

## **BAY AREA CLEAN WATER AGENCIES PROFESSIONAL SERVICES CONTRACT**

This PROFESSIONAL SERVICES CONTRACT, effective [Click here to enter a date.](#), is between Bay Area Clean Water Agencies (“BACWA”), a joint powers agency which exists as a public entity separate and apart from its Member Agencies, created January 4, 1984 by a Joint Powers Agreement between Central Contra Costa Sanitary District, East Bay Dischargers Association, East Bay Municipal Utility District, the City and County of San Francisco and the City of San Jose, with a mailing address of P.O. Box 24055, MS 702, Oakland, CA 94623, and [Click here to enter text.](#) (“Consultant”), a [Choose an item.](#) doing business at [Click here to enter text.](#) for professional services as described in any Exhibit A attached hereto.

In consideration of the mutual covenants, stipulations and agreements, the parties agree as follows:

### **Description and Standard of Services to be Performed**

1. Consultant will perform the Services as described by and in accordance with [Exhibit A](#) in a manner acceptable to BACWA.
2. Consultant shall not contract with or otherwise use any subconsultants, subcontractors or other non-employee persons or entities (“Subconsultants”) to perform the Services without the prior written approval of BACWA. If Consultant and BACWA agree that Subconsultants shall be used, Consultant shall ensure Subconsultants’ compliance with all the terms and conditions of this agreement.
3. Consultant will exercise that degree of care in performing the Services in accordance with that prevailing among firms of comparable standing in the State of California (“Professional Standard”). Consultant will promptly correct or re-perform those Services not meeting the Professional Standard without additional compensation.
4. Consultant warrants that it is fully licensed, registered and otherwise fully authorized to perform the Services in the State of California to the extent applicable law requires such licensure, registration or authorization.
5. BACWA’s review, approval, acceptance, use, or payment for all or any part of the Services hereunder will not alter the Consultant’s obligations or BACWA’s rights hereunder, and will not excuse or diminish Consultant’s responsibility for performing all Services consistent with this Contract.

### **Payment for Services**

6. BACWA will pay Consultant based on the rates in [Exhibit B](#), up to a maximum amount payable of [Click here to enter text.](#) Consultant will not exceed the maximum amount payable without obtaining prior written approval from BACWA.
7. Consultant shall submit invoices monthly. Invoices shall include the hours charged by each employee, a brief description of the work performed, and a description of costs for which Consultant seeks reimbursement and which are specified in [Exhibit B](#).
8. Payments under this Contract will be due thirty (30) days after BACWA’s receipt of invoices. BACWA may withhold from any progress or final payment any damages, backcharges or claims incurred or anticipated by BACWA to the extent caused by Consultant.

### **Document Ownership and Retention**

9. Consultant will maintain all financial records relating to this Contract in accordance with generally accepted accounting principles and for at least three years following termination of this Contract. Consultant will grant BACWA and its representatives access upon request to all such records and all

other books, documents, papers, drawings, and writings of Consultant that refer or relate to this Contract.

10. All drawings, specifications, reports, programs, manuals, and other work product of Consultant that result from this Contract (“Work Product”) will be considered the exclusive property of BACWA. Consultant agrees that it will not use, disclose, communicate, publish or otherwise make available to third parties any products, analyses, data, compilations, studies, proposals, technical or business information, and any other information related to the Services provided to BACWA without BACWA’s prior written approval.

### **Indemnification**

11. To the fullest extent allowed by law, Consultant will indemnify, hold harmless, reimburse and defend BACWA, its Member Agencies, and each of their officers, directors, employees and agents from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties, including but not limited to reasonable attorneys’ and expert witnesses’ fees, arising out of or relating to the Services but only to the extent caused by the negligent or other wrongful acts or omissions of Consultant or any person or entity for whose acts or omissions any of them are responsible, or by the failure of any such party to perform as required by this Contract.

### **Insurance**

12. Consultant will purchase and maintain, at Consultant’s expense, the following types of insurance, covering Consultant, its employees and agents:
  - a. Workers’ Compensation Insurance as required by law, subject to a waiver of subrogation in favor of BACWA;
  - b. Employers Liability Insurance with a per accident value at \$1,000,000, Policy Limit of \$1,000,000 and Each Employee of \$1,000,000, subject to a waiver of subrogation in favor of BACWA.
  - c. Comprehensive General Liability Insurance covering personal injury and property damage with a combined single limit, or the equivalent, of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, and naming BACWA as an additional insured.
  - d. Business Automobile Liability Insurance with combined single limit coverage of not less than \$1,000,000.00 aggregate for each claim, incident, or occurrence; and naming BACWA as an additional insured.

### **Assignment**

13. Consultant will not assign or transfer any of its interest in this Contract, in whole or in part, without the prior written consent of BACWA. BACWA may assign this Contract and any rights relating to this Contract (including but not limited to its right to assert claims and defenses against Consultant) at BACWA’s discretion.

### **Independent Contractor**

14. Consultant will perform the Services as an independent contractor. Although Consultant will perform its Services for the benefit of BACWA, and although BACWA reserves the right to determine the schedule for the Services and to evaluate the quality of the completed performance, BACWA does not control the means or methods of Consultant's performance. Consultant is solely responsible for determining the appropriate means and methods of performing the Services, and Consultant's liability will not be diminished by any review, approval, acceptance, use or payment for the same by BACWA or any other party.

### **Termination of Contract; Suspension of Services**

15. This contract shall automatically terminate on [Click here to enter a date](#). Either party may also terminate this Contract in whole or in part at any time for its convenience. For a termination for convenience, the termination will be effective thirty (30) days following receipt of a written notice of termination by one party from the other. BACWA may terminate this Contract in whole or in part for cause, in which event the termination will be effective ten (10) days after Consultant's receipt of BACWA's written notice and Consultant's failure during that period to cure the default.

### **Dispute Resolution**

16. Consultant will give prompt written notice to BACWA of any claim, dispute or other matter in question, but in no event will Consultant give such notice later than ten (10) days after Consultant's becoming aware of the event or circumstance giving rise to the claim, dispute or matter in question.
17. All claims, disputes and other matters in question between BACWA and Consultant arising out of or relating to this Contract will be subject to alternative dispute resolution. If both parties agree to arbitration it will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Notice of the demand for arbitration will be filed in writing with the other party to this Contract and with the American Arbitration Association. Any arbitration arising out of or relating to this Contract will include, by consolidation, joinder or joint filing, any other person or entity not a party to this Contract that is substantially involved in a common issue of law or fact and whose involvement in the consolidated arbitration is necessary to achieve a final resolution of a matter in controversy therein. This agreement to arbitrate will be specifically enforceable by any court with jurisdiction thereof.
18. A demand for dispute resolution by either party will be made within a reasonable time after the claim, dispute, or other matter in question has arisen, and in no event will it be made after the date when institution of court litigation based on such claim, dispute or other matter in question would be barred by the applicable period of limitations. For all claims by BACWA against Consultant, the applicable period of limitations will not commence to run, and any alleged cause of action will not be deemed to have accrued (whether such action is based on negligence, strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warranty, or any other legal or equitable theory), unless and until BACWA is fully aware of all three of the following: (1) the identity of the party(ies) responsible, (2) the magnitude of the damage or injury and (3) the cause(s) of the damage or injury. The contractual limitations period and discovery rule provided herein applies in lieu of any otherwise applicable statute or related case law.
19. The failure of either party to enforce any provision of this Contract will not constitute a waiver by that party of that or any other provision of this Contract.

### **Severability**

20. BACWA and Consultant agree that if any term or provision of this Contract is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the essential terms and provisions of this Contract remain unaffected, then the validity of the remaining terms and provisions

will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.

**Survival**

21. All rights and obligations set out in this Contract and arising hereunder will survive the termination of this Contract (i) as to the parties' rights and obligations that arose prior to such termination and (ii) as is necessary to give effect to rights and obligations that arise after such termination but derive from a breach or performance failure that occurred prior to the termination.

This Contract constitutes the entire, legally binding contract between the parties regarding its subject matter. No waiver, consent, modification or change of terms of this Contract is binding unless in writing and signed by both parties.

The following documents are incorporated into and made a part of this Contract. Any conflicts between these documents and this Contract will be resolved in favor of this Contract.

- Exhibit A – Scope of Work
- Exhibit B – Hourly Rates/Reimbursable Expenses

**CONSULTANT:** \_\_\_\_\_ [Click here to enter text.](#)

\_\_\_\_\_ [Click here to enter text.](#)  
*Street Address*

\_\_\_\_\_ [Click here to enter text.](#)  
*City, State, Zip Code*

\_\_\_\_\_ [Click here to enter text.](#)  
*Tax Identification No.*

\_\_\_\_\_ [Click here to enter a date.](#)  
*Consultant Signature* *Date*

\_\_\_\_\_ [Click here to enter text.](#)  
*Name, Title*

\_\_\_\_\_ [Click here to enter a date.](#)  
*BACWA Signature* *Date*

\_\_\_\_\_ [Click here to enter text.](#)  
*Name, Title*

**EXHIBIT A**

**SCOPE OF WORK**

Professional Services by [Click here to enter text.](#)

Fiscal Year [Click here to enter text.](#)

[Click here to enter text.](#) will provide professional services to Bay Area Clean Water Agencies (BACWA) for the following activities, the costs of which are **not to exceed** [Click here to enter text.](#):

**EXHIBIT B**

**HOURLY RATES/REIMBURSABLE EXPENSES**

**Consultant**

Click here to enter text.

Click here to enter text.

**Hourly Rate**

Click here to enter text.

Click here to enter text.