



SANTA ANA WATERSHED PROJECT AUTHORITY
GENERAL SERVICES 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, 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 **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.

4.04 Insurance Coverage: Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, its agents, representatives, employees or sub-contractors.

4.04(a) Coverage - Coverage shall be at least as broad as the following:

- 1. Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to SAWPA) or the general aggregate limit shall be twice the required occurrence limit.
- 2. Automobile Liability** – (if necessary) Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if Consultant has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
- 3. Workers' Compensation Insurance** - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- 4. Professional Liability** - (Also known as Errors & Omission) Insurance appropriate to the Consultant profession, with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- 5. Cyber Liability Insurance (Technology Professional Liability – Errors and Omissions)** – If Consultant will be providing technology services, limits not less than \$2,000,000 per occurrence or claim, and \$2,000,000 aggregate or the full per occurrence limits of the policies available, whichever is greater. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark,

trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, SAWPA requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SAWPA.

4.04(b) If Claims Made Policies:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not **replaced with another claims-made policy form with a Retroactive Date** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of contract work.

4.04(c) Waiver of Subrogation: The insurer(s) named above agree to waive all rights of subrogation against SAWPA, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency; but this provision applies regardless of whether or not SAWPA has received a waiver of subrogation from the insurer.

4.04(d) Other Required Provisions - The general liability policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** SAWPA, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 10 01), with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
2. **Primary Coverage:** For any claims related to this project, the Consultant's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to SAWPA, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Member Water Agency its directors, officers, employees and authorized volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

4.04(e) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to SAWPA.

4.04(f) Self-Insured Retentions - Self-insured retentions must be declared to and approved by SAWPA. SAWPA may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or SAWPA.

4.04(g) Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by SAWPA.

4.04(h) Verification of Coverage - Consultant shall furnish SAWPA with certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by SAWPA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. SAWPA reserves the right to require complete, certified copies of

all required insurance policies, including policy Declaration pages and Endorsement pages.

4.04(i) Subcontractors - Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that SAWPA, its directors, officers, employees and authorized volunteers are additional insureds on Commercial General Liability Coverage.

4.05 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. To the extent permitted by law, and subject to the provisions in Civil Code Section 2782.2 Consultant shall hold harmless, defend at its own expense, and indemnify SAWPA, its directors, officers, employees, and authorized volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees and costs, arising from all acts or omissions of Consultant or its officers, agents, or employees in rendering services under this Agreement and any Task Order issued hereunder; excluding, however, such liability, claims, losses, damages or expenses arising from SAWPA's sole negligence or willful acts.

4.06 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.

4.07 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.

4.08 Consultant shall comply with all local, state and federal laws, rules and regulations including those regarding nondiscrimination and the payment of prevailing wages, if required by law.

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. 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 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 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.

11.06 Any dispute which may arise by and between SAWPA and the Consultant, including the Consultants, its employees, agents and subcontractors, shall be submitted to binding arbitration. Arbitration shall be conducted by a neutral, impartial arbitration service that the parties mutually agree upon, in accordance with its rules and procedures. The arbitrator must decide each and every dispute in accordance with the laws of the State of California, and all other applicable laws. Unless the parties stipulate to the contrary prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation conducted by a neutral, impartial mediation service that the parties mutually agree upon, in accordance with its rules and procedures.

11.07 During the performance of the Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status and denial of family care leave. Consultant and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12290 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing

Commission implementing Government Code Section 12990 et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Consultant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11.08 Contractor’s employees, agents and subcontractors shall adhere to, and comply with, the California Drug Free Workplace Act at Government Code, Sections 8350 through 8357.

In witness whereof, the parties hereby have made and executed this Agreement as of the day and year first above-written.

SANTA ANA WATERSHED PROJECT AUTHORITY

General Manager Date

(CONSULTANT NAME)

(Signature) Date

Typed/Printed Name