



**REQUEST FOR PROPOSALS
FOR THE
SCOPING OF A LONG-TERM RELIABLE WATER SUPPLY STRATEGY**

PRE- PROPOSAL MEETING:

10 AM - July 21, 2009

SUBMITTALS DUE:

By 4 pm - AUGUST 5, 2009

RETURN TO:

Bay Area Water Supply & Conservation Agency
Attention: Nicole M. Sandkulla, Senior Water Resources Engineer
155 Bovet Road, Suite 302
San Mateo, CA 94402
(650) 349-3000

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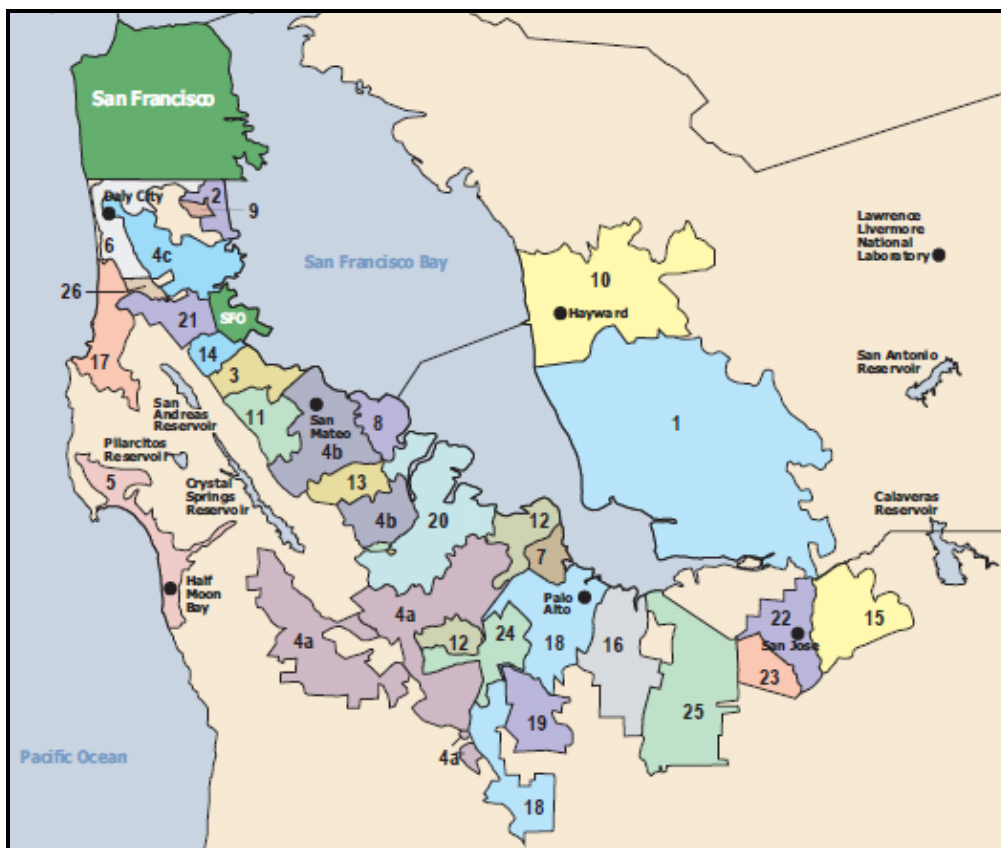
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NOTE: IT IS THE CONSULTANT'S RESPONSIBILITY TO EXAMINE THIS "REQUEST FOR PROPOSAL" SOLICITATION IN ITS ENTIRETY PRIOR TO SUBMITTING A PROPOSAL

1. INTRODUCTION

The Bay Area Water Supply and Conservation Agency (hereinafter referred to as “BAWSCA”) is soliciting firms to submit proposals for the Scoping of a Long-Term Reliable Water Supply Strategy (RWSS). The scoping for the RWSS is to be completed by the end of **March 2010**.

BAWSCA serves the interests of 26 agencies that include cities, water districts, and two private utilities, in Alameda, Santa Clara and San Mateo counties (shown below). BAWSCA and its member agencies serve 1.7 million residents and over 30,000 commercial and industrial customers and community organizations. BAWSCA has the authority to plan for, develop and acquire supplemental water supplies, and to plan and implement water conservation and recycled water on a regional basis for its member agencies.



- | | | |
|-----------------------------------|--------------------------------------|------------------------------------|
| 1 Alameda County Water District | 10 City of Hayward | 21 City of San Bruno |
| 2 City of Brisbane | 11 Town of Hillsborough | 22 San Jose Municipal Water System |
| 3 City of Burlingame | 12 City of Menlo Park | 23 City of Santa Clara |
| 4a CWS – Bear Gulch | 13 Mid-Peninsula Water District | 24 Stanford University |
| 4b CWS – Mid-Peninsula | 14 City of Millbrae | 25 City of Sunnyvale |
| 4c CWS – South San Francisco | 15 City of Milpitas | 26 Westborough Water District |
| 5 Coastside County Water District | 16 City of Mountain View | |
| 6 City of Daly City | 17 North Coast County Water District | |
| 7 City of East Palo Alto | 18 City of Palo Alto | |
| 8 Estero MID | 19 Purissima Hills Water District | |
| 9 Guadalupe Valley MID | 20 City of Redwood City | |

2. INTENT

The intent of this Request for Proposals (RFP) is to solicit proposals from firms for the Scoping of a Long-Term Reliable Water Supply Strategy for BAWSCA and its member agencies. All proposals will become the property of BAWSCA.

3. PROJECT DESCRIPTION

Based on studies completed to date, it is estimated that the BAWSCA member agencies may face a potential supply gap of as much as 45 MGD in 2035. This range reflects the inherent uncertainty of the continued availability of current sources of water supply and actual results achieved from implementation of water conservation activities, and assumes that San Francisco continues to meet its obligation to provide 184 mgd from the Regional Water System. In order to provide its member agencies with future water supply certainty, as well as to address issues associated with drought reliability and the potential effects demand hardening, BAWSCA is pursuing the development of the RWSS.

The RWSS will identify the water supply augmentation alternatives that BAWSCA, or BAWSCA in coordination with its member agencies, can implement to ensure a long-term reliable water supply for the region. The RWSS will also identify the costs and timelines associated with the development of the selected alternatives, including the time and expense needed to address the physical, legal, environmental, regulatory, and political aspects of the projects. In addition, the RWSS will clearly identify the schedule by which specific entities must perform specific tasks in order to ensure that the BAWSCA region has a reliable water supply to 2035.

The first step of preparing the RWSS is to develop the Scope for the RWSS. The objective of this project is to:

Develop a Scope for development of a Long-Term Reliable Water Supply Strategy that will assist BAWSCA and its member agencies to identify and attain the water supplies necessary to support demands to 2035.

When completed, the Scope for the RWSS will articulate the purpose and objectives of the RWSS, the screening and evaluation criteria that will be used to assess alternative water supplies and water efficiency measures, the spectrum of alternatives to be examined, and the scope, required expertise, cost, and schedule for preparing the RWSS.

A detailed description of the Scope of Work for developing the Scope for the RWSS is attached as Appendix A.

The purpose of this RFP is to evaluate issues and develop the scope of services for the preparation of a RWSS. This scoping work is Phase 1 and the preparation of the RWSS is Phase 2.

The Consultant awarded the contract for the scoping services is not disqualified from performing the services to prepare the RWSS.

Whether to proceed with the preparation of the RWSS and, if so, when and by what process, are decisions that will be made by the BAWSCA Board of Directors. BAWSCA may decide to solicit competitive proposals or may decide to engage the Consultant who performs the scoping work to prepare the RWSS. BAWSCA will consider numerous factors in deciding whether to seek competitive proposals for the preparation of the RWSS, 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 the RWSS, such as schedule, price, and key staff.

4. ANTICIPATED SCHEDULE FOR CONSULTANT SELECTION

The anticipated schedule for Consultant selection is:

July 1, 2009	RFP Package Mailed
July 21, 2009	Pre-Proposal Meeting (voluntary)
August 5, 2009	Proposals due to BAWSCA by 4 pm
August 19, 2009	Potential Interviews
September 17, 2009	Staff Recommendation to BAWSCA Board of Directors
September 21, 2009	Issue Notice to Proceed
September 24, 2009	First Meeting with BAWSCA Staff

A project schedule is included in the attached Scope of Work (Appendix A).

5. SELECTION PROCEDURE

Responses from interested Consultants must be prepared and submitted in accordance with the directions specified in Section 6 below. 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, but also may award the contract without conducting interviews. BAWSCA may request additional information from any Consultant who submits a proposal. Furthermore, BAWSCA reserves the right to waive information and irregularities in the proposals received.

BAWSCA reserves the right to withdraw this RFP or to not award a contract at any time.

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

The following criteria will be used in evaluating proposals:

Qualifications:

Proposals will be evaluated based on the qualifications of the firm and its key personnel. Weight will be given to the qualifications of the key personnel that will specifically be assigned to performing the work on this project. Consultants who have the experience and qualifications to provide both the scoping services set forth in Appendix A and the services required for the preparation of the RWSS will be rated higher than Consultants who do not have the experience and qualifications to prepare the RWSS.

Project Understanding, Approach and Scope of Work:

Proposals will be evaluated based on the Consultant's ability to meet the Scope of Work described in Appendix A and on the overall clarity of the proposal, written in the format described in Section 6 below. Proposals will be evaluated on the proposed approach for accomplishing each task and meeting the overall objective of this project.

Ability to Meet Project Timeline and Budget:

Proposals will be evaluated based on the Consultant's ability to complete all tasks listed in the Scope of Work according to the timeline provided, and within the proposed budget.

6. REQUIRED PROPOSAL FORMAT

The response to this RFP may be in a letter format, addressing the Scope of Work and, at a minimum, must include the following sections:

Project Understanding:

Proposals shall provide a brief description of the Consultant's understanding of the Project issues, challenges, and opportunities. This section should create both a local and larger-scale context for what this project is trying to accomplish.

Project Approach:

Proposals shall describe the Consultant's recommended approach to implementation of a successful project in as much detail as necessary.

Proposed Scope of Work:

Proposals shall describe how each of the required tasks in the Scope of Work for this project will be addressed in as much detail as necessary.

Qualifications:

Proposals shall include descriptions of similar projects completed and/or experiences and/or qualifications related to this project completed or undergoing within the last five years. Proposals shall also include legal name of firm, location and phone number of main office, date firm was established, current size of firm, and number of employees to be involved in the project. Please identify key team members that will be committed to this project (project manager, etc.) and their relevant experience. Additionally, please provide at least (3) references for key personnel and the project team from past projects completed that were a similar size and scope to this program.

Project Timeline:

Proposals will specify the approach to taken to meet the overall project timeline and successfully complete each task on time.

Project Budget:

Please include an estimated budget to complete the Scope of Work for this project. The budget should include the hourly labor rate for all key personnel that will be involved with the project and their anticipated hours per task. Also list any anticipated reimbursable expenses other than labor.

7. PROPOSAL DUE DATE

Proposals shall be submitted to the BAWSCA office via mail or in person by 4:00 pm, August 5, 2009. *Late proposals will be returned unopened. Postmarks will not be accepted. No faxed or e-mailed proposals will be accepted.*

Submission of a proposal constitutes a firm offer to BAWSCA for ninety (90) days from the deadline for submitting proposals. A proposer may withdraw its proposal before the date proposals are due by submitting a written request to BAWSCA. BAWSCA reserves the right to reject any and all proposals, the right to accept the proposal it considers most favorable to BAWSCA's interests, and the right to waive irregularities in the proposal or proposal process.

Please send proposals to:

Bay Area Water Supply & Conservation Agency
Attention: Nicole M. Sandkulla, Senior Water Resources Engineer
155 Bovet Road, Suite 302
San Mateo, CA 94402

8. INDEPENDENT CONSULTANT AND PROFESSIONAL RESPONSIBILITY OF CONSULTANT

Consultant will agree to maintain in confidence and not disclose to any person, firm, or corporation, without BAWSCA's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of business. Consultant will further agree to maintain in confidence and not disclose to any person, firm, or corporation any data, information, technology, or material developed or obtained by Consultant during the term of the Agreement for whatever cause.

Consultant is an independent Consultant and not an employee of BAWSCA. Consultant expressly warrants that it will not represent that it is an employee of BAWSCA.

Consultant represents that it has all necessary licenses to perform the work and shall maintain them during the term of this Agreement. Acceptance by BAWSCA of the work performed under this Agreement does not operate as a release of Consultant from its professional responsibility for the work performed.

9. 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 Appendix B so that potential proposers have an opportunity to review the terms and conditions of the Agreement. If a proposer desires any modifications to the form of Agreement, those requested modifications must be submitted for consideration with the proposal. Otherwise, the proposer will be deemed to have accepted all the terms and conditions included in the form of Agreement.

APPENDIX A

SCOPE OF WORK

A-1. INTRODUCTION

BAWSCA is an independent special district that represents the interests of 24 cities and water districts, and two private utilities, in Alameda, Santa Clara and San Mateo counties. BAWSCA and its member agencies serve 1.7 million residents and over 30,000 commercial and industrial customers and community organizations. BAWSCA has the authority to plan for and acquire supplemental water supplies, and to plan and implement water conservation and recycled water on a regional basis for its member agencies.

Based on studies completed to date, and described below, it is estimated that the BAWSCA member agencies may face a potential supply gap of as much as 45 MGD in 2035. In order to provide its member agencies with future water supply certainty, as well as to address issues associated with drought reliability and the potential effects of demand hardening, BAWSCA is pursuing the development of the RWSS.

BAWSCA is developing the RWSS to identify the water supply augmentation alternatives that BAWSCA, or BAWSCA in coordination with its member agencies, can implement to ensure a long-term reliable water supply for the region. The RWSS will identify the costs and timelines associated with the development of the selected alternatives, including the time and expense needed to address the physical, legal, environmental, regulatory, and political aspects of the projects. In addition, the RWSS will clearly identify the schedule by which specific entities must perform specific tasks in order to ensure that the BAWSCA region has a reliable water supply to 2035.

The first work product will be the Scope for the RWSS. The Scope for the RWSS will articulate the purpose and objectives of the RWSS, the screening and evaluation criteria that will be used to assess alternative water supplies and water efficiency measures, the spectrum of alternatives to be examined, and the scope, required expertise, cost, and schedule for preparing the RWSS.

A-2. BACKGROUND

As described below, over the last several years, significant work has been done to estimate the future demands and water conservation potential of the BAWSCA member agencies.

In preparation for the San Francisco Public Utilities Commission (SFPUC) Water System Improvement Program (WSIP) Program Environmental Impact Report (PEIR), the SFPUC, in conjunction with BAWSCA and its member agencies, completed three planning studies to estimate the future water demand and conservation potential for each of the BAWSCA member agencies:

- *Wholesale Customer Water Demand Projections Technical Report* (URS, November 2004);

- *Wholesale Customer Water Conservation Potential Technical Report* (URS, December 2004); and
- *Wholesale Customer Recycled Water Potential Technical Memorandum* (RMC, December 2004).

Based on the 2004 SFPUC Technical Reports, the BAWSCA member agency demand was projected to be 209 million gallons per day (MGD) from the SFPUC system in 2030, after accounting for the following:

- 25 MGD of conservation savings that would naturally occur within the BAWSCA service area as a result of implementation of existing plumbing codes; and
- 23 MGD of conservation savings and recycled water use that the BAWSCA member agencies committed to including:
 - 10.43 MGD of recycled water, which includes both existing and planned projects.
 - 12.77 MGD of water conservation that is in various stages of planning and implementation.

In addition in September 2007, BAWSCA committed to saving an additional 10 MGD of water purchased from the SFPUC by 2030 as part of its comments on the SFPUC Draft PEIR for its WSIP. With this additional conservation savings, the BAWSCA member agencies' demand for SFPUC water was projected to be 199 MGD in 2030.

In October 2008, as part of its adoption of the WSIP PEIR, the SFPUC selected a water supply option (i.e., the WSIP Variant) that established an Interim Supply Limitation of 184 MGD for the BAWSCA member agencies until at least 2018. This change in the WSIP accelerates the timeframe by which the BAWSCA member agencies are required to achieve the additional 10 MGD of conservation savings (i.e., those savings now had to be achieved by 2018 rather than 2030 in order to keep BAWSCA member agency purchases from SFPUC below 184 MGD).

BAWSCA, in coordination with its member agencies, prepared a *Water Conservation Implementation Plan* (WCIP) in 2009. Among other things, the WCIP presented updated demand projections through 2035, estimated the effects of the planned conservation program on those future demands, and identified additional water conservation measures that the member agencies could potentially implement to achieve the water savings necessary to keep their purchases from the SFPUC to below 184 MGD until 2018.

It is unknown at this time whether the Interim Supply Limitation will extend beyond 2018. In the event that it does, it is estimated that the BAWSCA member agencies may face a potential supply gap of as much as 45 mgd in 2035. In order to ensure certainty in long-term water supply reliability for its member agencies and their existing and future customers, BAWSCA has decided to pursue development of the RWSS to identify alternative mechanisms to meet the member agency's projected future demands to 2035. As part of this effort, BAWSCA will also evaluate issues associated with drought reliability and the potential effects of demand hardening. The first step in the preparation of the RWSS is to develop the Scope for the RWSS.

A-3. OBJECTIVE OF SCOPE FOR THE RWSS

When completed, the Scope for the RWSS will articulate the purpose and objectives of the RWSS, the screening and evaluation criteria that will be used to assess alternative water supplies and water efficiency measures, and the scope, required expertise, cost, and schedule for preparing the RWSS.

A-4. TASKS

Under each task, Consultant is requested to provide detailed information regarding the work to be completed to meet the project and individual task objectives. The proposal should identify specific, critical data needs that are anticipated to be needed to support the scoping effort. If Consultant recommends a different approach than that specified herein, that information, and a detailed scope of work to support that approach, should be included in the proposal.

Task 1: Develop the Scope of the RWSS

BAWSCA will work with each of the member agencies to solicit their preliminary input regarding the components of Task 1 that are described below. BAWSCA will provide this information to the Consultant at the inception of the project. BAWSCA will manage the assignments, productivity and performance of the Consultant. When necessary, and for specific purposes, BAWSCA will authorize Consultant to work with member agencies during this project. However, through participation in meetings and review of Consultant work products, member agency input will be provided to Consultant throughout the duration of the project.

BAWSCA will provide, or will coordinate with the member agencies to provide, Consultant with key reports and information regarding the projected future demands, water conservation and recycling plans, and other relevant information regarding the BAWSCA member agencies and their individual supplies to Consultant. Some of this information is provided in Appendix C. The proposal should identify specific, critical data needs that are anticipated to be needed by Consultant to support the scoping effort.

Subtask 1A: Document Purpose and Rationale for Development of the RWSS

As part of this Subtask, Consultant shall prepare a technical memorandum that articulates the need for the development of the RWSS in a clear, concise “problem statement” and describes the objectives of the RWSS. The technical memorandum should also describe the water supply and other issues that BAWSCA member agencies are facing between now and 2035 and that will need to be addressed by the RWSS.

The work product for this task will be a memorandum (Technical Memorandum No. 1). A draft of the memorandum will be given to BAWSCA to review, and will be revised by Consultant after receipt and incorporation of BAWSCA’s comments. Technical Memorandum No. 1 will be finalized after it is reviewed by the BAWSCA member agencies, BAWSCA has compiled and transmitted any additional comments to the Consultant, and those additional

comments have been incorporated by Consultant. Consultant should schedule 1 week for BAWSCA review and 2 weeks for member agency review.

Subtask 1B: Develop RWSS Screening and Evaluation Criteria

As part of this Subtask, Consultant shall prepare a technical memorandum that articulates the screening and evaluation criteria that will be used to assess the water supply alternatives that are investigated as part of the RWSS. These screening and evaluation criteria should be designed to, among other things, screen, evaluate and rank the various water supply alternatives relative to the RWSS objectives.

The process by which the various water supply alternatives will be screened, evaluated, and ranked to optimize the outcome of the RWSS and to serve as a tool for decision makers should be also described. An example of the implementation of such a screening and ranking process should be included in the proposal, either graphically or in tabular form.

The work product for this task will be a memorandum (Technical Memorandum No. 2). The memo will contain figures and tables, as appropriate. A draft of the memo will be given to BAWSCA to review, and will be revised by Consultant after receipt and incorporation of BAWSCA's comments. Technical Memorandum No. 2 will be finalized after it is reviewed by the BAWSCA member agencies, BAWSCA has compiled and transmitted any additional comments to the Consultant, and those additional comments have been incorporated by Consultant. Consultant should schedule 1 week for BAWSCA review and 2 weeks for member agency review.

Subtask 1C: Compile Complete List of Water Supply Options to be Evaluated in the RWSS

As part of this Subtask, Consultant shall prepare a technical memorandum that compiles a list of the water supply options that will be evaluated as part of the RWSS. It is expected that this list will be comprehensive and include known, as well as developing, technologies and water supply augmentation options. It is expected that the list will include local as well as non-local sources and opportunities. Where technologies and approaches are recommended for inclusion in the RWSS, examples of where such approaches have been successfully implemented and other relevant reference materials shall also be provided.

The work product for this task will be a memorandum (Technical Memorandum No. 3). The memo will contain figures and tables, as appropriate. A draft of the memo will be given to BAWSCA to review, and will be revised by Consultant after receipt and incorporation of BAWSCA's comments. Technical Memorandum No. 3 will be finalized after it is reviewed by the BAWSCA member agencies, BAWSCA has transmitted a compiled set of agency comments to the Consultant, and those additional comments have been incorporated by Consultant. Consultant should schedule 1 week for BAWSCA review and 2 weeks for member agency review.

Task 2: Prepare Final RWSS Scoping Report

It is expected that, when completed, the RWSS will identify the water supply augmentation alternatives that BAWSCA, or BAWSCA in coordination with its member agencies, can

implement to ensure a long-term reliable water supply for the region for both normal and drought years. The RWSS will also identify the costs and timelines associated with the development of the selected alternatives, including the time and expense needed to address the physical, legal, environmental, regulatory, and political aspects of the projects. In addition, the RWSS will clearly identify the schedule by which specific entities must perform specific tasks in order to ensure that the BAWSCA region has a reliable water supply to 2035.

Based on the above requirements for the RWSS, and the information compiled pursuant to Task 1, Consultant will prepare a final RWSS Scoping Report that will be the scope of work for the development of the RWSS.

The final RWSS Scoping Report will include an estimate of the scope, schedule, and budget needed to complete the RWSS. The RWSS Scoping Report will further describe the type of expertise required to develop the RWSS (e.g., technical, legal, environmental, etc) and discuss the extent to which the public or other entities (e.g., non-governmental organizations) should be included in the RWSS development process. In addition, the RWSS Scoping Report will include an estimate of the time frames and rough costs that will be needed to implement the RWSS.

The RWSS Scoping Report will contain figures and tables, as appropriate. A draft will be given to BAWSCA to review, and will be revised by Consultant after receipt and incorporation of BAWSCA's comments. The RWSS Scoping Report will be finalized after it is reviewed by the BAWSCA member agencies, BAWSCA has compiled and transmitted any additional comments to the Consultant, and those additional comments have been incorporated by Consultant. Consultant should schedule 2 weeks for BAWSCA review and 2 weeks for member agency review.

Task 3: Attend Meetings and Provide Technical Support

It is expected that Consultant will develop the Scope for the RWSS in close coordination with BAWSCA. It is further expected that Consultant will support BAWSCA in its communications with the BAWSCA member agencies. As such, this task includes up to five 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:

- Kick-off meeting
- Project progress meeting(s), as needed
- Final meeting to present report

BAWSCA anticipates holding up to four meetings with member agency representatives. At BAWSCA's request, Consultant will support BAWSCA in developing materials to present at those meetings, including, but not limited to, agendas, tables, figures, power-point slides, and other supporting information.

A-5. MASTER SCHEDULE

Task	Schedule
▪ Kick-off Meeting with BAWSCA (1)	September 24, 2009
▪ Support BAWSCA for Agency Meeting (I)	September 30, 2009
▪ Complete Draft TM No.1	October 23, 2009
▪ Progress Meeting with BAWSCA (2)	November 5, 2009
▪ Complete Draft TM No.2	November 20, 2009
▪ Progress Meeting with BAWSCA (3)	December 3, 2009
▪ Support BAWSCA for Agency Meeting (II)	December 17, 2010
▪ Complete Draft TM No. 3	December 31, 2009
▪ Progress Meeting with BAWSCA (4)	January 7, 2009
▪ Support BAWSCA for Agency Meeting (III)	January 21, 2010
▪ Finalize TMs No. 1-3	January 29, 2010
▪ Complete Draft Report	February 18, 2010
▪ Final Meeting with BAWSCA (5)	March 4, 2010
▪ Support BAWSCA for Agency Meeting (IV)	March 18, 2010
▪ Complete Final Report	March 31, 2010

A-6. BUDGET

A not-to-exceed budget of **\$100,000** has been approved for preparing the Scope for the RWSS.

APPENDIX B
SAMPLE PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

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

WHEREAS, Agency requires specialized services to [_____], and

WHEREAS, Consultant has represented that it is experienced and qualified to perform such services.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF WORK

Consultant will provide Agency the services set forth in **Appendix A**.

2. SCHEDULE

Consultant will commence work upon Agency’s issuance of a Notice to Proceed and will complete the work in accordance with the Schedule included in **Appendix A**.

3. COMPENSATION

Agency will pay Consultant at the rates set forth in **Appendix A** and will reimburse Consultant for out-of-pocket expenses reasonably and necessarily incurred in performing the work. The maximum amount payable under this Agreement is _____, which all-inclusive sum includes labor, materials, taxes, overhead, insurance, subconsultant costs, all other expenses, and profit. The maximum amount is not guaranteed; compensation will be based on services actually rendered and expenses actually incurred.

The General Manager/Chief Executive Officer may from time to time establish task-specific budgets for individual project which Consultant is requested to perform; such task-specific budgets, once established, will not be exceeded without notice to and prior approval of Agency.

4. METHOD OF PAYMENT

Consultant will submit detailed monthly invoices describing the work performed, the personnel performing the work, and their applicable hourly rates of compensation, which shall be consistent with **Appendix A**. Invoices shall 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.

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 shall be made to the limit on compensation contained in Section 3, or the Schedule referred to in Section 2, or both. The agreed-upon changes will be memorialized in a written amendment to the Agreement.

6. CONSULTANT'S STATUS

Consultant is an independent Consultant and not a partner or agent of, nor a joint venturer with, Agency, neither Consultant nor any of Consultant's officers or employees are employees of Agency for any purpose. Consultant shall 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. The inability of a proposed assignee to provide personnel equal in experience, expertise and numbers to those provided by Consultant or to perform any of the services remaining to be performed on the same schedule required of Consultant shall be reasonable grounds for Agency to refuse its consent to a proposed assignment.

8. SUBCONSULTANTS

Consultant may not subcontract any work to be performed under this Agreement without the prior written consent of Agency, except to service firms engaged in reproduction, typing and printing.

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

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

9. KEY PERSONNEL

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

The Consultant agrees that these personnel will devote their personal attention to the work, as further described in **Appendix A**.

10. STANDARD OF CARE

Consultant shall 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 shall re-perform, at no cost to Agency, services which fail to meet this standard.

11. OWNERSHP OF WORK

All reports, plans and any other materials prepared by Consultant under this Agreement are the property of Agency. Agency shall 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 Consultant or any subconsultant shall be delivered to Agency. Consultant may retain a copy of all materials produced under this Agreement, subject to the provisions of Section 12.

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

12. CONFIDENTIALITY

Consultant shall treat information and materials provided to it by Agency with trust and confidence, revealing such information and/or materials to third parties only with the prior written approval of Agency.

Consultant shall not release 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 shall 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 any injury to persons or damage to property due to or alleged to be due to the willful misconduct, negligent act or omission, or breach of contract by Consultant, its employees, subconsultants or agents. This indemnification shall 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 shall 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 shall contain a waiver of subrogation in favor of Agency and its directors, officers, employees and agents.

(2) **Commercial General Liability Insurance.** Consultant shall 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.

(3) **Comprehensive Automobile Liability Insurance.** Consultant shall procure and maintain Automobile Liability insurance on vehicles used in connection with its business in an amount not less than Three Hundred Thousand Dollars (\$300,000) combined single limit per occurrence or claim.

(4) **Professional Liability Insurance.** Consultant shall 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 policies will be issued by companies admitted to do business in California and subject to the jurisdiction of the California Insurance Commissioner and with a minimum Best's rating of A or better and VII or larger.

(2) **Endorsements**

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

(b) The Commercial General Liability and Automobile Liability policies shall name Agency, its directors, officer and employees as additional insureds.

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

(d) The naming of more than one insured shall not affect the rights of such insureds as against one another; such policies shall protect Consultant and Agency as

though a separate policy had been issued to each, but inclusion of more than one insured shall not increase the limits of the insurer's liability.

(3) Evidence of Insurance. Before commencing work, Consultant shall 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.

15. RECORDS

Agency and its authorized representatives 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 shall provide such assistance as may be reasonably required in the course of such inspection and audit.

Consultant shall 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, Consultant shall not discriminate against any employee or applicant for employment because of race, national origin, religion, color, sex, age or disability.

17. COMPLIANCE WITH LAW

In connection with the performance of this Agreement, Consultant shall 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 shall promptly deliver to Agency all materials prepared or obtained in performance of this Agreement and shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a default by Consultant, Agency shall 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 default,

Agency shall 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.

20. DISPUTE RESOLUTION

In the event of any dispute, the parties will promptly meet and confer in an attempt to resolve the matter between themselves. If a dispute cannot be resolved by the parties independently, they 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.

The party proposing mediation shall 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 shall 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 shall 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 shall be filed and prosecuted in the Superior Court of the State of California. This section does not limit Agency's right to terminate the Agreement.

21. NOTICE

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

If too Agency: Bay Area Water Supply & Conservation Agency
155 Bovet Road, Suite 302
San Mateo, CA 94402
Attention: Art Jensen, CEO/General Manager

If to Consultant: _____

Attention: _____

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

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

22. STATEMENTS OF ECONOMIC INTEREST

Consultant acknowledges that Agency has adopted a Conflict of Interest Code pursuant to the California Government Code, which may require Consultants such as Consultant to file Statements of Economic Interest, depending on the scope of their duties. Consultant agrees to comply with such filing obligations if notified by Agency that it is required to do so.

23. NO WAIVER

The waiver by either party of a breach of any requirement of this Agreement shall not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

24. INTERPRETATION

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

25. ENTIRE AGREEMENT

This Agreement including the Attachments, which are incorporated into it by this reference, constitutes the complete agreement between the parties and supersedes any prior agreements, promises, and understandings whether written or oral.

26. 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.

27. SEVERABILITY

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, such provision shall be severable and shall not affect the validity or enforceability of any other provision.

28. BINDING ON SUCCESSORS

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

29. APPLICABLE LAW

This Agreement, its interpretation and all work performed under it shall 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: _____
Arthur R. Jensen
General Manager/Chief Executive Officer

Date

(CONSULTANT)

Date

By: _____
Title: _____

Taxpayer I.D. Number: _____

APPENDIX C
SELECTED REFERENCES

The BAWSCA website:

<http://www.bawsca.org>

The BAWSCA Annual Survey can be found here:

http://www.bawsca.org/docs/BAWSCA_Survey_FY07_08_2.pdf

Specific studies that may be useful as background information and sources of data can be found here:

<http://www.bawsca.org/agendadocs.html>