



# **SANTA ANA WATERSHED PROJECT AUTHORITY**

## **REQUEST FOR PROPOSALS FOR AUDIT SERVICES**

**February 20, 2018**

**PROPOSALS DUE:  
Thursday, March 22, 2018 at 4:00 PM**

**Hand delivered to:  
Santa Ana Watershed Project Authority  
Attn: Finance Department  
11615 Sterling Avenue  
Riverside, CA 92503**

**By USPS:  
Santa Ana Watershed Project Authority  
Attn: Finance Department  
11615 Sterling Avenue  
Riverside, CA 92503**



## PROPOSAL SUBMITTALS

Responses to the Request for Proposal (RFP) are to be submitted to:

Santa Ana Watershed Project Authority – Finance Department  
11615 Sterling Avenue  
Riverside, CA 92503  
Phone (951) 354-4220 Fax (951) 352-3422

**No later than 4:00 p.m. on Thursday, March 22, 2018.** Two (2) copies of the proposal shall be submitted in a sealed envelope and marked “March 2018 – Request for Proposals – Audit Services.” An electronic copy of this proposal also should be provided on or before the deadline, preferably in Adobe Acrobat (PDF) format to [kwilliams@sawpa.org](mailto:kwilliams@sawpa.org). **Proposals received after the specified time will not be accepted.** Questions regarding this request may be addressed to Karen Williams ([kwilliams@sawpa.org](mailto:kwilliams@sawpa.org)).

## INTRODUCTION

The Santa Ana Watershed Project Authority (SAWPA) was formed in 1972 to plan and build facilities to protect water quality in the Santa Ana River Watershed. The organization is a joint powers authority comprised of the following five major water districts that share the Santa Ana River Watershed: Eastern Municipal Water District, Inland Empire Utilities Agency (formerly Chino Basin Municipal Water District), Orange County Water District, San Bernardino Valley Municipal Water District, and Western Municipal Water District. The governance structure of SAWPA is made up of an elected Board of Director and an alternate Board of Director (also elected) from each of the five water districts forming what is known as the Board of Commissioners.

The Santa Ana River is the largest stream system in southern California. The river begins high in the San Bernardino Mountains and flows over 100 miles southwesterly where it discharges to the Pacific Ocean in Huntington Beach. The Santa Ana River Watershed, which receives an average annual rainfall of about 13 inches, covers over 2,650 square miles of widely varying urban, rural and forested terrain. The watershed covers the more populated urban areas of San Bernardino, Riverside and Orange Counties, and a small portion of Los Angeles County and provides a home to over 4.8 million people.

SAWPA’s current audit relationship is with White Nelson Diehl Evans LLP, and has been in force without interruption since its audit for the fiscal year ending June 30, 2013. While the relationship has met SAWPA’s legal independent audit requirement, it is in SAWPA’s best interest to issue an RFP in order to evaluate current costs being

assessed and the overall audit services being rendered at this time. Proposals for partial services or a varied scope of work will not be considered.

The intent of this RFP is to identify a professionally responsible certified public accounting firm that can offer the highest quality of service at the lowest overall cost to SAWPA. The establishment of a three (3) year contract commencing with the fiscal year end audit for June 30, 2018 is desired. SAWPA requires fixed pricing for the three years of the contact limited by the prevailing Consumer Price Index. Notwithstanding the intended three-year duration of the proposed contract, as provided below, the contract may be terminated by SAWPA upon 30 days written notice.

SAWPA will make every effort to administer the proposal process in accordance with the terms and dates outlined in this RFP; however, SAWPA reserves the right to modify the activities, timeline, or any other aspect of the process at any time and as deemed necessary by SAWPA staff. By requesting proposals, SAWPA is in no way obligated to award a contract or pay the expenses of proposing audit firms in connection with the preparation or submission of a proposal. The awarding of a contract shall be contingent on the availability of funds and the requisite staff and Commission approvals. The decision to award any contract to a particular company will be based on many factors to include, but not limited to: office location, products available, service levels, overall cost, quality of references, and financial strength. No single factor will determine the final award decision.

## RFP AND PROPOSAL SCHEDULE

SAWPA intends to follow the schedule described below during the procurement process for Audit services, but reserves the right to alter the schedule at any time for any reason.

<u>ACTIVITY</u>	<u>DATE</u>
Release of RFP	February 20, 2018
Questions Due from Firms	March 16, 2018
Proposal Due Date	March 22, 2018
Commencement of Contract	June 30, 2018 Audit

## PROPOSAL PROCEDURES

**Submission of Proposal** – Proposal must be received by the Finance Department no later than 4 p.m. on Thursday, March 22, 2018. Late proposals will not be considered. Proposal must be submitted in a sealed envelope, marked “March 2018 - Request for Proposals - Audit Services”, and delivered to: Finance Department, 11615 Sterling Avenue, Riverside, CA 92503. Telephoned or faxed proposals will not be accepted.

**Right to Reject Proposals** - SAWPA reserves the right to reject any and all proposals, to waive any non-material irregularities or informalities in any proposal, and to accept or reject any item or combination of items.

**Execution of Agreement** - If an audit firm is not able to execute the standard services agreement and task order for year one (Attachment A) within thirty (30) days after being notified of selection, SAWPA reserves the right to select the next most qualified proposing audit firm or call for new proposals, whichever SAWPA deems most appropriate. The audit firm shall be required to work under a written contract with SAWPA in accordance with standard terms of the services agreement and task order approved by legal counsel for SAWPA. Notwithstanding anything in this RFP to the contrary, SAWPA reserves the right to negotiate the terms and conditions of the contract with the selected provider.

**Incorporation of RFP/Proposal** - This RFP and the audit firm's response, including all promises, warranties, commitments, and representations made in the successful proposal will become binding contractual obligations and will be incorporated by reference in any agreement between SAWPA and the audit firm.

**Authorized Signatories** - Audit firm personnel signing the cover letter of the proposal or any other related forms submitted must be authorized signers with the requisite authority to represent their firm and to enter into binding contracts with clients.

**Validity of Proposals** - Proposed services and related pricing and warranties contained in the proposal must be valid for a period of 120 days after the submission of the proposal.

**Reporting** - Independence is essential to the effectiveness of the agency's annual audit, and is strongly emphasized by the Institute of Internal Auditors (IIA), the American Institute of Certified Public Accountants (AICPA), the U. S. General Accounting Office (GAO), and the U. S. Securities and Exchange Commission (SEC). To ensure independence and objectivity are maintained, the Audit Firm selected shall receive direction from and report directly to the SAWPA Board of Commissioners/Audit Committee.

**Termination Clause** – SAWPA, at its sole discretion, may terminate the contract by giving a 30 day written notice to the audit firm selected. In the event of such termination, SAWPA's liability, if any, will be limited to only the work actually performed, if any, up to the termination date.

## SCOPE OF WORK

SAWPA is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2018, and the two (2) subsequent fiscal years. Additionally, the Agency has the option to extend two (2) additional years (in single year increments). As a recipient of federal grants, a single audit may be required for SAWPA.

1. The audit shall be in compliance with Section 26909 of the Governmental Code and the related State Controller Guidelines.
2. SAWPA desires the independent auditor to express an opinion on the fair presentation of its general purpose financial statements in conformity with generally accepted accounting principles.
  - The audit shall be a full-scope financial and compliance review of all funds and account groups of SAWPA. The auditor shall issue an opinion letter on SAWPA's financial statements, in compliance with applicable legal provisions, the auditor's report on the study and evaluation of internal control system and the auditor's report on compliance.
3. SAWPA will provide the auditor with trial balance, general ledger and schedules for all of the funds. The auditor will be responsible for preparing the financial statements, footnotes and supplementary information of the individual funds.
4. The auditor must provide SAWPA with draft copies of the financial statements, including journal entries and explanations to support the changes to the trial balance. Any results prepared by the auditor which alter SAWPA's books must be reviewed by SAWPA's personnel.
5. Final copies of the financial statements, including the opinion letter, footnotes, and supplemental data for individual funds, must be available for review by the Board of Commissioners during a regular Commission meeting. Regular Board of Commissioners meetings are scheduled on the first and third Tuesday of every month.
6. The auditor shall submit a written management letter to the Board of Commissioners that communicates any observations for improvements in SAWPA's financial operations, and any deficiencies in internal controls that need to be addressed by SAWPA.
7. The partners in charge shall be available to attend up to two SAWPA management and/or public meetings at which the audit report may be discussed.
8. The auditor shall assist SAWPA personnel in applying generally accepted accounting principles and provide support necessary to maintain sound financial management procedures. The auditor shall provide financial advice and counsel

on significant matters occurring throughout the year that would affect the annual reports and sound accounting practices.

9. SAWPA finance personnel will assist the auditor in preparing all required schedules for the annual audit, assist in locating information, and answer questions as they arise. SAWPA will provide work space for auditor personnel.
10. Test compliance with the Single Audit Act as amended in 1996, and applicable laws and regulations, including additional requirements applicable to federal stimulus funds under the American Recovery Reinvestment Act (ARRA); Auditor will prepare and publish an audit report, if required, and prepare the forms for submission to the Federal Audit Clearinghouse.
11. The auditor shall perform, as part of the annual audit, the preparation and transmittal of the Special Districts Financial Transactions Report to the State Controller's Office as required under California Government Code section 53891.
12. The auditor must provide (1) unbound copy and one (1) electronic copy (PDF) of the complete financial statements to the Agency for incorporation into the Comprehensive Annual Financial Report (CAFR).

**OPTIONAL SERVICE – AUDIT OF LESJWA**

Refer to number 11 of guidelines for proposal on page ten of the RFP.

**REPORTS TO BE ISSUED**

Following completion of the audit and preparation of the fiscal year's comprehensive financial statements and special purpose audits, the auditor shall issue:

1. Reports on the fair presentation of the financial statements in accordance with auditing standards and generally accepted in the United States of America as listed below:
  - Basic Financial Statements for the Agency
  - State Controllers Report for the Agency
  - Single Audit Report on Schedule of Federal Awards (as listed below)
    - State Revolving Fund Loan Program if required
2. A report based on the auditor's understanding of the internal control structure and assessment of control risk. In this report, the auditor will also communicate any reportable conditions found during the audit and indicate whether they are also material weaknesses.

3. A Statement on Auditing Standards (SAS) 114 letter communicated to the Commission reporting any control deficiencies that are considered significant deficiencies and/or material weaknesses as defined by the Standards.
4. Auditors shall be required to make an immediate written report to the Agency of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following:
  - Susan Lien-Longville, Chairman, Board of Commissioners
  - Ronald Sullivan, Vice Chairman, Board of Commissioners
  - Richard Haller, General Manager
  - Karen Williams, Chief Financial Officer
5. The Auditor must present to the Agency's Board of Commissioners, the results of the Audit and address all findings and all adjustments.
6. Final Audit Report: The Auditor must deliver the final audit report by December so that the Agency may continue to apply for the Government Finance Officer's Association Award for Excellence in Financial Reporting.
7. Single Audit Report: The Auditor must deliver 10 original, signed, final audit reports to the Agency's Chief Financial Officer, if a single audit is required.

## **SUBMISSION REQUIREMENTS**

**Copies** – The Agency will require four physical copies of the proposal mailed to the address listed on the cover page of this request and an electronic copy, preferable in Adobe Acrobat (PDF) format emailed to [kwilliams@sawpa.org](mailto:kwilliams@sawpa.org). Each proposal shall be received and stamped by SAWPA no later than **4:00 P.M. March 22, 2018**. The successful audit firm will be notified in writing within 30 days of acceptance by the Agency.

**Format** – To achieve a uniform response and consideration please include the following information in the proposal.

The purpose of the proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of SAWPA in conformity with the requirements of this request for proposal. The proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.



Proposals shall be organized, tabbed and numbered in the following order:

1. Executive Summary
2. Statement of Independence
3. License to Practice in California
4. Firm Qualifications and Experience
5. Partner, Supervisory and Staff Qualifications and Experience
6. References - Similar Engagements With Other Government Entities
7. Specific Audit Approach
8. Cost Proposal
9. External Quality Control Review Report
10. Professional Insurance
11. Optional Service – Audit of LESJWA

1. Executive Summary

The Executive Summary should be addressed to:

Board of Commissioners  
Santa Ana Watershed Project Authority  
11615 Sterling Avenue  
Riverside, CA 92503

The summary should state the prime firm and include the firm's name submitting the proposal, their mailing address, telephone number, and contact name. The letter shall address the firm's understanding of the project based on this RFP and any other information the firm has gathered. Include a statement discussing the firm's interest and qualifications for this type of work. Certify that the person signing the proposal is entitled to represent the firm, empowered to submit the bid, and authorized to sign a contract with SAWPA.

2. Statement of Independence

The firm should provide an affirmative statement that it is independent of SAWPA as defined by generally accepted auditing standards and/or U.S. General Accounting Office's Government Auditing Standards. The firm also should provide an affirmative statement that it is independent of all of the component units of SAWPA as defined by those same standards.

3. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly registered / licensed to practice in California.

4. Firm Qualifications and Experience

The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, the number and nature of the professional staff to be employed in this engagement on a full-time basis, and the number and nature of the staff to be so employed on a part-time basis.

The firm also shall provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

5. Partner, Supervisory, and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partner, managers, other supervisors, and specialists who would be assigned to the engagement. Indicate whether each person is an active licensed certified public accountant in California. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit. Indicate how the quality of staff over the term of the agreement will be assured.

This section may include graphs, charts, photos, resumes, references, etc., in support of the firm's qualifications.

6. Similar Engagements with other Government Entities

Please provide a list of not less than five client references for which services similar to those outlined in the RFP are currently being provided. For each reference listed provide the name of the organization, dates for which the services(s) are being provided, type of services(s) being provided and the name, address, telephone and email address of the responsible person within the reference's organization. SAWPA reserves the right to contact any or all of the listed references regarding the audit services performed by the Proposer.

7. Specific Audit Approach

The audit approach should indicate the firm's ability to meet each specification as outlined in this document. The work plan should address the items of work as described in this RFP. The plan should be simple, easy to read and follow, and address and satisfy the objectives and specifications as listed in the Scope of Work in this RFP.

8. Cost Proposal

The proposal should contain all pricing information relative to performing the audit engagement as described in this request for proposal. The total all-inclusive maximum price to be proposed is to contain all direct and indirect costs including all

out-of-pocket expenses for each of the three years. This information is required to be shown for each year to be audited and in total. SAWPA will not be responsible for expenses incurred in preparing and submitting the proposal.

No cost increases shall be passed onto SAWPA after the proposal has been submitted.

- The proposal shall include a separate fee (not related to the financial year-end audit) that the bidding firm would charge to conduct an annual audit of the Lake Elsinore & San Jacinto Watersheds Authority and preparation and transmittal of the Special Districts Financial Transactions Report to the State Controller's Office as required under California Government Code section 53891, beginning with fiscal year ending June 30, 2018 (see number 11 on page ten).

9. External Quality Control Review Report

The firm also is required to submit a copy of the report on its most recent External Quality Control Review Report, with a statement whether that quality control review included a review of specific government engagements.

10. Insurance

The proposal shall include a copy of the firm's most current certificate of insurance and endorsements for professional liability and worker's compensation insurance.

11. Optional Service – Audit of the Lake Elsinore and San Jacinto Watersheds Authority

The bidding firm also shall include as a stand-alone component (option) for the cost to do an annual audit of the Lake Elsinore & San Jacinto Watersheds Authority (LESJWA). This additional option will be considered separately. All audit requirements and deliverables previously defined for the SAWPA audit would apply to the LESJWA audit as well in relation to the LESJWA Board.

The Lake Elsinore & San Jacinto Watersheds Authority was formed in 2000 pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. The Authority was formed for the purpose of implementing projects and programs to improve the water quality and habitat of Lake Elsinore and its back basin consistent with the Lake Elsinore Management Plan, and to rehabilitate and improve the San Jacinto and Lake Elsinore Watersheds and the water quality of Lake Elsinore in order to preserve agricultural land, protect wildlife habitat, and protect and enhance recreational resources, all for the benefit of the general public. Major activities include administering the LE/CL TMDL Task Force, developing BMPs, and continued improvement of lake quality.

The Authority's five member agencies are the City of Lake Elsinore, City of Canyon Lake, County of Riverside, Elsinore Valley Municipal Water District, and Santa Ana Watershed Project Authority (SAWPA).

SAWPA serves as the administrator for this JPA and manages the finance and accounting functions on behalf of the Authority.

ADDITIONAL INFORMATION

SAWPA reserves the right to conduct interviews with all, any or none of the firms submitting proposals, and to reject any or all proposals and to accept the proposal most favorable to the Agency's interest.

The audit firm submitting bid proposals should be aware that SAWPA has no obligation whatsoever to engage the firm for future work to implement any of the recommended changes in procedures and policies revealed during the course of the audit. In addition, there is no obligation on the part of SAWPA to engage the firm for any management services or studies.



## APPENDIX A

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

This Agreement is made this \_\_\_ day of \_\_\_\_\_, **2018** 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.

