

REGIONAL SMART CONTROLLER PROGRAM

REQUEST FOR PROPOSALS

Regional Water Authority
5620 Birdcage Street, Suite 180
Citrus Heights, California 95610

Proposals Due By 4:00 PM, May 9, 2019



Regional Smart Controller Program Request for Proposal

<p>General Program Information</p>	<p>The Regional Water Authority (RWA) is seeking support for the implementation of a Regional Smart Controller Program (Program). Situated in the central valley of California, the Sacramento region’s residential outdoor water use is estimated to be between 50-60% of a household’s total use. The goal of the Program is to convert higher water use households to more water efficient households through the installation of smart controllers to manage outdoor water use. The Program timeline is June 2019-March 2020 with an opportunity to extend further into 2020 and beyond, pending RWA approval and available funding. Currently funding for the Program is \$110,000. There may be additional opportunities to expand the Program into other parts of northern California, in partnership with RWA, pending partner water agency approval and available funding. These partner water agencies could include the Bay Area Water Supply & Conservation Agency (BAWSCA) and its 26 member agencies (BAWSCA Member Agencies) and Sonoma Water and its contractors (9 cities and special districts).</p> <p>RWA is seeking responses from Consultants for the following tasks:</p> <ol style="list-style-type: none"> 1. Provide Program design and administration framework, including an online platform to facilitate RWA’s Program oversight and management 2. Provide marketing, online sign up platform, customer assistance, and training and installation services necessary to implement a “turnkey” multiagency smart controller program. 3. Develop and provide Program evaluation metrics 4. Provide Program status and completion reports
<p>Disclaimer</p>	<p>The RWA reserves the right to modify the anticipated timeline set forth below. There will be no public opening of proposals. The RWA reserves the right to reject any and all proposals, cancel all or part of this Request for Proposals (RFP), waive any minor irregularities and to request additional information from proposing Consultants. This RFP does not obligate the RWA to award a contract. <u>There is no expressed or implied obligation for the RWA to reimburse responding Consultants for any expenses incurred in preparing proposals in response to this request.</u></p> <p>To be considered, three bound copies of the submittal and one unbound copy must be received by the principal contact listed below by 4:00 p.m. on Thursday, May 9, 2019. The RWA reserves the right to reject any or all submittals after the deadline.</p>
<p>RWA Profile</p>	<p>The RWA was formed in 2001 as a joint powers authority that represents the interests of over 21 water providers and associated agencies, serving 2 million people in the greater Sacramento, Placer, El Dorado, Sutter, and Yolo Counties</p>

	<p>Region (Attachment A & B). The RWA's vision includes effectively managing water resources to provide high quality water supplies to the public at a reasonable cost and to promoting a sustainable environment. Other RWA goals include supporting and implementing the objectives of the Sacramento Area Water Forum to preserve American River environmental values and ensure a reliable water supply through the year 2030. RWA is governed by a Board of Directors comprised of two representatives from each of the member agencies. The representatives are appointed by the member agencies. For more information, visit the RWA website at www.rwah2o.org.</p>						
<p>Principal Contact</p>	<p>The principal contact with the RWA will be: Amy Talbot, Senior Program Manager 5620 Birdcage Street, Suite 180 Citrus Heights, California, 95610 Phone: (916) 967-7692 Email: Amy Talbot atalbot@rwah2o.org</p>						
<p>RFP Timeline</p>	<table border="1"> <tr> <td data-bbox="440 856 1536 898">April 11, 2019 Distribution of RFP</td> </tr> <tr> <td data-bbox="440 898 1536 940">May 9, 2019 RFP filing deadline-must be received by RWA by 4:00 p.m.</td> </tr> <tr> <td data-bbox="440 940 1536 982">May 13-17, 2019 RWA review of RFPs</td> </tr> <tr> <td data-bbox="440 982 1536 1024">May 22, 2019 Pending RWA Executive Committee Approval</td> </tr> <tr> <td data-bbox="440 1024 1536 1066">May 23, 2019 RWA notifies selected Consultant</td> </tr> <tr> <td data-bbox="440 1066 1536 1100">June 2019 Contract signed and Program begins</td> </tr> </table>	April 11, 2019 Distribution of RFP	May 9, 2019 RFP filing deadline-must be received by RWA by 4:00 p.m.	May 13-17, 2019 RWA review of RFPs	May 22, 2019 Pending RWA Executive Committee Approval	May 23, 2019 RWA notifies selected Consultant	June 2019 Contract signed and Program begins
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Scope of Services

The RWA is soliciting qualified Consultants to implement the following Program and Tasks:

Nature of Services	<p><u>Program Description:</u></p> <p>The Regional Water Authority (RWA) is seeking support for the implementation of a Regional Smart Controller Program (Program). Situated in the central valley of California, the Sacramento region’s residential outdoor water use is estimated to be between 50-60% of a household’s total use. The goal of the Program is to convert higher water use households to more water efficient households through the installation of smart controllers to manage outdoor water use. The Program timeline is June 2019-March 2020 with an opportunity to extend further into 2020 and beyond, pending RWA approval and available funding. Currently funding for the Program is \$110,000. There may be additional opportunities to expand the Program into other parts of northern California, in partnership with RWA, pending partner water agency approval and available funding. For this Program, smart controller is defined as a weather-based irrigation controller that uses current weather data to properly adapt irrigation schedules.</p> <p>RWA is seeking responses from Consultants that can perform the following tasks. Tasks may be modified throughout the Program time period on the approval of both RWA and the selected Consultant.</p> <p>TASK 1. Program Design and Administrative Framework</p> <p>Program Design: Consultant will work with RWA staff to design a Smart Controller Program that will fit the needs of RWA and its member water agencies. Design includes the selection of smart controllers to be offered through the Program, associated customer costs (if any) and customer target audience.</p> <ul style="list-style-type: none">• Smart controllers distributed through the Program must be certified by the United States Environmental Protection Agency (USEPA)’s WaterSense Program (www.epa.gov/watersense/irrigation-controllers). Other controller features must include an optional associated mobile phone application, ability to program customized irrigation zones and watering days and a noninvasive installation process. Some participating agencies may choose to add in additional irrigation related devices such as high efficiency sprinkler nozzles to compliment the controller and increase water savings. All products distributed/installed through this Program must be WaterSense labeled, if applicable. Estimated cost per controller is required in Attachment C.• RWA is open to considering a variety of customer cost scenarios including 100% RWA funded and cost share (customer and RWA funded) options, with the understanding the RWA has a limited budget. RWA encourages the submitting Consultants to propose Program funding ideas based on previous experience/observations, customer satisfaction ratings and
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customer participation research. Proposal should also include a Program design option that allows for different customer cost scenarios among participating cities and water providers for continued participation of RWA agencies beyond the initial \$110,000 funding and for additional participation from potential multiregional partners. For example, controllers may be partially funded for some service areas and entirely funded for others.

- Consultant will work with RWA to define and identify the ideal **customer target audience** in the region. RWA prefers to focus on high water use customers. Definitions of high water use customers may vary between participating RWA member water agencies and partnering agencies.

Administrative Framework: Consultant must provide RWA with a web-based online platform to provide information on the number of active controllers in the region, irrigation schedules, and respective water agency for each controller location. Exact location and customer data is not needed. The platform will be used by RWA to provide monthly Program updates to water agency members and will be included in any related reports. Ideally summary information would be easily downloadable from the online platform in excel or PDF format.

TASK 2. Customer Focus

Marketing: Consultant will work with RWA staff and member agencies to refine customer target audience and provide a marketing plan to reach the identified audience. The marketing plan will include a variety of direct and digital marketing strategies to promote customer installation of smart controllers and may include email and social media campaigns, neighborhood based groups and/or referral programs. Consideration will also be given for those customers that may not have access to digital resources or prefer more traditional outreach methods like flyers and postcards. Marketing efforts should reflect available Program budget.

Customer Assistance: Consultant will provide a service telephone number to field customer questions regarding the Program. This telephone number will be included on all printed and digital outreach materials. Customer inquiries to the phone line will be returned within 24 hours. The telephone number will remain active for the full duration of the Program unless agreed otherwise by RWA and Consultant.

Customer Eligibility: Consultant will work with RWA to develop an online customer sign up portal/website to confirm customer eligibility according to RWA Program rules and regulations. Eligibility requirements have not been determined yet but may include location/address, account number verification, approved landscape irrigation audit, and/or water use thresholds.

Product Warranty: Consultant will provide a minimum of one year product warranty for all smart controllers and other devices distributed or installed through the Program. Warranty may be a manufacturer's warranty. Information about the warranty will be provided to the customers upon delivery/installation of the smart controller and/or other devices.

Participation/Sign Up: Consultant must provide an online customer sign up portal/website for the Program. Portal must be able to verify customer information, allow customer to select products for purchase/rebate, accept customer payments (as needed), allow for customer sign up for optional installation services, and provide some level of customer support with Program questions. Portal must be user and mobile friendly. Customer interface portal should allow for clear delineation of program options available based on customer's address and/or water agency.

Installation: Consultant will acquire, train, and manage installation professionals that will perform work in RWA member service areas for the duration of the Program. Through the online platform, customers will have the option to receive a controller (and potentially other devices) via mail and customers can also select to have the controller installed for a fee. Consultant may also provide an option for customers to have an on-site irrigation system audit. Fee for controller installation and/or irrigation audit may be partially paid by RWA/participating water agency or may be solely paid by the customer desiring such services. Fee structure for installation and irrigation audit may vary by city or water provider. Consultant is solely responsible for all liability from installations on customers' properties and will develop and collect liability forms from all customers choosing installation services. Consultant will confirm that installation professionals have the required training and licensing to perform installations for controller and additional devices. Consultant will track and submit data to RWA listing customers that participated in installation services. Estimated fee per installation is required in Attachment C.

Training: Consultant will design and provide two in-person customer training sessions throughout the Program timeframe. The training sessions serve two purposes: 1) to provide customers with additional information about operating and maintaining their smart controller; and 2) to provide water agency staff additional information on how to assist customers with questions about smart controllers over time. Sessions will be held in geographically diverse, publicly accessible locations in the region in partnership with RWA and member water agencies. Consultant will also provide an online training session (webinar or similar format) that can be accessed by customers, RWA, and partner agencies outside of the training sessions in perpetuity. Consultant will also provide an educational handout with every smart controller distributed through the Program. Content of the handout will be approved by both Consultant and RWA.

	<p>TASK 3. Evaluation Metrics</p> <p>Consultant will provide options for tracking and evaluating Program participation for the entire regional Program as well as by individual participating water agency. Metrics may include post installation/participating customer satisfaction survey. Metrics will be approved by RWA Program Manager and will be included in Program Status and Completion Reports (Task 4). Metrics may be changed during the Program timeframe to respond to changing Program needs. Real time online downloadable summary of metrics is preferred.</p> <p>TASK 4. Program Status and Completion Reports</p> <p>Consultant will provide RWA with Program status reports on a quarterly basis and one final completion report at the end of the Program. Reports will include but are not limited to the following: participating water customers information, number and type of controllers and/or irrigation equipment distributed and/or installed, type of controller removed from customer’s residence (if installation services were provided), incurred Program costs, customer complaints (if any), etc. Consultant will work with RWA to define report outline prior to Program start. Report outline may be modified during the Program timeframe to meet unforeseen reporting needs.</p>
<p>Program Expansion Opportunities</p>	<p>Several other regional and wholesaler agencies in northern California may be interested in participating in this Program. Consultant should brainstorm and present potential management options in the RFP response to incorporate other regional/wholesaler agencies. RWA would serve as the Program lead for any expansion efforts and the partner agencies would enter into an agreement with RWA to piggyback on the contract resulting from this solicitation. Consultant should incorporate the following considerations into their proposal:</p> <ul style="list-style-type: none"> • How would your company expand the requested RWA services (administrative framework, customer portal, installation services, marketing, etc.) to other agencies? • What services are customizable for other participating agencies? Selection of products? • List benefits from expanding the Program beyond the RWA member service areas. Potential to offer discounts for product and services? • List potential challenges from expanding the Program beyond the RWA member service areas. <p>Potential partners include: BAWSCA and the BAWSCA Member Agencies and Sonoma Water and its contractors.</p>

Program Timeline	RWA is anticipating a 10 month Program timeline, with the option to extend based upon funding availability and customer participation rates at RWA's discretion.
Invoicing	RWA will process submitted and approved (by RWA Program Manager and RWA Executive Director) invoices at or within 30 days.
Program Advisory Committee	Throughout the Program, selected Consultant may be expected to provide Program updates and/or presentations to the RWA Regional Water Efficiency Program Advisory Committee (RWE PAC), as necessary. The RWE PAC includes one or more water efficiency related staff representatives from each RWA member water agency. Water efficiency representatives from partner water agencies may also be invited to participate in the RWE PAC meetings. Consultant should prepare for and attend at least one RWE PAC meeting in person. Meetings will be primarily held at the RWA office in Citrus Heights, California.
Attachments	<ul style="list-style-type: none"> A. Map of RWA Member Water Agencies B. General Information about RWA Member Water Agencies C. RWA standard Services Agreement. D. Fee Schedule Chart (REQUIRED for RFP submission)

Submittal Process and Evaluation

<p>Proper Completion and Submission of RFP</p>	<p>To be considered, each Consultant submitting qualifications must provide, by the filing deadline, three complete bound paper copies of its qualifications plus one complete unbound copy to RWA’s principal contact shown above. Submittals must be mailed or hand delivered to the RWA office. The Consultant may also additionally choose to provide an electronic copy of the proposal via email to RWA’s principal contact. Late submissions or delivery only via e-mail will not be considered. The RWA reserves the right to reject any or all submittals.</p>
<p>Rights to Submitted Materials</p>	<p>RWA reserves the right to retain all submittals. Submission of qualifications indicates acceptance by the Consultant of the conditions contained in this request, unless exceptions are clearly and specifically noted in the submittal and in the proposed contract between the RWA and the Consultant selected.</p>
<p>Changes to RFP</p>	<p>RWA will send any changes to this RFP to each Consultant to whom an RFP notification has been sent and will be posted on the RWA website. Such changes become an integral part of the RFP for incorporation into any contract awarded pursuant to the RFP.</p>
<p>Inquiries to RFP</p>	<p>Please first submit any inquiries or requests for clarification concerning the RFP via email to RWA’s principal contact. Answers to inquiries will be returned via email. Answers to any inquiries that are of a general nature will also be distributed to other Consultants that were sent this RFP and posted on the RWA website.</p>
<p>Evaluation of RFP</p>	<p>Submittals will be considered by a selection team consisting of RWA staff and representatives of participating RWA and partner water agencies. Submittals will be evaluated on a combination of factors that will be assigned point values up to the total amounts indicated in the following criteria: the Consultant profile (10 points), staff qualifications (15 points), past experience and references (20 points), Program tasks (30 points), fee schedule (10 points), multiregional approach proposal (10 points), and overall proposal quality (5 points). There is a maximum possible score of 100 points. The criteria are further described in the “Submittal Requirements” section below.</p> <p>During the evaluation process, the selection team, RWA management and/or RWA Board of Directors reserve the right, where it may serve the RWA's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions.</p>

Additional Information

<p>Award of Contract</p>	<p>RWA’s selection of a Consultant will be completed by May 23, 2019. Following the notification of the selected Consultant, it is expected that a contract will be executed between RWA and the selected Consultant in June pending RWA Executive Committee and/or Board approval.</p>																		
<p>Term of Engagement</p>	<p>The contract term is expected to run from June 2019 until March 2019, with the potential to extend further into 2020 and beyond, pending additional funding and partners. The contract term may be modified based on selected final scope of work.</p>																		
<p>Subcontracting</p>	<p>If a proposer intends to subcontract any of the work in its proposal, that fact, the name of the proposed subcontracting Consultant(s), and the work to be performed by each subcontractor must be clearly identified in the proposal. Subcontractors must have prior experience with similarly scoped programs.</p>																		
<p>Insurance</p>	<p>The selected Consultant will maintain in full force and effect throughout the term of the services contract the following insurance coverage:</p> <table border="1" data-bbox="492 926 1528 1394"> <thead> <tr> <th><i>Type</i></th> <th><i>Limits</i></th> <th><i>Scope</i></th> </tr> </thead> <tbody> <tr> <td>Commercial general liability</td> <td>\$2,000,000 per occurrence & \$5,000,000 aggregate</td> <td>at least as broad as ISO CG 0001</td> </tr> <tr> <td>Automobile liability</td> <td>\$2,000,000 per accident</td> <td>at least as broad as ISO CA 0001, code 1 (any auto)</td> </tr> <tr> <td>Workers’ compensation</td> <td>Statutory limits</td> <td></td> </tr> <tr> <td>Employers’ liability</td> <td>\$1,000,000 per accident</td> <td></td> </tr> <tr> <td>Professional liability*</td> <td>\$1,000,000 per claim</td> <td></td> </tr> </tbody> </table> <p>*Required only if Consultant is a licensed engineer, land surveyor, geologist, architect, doctor or attorney.</p>	<i>Type</i>	<i>Limits</i>	<i>Scope</i>	Commercial general liability	\$2,000,000 per occurrence & \$5,000,000 aggregate	at least as broad as ISO CG 0001	Automobile liability	\$2,000,000 per accident	at least as broad as ISO CA 0001, code 1 (any auto)	Workers’ compensation	Statutory limits		Employers’ liability	\$1,000,000 per accident		Professional liability*	\$1,000,000 per claim	
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Professional liability*	\$1,000,000 per claim																		
<p>Other Agreement Terms</p>	<p>Proposers are strongly recommended to review the attached standard RWA consulting agreement (Attachment D) for additional requirements of RWA contractors. This agreement must be executed before Program work can begin.</p>																		

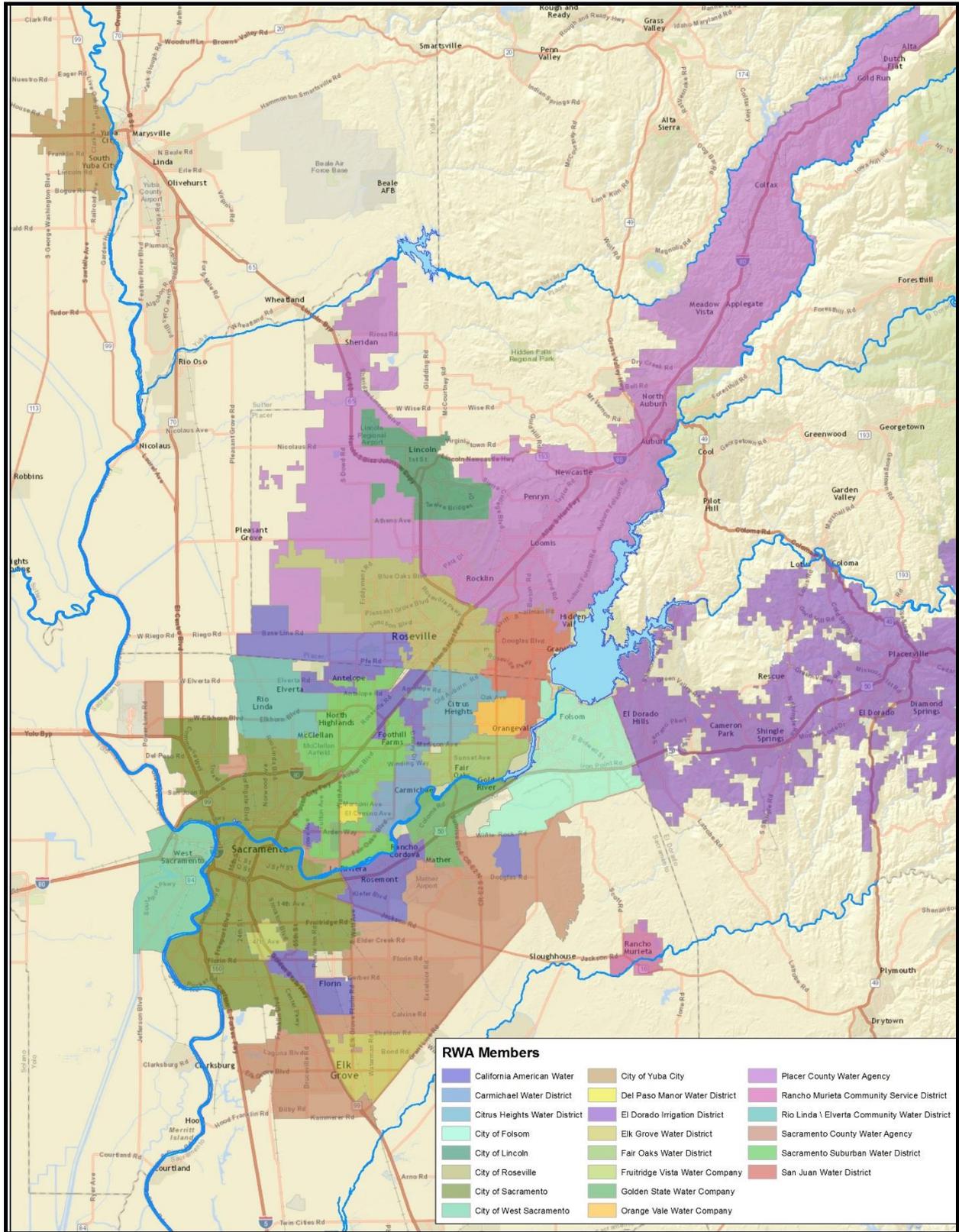
Submittal Requirements

In order to facilitate the comparison of submittals from competing Consultants and to assist the selection team with the review process, Consultants are required to organize their submittals in accordance with the following order and substance.

Title Page	State the RFP subject (Regional Smart Controller Program), name of the Consultant, local address, email, and telephone number of the Consultant’s primary contact person, and the date of the proposal.
Table of Contents	The table of contents of the submittal should include a clear and complete identification of the materials submitted by section and page number.
Consultant Profile	Include staffing size of your business, your business’s client base (i.e. local, regional, statewide, etc.), the location of the office from which the work will be done and the staffing capacity for that office. Include a statement on your business’s capability to support the proposed work.
Staff Qualifications	Identify all staff (managers, supervisors and specialists), including primary point-of-contact, who would be assigned to the Program. Clearly identify the Program manager and his or her availability to manage the Program between June 2019 and March 2020. Specifically discuss program administration, technical skills, communication style, and other skills necessary to perform this Program. Any subcontractors should be identified both in name/company and scope.
Past Experience and References	List a minimum of two and a maximum of five similar recent engagements performed. Indicate the scope of work, date, engagement partner(s), total hours, and the name and telephone number of the principal client contact. Maximum of one page per engagement.
Program Tasks	<p>Consultant must provide a detailed description of how each task, described in RFP, will be accomplished.</p> <ul style="list-style-type: none"> • Task 1: Program Design and Administrative Framework • Task 2: Customer Focus • Task 3: Evaluation Metrics • Task 4: Program Status and Completion Reports <p>Program timeline that corresponds to each Program Task must be included in this section.</p>
Fee Schedule	Payments will be made on a number of services (per controller/installation) basis provided during the course of the engagement and direct expenses (staff, etc.) incurred while completing each Task (#1-4) at a monthly time step. Costs provided should reflect billing rates for the duration of the Program through

	<p>March 2020. Please note that per diem expenses will not be allowable expenses for this Program. Attachment C: Fee Schedule Chart is a required document and must be included in the proposal in this section.</p>
<p>Multiregional Approach</p>	<p>Include proposal for expanding Program beyond the RWA member service area as described in the Scope of Services section. Program expansion to other agencies in northern California is not guaranteed either in scope or additional funding and may not be included in final RWA scope and contract.</p>
<p>Proof of Insurance</p>	<p>Consultant must provide proof of insurance as described in the RFP. If Consultant does not currently have proof of insurance, describe timeline for acquiring required insurance coverages prior to June 2019.</p>

ATTACHMENT A



ATTACHMENT B

	Water Supplier	Population	Connections	Area (Sq. Miles)
1	California American Water	203,851	59,946	54
2	Carmichael Water District	37,897	11,871	9
3	Citrus Heights Water District	65,093	19,513	13
4	City of Folsom	67,323	19,040	36
5	City of Lincoln	47,339	17,768	20
6	City of Roseville	129,262	39,452	43
7	City of Sacramento	493,025	137,800	99
8	City of West Sacramento	53,082	13,480	23
9	City of Yuba City	73,202	18,732	16
10	Del Paso Manor Water District	5,000	1,797	1
11	El Dorado Irrigation District	110,950	39,891	232
12	Elk Grove Water District	44,874	12,302	13
13	Fair Oaks Water District	36,226	13,817	10
14	Golden State Water Company	53,893	16,891	13
15	Orange Vale Water Company	16,754	5,531	5
16	Placer County Water Agency	101,530	44,242	260
17	Rancho Murieta Community Services District	5,488	2,614	6
18	Rio Linda/Elverta Community Water District	14,102	4,615	17
19	Sacramento County Water Agency	182,603	54,872	109
20	Sacramento Suburban Water District	179,031	46,661	36
21	San Juan Water District	29,551	10,365	17
	Regional Total	1,950,076	591,200	1,032

ATTACHMENT C

Fee Schedule

Task	Cost*
Task 1: Program Design and Administrative Framework	\$
Staff	
Other	
Task 2: Customer Focus	\$
Staff	
Other	
Task 3: Evaluation Metrics	\$
Staff	
Other	
Task 4: Program Status and Completion Reports	\$
Staff	
Other	
Miscellaneous Costs: Please specify, if applicable.	\$
Total	\$
*Costs should include staff and administration expenses only associated with each Task. Individual controller and installation costs are requested separately below.	

Equipment/Service	Cost
Cost per irrigation controller	\$
Cost per irrigation controller installation	\$

Additional information:

ATTACHMENT D

REGIONAL WATER AUTHORITY SERVICES AGREEMENT

THIS AGREEMENT is entered into as of the date last signed and dated below by and between Regional Water Authority, a public agency (“Authority”), and _____, a _____ [Insert type and jurisdiction of entity] (“Contractor”), who agree as follows:

1. Scope of Work. Contractor shall perform the work and render the services described in the attached Exhibit A (the “Work”). Contractor shall provide all labor, services, equipment, tools, material and supplies required or necessary to properly, competently and completely perform the Work. Contractor shall determine the method, details and means of doing the Work.

2. Payment.

a. Authority shall pay to Contractor a fee based on **[check one]**:

___ Contractor’s time and expenses necessarily and actually expended or incurred on the Work in accordance with Contractor’s fee schedule on the attached Exhibit A.

___ The fee arrangement described on the attached Exhibit A.

The total fee for the Work shall not exceed \$_____ **[delete this sentence if not applicable]**. There shall be no compensation for extra or additional work or services by Contractor unless approved in advance in writing by Authority. Contractor’s fee includes all of Contractor’s costs and expenses related to the Work.

b. At the end of each month, Contractor shall submit to Authority an invoice for the Work performed during the preceding month. The invoice shall include a brief description of the Work performed, the dates of Work, number of hours worked and by whom (if payment is based on time), payment due, and an itemization of any reimbursable expenditures. If the Work is satisfactorily completed and the invoice is accurately computed, Authority shall pay the invoice within 30 days of its receipt.

3. Term.

a. This Agreement shall take effect on the above date and continue in effect until completion of the Work, unless sooner terminated as provided below. Time is of the essence in this Agreement. If Exhibit A includes a Work schedule or deadline, then Contractor must complete the Work in accordance with the specified schedule or deadline, which may be extended by Authority for good cause shown by Contractor. If Exhibit A does not include a Work schedule or deadline, then Contractor must perform the Work diligently and as expeditiously as possible, consistent with the professional skill and care appropriate for the orderly progress of the Work.

b. This Agreement may be terminated at any time by Authority upon 10 days advance written notice to Contractor. In the event of such termination, Contractor shall be fairly

compensated for all work performed to the date of termination as calculated by Authority based on the above fee and payment provisions. Compensation under this subsection shall not include any termination-related expenses, cancellation or demobilization charges, or lost profit associated with the expected completion of the Work or other such similar payments relating to Contractor's claimed benefit of the bargain.

4. Professional Ability of Contractor. Contractor represents that it is specially trained and experienced, and possesses the skill, ability, knowledge and certification, to competently perform the Work provided by this Agreement. Authority has relied upon Contractor's training, experience, skill, ability, knowledge and certification as a material inducement to enter into this Agreement. All Work performed by Contractor shall be in accordance with applicable legal requirements and meet the standard of care and quality ordinarily to be expected of competent professionals in Contractor's field.

5. Conflict of Interest. Contractor (including principals, associates and professional employees) represents and acknowledges that (a) it does not now have and shall not acquire any direct or indirect investment, interest in real property or source of income that would be affected in any manner or degree by the performance of Contractor's services under this agreement, and (b) no person having any such interest shall perform any portion of the Work. The parties agree that Contractor is not a designated employee within the meaning of the Political Reform Act and Authority's conflict of interest code because Contractor will perform the Work independent of the control and direction of the Authority or of any Authority official, other than normal contract monitoring, and Contractor possesses no authority with respect to any Authority decision beyond the rendition of information, advice, recommendation or counsel.

6. Contractor Records.

a. Contractor shall keep and maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records and documents evidencing or relating to the Work and invoice preparation and support for a minimum period of three years (or for any longer period required by law) from the date of final payment to Contractor under this Agreement. Authority may inspect and audit such books and records, including source documents, to verify all charges, payments and reimbursable costs under this Agreement.

b. In accordance with California Government Code section 8546.7, the parties acknowledge that this Agreement, and performance and payments under it, are subject to examination and audit by the California State Auditor for three years following final payment under the Agreement.

7. Ownership of Documents. All works of authorship and every report, study, spreadsheet, worksheet, plan, design, blueprint, specification, drawing, map, photograph, computer model, computer disk, magnetic tape, CAD data file, computer software and any other document or thing prepared, developed or created by Contractor under this Agreement and provided to Authority ("Work Product") shall be the property of Authority, and Authority shall have the rights to use, modify, reuse, reproduce, publish, display, broadcast and distribute the Work Product and to prepare derivative and additional documents or works based on the Work Product without further compensation to Contractor or any other party. Contractor may retain a copy of any Work Product and use, reproduce, publish, display, broadcast and

distribute any Work Product and prepare derivative and additional documents or works based on any Work Product; provided, however, that Contractor shall not provide any Work Product to any third party without Authority's prior written approval, unless compelled to do so by legal process. If any Work Product is copyrightable, Contractor may copyright the same, except that, as to any Work Product that is copyrighted by Contractor, Authority reserves a royalty-free, nonexclusive and irrevocable license to use, reuse, reproduce, publish, display, broadcast and distribute the Work Product and to prepare derivative and additional documents or works based on the Work Product. If Authority reuses or modifies any Work Product for a use or purpose other than that intended by the scope of work under this Agreement, then Authority shall hold Contractor harmless against all claims, damages, losses and expenses arising from such reuse or modification. For any Work Product provided to Authority in paper format, upon request by Authority at any time (including, but not limited to, at expiration or termination of this Agreement), Contractor agrees to provide the Work Product to Authority in a readable, transferable and usable electronic format generally acknowledged as being an industry-standard format for information exchange between computers (e.g., Word file, Excel spreadsheet file, AutoCAD file).

8. *[This section can be deleted (and all subsequent sections renumbered) if the Authority will not provide any confidential information to the Contractor.]*
Confidentiality of Information.

a. Contractor shall keep in strict confidence all confidential, privileged, trade secret, and proprietary information, data and other materials in any format generated, used or obtained by the Authority or created by Contractor in connection with the performance of the Work under this Agreement (the "Confidential Material"). Contractor shall not use any Confidential Material for any purpose other than the performance of the Work under this Agreement, unless otherwise authorized in writing by Authority. Contractor also shall not disclose any Confidential Material to any person or entity not connected with the performance of the Work under this Agreement, unless otherwise authorized in advance in writing by Authority. If there is a question if Confidential Material is protected from disclosure or is a public record or in the public domain, the party considering disclosure of such materials shall consult with the other party concerning the proposed disclosure.

b. Contractor, and its officers, employees, agents, and subcontractors, shall at all times take all steps that are necessary to protect and preserve all Confidential Material. At no time shall Contractor, or its officers, employees, agents, or subcontractors in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any Confidential Material to any person or entity unless specifically authorized in writing by the Authority or by order of a court or regulatory entity with jurisdiction over the matter. Contractor, and its officers, employees, agents, and subcontractors shall protect the Confidential Material and treat it as strictly confidential in accordance with applicable law, Authority policies and directives, and best industry security practices and standards.

c. If any person or entity, other than Authority or Contractor, requests or demands, by subpoena, discovery request, California Public Records Act request or otherwise, Confidential Material or its contents, the party to whom the request is made will immediately notify the other party, so that the parties may collectively consider appropriate steps to protect the disclosure of those materials. The parties agree to take all steps reasonably necessary to preserve the confidential and privileged nature of the Confidential Material and its content.

In the event that the parties cannot agree whether to oppose or comply with a disclosure demand, the opposing party may oppose the demand at its sole cost and expense, in which event the party favoring disclosure will refrain from disclosing the demanded Confidential Material until such time as a final agreement regarding disclosure is reached or, if an agreement is not reached, a judicial determination is made concerning the demand.

d. Unless otherwise directed in writing by the Authority, upon contract completion or termination, Contractor must destroy all Confidential Materials (written, printed and/or electronic) and shall provide a written statement to the Authority that such materials have been destroyed.

9. Compliance with Laws.

a. General. Contractor shall perform the Work in compliance with all applicable federal, state and local laws and regulations. Contractor shall possess, maintain and comply with all federal, state and local permits, licenses and certificates that may be required for it to perform the Work. Contractor shall comply with all federal, state and local air pollution control laws and regulations applicable to the Contractor and its Work (as required by California Code of Regulations title 13, section 2022.1). Contractor shall be responsible for the safety of its workers and Contractor shall comply with applicable federal and state worker safety-related laws and regulations.

b. ***[This paragraph may be deleted if the work is not subject to a grant or loan agreement.]*** Contractor may perform some of the Work pursuant to funding provided to the Authority by various federal and/or state grant and/or loan agreement(s) that impose certain funding conditions on Authority and its sub-recipients (the "Funding Conditions"). For any such Work, if Authority informs Contractor about the Funding Conditions, then Contractor agrees to determine, comply with and be subject to the Funding Conditions that apply to Authority's Contractors and contractors performing the Work, including, but not limited to, provisions concerning record keeping, retention and inspection, audits, state or federal government's right to inspect Contractor's work, nondiscrimination, workers' compensation insurance, drug-free workplace certification, and, compliance with the Americans with Disabilities Act and related State laws.

c. ***[This paragraph may be deleted if the contract work does not include any pre- or post-construction work.]*** Pre- and Post-Construction Related Work.

(1) Applicability. This subsection (b) applies if the Work includes labor performed during the design and pre-construction phases of construction, including, but not limited to, inspection and land surveying work, and labor performed during the post-construction phases of construction, including, but not limited to, cleanup work at the jobsite. (See California Labor Code section 1720(a).) If the Work includes some labor as described in the preceding sentence and other labor that is not, then this subsection (b) applies only to workers performing the pre-construction and post-construction work.

(2) Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wage rates, penalties, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works as may be required by the Labor Code and applicable state regulations. (See

California Labor Code division 2, part 7, chapter 1 (sections 1720-1861), which is incorporated in this Agreement by this reference.) The state-approved prevailing rates of per diem wages are available at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Contractor also shall comply with Labor Code sections 1775 and 1813, including provisions that require Contractor to (a) forfeit as a penalty to Authority up to \$200 for each calendar day or portion thereof for each worker (whether employed by Contractor or any subcontractor) paid less than the applicable prevailing wage rates for any labor done under this Agreement in violation of the Labor Code, (b) pay to each worker the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage, and (c) forfeit as a penalty to Authority the sum of \$25 for each worker (whether employed by Contractor or any subcontractor) for each calendar day during which the worker is required or permitted to work more than 8 hours in any one day and 40 hours in any one calendar week in violation of Labor Code sections 1810 through 1815.

d. ***[This paragraph may be deleted if the contract work does not include any maintenance or installation work.]*** Maintenance of Public Facility, Plant or Structure.

(1) Applicability. This subsection (c) applies if the Work includes “maintenance” work. “Maintenance” means (a) routine, recurring and usual work for the preservation, protection and keeping of any Authority facility, plant, building, structure, utility system or other property (“Authority Facility”) in a safe and continually usable condition, (b) carpentry, electrical, plumbing, glazing, touchup painting, and other craft work designed to preserve any Authority Facility in a safe, efficient and continuously usable condition, including repairs, cleaning and other operations on Authority machinery and equipment, and (c) landscape maintenance. “Maintenance” excludes (a) janitorial or custodial services of a routine, recurring or usual nature, and (b) security, guard or other protection-related services. (See California Labor Code section 1771 and 8 California Code of Regulations section 16000.) If the Work includes some “maintenance” work and other work that is not “maintenance,” then this subsection (c) applies only to workers performing the “maintenance” work.

(2) Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wage rates, penalties, keeping and retention of payroll records, and other prevailing wage and related requirements as may be required by the Labor Code section 1771 and applicable state regulations. The state-approved prevailing rates of per diem wages are available at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Contractor also shall comply with Labor Code section 1775, including provisions that require Contractor to (a) forfeit as a penalty to Authority up to \$200 for each calendar day or portion thereof for each worker (whether employed by Contractor or any subcontractor) paid less than the applicable prevailing wage rates for any Work done under this Agreement in violation of the Labor Code, and (b) pay to each worker the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage.

(3) The Contractor must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Contract is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. The Contractor shall furnish

the records specified in Labor Code Section 1776 directly to the Labor Commissioner, monthly in a format prescribed by the Labor Commissioner.

10. Indemnification. Contractor shall indemnify, defend, protect, and hold harmless Authority, Authority’s member agencies, the Bay Area Water Supply and Conservation Agency (BAWSCA), the BAWSCA member agencies (BAWSCA Member Agencies), and all of their directors, officers, employees and agents (Indemnitees) from and against any and all claims, liability, losses, damages, expenses (including attorney, expert witness and Contractor fees, and litigation costs), and liability of any kind or nature arising out of any of the following:

a. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Contract by the Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, subcontractors or agents; or

b. Any allegation that materials or services provided by the Contractor under this Contract infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party; or

c. Any disclosure or allegation thereof of Authority PII (defined below) by Contractor or its employees, subcontractors, subconsultants or agents.

However, this indemnity provision will not apply to any claims, liability, losses, damages and expenses arising from the sole negligence or willful misconduct of Authority or its employees or agents. Contractor’s obligations under this indemnification provision shall survive the termination of, or completion of Work under, this Agreement.

11. Insurance.

Types & Limits. Contractor at its sole cost and expense shall procure and maintain for the duration of this Agreement the following types and limits of insurance: ***[The general liability and automobile coverage limits may be adjusted depending on the Work’s overall risks, cost and complexity.]***

<i>Type</i>	<i>Limits</i>	<i>Scope</i>
Commercial general liability	\$2,000,000 per occurrence & \$5,000,000 aggregate	at least as broad as ISO CG 0001
Automobile liability	\$2,000,000 per accident	at least as broad as ISO CA 0001, code 1 (any auto)
Workers’ compensation	Statutory limits	
Employers’ liability	\$1,000,000 per accident	
Professional liability*	\$1,000,000 per claim	

*Required only if Contractor is a licensed engineer, land surveyor, geologist, architect, doctor or attorney.

a. Professional Liability Insurance. If the Contractor can obtain it, Contractor shall obtain Professional Liability Insurance coverage that includes Network Security, Privacy & Media coverage with limits of \$2,000,000 per claim or occurrence and \$2,000,000 annual aggregate covering errors and omissions and the resulting damages including, but not limited to, economic loss to the Authority, Authority's member agencies, BAWSCA, and the BAWSCA Member Agencies. The policy shall include coverage for all services and work performed under this Agreement. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy coverage and media coverage. If such coverage is not available, Contractor will obtain the broadest form cyber liability insurance policy possible with the limits set forth in this paragraph.

b. Other Requirements. The general and automobile liability policy(ies) shall be endorsed to name Authority, Authority's member agencies, BAWSCA, the BAWSCA Member Agencies, and their officers, employees, volunteers and agents as additional insureds regarding liability arising out of the Work. Contractor's coverage shall be primary and apply separately to each insurer against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Authority's insurance or self-insurance, if any, shall be excess and shall not contribute with Contractor's insurance. Each insurance policy shall be endorsed to state that coverage shall not be canceled, except after 30 days (10 days for non-payment of premium) prior written notice to Authority. Insurance is to be placed with admitted insurers with a current A.M. Best's rating of A-:VII or better unless otherwise acceptable to Authority. Workers' compensation insurance issued by the State Compensation Insurance Fund is acceptable. Contractor agrees to waive subrogation that any insurer may acquire from Contractor by virtue of the payment of any loss relating to the Work. Contractor agrees to obtain any endorsement that may be necessary to implement this subrogation waiver. The workers' compensation policy must be endorsed to contain a subrogation waiver in favor of Authority for the Work performed by Contractor.

c. Proof of Insurance. Upon request, Contractor shall provide to Authority the following proof of insurance: (a) certificate(s) of insurance evidencing this insurance; and (b) endorsement(s) on ISO Form CG 2010 (or insurer's equivalent), signed by a person authorized to bind coverage on behalf of the insurer(s), and certifying the additional insured coverage.

12. Data Security and Privacy.

a. Data Privacy

(1) The Contractor may have access to personally identifiable information ("PII") in connection with the performance of the Agreement. PII is any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, and water usage data. Personally Identifiable Information of Authority and BAWSCA member agencies' customers, or Customer PII, means any PII relating to the Authority's member agencies' customers or BAWSCA Member Agency customers.

(2) The Contractor must ensure and maintain the confidentiality, security, safety, and integrity of all Customer PII, including physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and protect against known or anticipated threats to the security or integrity of such data. This includes, but is not limited to, the secure transport, transmission and storage of Customer PII used or acquired in the performance of this Agreement. The Contractor agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et. seq.) and California Civil Code section 1798.81.5. In addition, the Contractor warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States, and the State of California relating to the handling and confidentiality of Customer PII, including the terms and conditions contained in this Section.

(3) This Section will survive termination or expiration of the agreement.

b. Notice of Security Breach

The Contractor must immediately notify the Authority, Authority member agencies, BAWSCA, and the BAWSCA Member Agencies when it discovers that there may have been a data security incident that has or may have resulted in compromise to Customer PII. For purposes of this Section, immediately is defined as within twenty-four hours of discovery. The Contractor must immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of any suspected breach or security vulnerability—and must promptly alert the Authority, Authority member agencies, BAWSCA and the BAWSCA Member Agencies of any such circumstances, including information sufficient for the impacted agency to assess the nature and scope of any suspected data breach. In the event of an unauthorized disclosure of Customer PII, the Contractor will be liable for paying for the following costs to remediate any such unauthorized disclosure:

(1) The reasonable cost of providing notice of the breach to individuals affected by such breach;

(2) The reasonable cost of providing required notice of the breach to government agencies, credit bureaus, and/or other required entities;

(3) The cost of providing individuals affected by such breach with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed 12 months; and

(4) Any other service required by applicable law.

The Contractor must provide any information and/or support to the Authority, Authority member agencies, BAWSCA, and/or the BAWSCA Member Agencies in issuing the actual notification and, at each of the agencies' sole discretion, the Contractor must itself provide actual notification if each of the agencies desire. This Section will survive termination or expiration of this Contract.

13. Intellectual Property Provisions

a. Definitions.

(1) The term “Contractor Software” means any software reasonably necessary to operate or maintain any portions of the System that is a product or application of Contractor that pre-existed the execution of this Agreement.

(2) The term “Contractor Software Customizations” means any software reasonably necessary to operate or maintain any portions of the System that is a customization, modification, or other change or addition of or to Contractor Software made under this Agreement.

(3) The term “Third Party Software” means any software reasonably necessary to operate or maintain any portions of the System that does not constitute Contractor Software or Contractor Software Customizations.

(4) The term “Materials” means any recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement—with examples including, but not being limited to: computer software documentation; change logs; engineering drawings; specifications; standards; process sheets; manuals; technical reports; catalog item identifications; and related information—and for clarity, excluding financial, administrative, and cost and pricing information incidental to the work.

b. Grant of License. The Contractor grants to the Authority, Authority member agencies, BAWSCA and the BAWSCA Member Agencies (Agencies) a perpetual, unlimited, royalty-free, non-exclusive and irrevocable license for Agencies (including without limitation its officers, directors, employees, and agents) to install, use, copy, modify, and maintain the Contractor Software and the Contractor Software Customizations, with no limitation on the number of sites or users.

(1) In providing the System, the Contractor will use only that Third Party Software that has been expressly approved in writing by Agencies. Contractor will procure, maintain, and otherwise be responsible for all licenses for Agencies, in Agencies’ name, for any such Third Party Software reasonably necessary to operate or maintain the System. Contractor will provide to Agencies copies of such licenses, along with any related software or license documentation.

(2) To the extent that any other licenses or permissions are reasonably desirable or necessary for Agencies to operate or maintain the System, Contractor hereby grants to Agencies to the maximum extent within its rights—or will procure for Agencies, in Agencies’ name, to the maximum extent reasonably negotiable—any such licenses and permissions.

(3) All rights and licenses granted under or pursuant to this Agreement are and will be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses of rights to “intellectual property,” as defined under Section 101 of the U.S. Bankruptcy Code. The parties agree that the Agencies, as a licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; however, nothing herein will be deemed to constitute a present exercise of such rights and elections.

c. Patent and Copyright Warranties. The Contractor represents and warrants that any use of the System (or any portion of the System) by Agencies (or its officers, directors, agents, employees, or transit users) will not infringe or violate the patent, copyright, trade-secret, or other intellectual-property or proprietary rights of any third party.

(1) The Contractor further represents and warrants that it has or will have all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade-secret, or other intellectual-property or proprietary rights needed for the performance of its obligations under this Agreement—including without limitation that it will have all necessary rights to use patentable or copyrightable materials, equipment, devices, or processes not furnished by the Agencies used on or incorporated in the work under this Agreement. The Contractor assumes all risks arising from the use of any such patented or copyrighted materials, equipment, devices, or processes.

(2) In case any such software, materials, equipment, devices, processes, or other materials are held to constitute an infringement and their use enjoined, the Contractor, at Contractor's sole cost and expense will: (a) secure for the Agencies the right to continue using the materials, equipment, devices or processes by suspension of the injunction or by procuring a royalty-free license, or licenses, or (b) replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices, or processes, or (c) modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid for them without prejudice to any other rights of the Agencies. If the amount of time necessary to proceed with one of these options is deemed excessive by the Agencies, the Agencies may direct the Contractor to select another option or risk default.

d. Source Code. The Contractor agrees that as a condition of final acceptance, it will deposit the source code for any Contractor Software and Contractor Software Customizations into escrow (including all updates, versions, releases, and upgrades licensed under this Agreement or any related maintenance agreements between Contractor and Agencies), with a source code agent capable of providing Level 2 certification/verification. Deposit will be at reasonable periodic intervals based generally on the pace at which the software is being developed or changed and will include any and all subsequent updates, versions, releases, and upgrades licensed under this Agreement or any related maintenance agreements between Contractor and Agencies. The source code escrow agreement will remain in place, and source code deposits will be updated and maintained, for as long as the Agencies and Contractor have entered into a software maintenance or support agreement. The applicable source code will be released to the Agencies (or any contractor acting on its behalf) in the event of Contractor's nonperformance or the inability of Contractor to execute or maintain the portion of the System controlled by or through its applicable software. Such conditions of release include, but are not limited to (1) Contractor's bankruptcy, (2) Contractor's cessation of business, or (3) failure of Contractor to support, execute, maintain or provide enhancements in a timely manner to the portion of the System controlled by or through its applicable software. Contractor agrees that the Agencies (or any contractor acting on its behalf) may use the source code to maintain, fix, or modify the Contractor Software and the Contractor Software Customizations as reasonably necessary to operate or maintain any portions of the System. Contractor and the Agencies will separately document an escrow agreement concurrently with this Agreement. The Contractor will be responsible for any costs related to the escrow.

e. Patent Rights. If any invention, improvement, or discovery of Contractor is conceived or first actually reduced to practice in the course of or under this Agreement, which invention, improvement, or discovery may be patentable under the Patent Laws of the United States or any foreign country, Contractor will immediately notify Agencies and provide a detailed report. The rights and responsibilities of Agencies, Contractor [and the federal government (if federally-funded)] with respect to such invention will be determined in accordance with applicable federal laws, regulations, policies and any waivers thereof.

f. Non-Compete Clauses Waived. In the event that any of the release conditions set forth in any source code escrow agreement between the parties are satisfied and the source code is released to the Agencies, the Agencies will have the right to hire Contractor's personnel or subcontractors for any reason related to the maintenance and operation of the System. The Contractor will not interfere with any such efforts to hire any of Contractor's personnel. Contractor agreements with personnel and/or subcontractors that restrict employment by the Agencies will be waived under such circumstances.

g. Precedence. In the event of any conflict between the provisions of this Section and the provisions of any separate software license, escrow, or otherwise related agreement, this Section will take precedence.

14. Entire Agreement; Amendment. The parties intend this writing to be the sole, final, complete, exclusive and integrated expression and statement of the terms of their contract concerning the Work. This Agreement supersedes all prior oral or written negotiations, representations, contracts or other documents that may be related to the Work, except those other documents (if any) that are expressly referenced in this Agreement. This Agreement may be amended only by a subsequent written contract approved and signed by both parties.

15. Independent Contractor. Contractor's relationship to Authority is that of an independent contractor. All persons hired by Contractor and performing the Work shall be Contractor's employees or agents. Contractor and its officers, employees and agents are not Authority employees, and they are not entitled to Authority employment salary, wages or benefits. Contractor shall pay, and Authority shall not be responsible in any way for, the salary, wages, workers' compensation, unemployment insurance, disability insurance, tax withholding, and benefits to and on behalf of Contractor's employees. Contractor shall, to the fullest extent permitted by law, indemnify Authority, and its officers, employees, volunteers and agents from and against any and all liability, penalties, expenses and costs resulting from any adverse determination by the federal Internal Revenue Service, California Franchise Tax Board, other federal or state Authority, or court concerning Contractor's independent contractor status or employment-related liability.

16. Subcontractors. No subcontract shall be awarded nor any subcontractor engaged by Contractor without Authority's prior written approval. Contractor shall be responsible for requiring and confirming that each approved subcontractor meets the minimum insurance requirements specified in Section 11 of this Agreement. Any approved subcontractor shall obtain the required insurance coverages and provide proof of same to Authority in the manner provided in Section 11 of this Agreement.

17. Assignment. This Agreement and all rights and obligations under it are personal to the parties. The Agreement may not be transferred, assigned, delegated or subcontracted in

whole or in part, whether by assignment, subcontract, merger, operation of law or otherwise, by either party without the prior written consent of the other party. Any transfer, assignment, delegation, or subcontract in violation of this provision is null and void and grounds for the other party to terminate the Agreement.

18. No Waiver of Rights. Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by Authority to Contractor shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

19. Severability. If any part of this Agreement is held to be void, invalid, illegal or unenforceable, then the remaining parts will continue in full force and effect and be fully binding, provided that each party still receives the benefits of this Agreement.

20. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of California. The county and federal district court where Authority's office is located shall be venue for any state and federal court litigation concerning the enforcement or construction of this Agreement.

21. Third Party Beneficiaries. BAWSCA, BAWSCA Member Agencies, and any other partner agencies that the Authority enters into contracts with to piggyback on this Agreement are direct beneficiaries of this Agreement.

22. Notice. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement must be in writing and delivered either (a) in person, (b) by prepaid, first class U.S. mail, (c) by a nationally-recognized commercial overnight courier service that guarantees next day delivery and provides a receipt, or (d) by email with confirmed receipt. Such notices, etc. shall be addressed as follows:

Authority:

Regional Water Authority
Attn: _____
5620 Birdcage Street, Suite 180
Citrus Heights, CA 95610
E-mail: _____@rwah2o.org

Contractor:

Attn: _____

E-mail: _____

Notice given as above will be deemed given (a) when delivered in person, (b) three days after deposited in prepaid, first class U.S. mail, (c) on the date of delivery as shown on the overnight courier service receipt, or (d) upon the sender's receipt of an email from the other party confirming the delivery of the notice, etc. Any party may change its contact information by notifying the other party of the change in the manner provided above.

23. Signature Authority. Each party warrants that the person signing this Agreement is authorized to act on behalf of the party for whom that person signs. The Parties may execute and deliver this Agreement and documents necessary to perform it, including task orders and amendments, in any number of original or facsimile counterparts. When each Party has signed and delivered at least one counterpart to the other Party, each counterpart shall be

deemed an original and, taken together, the counterparts shall constitute one and the same document, which shall be binding and effective.

REGIONAL WATER AUTHORITY:

Dated: _____

By: _____

Rob Swartz
Interim Executive Director

[NAME OF CONTRACTOR]:

Dated: _____

By: _____

[Name/Title]