



REQUEST FOR PROPOSALS:

BAWSCA Regional Water Supply Reliability Model Development and Analysis Services

SUBMITTALS DUE:

By 4pm – April 24, 2017

INTERVIEW DATE (IF NEEDED):

May 2, 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 develop independent water system and supply modeling tools to assist in BAWSCA's implementation of its Long-Term Reliable Water Supply Strategy (Strategy). The development of the BAWSCA Regional Water Supply Reliability Model (the Model) should accomplish the project goals and requirements set forth in this Request for Proposals (RFP). Through the RFP process, BAWSCA seeks to select a Contractor to develop the Model and train BAWSCA staff on how to use the Model. BAWSCA desires to own the customized Model and be able to make additional modifications to the Model in the future. BAWSCA will own all data input into the Model and created by the Model.

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 1.7 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.

3. PROJECT BACKGROUND

In February 2015, BAWSCA published the Long-Term Reliable Water Supply Strategy Phase II Final Report (Strategy Report). The Strategy Report represents a nearly five year effort by BAWSCA and its member agencies to identify appropriate water management actions that, when in place, would provide long-term water supply reliability for the region. For the Strategy Report, BAWSCA performed a comprehensive assessment of the regional water supply reliability needs through the year 2040, evaluated potential water supply reliability projects that could be implemented to meet these needs, and identified a suite of actions to achieve increased regional reliability.

As part of the ongoing Strategy, BAWSCA's modeling of potential future hydrologic conditions has been performed by San Francisco Public Utilities Commission (SFPUC) staff through a cooperative agreement with SFPUC to analyze the probability of supply shortages on the San Francisco Regional Water System (SFRWS). The drought has highlighted the potential impacts that regional supply shortages can have on member agency reliability and potential SFRWS purchases, but the reliability analyses done thus far for the Strategy does not account for potential shortages in other supplies utilized by BAWSCA member agencies (e.g., State Water Project supplies or local groundwater).

As a result, BAWSCA wants to engage a consultant to develop a modeling tool to run independent alternative scenarios to meet BAWSCA's planning needs. This tool will be intended to help understand the impacts of the reliability of other regional water supplies (e.g., surface water from Santa Clara Valley Water District, State Water Project supplies) on

the BAWSCA agencies and on the reliability of the SFRWS. This tool will also be used to evaluate the benefits of developing additional regional water supplies. To ensure BAWSCA meets its goal of ensuring a reliable supply of high quality water at a fair price into the future, the impacts of projects identified in the Strategy, and other regional and local water supply projects, need to be analyzed under different demand scenarios and hydrologic conditions.

4. PROJECT DESCRIPTION

BAWSCA seeks to select a firm (Contractor) to develop the Model for performing the above-stated analyses and for future use by BAWSCA. BAWSCA wants the Contractor to produce a Model and use the Model to complete the following analyses:

- Assess potential water shortage extent and frequency considering all supplies utilized by BAWSCA member agencies;
- Evaluate the benefits of potential new water resources on regional reliability;
- Evaluate the effects of changed water demands;
- Assess the impacts of non-SFRWS supply shortages on SFRWS demands and reliability; and
- Perform a sensitivity analysis by applying ranges of uncertainty to variables including:
 - Hydrologic changes due to climate change;
 - Demographic and economic changes;
 - Energy and implementation costs; and
 - New regulations and restrictions on supplies.

BAWSCA desires a Model that is a water management mass balance model. The Model should use an indexed sequential Monte-Carlo simulation or another methodology that would allow statistical evaluation of reliability. The Model need not simulate the physical processes that lead to runoff generation in a watershed, but does need to simulate the climate-driven accumulation, movement, use, and storage of water throughout the region. The Model must provide the capability to evaluate individual-year and multiple-year reliability (i.e., hydrology trace analysis).

The Project will include the following tasks:

1. Kick-off Meeting: Contractor will meet with BAWSCA staff to discuss the project. The goals of the meeting are to:
 - Introduce team members and discuss their project roles;
 - Confirm the project timeline and key milestones;
 - Review data already collected;
 - Review and confirm scope, schedule responsibility and other expectations for each deliverable; and
 - Determine communication protocols for the project.
2. Formulate the Modeling Approach: The Contractor will develop a plan to construct a Model that utilizes reliability information for the different supplies to evaluate regional-

scale reliability of the BAWSCA service area. The deliverable for this task will be Technical Memorandum #1 (TM-1) detailing the proposed approach.

As part of this task, in consultation with BAWSCA, the Contractor will:

- Define reliability priorities and metrics for the region. Contractor will plan to incorporate water demand estimates provided by BAWSCA that may take into account economic and climatic factors.
- Describe the proposed modeling platforms (i.e., computer software) suitable to accomplish the project objectives. The Contractor will describe other potential platforms that were evaluated and explain why the proposed platform is appropriate.
- Determine a viable method of calibration for the Model.
- Identify potential modeling scenarios to be performed in Tasks 5 and 6. Two or more planning-level scenarios will be identified as test cases for the development, calibration, and testing of the Model as described in Task 5. Other scenarios will be optionally pursued as a part of Task 6.

Task 2 Deliverable

- TM-1 summarizing the results of Task 2. Technical Memorandum #1 will describe 1) the proposed approach and plan to build the Model and 2) the proposed modeling scenarios.

3. Develop the Approach and Capabilities to Evaluate Reliability of Other Water Supplies: Contractor will develop an approach and needed capabilities to evaluate the reliability of water supplies outside of SFRWS supplies. The deliverable for this task will be Technical Memorandum #2 (TM-2) detailing the proposed approach.

As part of this task, in consultation with BAWSCA, the Contractor will:

- Familiarize itself with tools used to evaluate reliability of other existing regional water supplies (e.g., State Water Project, local groundwater), as well as potential new supply projects (e.g. expanding recycled water use, desalination, and other Strategy projects) that directly or indirectly impact the reliability of BAWSCA's member agencies.
- Identify underlying assumptions, evaluate existing models, and identify additional data needs or uncertainties in evaluating reliability of other supplies. Contractor will identify methodologies to evaluate reliability of the other supplies identified and recommend approach for moving forward.

Task 3 Deliverable

- TM-2 summarizing results of Task 3.

4. Develop Capabilities to Evaluate Reliability of the SFRWS: This task will develop the approach to simulating reliability of the SFRWS. The deliverable for this task will be Technical Memorandum #3 (TM-3) detailing the proposed approach.

As part of this task, in consultation with BAWSCA, Contractor will:

- Review and develop a working knowledge of the Hetch Hetchy/Local Simulation Model (HH/LSM), the SFPUC's hydrologic model, as a reference to the system operation and historical hydrology. Use of the HH/LSM model by the Contractor and BAWSCA will be governed by an agreement between BAWSCA and the SFPUC. Protocols for use and transfer of model results will be agreed to by the Contractor.
- Provide a recommendation to BAWSCA on the use of the HH/LSM model results as input to the Model, or if a new or modified tool will be developed and used to simulate supply and demand on the SFRWS.
- If proposing a new or revised model to simulate supply and demand on the SFRWS rather than using HH/LSM as a model input, Contractor will verify accuracy through a comparison to existing HH/LSM model results.

Task 4 Deliverable

- TM-3 summarizing the results of Task 4. If a new or revised SFRWS Model is created, Contractor would provide the new Model to BAWSCA.

5. Construct and Calibrate the Model: Using the approach formulated in Task 2, Contractor will construct a Model that meets the specifications agreed to in Task 2.

The Contractor will develop a modeling framework on which to construct the Model. The Model will serve as a case study for the modeling framework that will be developed by the Contractor. The Model will include quantitative performance metrics to evaluate the different scenarios. Contractor will incorporate water demand estimates provided by BAWSCA that may take into account economic and climatic factors. The Model will be calibrated using the method identified in Task 2. Results of two or more planning-level scenarios, as defined during work completed for Task 2, will be presented.

Task 5 Deliverable

- Memorandum #4 (TM-4) summarizing the results of Task 5, including the modeling framework, quantitative performance metrics, and results of scenarios.
- Completed Model for use by BAWSCA – BAWSCA will, in its sole discretion, issue its Final Acceptance.

6. Use the Model to Evaluate Scenarios (Optional): If requested by BAWSCA after completion of Tasks 1 through 5, Contractor will use the calibrated Model to investigate additional regional reliability questions formulated in Task 2. BAWSCA will provide estimated demands for identified scenarios. The Contractor will list all scenarios that will be performed and provide a schedule for those simulations. For example, simulations will be performed to test the following parameters by applying ranges of uncertainty to variables:

- Hydrologic changes due to climate change
- Demand, Demographic and economic changes
- Energy and implementation costs

- New regulations and restrictions on supplies

Task 6 Deliverable

- Memorandum #5 (TM-5) summarizing the results of Task 6.

7. Training: Contractor will conduct training for BAWSCA staff on use of the Model.

Task 7 Deliverable

- Model user guide for BAWSCA staff.

8. Project Management: To keep the project on schedule and budget, Contractor must provide BAWSCA with monthly status and budget updates by subtask. The information can be shared via phone or email with updated Excel spreadsheet budgets and schedules.

5. ONGOING SUPPORT SERVICES

The Contractor must be fully capable of meeting and corresponding regularly with BAWSCA staff, either via phone/email or in person, during the Model development process. BAWSCA staff will provide input during the design process and review work as it is completed. In addition, BAWSCA may assemble a technical panel that BAWSCA and Contractor would engage periodically to assist in key project milestones.

Following completion of the Model, the Contractor must be capable of providing ongoing support for a minimum of five (5) years. This support includes, but is not limited to, investigating additional regional reliability questions and support for BAWSCA staff's use of the Model. The Contractor must outline ongoing fees in its cost proposal.

6. PROJECT SCHEDULE

BAWSCA anticipates commencing work at the start of Fiscal Year 2017-18, July 1, 2017, and adhering to the following implementation schedule. Proposers should be fully capable of adhering to this schedule, though BAWSCA reserves the right to adjust the project schedule based on its needs.

Tasks and Deliverables	Schedule
Task 1: Kickoff meeting	July 2017
Task 2 Timeline	July 2017 – September 2017
Submit Technical Memorandum #1	September 1, 2017
Task 3 Timeline	September 2017 - November 2017
Submit Technical Memorandum #2	November 3, 2017
Task 4 Timeline	September 2017 - January 2018
Submit Technical Memorandum #3	January 5, 2018
Task 5 Timeline	January 2018-May 2018

Submit Technical Memorandum #4	May 2018
Submit copy of Model	June 2018
Complete Task 6 (Optional)	TBD
Complete Task 7	June 2018

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 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 a water system operations modeler assigned to the project and identified in their proposal with substantial experience in water system operations modeling.

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

A. Company Background

Include a description of your company's organization, number of years in business, and relevant experience. Provide names and biographies of all staff that would be involved in the BAWSCA Model project. Provide a project organization chart (1) identifying the key staff who will be assigned to the Project (including the water system operations modeler assigned to the Project) and (2) illustrating the lines of authority and the individual responsible for the completion of each service component and deliverable.

B. References and Samples

Include the names of at least three organizations for which you have performed professional water system and supply modeling services within the past three years. It is preferable that at least two of these organizations be either public agencies or non-profits of similar size to BAWSCA. For each reference, provide a contact name with current phone number and email address. Provide samples – either in print outs or links to websites – of the work completed for each reference as well as a description of the services performed.

C. Implementation Plan

Describe in detail how you will proceed with the development of the Model as described in detail in Section 4. Describe the roles and responsibilities of both BAWSCA and the Contractor during each phase of implementation. Address how you will meet/collaborate with BAWSCA staff and receive input.

D. Training

Describe how and where you propose to train BAWSCA staff. Provide an estimate for the number of staff training hours required to train three BAWSCA staff members.

E. Budget and Payment Schedule

Provide an approximate budget for the development of the Model. Please list any optional features as separate budget items. Describe your company's preferred payment milestones and a tentative payment schedule.

Any proposed milestone payment schedule shall include the following milestones as the last two milestones in the schedule: (1) Final Acceptance and (2) Warranty, with corresponding percentage payments. At a minimum, 10% of total compensation shall be due upon Final Acceptance of the project and 5% of total compensation shall be due upon expiration of the 30-day warranty period. With the final percentage payment upon the expiration of the 30-day warranty period, 100% of total compensation will have been remitted to the Contractor.

Please also specify as separate budget items:

- Warranty period (30 day) commencing upon Final Acceptance - required
- Software licensing – required if cost to BAWSCA
- Software escrow fees
- Hardware – required if cost to BAWSCA
- 3rd party solutions – if applicable
- Hourly rates and/or monthly fees for ongoing support – required

F. Exceptions to RFP & Standard Agreement

In accordance with Section 16, 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.

8. PROPOSAL INSTRUCTIONS AND SUBMITTAL INFORMATION

Hard copy proposals must be received by BAWSCA via mail or in person by 4:00 pm, April 24, 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 7. The content of the proposals should be ordered and numbered as listed in Section 7.
3. Submit three identical copies of the detailed proposal, as well as one searchable electronic copy. Electronic copy of the proposal may be provided on a USB drive or e-mailed to 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 4:00 pm on April 24, 2017.*

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 March 31, 2017 by 5:00 p.m., Pacific Standard Time. Questions should be directed to Adrienne Carr, Senior Water Resources Specialist, by e-mail at acarr@bawasca.org. BAWSCA's reply to questions and/or requests for clarification will be provided by April 7, 2017 to all firms that received the RFP package and will be posted to the BAWSCA website.

Please send proposals to:

Bay Area Water Supply & Conservation Agency
Attention: Adrienne Carr, Senior Water Resources Specialist
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 one-hundred (100) days from the deadline for submitting proposals. A Proposer may withdraw its proposal before the date proposals are due by submitting a written request to BAWSCA. BAWSCA reserves the right to reject any and all proposals, the right to accept the proposal it considers most favorable to BAWSCA's interests, and the right to waive irregularities in the proposal or proposal process.

12. EVALUATION OF PROPOSALS AND SELECTION PROCEDURE

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

Responses must be prepared and submitted in accordance with the directions specified in Sections 7 and 8. BAWSCA will review proposals and evaluate them based on their relative ranking 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 May 2, 2017 for potential interviews.

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

Proposals will be evaluated based on the following criteria:

Qualifications and Experience of Firm and Key Personnel

Proposals will be evaluated based on the qualifications of the firm and its key personnel. Particular consideration will be given to the qualifications of the Key

Personnel that will specifically be assigned to performing the work on this Project. Proposer 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 7, subsections A and B.

Project Understanding, Approach and Scope of Work

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 7. Proposals will be evaluated on the proposed approach for accomplishing each task and meeting the overall objective of this Project. Refer to Section 7, subsections C and D.

Ability to Meet Project Timeline

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

Cost

BAWSCA is seeking a cost-effective solution for the Model development, 30-day warranty period following Final Acceptance, and ongoing support services. Proposer is to provide budget by task for Model development as well as hourly rates and/or monthly fees for proposed Project personnel for ongoing support services. Proposer shall also submit any other costs that will be associated with providing the services (e.g., software licensing costs).

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 7, subsections C, D, and E.

13. BAWSCA RIGHTS

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

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

14. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code § 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.

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 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 supply operations model development and support 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 regional water supply reliability model (the "Model") development and analysis services within ____ calendar days thereafter in accordance with the Schedule included in Exhibit B.

Upon issuance of Agency's Final Acceptance of the Model development and analysis services, a 30-day warranty period shall commence during which time the Contractor warrants that the Model will conform in all material respects with the requirements set forth in Exhibit A.

Ongoing support services shall commence upon expiration of the warranty period. The initial term of the ongoing Model analysis 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 Model development and analysis 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, training, software, hardware, warranties, software escrow, 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 rates set forth on Exhibit B for ongoing support services shall remain in effect through June 30, 2018. If engaged, the task(s) for ongoing support services will be on a work directive basis and will include a separate not-to-exceed budget for each specific task. Beginning on July 1, 2018, and on each July 1 thereafter, the rates set forth on Exhibit B shall be subject to an adjustment based on the annual percentage change, measured from July of one year to July of the next, of the Consumer Price Index for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers. Provided however, that Contractor's rates shall not be adjusted by more than 3.5% in any one year. When applicable as set forth above, Contractor shall provide a revised Exhibit B setting forth the adjusted hourly rates.

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

For the Model development and analysis services and warranty period, Contractor will be compensated in accordance with the agreed upon milestone payments set forth in Exhibit B. Contractor will submit detailed monthly invoices describing the work performed in the previous month, the personnel performing the work, and the applicable milestone and deliverable, which shall be consistent with Exhibit B.

For ongoing support services, 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 shall be prepared in a format acceptable to Agency.

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

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. 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.

Excluding materials provided and prescribed by Agency, 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.

Contractor represents and warrants that, as applicable, its employees, agents, and permitted subcontractors have signed an agreement consistent with and as necessary effecting the ownership rights of Agency set forth in this Section 11 before performing any work under this Agreement.

B. Intellectual Property Provisions

1. Definitions

The term "Contractor Software" means any software reasonably necessary to operate or maintain any portions of the Model that is a product or application of Contractor that pre-existed the execution of this Agreement.

The term "Software Customizations" means any software reasonably necessary to operate or maintain any portions of the Model that is a customization, modification, or other change or addition of or to Contractor Software or Third Party Software made under this Agreement.

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

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

2. Ownership

Any copyrightable works created by Contractor under this Agreement will each be deemed “work made for hire” in which Agency owns the copyright; and to the extent any such works may be deemed not to be a “work made for hire,” Contractor hereby assigns all copyright in such works to Agency.

As between Contractor and Agency, Contractor agrees that Agency owns all right, title, and interest in and to the Model, any Software Customizations, and any Materials associated with or otherwise relating to the Model or any Software Customizations, including without limitation any trade secrets, design rights, know-how, patents, copyrights, or other intellectual-property or proprietary rights; and Contractor hereby assigns all such right, title, and interest to Agency.

Contractor agrees to execute any additional documents which may be reasonably necessary or desirable to evidence the assignment of all rights to Agency under this Section 11; and to the extent Contractor is unavailable to execute such documents, Contractor hereby appoints Agency as its agent and attorney-in-fact for the limited purpose of executing and filing such documents.

3. Grant of License

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

In providing the Model, the Contractor will use only that Third Party Software that has been expressly approved in writing by Agency. Contractor will procure, maintain, and otherwise be responsible for all licenses for Agency, in Agency's name, for any such Third Party Software reasonably necessary to operate or maintain the Model – though Agency retains sole and ultimate authority on executing and entering into any such licenses. Contractor shall provide to Agency copies of such licenses, along with any related software or license documentation or Materials.

Except to the extent relating to materials provided and prescribed by Agency, to the extent that any other licenses or permissions are reasonably desirable or necessary for Agency to operate or maintain the Model, 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.

Agency may, in its sole discretion, sublicense any of its rights under this Agreement as reasonably necessary or desirable to operate or maintain the Model or other deliverables under this Agreement, including without limitation to third-party vendors, contractors, or consultants whom Agency may retain.

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

4. Intellectual Property Representations and Warranties

Except to the extent relating to materials provided and prescribed by Agency, Contractor represents and warrants that any use of the Model (or any portion of the Model) 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 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 has all necessary rights to create any Software Customizations and to use patentable or copyrightable materials, equipment, devices, or processes not furnished and prescribed 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.

5. Intellectual Property Indemnification

The Contractor shall indemnify, defend and hold harmless the Agency, its directors, officers, agents, and employees against any liability, including costs and expenses, arising out of, resulting from, or in connection with any act or omission of the Contractor affecting the patent, copyright, trade-secret, or other intellectual-property proprietary rights of third parties, including liability arising out of the publication, translation, reproduction, delivery, use, or disposition of any work furnished under this Agreement.

The Contractor shall indemnify, defend and hold harmless the Agency (and its officers, directors, agents, employees, or transit users) to the maximum extent permitted by law from and against any and all claims, liabilities, losses, damages or expenses (including attorneys' fees and related costs, whether or not litigation has commenced), whether direct or indirect, arising out of, relating to, or in connection with any claim or allegation that the ownership, possession, or use of the Model or any software, materials, equipment, devices, processes, or other materials provided by Contractor relating to the Model or otherwise under his Agreement infringe or violate the patent, copyright, trade-

secret, or other intellectual-property or proprietary rights of any third party, except to the extent any such claim arises out of materials provided and prescribed by Agency. 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 shall: (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. Contractor must consult with Agency regarding the selection among such options (a), (b), and (c); and if the amount of time necessary to proceed with one of these options is deemed excessive by the Agency or unduly disrupts Agency's operations or business, the Agency may direct the Contractor to select another option or be in default.

6. Source Code

Contractor agrees to deliver to Agency any and all source code and any associated documentation and Materials for any Software Customizations at reasonable periodic intervals, including without limitation upon completion of such Software Customizations.

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

7. Access to Personnel

In the event that any of the release conditions set forth in any source code escrow agreement between the parties are satisfied and the source code in escrow is released to the Agency, the Agency shall have the right to hire or otherwise consult or contract with Contractor's personnel or subcontractors for any reason related to the maintenance and operation of the Model. The Contractor shall not interfere with any such efforts to hire or otherwise consult or contract with any of Contractor's personnel. Contractor agreements with personnel and/or subcontractors that restrict employment by or other work for the Agency shall be waived under such circumstances.

9. Precedence

In the event of any conflict between the provisions of this Section 11 and the provisions of any separate software license, escrow, or otherwise related agreement, this Section 11 shall take precedence. Additionally, this Section 11 will survive termination or expiration of this Agreement.

12. CONFIDENTIALITY

Contractor will hold in confidence any Agency materials to which the Contractor has access, materials shared with the Contractor from other entities, such as the San Francisco Public Utilities Commission, or materials prepared by the Contractor during the course of this Agreement, including the Model and all associated algorithms, operational rules, assumptions, and data ("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.

Contractor represents and warrants that, as applicable, its employees, agents, and permitted subcontractors are bound in writing to confidentiality provisions at least as protective as this Section 12 before performing any work under this Agreement.

13. 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, 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, 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.

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. TRANSITION

Upon the termination or expiration of this Agreement, the Contractor must cooperate fully with Agency, and any successor consultant to provide to 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 consultant to run the Model. 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 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 Agency to operate the Model in the future. Within 30 calendar days of Agency's termination of the Agreement, the Contractor must transfer all other Work Product, including written reports, data, and other relevant information, to Agency and the successor consultant. 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 Agency's records, as determined by 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 Agency and the successor consultant (if applicable). 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 Agency's records, as determined by Agency in its sole discretion.

21. 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.

22. 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 (____) _____

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. AGENCY WARRANTIES

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

32. 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