



SWEETWATER AUTHORITY

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CARLOS QUINTERO
GENERAL MANAGER

September 19, 2022

Subject: REQUEST FOR QUALIFICATIONS FOR ON-CALL ENVIRONMENTAL CONSULTING SERVICES

To Whom It May Concern:

Sweetwater Authority (Authority) is seeking a professional services consultant (or consultant team) to assist the Authority on an on-call basis with a variety of future environmental compliance, data collection, reporting, document production and/or policy related tasks. The Authority invites your firm to provide a proposal in response to this request for qualifications (RFQ), listing its qualifications to provide professional environmental consulting services including the tasks described in the scope of work (Section C).

Services of the selected consultant will be requested in the form of task orders on a case-by-case basis to meet the Authority's needs. The Authority's Water Quality Department will serve as the administrative lead on the proposed contract, and individual task orders will be assigned and coordinated by Water Quality or Engineering Department project managers as appropriate.

A. BACKGROUND INFORMATION

The Authority was formed in 1977 as a Joint Powers Agency between the City of National City and the South Bay Irrigation District. Governed by a seven-member Board of Directors, the Authority is a publicly-owned water agency that serves potable water to a population of approximately 200,000 in the City of National City, the western portion of the City of Chula Vista, and the unincorporated areas of Bonita and Lincoln Acres, in San Diego County, CA. The Authority's service area covers approximately 36 square miles. The Authority has several sources of water supply including surface water, fresh and brackish groundwater, and raw and treated imported supplies purchased from the San Diego County Water Authority (SDCWA). The Authority's mission is *"to provide its current and future customers with a safe and reliable water supply through the use of the best available technology, sound management practices, public participation and a balanced approach to human and environmental needs"*.

Within the 230 square mile Sweetwater River Watershed, the Authority owns and manages approximately 5,200 acres of property in the middle and upper portions of the Sweetwater River watershed (watershed), which includes the Sweetwater Reservoir property and the Loveland Reservoir property. Within these properties, the Authority maintains paved and unpaved roads, drainage conveyance systems, allows recreational use (limited riding and hiking trails and fishing), and many other facilities that are compatible with and/or contribute to watershed



protection and stewardship. The Authority also maintains facilities within the middle and upper watersheds that are located in Authority easements. These facilities include, the Sloane Canyon slide gate at Willow Lake, a diversion system that protects Sweetwater Reservoir from polluted runoff, known as the Sweetwater Reservoir Urban Runoff Diversion System (URDS). In addition to facilities and properties in the upper and middle watershed, the Authority owns and manages many facilities located within its service area, including two water treatment plants, multiple well sites, and a distribution system that includes various tank sites, pump stations, and approximately 390 miles of transmission and distribution mains. The Authority also supports natural habitat and species protection, including management of the Sweetwater Reservoir Habitat Management Program (HMP), Skelton Habitat Mitigation Area (HMA), and the Sweetwater Reservoir Shoreline Fishing Program Conservation Easement Area (CEA) that serve as mitigation for various Authority projects.

Maintaining a reliable water supply that continues to meet the needs of its customers and complies with all state and federal drinking water and environmental regulations/laws are the main concerns of the Authority. The Authority is a Lead Agency under the California Environmental Quality Act (CEQA) and uses the CEQA review process as its primary environmental review mechanism for the analysis of proposed projects. Issues addressed during the CEQA review process include, but are not limited to, water supply and quality, hazardous materials, utilities and service systems, biological resources, cultural resources, aesthetics, air pollution, and transportation. The CEQA review process also helps identify mechanisms needed to comply with local, state, and federal laws and regulations, such as the federal Clean Water Act and the California Fish and Game Code, among others. Projects subject to federal approval or funding are also subject to the National Environmental Policy Act where a federal agency acts as the Lead Agency.

Some of the intended goals of the CEQA process are disclosing to decision makers and the public the potential impacts to the environment from proposed projects and developing strategies to avoid, minimize, or mitigate these impacts. The Authority develops carefully planned projects and solicits input from various individuals or groups through the environmental review process. These include the general public, local, state, and federal jurisdictional agencies, Native American Tribes, as well as community planning and special interest groups. Once an environmental review is complete, the Authority's decision-making body decides whether or not the proposed project should be approved and move forward.

In addition to CEQA, the Authority conducts all of its functions in compliance with regulatory requirements and is consistent with numerous federal and state regulations including, but not limited to, the federal and state Safe Drinking Water Acts, federal Clean Water Act, Clean Air Act, Migratory Bird Treaty Act, National Historic Preservation Act, federal and state Endangered Species Acts, Homeland Security Act, California Fish and Game Code, and California Water Code. The Authority also complies with local fire ordinances, which regulate activities such as vegetation clearing and brushing to reduce fire hazards and maintain emergency access. In addition, the Authority coordinates with other local agencies on a regular basis to be consistent with local ordinances, such as vector control conducted by the County of San Diego.

More information on the Authority can be found at www.sweetwater.org.

B. AGREEMENT EXECUTION AND RENEWALS

The selected Consultant will be expected to execute the Authority's standard Agreement for Services (Agreement). Exceptions to the Agreement should be noted in the proposal for consideration. A copy of the agreement is provided in Attachment A. All services shall be performed on a time and materials basis in accordance with the standard hourly rates as submitted by the Consultant and the terms of the Agreement. The Agreement will be in effect for one year and renewable for four subsequent years on an annual basis, for a total of five contract years, at the Authority's discretion.

Consultant's work will be authorized via a scope of work and/or individual task orders. Upon request by the Authority for a specific task order, the Consultant shall prepare a task order proposal that describes the scope of work including individual tasks, schedule, project team members, expected deliverables, total not-to-exceed project budget on a time and materials basis at rates specified in the Agreement, and any project-specific requirements or assumptions prior to commencement of work. The Consultant shall provide all labor, equipment, and materials necessary to complete the scope of services described in the executed Task Order (unless otherwise noted). The Authority will issue a written Notice-to-Proceed to the Consultant for the specific Task Order. On-call tasks will be performance based and the Authority will be under no obligation to the selected on-call consultant if another consultant is utilized outside of the on-call contract due to cost, availability, identified technical need, or performance issues.

The Authority's Water Quality Department will serve as the administrative lead on the proposed Agreement, and the scope of work and/or individual task orders will be assigned and coordinated by the Water Quality or Engineering department project managers as appropriate.

This RFQ does not commit the Authority to enter into an agreement for services, to pay any costs incurred in the preparation of proposals, or to procure or contract for services or supplies. The Authority reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified source, or to cancel in part or in its entirety this RFQ, if it is in the best interest of the Authority to do so. The Authority shall not be obligated to contract any or all of the requested services to the retained Consultant. Further, even upon execution of the Agreement, the selected Consultant(s) will not be guaranteed any work under the Agreement as services will only be requested as needed or as defined in an agreed upon Scope of Work.

C. CONSULTANT SCOPE OF WORK

This section provides the Consultant with examples of services that may be required during the term of the Agreement. However, the Authority offers no guarantee as to the quantity or type of work that will actually be requested. The Authority typically budgets about \$75,000 per year for these services; however, an annual fixed budget amount is not guaranteed, and no payment to the Consultant would be made in the absence of satisfactory work, as determined by the Authority, on an authorized Task Order.

Areas where consultant support could be required include the following:

- CEQA and NEPA Compliance –
 - Technical studies and surveys (biological, cultural, paleontological, air quality, greenhouse gases, land use, traffic, noise, visual, hydrology/water quality, etc.)
 - Tribal notification and compliance
 - Construction monitoring (biological, cultural, paleontological, noise, etc.)
 - Development and implementation of mitigation strategies (revegetation, construction monitoring, noise reduction, etc.)
 - Documentation (categorical exemptions, environmental assessments for NEPA documents, initial studies for negative declarations, mitigated negative declarations, or environmental impact reports, subsequent environmental documents, etc.)
- County of San Diego Major and Minor Use Permits and Modifications
- Wetland Delineations and California Rapid Assessment Method (CRAM) for wetlands and jurisdictional determinations.
- Clean Water Act Section 404 Nationwide Permits
- Clean Water Act Section 401 and Porter-Cologne Water Quality Act Water Quality Certifications (WQC) or WQC Waivers
- California Department of Fish and Wildlife (CDFW) 1600 Lake and Streambed Alteration Notifications and Agreements
- Programmatic Regulatory Permitting
- Focused Threatened and Endangered Species Surveys and/or Monitoring -
 - San Diego fairy shrimp
 - Quino checkerspot butterfly
 - Hermes copper butterfly
 - Light-footed clapper rail
 - Least Bell's vireo
 - Southwestern willow flycatcher
 - California gnatcatcher
 - Arroyo southwestern toad
 - Otay tarplant
 - San Diego ambrosia
 - San Diego thornmint
 - Prostrate navarretia
 - Otay mesa mint
 - San Diego button celery
- Federal and State Species Take Permitting, such as Habitat Conservation Plans, Section 7 Consultations, Incidental Take Permits, and Consistency Determinations
- Habitat Conservation Planning and Policy, including Mitigation Banking Assistance
- Preparation of Project Permit Compliance Reports (monitoring reports)
- Design, Preparation, and Implementation of Native Revegetation Plans.
- Geographic Information Systems (GIS) Map Production, Remote Sensing Image Analysis, and Database Development and Management
- Document Editing/Formatting and Production

D. PROPOSAL REQUIREMENTS

Proposals submitted by potential Consultants shall be concise, well organized and demonstrate the responder's experience applicable to the requirements of this RFQ. A proposal submitted in response to this RFQ shall be in the following order and shall include:

1. Introductory Letter: Describe firm's basic understanding of the Authority's request for On-Call Environmental Consulting Services and provide a statement regarding the qualifications of the firm.
2. Identification of Responder:
 - a. Provide legal name and address of company.
 - b. Provide legal form of company (partnership, corporation, joint venture, etc.).
 - c. Identify any parent companies.
 - d. Provide addresses of office(s) and number of employees.
 - e. Provide name, title, address, telephone number, and email of a person to contact concerning the proposal.
3. Financial Relationships Disclosure(s):
 - a. Identify all existing and past financial relationships between Consultant's firm and current members of the Authority's Governing Board and staff and entities for which said members are employed or have an interest, both past and present. If there are none, clearly state this.
 - b. Identify all existing and past financial relationships between Consultant's proposed sub-consultants and current members of the Authority's Governing Board and staff and entities for which said members are employed or have an interest, both past and present. If there are none, clearly state this.
 - c. For a list of the Authority's Governing Board members, see the following link:
<http://www.sweetwater.org/35/Governing-Board>

4. Required Qualifications: The following are the minimum required qualifications for proposers. Interested parties should not submit a proposal if they do not meet these required qualifications:
 - a. The Consultant's primary business or the primary business of a department within the Consultant's firm shall be in environmental consulting services, and shall have been in the business of environmental consulting for at least 5 years.
 - b. The Consultant shall provide a single Project Manager as the primary point of contact with the Authority. This Project Manager must have at least 5 years (total, with current firm or other employers) of experience in environmental consulting.
 - c. Provide a list of past and on-going qualifying projects for which the Consultant's services were or are similar to those described in this RFQ. Limit the list to no more than 10 projects the Consultant feels are most relevant to the RFQ. For each project, include the following:
 - A brief description of the project, date initiated, date completed (if applicable).
 - Name of owner and owner's project manager with contact information (e-mail and/or phone).
 - Identify role of the key personnel proposed for the Authority's On-Call Environmental Consulting Services. Describe any relevant certifications or permits held by each.
 - d. Present the experience of any sub-consultants in the same manner. If no sub-consultants are anticipated to support on-call scope items, please state so.
 - e. Provide evidence of the experience and competence of the Consultant's team proposed to provide On-Call Reverse Environmental Consulting Services.
5. Consultant's Organization and Key Personnel: Provide an organizational chart showing the relationship and titles of key personnel. Describe proposed Consultant's organization, including identification and responsibilities of key personnel and sub-consultants. For each of the key personnel, identify their main work location. Identify the Project Manager who will be responsible for the direct supervision and coordination of all work activities.

6. **Costs:** Provide costs in Portable Document Format (PDF), that include billing rates per hour for every person to work on the proposed project. Costs, including percent annual increase, shall be provided in a separate document from the proposal submittal with the file name titled "Billing Rates and Costs." For this proposal and contract the following position titles must be used. We understand these may not be the same job titles used by your company, but for comparison purposes we require these be used for this RFQ and contract. Also, any necessary deviations in job title and bill rate for a future Task Order, will be negotiated and approved by the Authority in advance.

Position	Hourly rate
On-call Project Manager	
Principal Environmental Analyst	
Senior Environmental Analyst	
Associate Environmental Analyst	
Assistant Environmental Analyst	
Principal Biologist	
Senior Biologist	
Associate Biologist	
Assistant Biologist	
Principal Cultural Analyst	
Senior Cultural Analyst	
Associate Cultural Analyst	
Assistant Cultural Analyst	
GIS Specialist	
GIS Technician	
Word Processor	
Technical Editor	
Percent annual increase	

7. **Exceptions to the RFQ:** The proposer shall certify that it takes no exceptions to this RFQ, including but not limited to the Authority's Professional Services Agreement

(Agreement), as attached in Attachment A. If the respondent does take exception(s) to any portion of the RFQ or Agreement, the specific portion of the RFQ or Agreement to which exception(s) is taken shall be identified and proposed alternative language shall be provided and explained in the proposal.

8. Proposal Authorization: The proposal shall be signed by an individual authorized to bind the Consultant and shall contain a statement to the effect that the submittal is in effect for ninety (90) days.
9. Proposal Submittal: Provide one electronic copy of the proposal and one electronic copy of the proposed billing rates and costs in PDF format. The PDF electronic copies of the proposal and billing rates and costs shall be submitted by email to the attention of Pete Famolaro at pfamolaro@sweetwater.org. If the file(s) containing the proposal are larger than 10 megabytes, send Mr. Famolaro an email no later than 5:00 p.m. on October 10, 2022 requesting a secure file transfer invitation using the Authority's secure file transfer system "SendIt". Proposals submitted after this deadline will not be considered.

Proposals in response to the RFQ are due to Mr. Pete Famolaro at pfamolaro@sweetwater.org by 5:00 p.m. on October 10, 2022. Proposals submitted after this deadline will not be considered.

E. CONSULTANT SELECTION PROCESS

The Authority will evaluate all proposals based on the evaluation criteria presented in this section, as well as other information obtained through background information and references.

The Authority's Governing Board might convene a Committee for consultant selection on this RFQ. The Committee is made up of three Governing Board Members assisted by Authority staff responsible for the evaluation, operation, and management of water treatment processes. Using the established evaluation criteria, the Governing Board or Committee will evaluate the proposals based on the firms' personnel and organization, experience, and other information included in the proposal. For firms that are deemed to be equally qualified, costs may be considered in the selection process. To determine the firm(s) deemed most qualified to perform the requested services, the Governing Board or Committee will evaluate responses to ensure the Consultant meets all required qualifications. Responses that do not meet all required qualifications may be rejected and not reviewed further. Those proposals that clearly show the firm meets all required qualifications will be evaluated further and scored based on the criteria listed below.

The Governing Board or Committee may choose to select a short list from the proposals received based on proposal evaluation, and conduct interviews of the short-listed firms. After the interviews, short-listed firms may be re-evaluated and ranked based upon the combined proposal/interview process or based solely on the interview process. The Authority reserves the

right to eliminate the interview step of the procurement process and reserves the right to cancel the RFQ process.

The evaluation criteria that will be used by the Governing Board or Committee are as follows:

Category	Maximum Points
Completeness of proposal in addressing requested information	20
Qualifications and experience of the Consultant's personnel assigned	25
Firm's experience relevant to the type of project being considered	25
Approach to complete tasks identified in the Scope of Work Section	30

F. CONSULTANT SELECTION SCHEDULE

1. Proposals must be received by the Authority's Water Quality Department NO LATER THAN 5:00 P.M., October 10, 2022. Proposals shall be delivered by email to the Authority's Biologist at pfamolaro@sweetwater.org.
2. Authority staff will evaluate the proposals and make a contract award recommendation.
3. Following award, an Agreement between the Authority and the selected Consultant will be executed and a Scope of Work will be issued.

If you have any questions regarding this RFQ or the described scope of work, please contact our Biologist, Pete Famolaro, at 619-409-6814 or by email at pfamolaro@sweetwater.org.

Sincerely,

SWEETWATER AUTHORITY



Pete Famolaro

Biologist

619-409-6814

pfamolaro@sweetwater.org

Enclosures: Attachment A: Draft Agreement for Services

Attachment A

Agreement for Services

**AGREEMENT FOR SERVICES
BETWEEN SWEETWATER AUTHORITY
AND**

[CLICK AND TYPE CONSULTANT NAME**]**

**AGREEMENT FOR SERVICES
BETWEEN SWEETWATER AUTHORITY**

[CLICK & TYPE CONSULTANT NAME**]**

This Agreement is made and entered into this day of 20 by and between SWEETWATER AUTHORITY (hereinafter referred to as the "Authority"), a joint powers agency operating under the Irrigation District Law, Water Code § 20500 et seq., and **[**CLICK & TYPE CONSULTANT NAME**]** (hereinafter referred to as "Consultant").

RECITALS

- A. The Authority is a public agency of the State of California and is in need of professional services for the following project: **[**CLICK & TYPE PROJECT NAME**]** (hereinafter referred to as "the Project").
- B. Consultant is duly licensed and has the necessary qualifications to provide such services.
- C. The parties desire by this Agreement to establish the terms for the Authority to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services

1.1 Consultant shall provide the Authority with the services described in the Scope of Services attached hereto as Exhibit "A" and by this reference incorporated herein ("Services"). Consultant warrants that it will perform the Services as set forth herein in a competent, professional and satisfactory manner.

1.2 At any time during the term of this Agreement, the Authority may request changes in the Scope of Services, and any such change shall be processed by the Authority in the following manner: a letter outlining the changes shall be forwarded to the Authority by Consultant with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by the Authority and executed by both parties before performance of such services or the Authority will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

2. Compensation

2.1 Subject to paragraph 2.2 below, the Authority shall pay for such Services in accordance with the Schedule of Charges set forth in Exhibit "B" and by this reference incorporated herein.

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****CLICK AND TYPE CONSULTANT NAME****

2.2 Unless otherwise provide herein, Consultant will perform services on a time and material basis. In no event shall the total amount paid for services rendered by Consultant pursuant to Exhibit "A" exceed the sum of \$****CLICK & TYPE AMOUNT****. Periodic payments shall be made within thirty (30) days of receipt of an undisputed statement for services rendered. Payments to Consultant for work performed will be made on a monthly billing basis.

2.3 Payment shall not constitute acceptance of any work completed by Consultant.

3. Time of Performance

3.1 Consultant shall perform its services hereunder in a prompt and timely manner, in accordance with the Activity Schedule shown in Exhibit "C," and shall commence performance upon receipt of the written Notice to Proceed from the Authority. The Notice to Proceed shall set forth the date of commencement of work. Consultant shall confer as requested with Authority representatives to review progress of work elements, adherence to work schedule, coordination of work, scheduling of review and resolution of problems which may develop.

3.2 Neither the Authority nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions, floods, earthquakes, fire, epidemics, war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances, sabotage, or judicial restraint.

3.3 Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

4. California Labor Code Requirements

4.1 Consultant is aware of the requirements of California Labor Code Sections 1720 et seq and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the Authority, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

4.2 If the services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project may also be subject to compliance

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monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

5. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

6. Insurance

****SWA RISK MANAGER TO REVIEW INSURANCE LIMITS PROJECT BY PROJECT BASIS**] ****ESPECIALLY THE REQUIREMENT THROUGHOUT TO MAINTAIN THE INSURANCE FOR "24 months following the effective date of the project completion"**.****

6.1 Minimum Insurance Requirements: Consultant shall procure and maintain for the duration of the contract and for a minimum of twenty-four (24) months following the date of the Project completion and acceptance by the Authority, 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, his agents, representatives, employees or sub-contractors.

6.2 Coverage: Coverage shall be at least as broad as the following:

6.2.1 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 the Authority) or the general aggregate limit shall be at least twice the required occurrence limit or Four million dollars (\$4,000,000).

(a) **Required Provisions**: The General Liability policy must contain, or be endorsed to contain, the following provisions:

(i) **Additional Insured Status**: Authority, 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.

(ii) **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 the Authority, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Authority its directors, officers, employees and

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authorized volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

6.2.2 **"**SWA RISK MANAGER TO DETERMINE IF NEEDED **"** Automobile Liability - 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.

6.2.3 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. By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this agreement.

(a) **Waiver of Subrogation:** The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in the favor of the Authority for all work performed by Consultant, its employees, agents and sub-consultants. The Insurer(s) agree to waive all rights of subrogation against the Authority, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of the policy which arise from work performed by the Consultant; but this provision applies regardless of whether or not the Authority has received a Waiver of Subrogation from the insurer.

6.2.4 Professional **"**SWA RISK MANAGER TO DETERMINE IF NEEDED **"** 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.

(a) **If Claims Made Policies:**

(i) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

(ii) Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**

(iii) 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.

6.2.5 **"**FOR TECHNOLOGY VENDOR-PROVIDERS **"** Cyber Liability Insurance (Technology Professional Liability – Errors and Omissions) - 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

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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.

6.3 Other Required Provisions

6.3.1 If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Authority 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 the Authority.

6.3.2 Policy limits shall not be less than the minimum limits described above. The limits of insurance required by this Agreement may be satisfied by a combination of primary, and umbrella or excess insurance. Each umbrella or excess policy shall follow the same provisions as the primary policy.

6.3.3 Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Authority its Board and each member of the Board, its officers, employees, agents, and the Authority's designated volunteers.

6.3.4 Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.3.5 Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Authority.

6.4 Deductibles and Self-Insured Retentions - Insurance deductibles or self-insured retentions must be declared to and approved by the Authority. The Authority may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6.4.1 At the election of the Authority, Consultant shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

6.4.2 Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Authority.

6.5 Acceptability of Insurers - Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California and maintain an agent for process within the state, unless waived, in writing,

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by the Authority Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A: VII or better, or as otherwise approved by the Authority Risk Manager.

6.6 Verification of Coverage - Consultant shall furnish the Authority with certificates (Acord Form 25 or equivalent) and amendatory endorsements, declarations page(s) listing all policy endorsements or copies of the applicable policy language effecting coverage required by this Agreement. Blanket endorsements are accepted with language that states "as required by contract". All certificates and endorsements are to be received and approved by the Authority before work commences.

6.6.1 Such evidence shall include the following:

(a) Additional insured endorsements with primary & non-contributory wording for each policy providing General Liability coverage

(b) Workers' Compensation waiver of subrogation

6.6.2 All of the insurance shall be provided on policy forms and through companies satisfactory to the Authority. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Authority reserves the right to obtain complete, certified copies of all required insurance policies, at any time.

6.7 Continuation of Coverage - Consultant shall, upon demand of the Authority deliver evidence of coverage showing continuation of coverage for **not less than 24 months for all policies, and not less than (5) years for claims made policies**, following the termination or completion of this Agreement. Consultant further waives all rights of subrogation under this agreement. When any of the required coverages expire during the term of this agreement, Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement and evidence of waiver of rights of subrogation against the Authority to the Authority at least ten (10) days prior to the expiration date. Failure to continually satisfy the Insurance requirements is a material breach of contract.

6.8 Sub-Consultants - In the event that Consultant employs other consultants (sub-consultants) as part of the work covered by this agreement, it shall be Consultant's responsibility to require, verify and confirm that each sub-consultant meets the minimum insurance requirements specified above. Consultant shall, upon demand of the Authority, deliver to the Authority copies such policy or policies of insurance and the receipts for payment of premiums thereon.

6.9 The Authority reserves the right to modify these insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other circumstances.

7. Indemnification

7.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of the Authority's choosing), indemnify and hold the Authority, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or

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persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys' fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Authority, its officials, officers, employees, agents, or volunteers.

7.2 To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the Authority, Consultant's obligations shall be reduced in proportion to the established comparative liability of the Authority and shall not exceed Consultant's proportionate percentage of fault.

8. Termination or Abandonment

8.1 The Authority has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, the Authority shall be immediately given title and possession to all original field notes, drawings and specifications, written reports, and other documents produced or developed for that portion of the work completed, and/or being abandoned. The Authority shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by the Authority and Consultant of the portion of such task completed but not paid prior to said termination. The Authority shall not be liable for any costs other than the charges or portions thereof, which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

8.2 Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to the Authority only in the event of substantial failure by Authority to perform in accordance with the terms of this Agreement through no fault of Consultant.

9. Compliance with All Laws.

9.1 Consultant shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9.2 Consultant will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). All documents (including but not limited to plans, specifications, and other technical documents, if applicable) prepared by Consultant pursuant to this Agreement shall be compliant with all applicable requirements of the ADA.

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9.3 Consultant shall assist the Authority in obtaining and maintaining all permits required by federal, state, and local regulatory agencies.

9.4 Consultant is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its services or operations performed under this Agreement.

10. Organization

Consultant shall assign "[**CLICK & TYPE PM NAME**]" as the Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the Authority.

11. Maintenance of Records

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement for inspection by the Authority.

12. Job Site Responsibility.

If the services covered by this Agreement involve a construction phase of the Project, the Authority agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the Project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. Consultant shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences, or procedures, as these are solely the responsibility of the construction contractor.

13. Assignment and Subconsultants

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Authority, which may be withheld for any reason. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

14. Conflicts of Interest

Identify all existing and past financial relationships (including consulting agreements) between "[**CLICK & TYPE CONSULTANT NAME**]" and members of the Authority's Governing Board, and entities for which said members are employed, or have an interest, both past and present.

15. General Provisions

15.1 Independent Consultant. Consultant is retained as an independent consultant and is not an employee of Authority. No employee or agent of Consultant shall become an employee

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of the Authority. The work to be performed shall be in accordance with the work described in Exhibit "A," subject to such directions and amendments from the Authority as herein provided.

15.2 Notice. All notices permitted or required under this Contract shall be given at the following address, or at such other address as the parties may provide in writing for this purpose:

Authority:
SWEETWATER AUTHORITY
505 Garrett Ave
Chula Vista, CA 91910
Attn:
****CLICK & TYPE MANAGER****

Consultant:
****CLICK & TYPE ADDRESS****
****CLICK & TYPE COMPANY****
Attn: ****CLICK & TYPE CONTACT****

The parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

15.3 Severability. The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render other provisions of this Agreement unenforceable, invalid or illegal.

15.4 Integration. This Agreement represents the entire understanding of the Authority and the Consultant as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties hereto. This is an integrated Agreement.

15.5 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

15.6 Time is of the Essence. Time shall be of the essence as to all dates and times of performance contained in this Agreement.

15.7 Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Authority and Consultant.

15.8 Disputes. If any disputes should arise between the Parties concerning the work to be done under this Agreement, the payments to be made, or the manner of accomplishment of the work, Consultant shall nevertheless proceed to perform the work as directed by the Authority pending settlement of the dispute.

15.9 Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties,

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the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, as determined by the court.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SWEETWATER AUTHORITY

****CLICK & TYPE NAME****

By: _____

By: _____
(Authorized Representative of Consultant)

Name: Carlos Quintero

Name: ****CLICK & TYPE NAME****

Title: General Manager

Title: ****CLICK & TYPE TITLE****

Dated: _____

Dated: _____

Approved as to form: (only required when contract template is modified)

Paula C. P. de Sousa

Legal Counsel

SWEETWATER AUTHORITY

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EXHIBIT "A"

SCOPE OF WORK

****CLICK & INSERT PROPOSED SCOPE OF WORK****

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EXHIBIT "B"

SCHEDULE OF CHARGES

EXHIBIT "C"
ACTIVITY SCHEDULE