



# Santa Ana Watershed Project Authority

CELEBRATING 40 YEARS OF INNOVATION, VISION, AND WATERSHED LEADERSHIP

July 30, 2009

Terry Catlin  
Commission  
Chair

Dear Sir/Madam:

## Santa Ana Regional Interceptor (SARI) Financial Model

Celeste Cantú  
General  
Manager

Proposal submittals: Responses to this Request for Proposal (RFP) will be submitted to:

Eastern  
Municipal  
Water  
District

Santa Ana Watershed Project Authority  
11615 Sterling Avenue  
Riverside, California 92503

Telephone: (951) 354-4220  
Fax: (951) 785-7076

Inland  
Empire  
Utilities  
Agency

**No later than August 28, 2009 at 4:00 p.m.** Seven (7) original copies and one electronic (in PDF format) of the proposal shall be submitted in a sealed envelope and marked: "Proposal for Santa Ana Regional Interceptor Financial Model." One (1) original copy and an electronic copy (in PDF format) of the fee proposal shall be submitted in a separate sealed envelope and marked: "Fee Proposal for Santa Ana Regional Interceptor Financial Model." **Proposals received after the above specified date and time WILL NOT be accepted.** An optional pre-proposal meeting will be held at the SAWPA offices (see address above) on **August 7, 2009 at 10:00 a.m.** Questions regarding this RFP should be addressed to Karen Williams at [kwilliams@sawpa.org](mailto:kwilliams@sawpa.org).

Orange  
County  
Water  
District

San  
Bernardino  
Valley  
Municipal  
Water  
District

Sincerely,

Richard E. Haller, P.E.  
Executive Manager  
Santa Ana Watershed Project Authority

Western  
Municipal  
Water  
District



**SANTA ANA WATERSHED PROJECT AUTHORITY (SAWPA)**

**REQUEST FOR PROPOSALS (RFP)**

**For**

**Santa Ana Regional Interceptor (SARI) Financial Model**

Proposal submittals: Responses to this Request for Proposal (RFP) will be submitted to:

Santa Ana Watershed Project Authority  
11615 Sterling Avenue  
Riverside, California 92503

Telephone: (951) 354-4220  
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**I. INTRODUCTION**

***Agency Background***

The Santa Ana Watershed Project Authority (SAWPA) is comprised of five member agencies: Eastern Municipal Water District (EMWD), Inland Empire Utilities Agency (IEUA), Orange County Water District (OCWD), San Bernardino Valley Municipal Water District (SBVMWD), and Western Municipal Water District (WMWD).

SAWPA owns and operates approximately 73 miles of pipeline in the Upper Santa Ana River Watershed to collect and convey non-reclaimable wastewater to the ocean for discharge after treatment at Orange County Sanitation District (OCSD) facilities in Huntington Beach. Total system length including the Orange County portion in which SAWPA has 30 MGD capacity rights, is 93 miles.

The SARI is operated under a permit issued per SWRCB Order No. 2006-003, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. SAWPA is in the process of completing the required Sanitary Sewer Management Plan which will be the basis for all future management and operations of the SARI.

## ***Financial Model Background***

The goal of the SARI System rate structure, since inception, has been to provide adequate funding to operate, maintain, repair, improve and replace the pipeline. The main components of the rate structure include:

- Charges to be paid to OCSD (volumetric, BOD/TSS, repair and maintenance)
- SAWPA O&M costs
- SAWPA administrative costs
- Funding the CIP

Prior to FYE 2006, the SARI rate structure charged each member agency for its flow into the System, a fixed charge based on owned capacity, and for BOD and TSS concentrations that exceeded a 250 mg/L threshold. The combination of volumetric, fixed, and BOD/TSS charges were enough to cover operational costs and allow for modest contributions to several reserve accounts. However, with significant increases in domestic and industrial wastewater discharged in the SARI after year 2000, the old rate structure did not allow for recovery of all costs nor adequate contributions to reserves.

To help remedy the problem, a new rate model was developed in 2004. The rate model was designed to raise sufficient revenues to cover ongoing operational costs, and to provide funding for capital efforts and for the long-term capital repair and replacement reserve program, thus, addressing the long-term financial needs of the SARI Enterprise System. The rate model allowed for a three-year “ramp-in” to full pass-through of OCSD rates and charged BOD and TSS on total concentration with no threshold limit. After the first year of this rate plan, and continued increases of BOD and TSS concentrations, the Enterprise was not able to capture enough revenue to cover its costs. The three-year plan was accelerated by one year to full pass-through of OCSD costs in August 2005.

Reiter Lowry Consultants prepared the 2004 SARI Rate Model and Long-Range Financial Plan. In April 2006, Reiter Lowry Consultants updated the rate model. The updated model focused on a long-term approach to funding operations, the CIP and reserves. The model used the annual SARI O&M budget (Fund 240) and the 20-year CIP as a base and projected costs into the future using assumed inflation rates. BOD and TSS charges from OCSD continue to be passed through directly to the dischargers. The model calculates cash and reserve balances based upon model inputs including rates.

The SARI Rate Model has been used annually since 2006 to update SARI rates. Rates are set annually by resolution. The current rates are established by Resolution No. 513.

## **II. OBJECTIVE**

A SARI financial model is required to determine appropriate SARI rates and evaluate financial implications of agreement and system changes. The new financial model shall have the capability to estimate SARI future expenses, capital requirements, and appropriate rates, and evaluate potential changes identified in the Salinity Management Program (expected preparation period August 2009 through February 2010) such as revised flow projections, evolving brine wastewater characteristics, and changed annual

O&M requirements. Further, the model shall consider implications of concepts developed with OCSD that may be part of a new agreement such as a sinking fund concept.

### III. SCHEDULE

July 28, 2009	Issue Request for Proposals
August 7, 2009	Pre-proposal meeting (10:00 a.m.)
August 28 2009	Proposals due (4:00 p.m.)
September 1-8, 2009	Consultant selection panel reviews proposals
September 18, 2009	Interview panel conducts interview of top proposing firms
October 20, 2009	Recommend award to SAWPA Commission
October 21, 2009	Issue Notice to Proceed
March 2010	Complete Draft Report and Model, Conduct Workshop
April 2010	Complete Final Report and Model, Conduct Workshop

### IV. PROPOSAL INSTRUCTIONS AND CONDITIONS

1. **SAWPA is not Responsible for Pre-Contractual Expenses** - Pre-Contractual expenses are defined as expenses incurred by prospective firms in:

- Preparing a proposal in response to the RFP
- Submitting that proposal to SAWPA
- Negotiating with SAWPA in any matter related to this RFP, proposal, and/or contractual agreement
- Any other expenses incurred by the prospective firm prior to the date of an executed contract

SAWPA shall not, in any event, be liable for any pre-contractual expenses incurred by any prospective firm. In addition, no prospective firm shall include any such expenses as part of the price proposed to perform the requested services.

2. **Authority to Withdraw RFP and/or Not Award Contract** – SAWPA reserves the right to withdraw the RFP at any time without prior notice. Further, SAWPA makes no representations that any agreement will be awarded to any prospective firm responding to this RFP. SAWPA expressly reserves the right to postpone the opening of proposals for its own convenience and to reject any and all proposals in response to this RFP without indicating any reasons for such rejection(s).
3. **Selection of Multiple Proposals** – Due to the widely varied geographic area and technical requirements, SAWPA has found teams of consultants to be very effective in providing the technical expertise and personnel required to perform services for the SARI. Therefore, SAWPA reserves the right to select more than one prospective firm to provide services for all or part of the proposed scope of work.
4. **Right to Reject Proposal** - SAWPA reserves the right to reject any or all proposals submitted. Any award made for this engagement will be made to the firm/s, which, in the opinion of SAWPA, is best qualified to perform the services and represents best

value and effectiveness. This is not intended to be, nor shall it be considered, a competitive bidding process.

5. **Discrepancies in Proposal Documents** – Should prospective firms find discrepancies in, or omissions from the RFP, or if the intent of the invitation is not clear, and if provisions of the specifications restrict any prospective firm from proposing, they may request in writing that the deficiency(s) be modified. Such request must be received by SAWPA at least ten (10) working days before the proposal due date. All registered firms will be notified by addendum of any approved changes in the request for proposal documents.
6. **Oral Statements** - SAWPA is not responsible for oral statements made by any of their employees or agents concerning the RFP. If the prospective firm requires specific information, a written request must be submitted to SAWPA.
7. **Conflict of Interest** – The Consultant shall review their past, current or proposed work with agencies or firms having a significant interest in the SARI to verify a conflict of interest or the appearance of a conflict will not occur.

## V. SCOPE OF WORK

Develop a financial model for the SARI. The study shall include the following. **The Consultant is required to develop a detailed scope of work.**

1. Evaluate SAWPA's current rate structure for direct and indirect dischargers. Identify possible changes and the pros/cons of those changes. Analysis of direct rates shall consider the assumptions used to develop a peaking/emergency rate and a leased rate; indirect rate structure analysis shall evaluate additional non-brine categories and a rate based upon actual BOD and TSS levels. Evaluate the addition of BOD and TSS surcharges, or similar, for discharges in excess of owned BOD and TSS treatment and disposal capacity.
2. Recommend target balances for reserve accounts.
3. Identify the implications of funding the Capital Improvement Programs (CIP) for SAWPA and OCSD (SAWPA's contractual share) from reserve accounts, loans, or a combination thereof.
4. Develop and provide SAWPA with an easy-to-use MS Excel spreadsheet model that includes an interactive dashboard interface which can be readily used to evaluate alternative financial scenarios.
  - a. The model shall determine cash and reserve balances based upon a set of assumptions including rates and conversely shall be able to determine a required rate given desired cash and reserve balances.
  - b. The model shall allow for easy update of assumptions/inputs to include:
    - i. Brine characteristics (flow, BOD, TSS) by member agency
    - ii. Addition and removal of dischargers
    - iii. Inflation rates, discount rates, etc.

- iv. OCSD charges for flow, BOD, TSS
  - v. OCSD costs for annual O&M (SAWPA's contractual share)
  - vi. OCSD's CIP (SAWPA's contractual share) entered as discrete values or as a sinking fund value
  - vii. SAWPA's CIP from Salinity Management Program (Phase 3)
- c. The model shall calculate all the types of rates contained in the current Resolution No. 513 including: flow, BOD, TSS, fixed pipeline, fixed treatment, lease rate, truck rates, and peaking or emergency rate, and any changes recommended and accepted from Task 1.
  - d. Model output shall provide graphical presentations of data including assumptions, rates, and cash/reserve account balances.
  - e. Electronic files shall comply with the requirements of Appendix X, Electronic Deliverables. Files shall be unlocked, unprotected, with documented macros and/or programs.
5. Sensitivity Analysis – identify the most critical cost factors, the likely range of values over time and the potential affect on rates over that range.
  6. Ensure that projected revenues are adequate to cover projected operations, maintenance, and administrative costs; OCSD costs; debt service; capital outlay; and capital reserves.
  7. Recommend optional long-range financial plan to fund capital improvements. Identify planning periods and adjust recommendations based upon the appropriate level of details required.
  8. Ensure that SAWPA's rates conform to all state laws and regulations and existing contracts.
  9. Provide all rate calculation spreadsheets/models to SAWPA to allow the opportunity to evaluate alternative future rate structures.
  10. Provide training of SAWPA staff on the use and update of the financial model.
  11. Provide a draft report, six (6) hard copies and electronic copies (Adobe PDF<sup>®</sup>, MS Word<sup>®</sup>) and an electronic copy of the working model (MS Excel<sup>®</sup>) for SAWPA and member agency review. Conduct a workshop to review the draft model.
  12. Incorporate comments on the draft report and model, and revise. Prepare a final report and model. Conduct a second workshop to review the final report and updated financial model. Provide six (6) hard copies and electronic copies (Adobe PDF<sup>®</sup>, MS Word<sup>®</sup>) and an electronic copy of the working model (MS Excel<sup>®</sup>).

## VI. FEE PROPOSAL REQUIREMENTS

In preparing the fee schedule for the services identified under the scope of work, the Consultant shall take into consideration the following:

1. Compensation for Consultant direct services provided in completing the tasks shall be based upon an hourly billing rate up to a not-to-exceed amount.
2. For each task, provide a breakdown of labor hours by employee billing classification together with the cost of non-labor and sub-consultant services. The labor breakdown shall be compiled by project task, and be based on a listing of work tasks that correlates with the Consultant's defined scope of work for the project proposal. This information will be used by SAWPA to evaluate the reasonableness of the fee proposal, and will be used in negotiating the final fee amounts for the contract agreement.
3. The Consultant shall detail the hours allocated to meetings by meeting type (kickoff, bi-monthly coordination, workshop, etc).
4. The Consultant's billing rates for all classifications of staff likely to be involved in the project shall be included with the fee proposal, along with the markup rate for any non-labor expenses and sub-consultants.
5. SAWPA will review the fee proposal of the Consultant deemed most qualified after completing a review of the proposals and conducting interviews. The final scope and fee will be negotiated with the top ranked Consultant.
6. Reimbursable expenses will not be allowed unless included in the proposal and negotiated prior to a contract. Billing rate escalations during the contract term are disfavored and shall be approved in negotiations prior to execution of a contract.

## VII. PROPOSAL REQUIREMENTS

Although no specific format is required by SAWPA, this section is intended to provide guidelines to the Consultant regarding features, which SAWPA will look for and expect to be included in the proposal.

### **Content and Format**

SAWPA requests that submitted proposals are organized, presented in an understandable format, and relevant to the services requested. Consultant's proposals shall be clear, accurate, and comprehensive. Excessive or irrelevant material is not of benefit and will not contribute to overall evaluation.

Proposals should be limited to pertinent information. Proposal should be no more than twenty **(20) typed pages** (based on an 11-point minimum font size, including letter and table of contents). Resumes and page dividers will not count toward the proposal page limit. Resumes should be included in an appendix. The fee proposal, provided in separate cover, should contain information to clearly respond to the information that is requested in the RFP.

The proposal should include the following:

- Cover or transmittal letter
- Table of Contents, page numbering
- Approach and Scope of Services
- Team and Organization
- Descriptions of similar projects by key staff to be used on this assignment including scope and complexity of the projects
- Brief resumes of key staff and sub-consultants (In Appendix)
- Relevant and appropriate references
- Schedule
- Breakdown of total hours by Task. Total hours include Consultant personnel and subconsultants.
- Contract Exceptions, Proof of Insurance
- Fee proposal, billing rates for staff. In addition, the fee proposal shall include a breakdown of hours by type of personnel identified as part of the project team. **(submitted in a separate sealed envelope)**

Some of these areas are described in further detail below:

#### **Cover or Transmittal Letter**

An individual authorized to bind the Consultant shall sign the proposal and fee proposal. The proposal shall contain a statement that the proposal and fee are valid for at least a 90-day period.

#### **Approach and Scope of Services**

A description of the work program that will be undertaken shall be included in this section. It should explain the approach, methodology, and specific tasks and activities that will be performed to address the specific issues and work items identified in the RFP. It should also include a discussion of constraints, problems, and issues that should be anticipated during the contract, and suggestions for approaches to resolving them. Any proposed deviations to the scope of work as described herein should be clearly noted.

#### **Team and Organization Diagram**

The purpose of this section is to describe the organization of the team including sub-consultants and key staff. A project manager shall be named who shall be the prime contact and be responsible for coordinating all activities with SAWPA. An organizational diagram shall be submitted showing all key team members, their office location, and the relationship between SAWPA, the project manager, key staff, and sub-consultants. There also shall be a brief description of the role and responsibilities of all key staff and sub-consultants identified in the team organization.

#### **Schedule**

A schedule shall be included which identifies the timetable for completion of tasks, activities, and phases of the project that correlate with the scope of work for the project. There should be a brief discussion of any key assumptions used in preparing the timetable, and identification of critical tasks and/or events that could impact the overall schedule.

### **Contract Exceptions, Proof of Insurance**

The Consultant shall carefully review the standard agreement and include with the proposal a description of any exceptions requested to the standard contract. If no such written exceptions are provided with the proposal, the standard agreement shall be deemed acceptable as-is by the Consultant.

The Consultant shall furnish, with the proposal, proof of insurance coverage to the minimum levels identified in Section VII.

### **Fee Proposal (In Separate Sealed Envelope)**

A Fee Proposal shall be submitted per the requirements of Section VI.

## **VIII. GENERAL REQUIREMENTS**

### **1. Insurance Requirements**

**The Consultant shall furnish, with the proposal, proof of the following minimum insurance coverage. Full information on insurance requirements is listed in Attachment A.** These minimum levels of coverage are to be maintained for the duration of the project:

- a. **General Liability Coverage** - \$1,000,000 per occurrence for bodily injury and property damage. If Commercial General Liability Insurance or other form with a general limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Professional Liability Coverage:** Coverage in a minimum amount of \$2,000,000 to cover any negligent acts or omissions committed by the Consultant, its employees and/or agents in the performance of any services for SAWPA.
- c. **Worker's Compensation Coverage:** State statutory limits, deductibles, self-insurance retentions, or similar forms of coverage limitations or modifications must be declared to and approved by SAWPA.

The Consultant is encouraged to contact its insurance carriers during the Proposal stage to ensure that the insurance requirements can be met if selected for negotiation of a contract agreement.

### **2. Standard Form of Agreement**

The selected Consultant will enter into an agreement with SAWPA based upon the contents of the RFP and the Consultant's proposal. SAWPA's standard form of agreement is included as **Attachment A**. The Consultant shall carefully review the agreement, especially in regard to the indemnity and insurance provisions, and include with the proposal a description of any exceptions requested to the standard contract. If there are no exceptions, a statement to that effect shall be included in the proposal.

### **3. Assigned Representatives**

SAWPA will assign a responsible representative to administer the contract and to assist the Consultant in obtaining information. The Consultant also shall assign a project manager who shall be identified in the proposal. The Consultant's representative shall remain in responsible charge of the Consultant's duties from the notice-to-proceed through project completion. SAWPA's representative shall approve any substitution of representatives or sub-consultants identified in the written proposal. SAWPA reserves the right to review and approve/disapprove all key staff and sub-consultant substitution or removal, and may consider such changes not approved to be a breach of contract.

## **IX. CONSULTANT EVALUATION AND SELECTION PROCESS**

SAWPA's consultant evaluation and selection process is based on comprehensive review of the proposals for professional services. The following criteria will be used in evaluating the proposals:

1. Understanding of the requirements including identification of critical elements and key issues for successful preparation of a financial model.
2. Technical approach and work plan, including innovative approaches
3. Relevant qualifications and experience of the firm, project manager, other key individuals, and sub-consultants and past performance and experience.
4. Schedule
5. Quality control procedures
6. Results of reference checks
7. Clarity of proposal and compliance with proposal requirements

Firms submitting the best proposals may be invited to an interview conducted by a selection panel made up of representatives from SAWPA member agencies, sub-agencies, and/or SAWPA staff. The number of firms to be invited for interviews is at the discretion of SAWPA. The interview format and details will be included in the interview invitation letter. SAWPA recognizes the significant effort required to respond to this RFP and therefore discourages any firm or team which lacks the required experience to submit a proposal for evaluation.

SAWPA may negotiate a contract with the most qualified firm or firms for the desired consulting services and compensation level, which SAWPA determines is fair and reasonable. Failing a successful negotiation with the best-qualified firm or firms, SAWPA will terminate negotiations and continue the negotiation process with the next most qualified firm(s), in order to obtain the services at a fair and reasonable price, until an agreement is reached, a firm is selected, and an agreement is executed.

## **X. AVAILABLE DOCUMENTS**

The following reference documents are available for download from SAWPA's FTP site. Please email Regina Patterson at [rpatterson@sawpa.org](mailto:rpatterson@sawpa.org) to receive FTP download instructions.

1. SARI Planning Study, CDM, 2002
2. SARI Business Plan, SAWPA, 2006
3. Sanitary Sewer Management Plan, IEC, 2009
4. SARI Rate Model, MS Excel Spreadsheet, SAWPA, 2009
5. SAWPA Capital Improvement Program, 2009
6. Scope of Services for Salinity Management Program (work to be performed August 2009 through February 2010)

**XI. PROPOSAL AUTHORIZATION**

**(Please provide this document (or exact information) on your letterhead)**

I certify I am authorized to submit a binding proposal on behalf of my company, (enter company name), and this proposal conforms to required specifications unless otherwise noted.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Proposal Submitted by

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
email

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Facsimile Number

**SANTA ANA WATERSHED PROJECT AUTHORITY**  
**AGREEMENT FOR SERVICES BY INDEPENDENT CONSULTANT**

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2009 by and between the Santa Ana Watershed Project Authority ("SAWPA") located at 11615 Sterling Ave., Riverside, California, 92503 and \_\_\_\_\_ ("Consultant") whose address is \_\_\_\_\_.

**RECITALS**

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties to this Agreement:

- SAWPA desires to engage the professional services of Consultant to perform such professional consulting services as may be assigned, from time to time, by SAWPA in writing;
- Consultant agrees to provide such services pursuant to, and in accordance with, the terms and conditions of this Agreement and has represented and warrants to SAWPA that Consultant possesses the necessary skills, qualifications, personnel, and equipment to provide such services; and
- The services to be performed by Consultant shall be specifically described in one or more written Task Orders issued by SAWPA to Consultant pursuant to this Agreement.

**AGREEMENT**

Now, therefore, in consideration of the foregoing Recitals and mutual covenants contained herein, SAWPA and Consultant agree to the following:

**ARTICLE I**

**TERM OF AGREEMENT**

**1.01** This agreement shall become effective on the date first above written and shall continue until \_\_\_\_\_, 200\_, unless extended or sooner terminated as provided for herein.

**ARTICLE II**

**SERVICES TO BE PERFORMED**

**2.01** Consultant agrees to provide such professional consulting services as may be assigned, from time to time, in writing by the Commission and the General Manager of SAWPA. Each assignment shall be made in the form of a written Task Order. Each such Task Order shall include, but shall not be limited to, a description of the nature and scope of the services to be performed by Consultant, the amount of compensation to be paid, and the expected time of completion.

**2.02** Consultant may at Consultant's sole cost and expense, employ such competent and qualified independent professional associates, subcontractors, and consultants as Consultant deems necessary to perform each assignment; provided that Consultant shall not subcontract any work to be performed without the prior written consent of SAWPA.

**ARTICLE III**

**COMPENSATION**

**3.01** In consideration for the services to be performed by Consultant, SAWPA agrees to pay Consultant as provided for in each Task Order.

**3.02** Each Task Order shall specify a total not-to-exceed sum of money and shall be based upon the regular hourly rates customarily charged by Consultant to its clients.

**3.03** SAWPA shall reimburse Consultant for reasonable and necessary expenses incurred by Consultant in the performance of services for SAWPA. Reimbursement shall be according to a schedule set forth in each Task Order.

**3.04** Consultant shall not be compensated for any services rendered nor reimbursed for any expenses incurred in excess of those authorized in any Task Order unless approved in advance by the Commission and General Manager of SAWPA, in writing.

**3.05** Unless otherwise provided for in any Task Order issued pursuant to this Agreement, payment of compensation earned shall be made in monthly installments after receipt from Consultant of a timely, detailed, corrected, written invoice by SAWPA's Project Manager, describing, without limitation, the services performed, when such services were performed, the time spent performing such services, the hourly rate charged therefore, and the identity of individuals performing such services for the benefit of SAWPA. Such invoices shall also include a detailed itemization of expenses incurred. Such invoices shall be received in SAWPA's office on or before the 15th day of the month, for payment on or about the 15th day of the following month. All payments are made on or about the 15th day of the month. Each such invoice shall be provided to SAWPA by Consultant within 15 days after the end of the month in which the services were performed.

#### **ARTICLE IV**

#### **CONSULTANT OBLIGATIONS**

**4.01** Consultant agrees to perform all assigned services in accordance with the terms and conditions of this Agreement including those specified in each Task Order. In performing the services required by this Agreement and any related Task Order Consultant shall comply with all local, state and federal laws, rules and regulations. Consultant shall also obtain and pay for any permits required for the services it performs under this Agreement and any related Task Order.

**4.02** Except as otherwise provided for in each Task Order, Consultant will supply all personnel and equipment required to perform the assigned services.

**4.03** Consultant shall be solely responsible for the health and safety of its employees, agents and subcontractors in performing the services assigned by SAWPA. Consultant hereby covenants and agrees to:

**4.03a** Obtain a Commercial General Liability and an Automobile Liability insurance policy, including contractual coverage, with limits for bodily injury and property damage in an amount of not less than \$2,000,000.00 per occurrence for each such policy. Such policy shall name SAWPA, its officers, employees, agents and volunteers, as an additional insured, with any right to subrogation waived as to SAWPA, its officers, employees, agents and volunteers. If Commercial General Liability Insurance or other form with an aggregate limit is used, either the general aggregate limit shall apply separately to the work assigned by SAWPA under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. The coverage shall be at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 00 01) and Insurance Services Office Form CA 00 01 covering Automobile Liability, Code 1 (any auto). The Commercial Liability Insurance shall include operations, products and completed operations, as applicable;

**4.03b** Obtain a policy of Professional Liability (errors and omissions) insurance appropriate to the Consultant's profession in a minimum amount of \$2,000,000.00 per claim or occurrence to cover any negligent acts or omissions or willful misconduct committed by Consultant, its employees, agents and subcontractors in the performance of any services for SAWPA. Architects' and engineers' coverage shall include contractual liability;

**4.03c** Obtain a policy of Employer's Liability insurance in a minimum amount of \$2,000,000.00 per accident for bodily injury and property damage.

**4.03d** Provide worker's compensation insurance or a California Department of Insurance-approved self-insurance program in an amount and form required by the State of California and the Employer's Liability Insurance that meets all applicable Labor Code requirements, covering all persons or entities providing services on behalf of the Consultant and all risks to such persons or entities;

**4.03e** CONSULTANT shall require any subcontractor that CONSULTANT uses for work performed for SAWPA under this Agreement or related Task Order to obtain the insurance coverages specified above.

**4.03f** CONSULTANT hereby agrees to waive subrogation which any insurer of CONSULTANT may seek to require from CONSULTANT by virtue of the payment of any loss. CONSULTANT shall obtain an endorsement that may be necessary to give effect to this waiver of subrogation. In addition, the Workers Compensation policy shall be endorsed with a waiver of subrogation in favor of SAWPA for all work performed by CONSULTANT, and its employees, agents and subcontractors.

All such insurance policy or policies shall be issued by a responsible insurance company with a minimum A. M. Best Rating of "A-" Financial Category "X", and authorized and admitted to do business in, and regulated by, the State of California. Each such policy of insurance shall expressly provide that it shall be primary and noncontributory with any policies carried by SAWPA and, to the extent obtainable, such coverage shall be payable notwithstanding any act of negligence of SAWPA that might otherwise result in forfeiture of coverage.

Evidence of all insurance coverage shall be provided to SAWPA prior to issuance of the first Task Order. Such policies shall provide that they shall not be canceled or amended without 30 day prior written notice to SAWPA. CONSULTANT acknowledges and agrees that such insurance is in addition to CONSULTANT's obligation to fully indemnify and hold SAWPA free and harmless from and against any and all claims arising out of an injury or damage to property or persons caused by the negligence, recklessness or willful misconduct of Consultant in performing services assigned by SAWPA.

**4.04** Consultant hereby covenants and agrees that SAWPA, its officers, employees, and agents shall not be liable for any claims, liabilities, penalties, fines or any damage to property, whether real or personal, nor for any personal injury or death caused by, or resulting from, or claimed to have been caused by or resulting from, any negligence, , recklessness or willful misconduct of Consultant. Consultant shall hold harmless, defend and indemnify SAWPA and its officers, employees, agents and volunteers from and against any and all liability, loss, damage, fines, penalties, expense and costs, including, without limitation, attorneys' fees and litigation expenses and costs, of every nature arising out of or related to Consultant's negligence, recklessness or willful misconduct related to or arising from the performance of the work required under this Agreement and any related Task Order or Consultant's failure to comply with any of its obligations contained in this Agreement and any related Task Order, except as to such loss or damage which was caused by the active negligence or willful misconduct of SAWPA.

**4.05** In the event that SAWPA requests that specific employees or agents of Consultant supervise or otherwise perform the services specified in each Task Order, Consultant shall ensure that such individual(s) shall be appointed and assigned the responsibility of performing the services.

**4.06** In the event Consultant is required to prepare plans, drawings, specifications and/or estimates, the same shall be furnished with a registered professional engineer's number and shall conform to local, state and federal laws, rules and regulations. Consultant shall obtain all necessary permits and approvals in connection with this Agreement, any Task Order or Change Order. However, in the event SAWPA is required to obtain such an approval or permit from another governmental entity, Consultant shall provide all necessary supporting documents to be filed with such entity, and shall facilitate the acquisition of such approval or permit.

## **ARTICLE V**

### **SAWPA OBLIGATIONS**

**5.01** SAWPA shall:

**5.01a** Furnish all existing studies, reports and other available data pertinent to each Task Order that are in SAWPA's possession;

**5.01b** Designate a person to act as liaison between Consultant and the General Manager and Commission of SAWPA.

## **ARTICLE VI**

### **ADDITIONAL SERVICES, CHANGES AND DELETIONS**

**6.01** During the term of this Agreement, the Commission of SAWPA may, from time to time and without affecting the validity of this Agreement or any Task Order issued pursuant thereto, order changes, deletions, and additional services by the issuance of written Change Orders authorized and approved by the Commission of SAWPA.

**6.02** In the event Consultant performs additional or different services than those described in any Task Order or authorized Change Order without the prior written approval of the Commission of SAWPA, Consultant shall not be compensated for such services.

**6.03** Consultant shall promptly advise SAWPA as soon as reasonably practicable upon gaining knowledge of a condition, event, or accumulation of events, which may affect the scope and/or cost of services to be provided pursuant to this Agreement. All proposed changes, modifications, deletions, and/or requests for additional services shall be reduced to writing for review and approval or rejection by the Commission of SAWPA.

**6.04** In the event that SAWPA orders services deleted or reduced, compensation shall be deleted or reduced by a comparable amount as determined by SAWPA and Consultant shall only be compensated for services actually performed. In the event additional services are properly authorized, payment for the same shall be made as provided in Article III above.

## **ARTICLE VII**

### **CONSTRUCTION PROJECTS: CONSULTANT CHANGE ORDERS**

**7.01** In the event SAWPA authorizes Consultant to perform construction management services for SAWPA, Consultant may determine, in the course of providing such services, that a Change Order should be issued to the construction contractor, or Consultant may receive a request for a Change Order from the construction

contractor. Consultant shall, upon receipt of any requested Change Order or upon gaining knowledge of any condition, event, or accumulation of events, which may necessitate issuing a Change Order to the construction contractor, promptly consult with the liaison, General Manager and Commission of SAWPA. No Change Order shall be issued or executed without the prior approval of the Commission of SAWPA.

## **ARTICLE VIII**

### **TERMINATION OF AGREEMENT**

**8.01** In the event the time specified for completion of an assigned task in a Task Order exceeds the term of this Agreement, the term of this Agreement shall be automatically extended for such additional time as is necessary to complete such Task Order and thereupon this Agreement shall automatically terminate without further notice.

**8.02** Notwithstanding any other provision of this Agreement, SAWPA, at its sole option, may terminate this Agreement at any time by giving 10 day written notice to Consultant, whether or not a Task Order has been issued to Consultant.

**8.03** In the event of termination, the payment of monies due Consultant for work performed prior to the effective date of such termination shall be paid after receipt of an invoice as provided in this Agreement.

## **ARTICLE IX**

### **CONSULTANT STATUS**

**9.01** Consultant shall perform the services assigned by SAWPA in Consultant's own way as an independent contractor, in pursuit of Consultant's independent calling and not as an employee of SAWPA. Consultant shall be under the control of SAWPA only as to the result to be accomplished and the personnel

assigned to perform services. However, Consultant shall regularly confer with SAWPA's liaison, General Manager, and Commission as provided for in this Agreement.

**9.02** Consultant hereby specifically represents and warrants to SAWPA that the services to be rendered pursuant to this Agreement shall be performed in accordance with the standards customarily applicable to an experienced and competent professional consulting organization rendering the same or similar services. Furthermore, Consultant represents and warrants that the individual signing this Agreement on behalf of Consultant has the full authority to bind Consultant to this Agreement.

**ARTICLE X**  
**AUDIT AND OWNERSHIP OF DOCUMENTS**

**10.01** All draft and final reports, plans, drawings, specifications, data, notes, and all other documents of any kind or nature prepared or developed by Consultant in connection with the performance of services assigned to it by SAWPA are the sole property of SAWPA, and Consultant shall promptly deliver all such materials to SAWPA. Consultant may retain copies of the original documents, at its option and expense. Use of such documents by SAWPA for project(s) not the subject of this Agreement shall be at SAWPA's sole risk without legal liability or exposure to Consultant.

**10.02** Consultant shall retain and maintain, for a period not less than four years following termination of this Agreement, all time records, accounting records, and vouchers and all other records with respect to all matters concerning services performed, compensation paid and expenses reimbursed. At any time during normal business hours and as often as SAWPA may deem necessary, Consultant shall make available to SAWPA's agents for examination of all such records and will permit SAWPA's agents to audit, examine and reproduce such records.

**ARTICLE XI**  
**MISCELLANEOUS PROVISIONS**

**11.01** This Agreement supersedes any and all previous agreements, either oral or written, between the parties hereto with respect to the rendering of services by Consultant for SAWPA and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing signed by both parties.

**11.02** Consultant shall not assign or otherwise transfer any rights or interest in this Agreement without the prior written consent of SAWPA. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

**11.03** In the event Consultant is an individual person and dies prior to completion of this Agreement or any Task Order issued hereunder, any monies earned that may be due Consultant from SAWPA as of the date of death will be paid to Consultant's estate.

**11.04** Time is of the essence in the performance of services required hereunder. Extensions of time within which to perform services may be granted by SAWPA if requested by Consultant and agreed to in writing by SAWPA. All such requests must be documented and substantiated and will only be granted as the result of unforeseeable and unavoidable delays not caused by the lack of foresight on the part of Consultant.

**11.05** Consultant shall comply with all local, state and federal laws, rules and regulations including those regarding nondiscrimination and the payment of prevailing wages.

**11.06** SAWPA expects that Consultant will devote its full energies, interest, abilities and productive time to the performance of its duties and obligations under this Agreement, and shall not engage in any other consulting activity that would interfere with the performance of Consultant's duties under this Agreement or create any conflicts of interest. If required by law, Consultant shall file a Conflict of Interest Statement with SAWPA.

