

SANTA ANA WATERSHED PROJECT AUTHORITY (SAWPA)

REQUEST FOR PROPOSALS (RFP)

To Provide

Executive Search Services

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

Santa Ana Watershed Project Authority
Attention: Kelly Berry
11615 Sterling Avenue
Riverside, California 92503

The Santa Ana Watershed Project Authority (SAWPA) is accepting sealed proposals to provide executive search services for the position of General Manager.

SAWPA is a Joint Powers Authority, focusing on water supply and water quality. Its stated mission is to develop and maintain regional plans, programs, and projects that will protect the Santa Ana River basin water resources to maximize beneficial uses within the watershed in an economically and environmentally responsible manner. First formed in 1968 as a planning agency, SAWPA was reformed in 1972 with a mission to plan and build facilities to protect the water quality of the Santa Ana River Watershed. The watershed is home to over six million people in southern California, and the region's population is projected to grow to almost ten million people within the next 50 years. SAWPA has supported its five member water agencies and various stakeholder groups throughout the watershed with developing and implementing plans to ensure that there is sufficient clean water to support all the water needs of the watershed into the future.

1. Submittal Information

1.1. No later than **4:00 p.m. PST on Friday, April 28, 2017**, one (1) original, five (5) copies, and one (1) electronic file copy (in PDF format) of the proposal shall be submitted to the address above in a sealed envelope and labeled: "Proposal for Executive Search Services." **Proposals received after the above specified date and time WILL NOT be accepted.** Emailed proposals will **not** be accepted.

1.2. All questions regarding this RFP shall be in writing and directed to Kelly Berry at kberry@sawpa.org. Please reference "Proposal for Executive Search Services" when communicating relative to this RFP.

1.3. Proposals not following the requested format may be considered non-responsive and eliminated from further consideration. The Proposal shall include a dated cover letter signed by a person authorized to negotiate and execute contracts on behalf of the Consultant, and must be binding for a period of sixty (60) days.

1.4. Any proposal found to be illegible or incomplete will be considered for rejection.

1.5. Depending on the number of responses received, SAWPA may request top Consultants be available for an interview.

2. Schedule (Consultant Selection Process)

April 18, 2017	Issue Request for Proposals
April 28, 2017	Proposals due (4:00 p.m. PST)
TBD	Interview panel conducts interview of top proposing firms
TBD	Recommend award to SAWPA Commission
TBD	Contract Negotiation/Execution

3. Proposal Instructions and Conditions

3.1. **Pre-Contractual Expenses** – Pre-Contractual expenses are defined as expenses incurred by prospective bidders 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 bidder prior to the date of an executed contract

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

3.2. **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 bidder 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).

3.3. **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/are best qualified to perform the services and represents the best value and effectiveness.

3.4. **Oral Statements** - SAWPA is not responsible for oral statements made by any of its employees or agents concerning the RFP. If the prospective firm requires specific information, a written request must be submitted to SAWPA.

3.5. **Conflict of Interest** – The Consultant shall review their past, current or proposed work with agencies or firms having a significant interest in or with the Santa Ana Watershed Project Authority to verify a conflict of interest or the appearance of a conflict will not occur.

4. Scope of Work

The Santa Ana Watershed Project Authority (SAWPA) is seeking an experienced, full service Executive Search firm to successfully recruit its next General Manager. The scope of work will include, but not be limited to the following tasks.

Communications to and from SAWPA during the course of completing this Scope of Work shall be through SAWPA's Designated Contact: Kelly Berry (kberry@sawpa.org). References in this Scope of Work to "SAWPA" shall mean SAWPA's Designated Contact.

Task 1 – Initial Teleconference with SAWPA Representatives

- 1.1 Based on provided job description, establish job requirements and candidate profile.
- 1.2 Discuss recruitment brochure and advertising.
- 1.3 Establish project timeline.
- 1.4 Provide written report to SAWPA.

Task 2 – Recruitment Materials (following initial teleconference in Task 1)

Advertising:

- 2.1 Draft profile and ad text; provide to SAWPA for review.
- 2.2 Receive SAWPA revisions; make revisions; obtain final SAWPA approval.
- 2.3 Place ads in accordance with direction from SAWPA.

Brochure:

- 2.4 Prepare draft recruitment brochure based on teleconference discussion, which shall include Strategic Assessment documentation.
- 2.5 Obtain SAWPA review/adjustments/approval of brochure text.
- 2.6 Design, prepare and provide PDF of draft brochure; obtain final approval.
- 2.7 Print final brochure and provide to SAWPA in printed and PDF format.
- 2.8 Distribute to potential candidates/referral sources.
Final filing date: TBD
- 2.9 Prepare and submit to SAWPA Summary of Activities to Date.

Task 3 – Identify and contact potential candidates and referral sources

Task 4 – Preliminary Screening

- 4.1 Discussion with SAWPA to establish screening criteria.
- 4.2 Prepare and provide written screening criteria to SAWPA.
- 4.3 Preliminary screening of resumes.
- 4.4 Prepare and provide written candidate report of entire applicant pool, including preliminary screening.
- 4.5 Preliminary interviews by SAWPA Committee; Consultant will provide the designated number of candidate information packets to SAWPA for candidate selection.

Task 5 – Final Screening and Selection. Consultant will provide the designated number of final candidate information packets to SAWPA for selection of finalists.

5. Project Schedule

The Project Schedule will be discussed during Task 1 - Initial Teleconference with SAWPA Representatives. Consultant shall document and provide to SAWPA the Project Schedule for approval. Final Candidate selection will occur no later than: TBD.

6. 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:

- 6.1 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.
- 6.2 For each task, provide a breakdown of labor hours by employee billing classification together with the cost of non-labor and sub-consultant services, if any. 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 proposal. For each task sum the total hours and the total cost. The sum of all task hours and task cost shall be provided. This information will be used by SAWPA to evaluate the reasonableness of the fee proposal.
- 6.3 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, if any. Billing rates for the entire duration of the agreement shall be provided.
- 6.4 SAWPA will review the fee proposal of the Consultant deemed most qualified after completing a review of the proposals and conducting interviews (if necessary). The final scope and fee will be negotiated with the top ranked Consultant.
- 6.5 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.
- 6.6 Vehicle usage and mileage is not considered a reimbursable expense and should be included in the hourly rates.

7. 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. 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 **three (3) typed pages** (based on an 11-point minimum font size). Resumes, cover letter, table of contents 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
- Project Approach and Scope of Services
- Project Team and Organization Diagram
- 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, if any (In Appendix)
- Relevant and appropriate references
- Breakdown of total hours by Task. Total hours include Consultant personnel and sub-consultants.
- 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.

Project 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 might 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.

Project Team and Organization Diagram

The purpose of this section is to describe the organization of the project team including sub-consultants, if any, and key staff. An organizational diagram shall be submitted

showing all key team members, key staff, and sub-consultants. There also shall be a brief description of the role and responsibilities of all key staff and sub-consultants, if any, identified in the team organization.

Descriptions of similar projects by key staff to be used on this assignment including scope and complexity of the projects

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 there are no exceptions, a statement to that effect shall be included in the proposal.

The Consultant shall furnish, with the proposal, proof of insurance coverage to the minimum levels identified in Section 8.

Fee Proposal (In Separate Sealed Envelope)

A Fee Proposal shall be submitted per the requirements of Section 6.

8. General Requirements

8.1 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:

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.

8.2 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.

8.3 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 contract execution through 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.

9. 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 project requirements including identification of critical elements and key issues for successful implementation and outcome.
2. Approach and work plan; include innovative approaches.
3. Relevant qualifications and experience of the firm, key individuals, and sub-consultants and past performance and experience.
4. Results of reference checks.
5. Clarity of proposal and compliance with proposal requirements.

Firms submitting the best proposals may be invited to an interview conducted by a selection panel. 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 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.

10. Attachments

Attachment A - Standard Form of Agreement

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



ATTACHMENT A
SANTA ANA WATERSHED PROJECT AUTHORITY
AGREEMENT FOR SERVICES BY INDEPENDENT CONSULTANT

This Agreement is made this ___ day of _____, **20**__ by and between the Santa Ana Watershed Project Authority ("SAWPA") located at 11615 Sterling Ave., Riverside, CA, 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 **December 31, 20**__ 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 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.

3.04 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. Upon approval by an authorized SAWPA employee, SAWPA will pay within 30 days after receipt of a valid invoice from Consultant.

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 \$1,000,000.00 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. If the insurance company is not admitted in the State of California, it must be on the List of Eligible Surplus Line Insurers (LESLI), shall have a minimum A.M. Best Rating of "A", Financial Category "X", and shall be domiciled in the United States, unless otherwise approved by SAWPA in writing. 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 a 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. SAWPA agrees to not release any software "code" without prior written approval from the 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 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.

