



**REQUEST FOR PROPOSALS:**

**BAWSCA's Reliable Water Supply Strategy 2045 – Scoping Assistance**

**SUBMITTALS DUE:**

By 5pm March 24, 2023

**INTERVIEW DATES (IF NEEDED):**

April 4, 2023 and April 7, 2023

**RETURN TO:**

Bay Area Water Supply & Conservation Agency

155 Bovet Road, Suite 650

San Mateo, CA 94402

(650) 349-3000

Attn: Tom Francis [tfrancis@bawsca.org](mailto:tfrancis@bawsca.org)

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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 water resources planning providers (Proposer or Consultant) to assist BAWSCA in the development of a Scope of Work for updating BAWSCA's Long-Term Reliable Water Supply Strategy (Strategy). The development of the Scope of Work to prepare an updated Strategy (Strategy 2045) would commence during FY 2023-24 following completion of the consultant selection and agreement negotiation processes. Agreement execution is contingent upon approval by the BAWSCA Board of Directors.

## **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 (Wholesale Customers) that provide water to over 1.85 million residents and thousands of commercial, industrial and institutional customers in Alameda, San Mateo, and Santa Clara Counties. BAWSCA's goal is to ensure a reliable supply of high-quality water at a fair price. BAWSCA is governed by a 26-member Board of Directors.

BAWSCA represents the interests of the Wholesale Customers that purchase water on a wholesale basis from the San Francisco Regional Water System (RWS), which is owned and operated by the San Francisco Public Utilities Commission (SFPUC). BAWSCA provides the ability for the wholesale customers of the RWS to work with SFPUC on an equal basis to ensure that the water system is fixed and maintained.

## **3. PROJECT BACKGROUND**

In 2009, BAWSCA launched the development of a Long-Term Reliable Water Supply Strategy (Strategy) to provide a comprehensive, regional assessment of the BAWSCA member agencies' water supply reliability needs, complete an evaluation of potential water management actions that could be implemented to meet these needs, and identify potential actions for consideration by the BAWSCA Board to achieve an increased level of regional reliability. Successful implementation of the Strategy was seen as essential to ensuring that BAWSCA met its water management objective to ensure that a reliable, high-quality supply of water is available where and when people, businesses, and community agencies within the BAWSCA service area need it. The Strategy was finalized in February of 2015, and it can be found on BAWSCA's website at <https://bawasca.org/water/reliability/strategy>

Implementation of the Strategy recommendations have been incorporated into the yearly BAWSCA Work Plan since FY2015-16. Once Strategy 2045 is finalized, it too will be incorporated into ensuing yearly Work Plans.

While the Strategy has served BAWSCA well, time has passed and conditions have changed since 2015. For example, BAWSCA has prepared updated demand studies and BAWSCA member agencies have prepared new Urban Water Management Plans. Water supply projects at the member-agency specific level have come online. Regulatory pressures are mounting, some of which have the potential to impact existing supply reliability. Large regional water supply projects, such as the Los Vaqueros Reservoir Expansion Project, have advanced. The SFPUC has embarked

upon the preparation of an Alternative Water Supply Plan which informs BAWSCA and its member agencies regarding their future plans toward water supply reliability. For these and other reasons, an update to the Strategy is called for. BAWSCA therefore needs to develop a scope for Strategy 2045, and desires consultant assistance on that effort.

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

The Strategy, as finalized in 2015, provided a comprehensive, regional assessment of the BAWSCA member agencies' water supply reliability needs, a thorough evaluation of potential water management actions that could be implemented to meet those needs, and identified potential actions for consideration by the BAWSCA Board to achieve an increased level of regional reliability. In recent years, the concept of a "One Water" approach has emerged. BAWSCA wants to consider if and how to incorporate that into Strategy 2045. BAWSCA needs guidance about which elements of the Strategy should continue to include and consider, and seeks a Consultant to prepare suggestions as to how to approach the development of Strategy 2045.

The purpose of this RFP is to select a Consultant to evaluate issues and develop the scope of work to prepare Strategy 2045. The work for this RFP is Phase 1. Developing Strategy 2045 is Phase 2. The Consultant awarded the contract for Phase 1, is not disqualified from performing the services needed for Phase 2, preparing Strategy 2045.

The BAWSCA Board of Directors will determine whether to proceed with preparing Strategy 2045 and, if so, will authorize the time and process. BAWSCA may decide to solicit competitive proposals or may decide to engage the Consultant who performs the scoping work to prepare Strategy 2045. BAWSCA will consider numerous factors in deciding whether to seek competitive proposals for preparing Strategy 2045, including but not limited to the following: (1) the quality of the scoping services performed by Consultant; (2) whether the scoping services were completed on time and on budget; and (3) the reasonableness of Consultant's proposed key business terms for preparing Strategy 2045, such as schedule, price, and key staff.

##### **Task 1 – Document Review**

The Consultant will review existing documents prepared by BAWSCA as well as other agencies pertinent to BAWSCA's water supply reliability needs including the following:

- BAWSCA's Strategy Final Reports (for Phase 1, Phase 2 and the Final Phase)
- BAWSCA's most recent Demand Study and Annual Report
- BAWSCA's Pilot Water Transfer Report
- BAWSCA Member Agency Project Information Forms (PIFs) collected by BAWSCA detailing future agency-specific water supply development plans
- SFPUC's recent quarterly report(s) as prepared for its Alternative Water Supply Program
- Member Agency Urban Water Management Plans (UWMPs), and in particular sections of said UWMPs that detail future water supply development
- Reports produced regarding the BAWSCA region's groundwater resources, such as the San Mateo Basin Groundwater Assessment prepared by the County of San Mateo

The purpose of the document review will be to assess what elements of the Strategy merit update and/or continued inclusion, and moreover to inform BAWSCA as to what tasks should be included as part of the development of Strategy 2045.

The Consultant will also review no fewer than two (2) water supply strategy plans prepared by large water agencies outside of the BAWSCA service area in an effort to identify what other efforts, in addition to those followed by BAWSCA, are worthy of consideration by BAWSCA

### ***Task 1 Deliverables***

The Consultant will prepare a draft, for BAWSCA staff review, and a final Technical Memorandum (TM-1) at the completion of Task 1 to summarize the Consultant's findings and recommendations. Findings and recommendations will focus on what components of the LTRWSS continue to work well with refinement, what components require revisiting as part of Strategy 2045, and new elements that should be considered.

### **Task 2 – Stakeholder Engagement**

Following the completion of Task 1, the Consultant in coordination with BAWSCA staff, shall interact with representatives from BAWSCA member agencies to receive their input on the approach for developing the Scope of Work to prepare Strategy 2045. BAWSCA envisions that feedback will be gathered through a combination of 1) feedback forms of some nature via email, and, 2) via one (1) in-person workshop approximately 3 hours in length. The Consultant is expected to develop presentation materials, assist BAWSCA if needed during the discussion that takes place, and keep meeting notes. BAWSCA will arrange the meeting location facilities.

It is also anticipated that at least one informational item will be brought to the BAWSCA Board of Directors for discussion and input. The consultant would work with BAWSCA staff to prepare materials, attend meetings, and take notes.

### ***Task 2 Deliverables***

The Consultant will prepare a draft, for BAWSCA staff review, and a final Technical Memorandum (TM-2) at the completion of Task 2 to summarize the results of Stakeholder Engagement, including a record of comments and suggestions received

### **Task 3: Attend Meetings and Provide Technical Support**

The Consultant will support BAWSCA in its communications with the BAWSCA member agencies and Board as the work progresses. As such, this task includes up to six meetings between Consultant and BAWSCA, as well as telephone conference calls and status reports. It is anticipated that the meetings between BAWSCA and the Consultant will include:

- A Kick-off meeting
- Project progress meeting(s), as needed
- Meeting to present draft TM-1
- Meetings with Stakeholders and BAWSCA Board of Directors (as detailed under Task 2)
- Meeting to present draft TM-2
- Meeting to discuss BAWSCA comments on draft TM 1 and 2 and resolve outstanding questions

BAWSCA anticipates holding up to four meetings with member agency representatives and one with

the Board. At BAWSCA’s request, the Consultant will support BAWSCA in developing materials to present at those meetings, including, but not limited to, agendas, tables, figures, powerpoint slides, and other supporting information.

**Task 4: Development of the Scope of Work for Phase 2, preparing Strategy 2045**

Utilizing the results of the work efforts of Tasks 1 through 3, the Consultant will prepare the proposed scope of work for Phase 2, preparing Strategy 2045. It is anticipated that this document will form the basis for the work plan that BAWSCA will embark upon, though BAWSCA retains the right to make changes and adjustment as desired following its consideration of the proposed scope of work.

**Task 4 Deliverables**

The Consultant will prepare a draft, for BAWSCA review, of the proposed scope of work for Strategy 2045 Phase 2. Following a review of the draft by BAWSCA, the Consultant will prepare the Final scope of work for Strategy 2045.

**5. PROJECT SCHEDULE**

BAWSCA anticipates commencing work for Phase 1 in the last quarter of FY 2022-23. Work will be contracted on a fiscal year basis and completed in calendar year 2023. Proposals must include a detailed schedule demonstrating the Consultant’s proposed approach for completing each task. An estimated schedule is provided in Table A below.

**Table A – Phase 1 Schedule**

<b><u>Fiscal Year 2022-23 Work Efforts</u></b>	
<b>Task</b>	<b>Date</b>
Task 1 – Document Review	NTP thru June 30, 2023
<b><u>Fiscal Year 2023-24 Work Efforts</u></b>	
<b>Task</b>	<b>Date</b>
Task 1 (Continued) – Document Review	July 1- 2023 – September 1, 2023
<i>Draft TM-1 Submittal</i>	<i>August 18, 2023</i>
<i>Final TM-1</i>	<i>Sept 1, 2023</i>
Task 2 – Stakeholder Engagement	July 3, 2023 – October 13, 2023
<i>Draft TM-2 Submittal</i>	<i>September 29, 2023</i>
<i>Final TM-2</i>	<i>October 13, 2023</i>
Task 3 – Meetings and Support	Ongoing thru Phase 1
Task 4 – Scope of Work for Phase 2	October 16 – December 1, 2023
<i>Draft Scope of Work</i>	<i>November 10, 2023</i>
<i>Final Scope of Work</i>	<i>December 1, 2023</i>

## 6. REQUIRED PROPOSAL FORMAT

The response to this RFP may be in a letter format. There is no page limitation, but proposers are encouraged to be succinct. Proposers should only include information that is essential 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 and should not be submitted. Please submit all requested information, documents, insurance certificates, and applicable licenses with your proposal. Proposers must have a business license and proof of insurance. Key staff assigned to the project must be identified in the proposals and have 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 Consultant's understanding of the Project, including (1) Consultant's perspective on the key elements of scoping Strategy 2045, and (2) Consultant's approach to prepare the TMs as identified in this RFP.

B. Company Background

Proposals shall identify the prime Consultant and any subcontractors proposed to be used. Proposals shall include a description of the company's organization, number of years in business, and relevant experience. Proposals shall provide names and biographies of key team members that will be committed to the Project. Information on key team members' experience and knowledge of long-term plans for the development of water supply alternatives must be included. 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 as well as the individual(s) responsible for the completion of each service component and deliverable.

C. Qualifications

Proposals shall include descriptions of similar projects and/or experiences and/or qualifications proposers have with past and ongoing projects within the last five years. Proposals shall include at least three (3) references for key personnel and the project team from projects completed within the past five years that were similar in size and scope to this Project. For each reference, proposals shall include a contact name, phone number and email address with a description of the services performed for each reference.

D. Implementation Plan /Scope of Work

Proposals shall describe the methodology and approach for completing the Project as described in Section 4. Proposals shall describe the roles and responsibilities of BAWSCA, the Consultant, and the Wholesale Customers during each phase of implementation. Proposals shall include a detailed schedule for completion of all tasks.

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. A copy of BAWSCA's standard Agreement is attached as Exhibit A. 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.

E. Levine Act Statement

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

**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 March 24, 2023 by 5:00 p.m., Pacific Standard Time. Questions should be directed to Tom Francis, Water Resources Manager, by e-mail at [tfrancis@bawasca.org](mailto:tfrancis@bawasca.org). BAWSCA’s reply to questions and/or requests for clarification will be provided by March 10, 2023 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 March 24, 2023. *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 web link e-mailed to [tfrancis@bawasca.org](mailto:tfrancis@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 March 24, 2023.*

Please send proposals to:

Bay Area Water Supply & Conservation Agency  
Attention: Tom Francis, Water Resources Manager  
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/or unless the communication is made public. Proposers and proposers’ representatives must communicate in the manner set forth in this RFP. There shall be no communication with any officer, director, employee, or agent of BAWSCA, except as may be reasonably necessary to carry out the procedures specified in this RFP.

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

## **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 an RFP package will be sent a notification of the posting of clarifications. All addenda issued shall become part of the RFP. If BAWSCA determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that BAWSCA determines will allow Proposers sufficient time to revise their proposals. Any new due date shall be included in the addenda.

## **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 be available for potential interviews.

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

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

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

Proposals will be evaluated based on the qualifications of the firm and its key personnel as related to the specific tasks in Section 4. Particular consideration will be given to the qualifications of the Key Personnel that will specifically be assigned to performing the work on

this Project. Proposers who have the experience and qualifications to implement similar projects will be rated higher than Proposers who do not have the relevant experience and qualifications. Refer to Section 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.

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

**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 § 7921.000 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between BAWSCA and the Proposer shall be available to the public.

If the Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that BAWSCA withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal 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 Consultant selected by BAWSCA to perform the services as set forth in this RFP will be required to execute an Agreement with BAWSCA. A sample of BAWSCA's standard Agreement is attached as Exhibit A so that potential Proposers have an opportunity to review the terms and conditions of the Agreement. If a Proposer desires any modifications to the terms of Agreement or this Request for Proposals, those requested modifications must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted all the terms and conditions included in the form of Agreement and this Request for Proposals.

## **Exhibit A: BAWSCA Standard Agreement**

**THIS AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_ 2023, by and between the Bay Area Water Supply & Conservation Agency (“Agency”) and \_\_\_\_\_ (“Consultant”).

**WHEREAS**, Agency desires to obtain professional services to develop a scope of work for updates to Agency's Long-Term Reliable Water Supply Strategy and has issued a Request for Proposals, dated \_\_\_\_\_, 2023, a copy of which is attached and incorporated as Exhibit A, and

**WHEREAS**, Consultant desires to perform such services and has represented that it is experienced and qualified to perform such services. It submitted a written proposal on \_\_\_\_\_, 2023, which has been negotiated and approved by BAWSCA, a copy of which is attached and incorporated as Exhibit B.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

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

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

### **2. SCHEDULE AND TERM**

Consultant will commence work upon Agency’s issuance of a Notice to Proceed and, unless the Agreement is terminated sooner pursuant to Section 19, will complete the work by June 30, 2023 in accordance with the mutually agreed upon Schedule included in Exhibit B.

### **3. COMPENSATION**

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

The not-to-exceed amount is not guaranteed; compensation will be based on services actually rendered and expenses actually incurred. Agency will pay Consultant at the rates set forth in Exhibit A and will reimburse Consultant for out-of-pocket expenses reasonably and necessarily incurred in performing the work.

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

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

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

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

## **5. CHANGES**

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

## **6. CONSULTANT'S STATUS**

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

## **7. ASSIGNMENT**

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

## **8. SUBCONSULTANTS**

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

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

[TBD]

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

## **9. KEY PERSONNEL**

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

[TBD]

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

#### **10. STANDARD OF CARE**

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

#### **11. OWNERSHIP OF WORK**

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

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

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

#### **12. CONFIDENTIALITY**

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

#### **13. INDEMNIFICATION**

Consultant will defend, indemnify and hold harmless the Agency, its directors, officers, employees and agents from and against any and all suits, claims or actions arising out of (i) any injury to persons or damage to property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Consultant and caused by the willful misconduct, negligent act or omission by Consultant, its

employees, subcontractors or agents, or (ii) any allegation that materials or services provided by the Consultant under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

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

#### **14. INSURANCE**

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

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

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

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

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

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

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

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

##### **B. Other Requirements**

(1) Insurers. All insurance policies must be issued by a California admitted carrier. Insurance policies issued by surplus lines carriers are not acceptable absent the express written approval of

Agency and the carrier is listed on the California DOI LASLI list. Policies must be issued by insurers must have a Best Financial Strength Rating of A- or better, and be in the Best Financial Size Category of VII or larger.

(2) Endorsements

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

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

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

(d) The inclusion of more than one insured on the Commercial General Liability and Automobile Liability policies will not affect the rights of such insureds as against one another; such policies will protect Consultant and Agency as though a separate policy had been issued to each, but inclusion of more than one insured will not increase the limits of the insurer's liability.

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

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

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

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

## **15. RECORDS**

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

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

## **16. NONDISCRIMINATION**

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Consultant shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

## **17. COMPLIANCE WITH LAW**

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

## **18. MODIFICATION**

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

## **19. TERMINATION**

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

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

**20. DISPUTE RESOLUTION**

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

In the event the parties agree to mediation, the party proposing mediation will provide the other party with the names of three mediators (provided by the American Arbitration Association, JAMS, or other such organization), each of which is acceptable to that party. The other (second) party will select one of the three mediators and notify the first party of its selection within fifteen (15) days after receiving the names of the three mediators. If the second party fails to make a selection within this fifteen (15) day period, the first party may either select the mediator from among the three it proposed or may pursue its legal and equitable remedies through litigation.

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

**21. NOTICE**

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

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

If to Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 Tom Francis, Water Resources Manager, for Agency at (650) 349-3000, and \_\_\_\_\_ for Consultant at (\_\_\_\_) \_\_\_\_\_

**22. CONFLICT OF INTEREST**

The Consultant warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Consultant further

covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

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

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

### **23. PUBLICITY**

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

### **24. WAIVER**

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

### **25. INTERPRETATION**

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

### **26. ENTIRE AGREEMENT**

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

### **27. NO THIRD PARTY RIGHTS**

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

### **28. SEVERABILITY**

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

**29. BINDING ON SUCCESSORS**

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

**30. AGENCY WARRANTIES**

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

**31. APPLICABLE LAW**

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

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

BAY AREA WATER SUPPLY & CONSERVATION AGENCY

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

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

CONSULTANT

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

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

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

## EXHIBIT B: CALIFORNIA LEVINE ACT STATEMENT

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

The names of Board members are stated on BAWSCA's website at:

<http://bawasca.org/about/board>

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

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

YES       NO

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of authorized individual

\_\_\_\_\_  
Type or write name of authorized individual

\_\_\_\_\_  
Type or write name of company