all tasks.

E. Budget

Proposals shall Provide an estimated budget for each subtask to complete the Scope of Work for this project. The budget should 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.

F. Exceptions to RFP & Standard Agreement

In accordance with Section 15, proposals shall provide a statement that Proposer is prepared to sign the standard Agreement 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. 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 any political contributions totaling more than \$250 within the previous twelve months, and for three months following 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. Proposers must complete Attachment B, California Levine Act Statement, and submit it with their proposal.

## **7. 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 July 11, 2017 by 5:00 p.m., Pacific Standard Time. Questions should be directed to Andree Johnson, Senior Water Resources Specialist, by e-mail at [ajohnson@bawasca.org](mailto:ajohnson@bawasca.org). BAWSCA's reply to questions and/or requests for clarification will be provided by July 20, 2017 to all firms that received the RFP package and will be posted to the BAWSCA website.

Hard copy proposals and an electronic copy must be received by BAWSCA via mail or in person by 5:00 pm, August 8, 2017. *Late proposals will be returned unopened. Proposals received after this deadline, but postmarked prior to the deadline will not 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 6. The content of the proposals should be ordered and numbered as listed in Section 6.
3. Submit three identical copies of the detailed proposal, as well as one searchable electronic copy. The electronic copy of the proposal may be provided on a 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. Both hard copy proposals and an electronic copy must be received by the proposal deadline of 5:00 pm on August 8, 2017.*

Please send proposals to:

Bay Area Water Supply & Conservation Agency  
Attention: Andree Johnson, Senior Water Resources Specialist  
155 Bovet Road, Suite 650  
San Mateo, CA 94402

All proposals will become the property of BAWSCA. Refer to Section 13, Confidentiality.

## **8. 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.

## **9. 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.

## 10. 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.

## 11. 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.

Responses must be prepared and submitted in accordance with the directions specified in Sections 6 and 7. 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 requests that Proposers reserve August 22, 2017 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 4 and overall water conservation program planning, management, and implementation. 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 Proposer who do not have the relevant experience and qualifications. Refer to Section 6, 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 4 and on the overall clarity of the proposal written in the format described in Section 6. Proposals will be evaluated on the proposed approach for accomplishing each task and meeting the overall objective of this Project. Refer to Section 6, 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 6, subsection D.

***Cost (25%)***

Proposals will be evaluated based on the Proposer's overall value provided within the proposed budget. Refer to Section 6, subsection D and E.

All proposed costs shall be inclusive of all labor, materials, insurance, overhead, profit, subcontractor costs, warranty, training, and all other costs to implement the Project (with the exception of optional services.) Refer to Section 6, subsections A, D, and E.

**12. 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.

**13. 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 Vendor 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 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.

#### **14. 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.

#### **15. 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 Attachment 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 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.



## **Attachment A: BAWSCA Standard Agreement**

**THIS AGREEMENT** is made as of this \_\_\_\_\_ day of \_\_\_\_ 2017, by and between the **Bay Area Water Supply & Conservation Agency** (“Agency”) and \_\_\_\_\_ (“Contractor”).

**WHEREAS**, Agency desires to obtain professional water conservation strategic planning services and has issued a Request for Proposals, dated \_\_\_\_\_, 2017, 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 \_\_\_\_\_, 2017, 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 “Making Conservation a Way of Life” Strategic Plan – Phase 1 (Phase 1) development services by June 30, 2018 in accordance with the Schedule included in Exhibit B.

### **3. COMPENSATION**

The Contractor agrees to perform all of the services included in Section 1 for the total all-inclusive not-to-exceed amount of \$\_\_\_\_\_ in accordance with Exhibit 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 Contractor. The not-to-exceed amount is not guaranteed; compensation will be based on services actually rendered and accepted by Agency.

Contractor may not exceed the amount specified in Exhibit B for each individual task within the Scope of Services without the written permission of Agency. Nor may Contractor apply time spent on one task to the budgeted amount for another task without the written permission of Agency.

The hourly rates set forth on Exhibit B for ongoing support services shall remain in effect through June 30, 2018.

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 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. Hourly rates for the additional work shall correspond to the hourly rates by personnel provided in Exhibit B, subject to the adjustments set forth in the previous paragraph.

#### **4. MANNER OF PAYMENT**

Contractor will submit detailed monthly invoices describing the work performed in the previous month, the personnel performing the work, and their applicable hourly rates of compensation, which shall 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**

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. If any such materials are lost, damaged, or destroyed before delivery to Agency, Contractor will replace them at its own expense. Contractor may retain a copy of all materials produced under this Agreement for archival purposes, 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.

## **12. CONFIDENTIALITY**

Contractor will hold in confidence any Agency materials to which the Contractor has access, or materials prepared by the Contractor during the course of 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.

## **13. INDEMNIFICATION**

Contractor 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 Contractor and caused by the willful misconduct, negligent act or omission by Contractor, its employees, subcontractors or agents, or (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.

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.

## **14. 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 is required to assess the risks associated with work to be performed by its subcontractors and to include in every subcontract the requirement that the subcontractor maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that any subcontractor does not procure and maintain such insurance coverage, Contractor shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Contractor's indemnity obligation as to itself or any of its subcontractors in the absence of insurance coverage.

## **15. 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.

## **16. NONDISCRIMINATION**

In connection with the performance of this Agreement, the Contractor 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 Contractor 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 Contractor 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, Contractor 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, 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.

**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, 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.

**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: 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 (\_\_\_\_) \_\_\_\_\_

**22. 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.

### **23. 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.

### **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 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.

### **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, either 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: \_\_\_\_\_

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

CONTRACTOR

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

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

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

**ATTACHMENT 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 the previous twelve months, and for three months following 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 proposals 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 three 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