

Regional Conservation Authority

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
AND THE SANTA ANA WATERSHED ASSOCIATION**

Staff Contact:

**Ken Graff, Director of Land Acquisition
(951) 955-8805**

Background:

On November 8, 2005, the Western Riverside County Regional Conservation Authority (RCA) entered into a Cooperative Agreement (Agreement) with the Santa Ana Watershed Association (SAWA) to provide biological support staff to the Monitoring Program described in Section 5.3 of the Western Riverside County Multiple Species Habitat Conservation Plan (Plan). The term of the original Cooperative Agreement has been extended annually. After six (6) amendments, the original Agreement will expire on June 30, 2010.

Staff desires to continue to contract with SAWA to provide biological support and is proposing a new agreement which incorporates the current scope of services and more clearly identifies roles and responsibilities. SAWA continues to have a workforce of biologists and office support staff that will provide the day-to-day scheduling, assignments and supervision of SAWA staff biologists required for the Monitoring Program. The agreement reflects the creation of a new position which is required since the California Department of Fish and Game (CDFG) no longer provides a staff position to directly supervise the Monitoring Program (SAWA) personnel.

The term of the agreement is for a period of one year, from July 1, 2010 through June 30, 2011. The "not to exceed" amount is Six Hundred Eighty Thousand One Hundred Ten Dollars (\$680,110.00), which reflects the RCA funded portion of this agreement approved in Fiscal Year 2010-11 budget. It is anticipated that the not to exceed amount will be increased when the agreement between the RCA and the California Department of Fish and Game regarding the State Wildlife Grant (SWG) funds is finalized.

The agreement between the RCA and SAWA is in draft form and may be modified prior to submitting to the RCA Board for approval, as RCA and SAWA legal counsel are still working through indemnification issues.

Agenda Item 7.5 Staff Report

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June 7, 2010

Executive Committee and Staff Recommendations:

That the RCA Board of Directors:

- 1) Approve the Professional Services Agreement between the RCA and SAWA; and
- 2) Authorize the Chairman, pursuant to legal counsel review and approval, to execute said agreement on behalf of the Authority.

Attachment:

Professional Services Agreement between the RCA and SAWA

FINANCIAL INFORMATION	
In Fiscal Year 2010-11 Budget: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Cost: \$ 680,110.00 Annual Cost: N/A
Source of Funds: Tipping Fees, Flood Control Contributions, Other misc. revenue	Budget Adjustment: No
Approved by: <i>Honey Bervas</i>	Date: June 2, 2010

AGENDA ITEM NO. 7.5

Attachment 1

Professional Services Agreement between RCA and SAWA

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY
AND THE SANTA ANA WATERSHED ASSOCIATION**

1. Parties and Date.

This Agreement is made and entered into this 1st day of July 2010, by and between the Western Riverside County Regional Conservation Authority, a joint powers authority organized under the laws of the State of California with its principal place of business at 3403 Tenth Street, Suite 320 Riverside, California 92501 (“RCA”) and the Santa Ana Watershed Association, a 501(c) (3) nonprofit organization with its principal place of business located at the Chino Creek Wetlands and Educational Park in Chino, California 91708 (“Consultant” or “SAWA”). RCA and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by RCA on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing biological monitoring services to public clients, is licensed in the State of California, and is familiar with the plans of RCA.

2.2 Project. RCA desires to engage Consultant to render such services for the Western Riverside County Multiple Species Habitat Conservation Program (“Project” or “MSHCP”) as set forth herein.

2.3 Grant. The Parties anticipate that this Agreement may be amended if the California Department of Fish & Game awards a grant to RCA to fund the 2010/11 work plan.

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to RCA all labor, materials, tools, equipment, services and incidental and customary work necessary to fully and adequately supply biological monitoring services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. Services shall include, but not be limited to, any duties and responsibilities assigned by the RCA Executive Director. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.1.1 SAWA will hire fulltime and part-time SAWA staff to carry out biological monitoring activities for RCA as further identified and described in the Scope of Work, Exhibit A, during the term of this Agreement (“SAWA Staff”). The SAWA Staff to be sub-contracted to the RCA will be identified or approved by the Monitoring Program Administrator (also referenced as “RCA liason”). The SAWA Staff sub-contracted to the RCA will remain employees of SAWA only, and the RCA and/or any other individual, entity, or agency that participates in, or assists with, the MSHCP will not be considered a joint employer of

the SAWA staff, and will not have any supervisory powers or duties in relation to the SAWA Staff.

3.1.1.2 In addition, a supervisory position (“Supervisor”) is hereby created to oversee any SAWA Staff that is sub-contracted to the RCA for the MSHCP. The Supervisor shall be a SAWA employee only. However, RCA will prioritize the activities to be provided under this Agreement. In addition, the Supervisor will serve as liaison with California Department of Fish and Game (“CDFG”) as Monitoring Program Administrator. Only the Supervisor will have supervisory powers, duties, and responsibilities over the SAWA Staff that are sub-contracted to the RCA, including the power to hire, suspend, and/or terminate the employment of said SAWA Staff members. However, upon the written request of the RCA, the Supervisor shall promptly address any concerns regarding SAWA’s performance regarding the scope of work.”

3.1.2 Term. The term of this Agreement shall be from the date first specified above to June 30, 2011, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. RCA retains Consultant on an independent contractor basis and Consultant is not an employee of RCA. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall not be employees of RCA and shall at all times be under Consultant’s exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers’ compensation insurance. The SAWA Staff sub-contracted to the RCA will remain employees of SAWA only, and the RCA and/or any other individual, entity, or agency that participates in, or assists with, the MSHCP will not be considered a joint employer of the SAWA staff, and will not have any supervisory powers or duties in relation to the SAWA Staff.

3.2.2 Schedule of Services. Consultant shall provide the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical expertise and personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant’s conformance with the schedule, RCA shall respond to Consultant’s submittals in a timely manner. Upon request of RCA, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of RCA.

3.2.4 RCA's Representatives. RCA hereby designates its Executive Director, or his or her designee, to act as its representative for the performance of this Agreement. All invoices for Consultant shall be submitted to the Executive Director. The Executive Director shall be responsible for directing Consultant's activities pursuant to this Agreement. The Executive Director shall have the power to act on behalf of RCA for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the Executive Director or his or her designee.

3.2.5 Substitution of Key Personnel. Consultant has represented to RCA that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence and experience upon written approval of RCA. In the event that RCA and Consultant cannot agree as to the substitution of key personnel, RCA shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.5.1 of this Agreement. The key personnel for performance of this Agreement are as follows: Lee Reeder, Executive Director, or his designee.

3.2.6 Consultant's Representative. Consultant hereby designates Lee Reeder, or his or her designee, to act as its Representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. Consultant shall work closely and cooperate fully with RCA's Representative and any other agencies which may have jurisdiction over, or an interest in, the Services. Consultant's Representative shall be available to the RCA staff at all reasonable times.

3.2.7 Coordination of Services. Consultant agrees to work closely with RCA staff in the performance of Services and shall be available to RCA's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from RCA, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein and shall be fully responsible to RCA for all damages and other liabilities arising from the Consultant's errors and omissions. Any employee of the Consultant or its sub-consultants who is determined by RCA to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of

persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to RCA, shall be promptly removed from the Project by the Consultant and shall not be allowed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to RCA, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold RCA, its officials, directors, officers, employees, consultants, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to RCA that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to RCA that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *If Consultant has employees, Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (3) *If Consultant has employees, Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) RCA, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects RCA, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by RCA, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) RCA, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects RCA, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by RCA, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against RCA, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to RCA; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to RCA, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to RCA, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by RCA. If RCA does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of RCA, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects RCA, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to RCA.

3.2.10.8 Verification of Coverage. Consultant shall furnish RCA with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to RCA. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by RCA before work commences. RCA reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Total Compensation shall not exceed SIX HUNDRED EIGHTY THOUSAND ONE HUNDRED TEN AND NO/100'S DOLLARS (\$680,110.00), without written approval of RCA's Executive Director. Extra Work may be authorized, as described below, and, if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to RCA a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Said compensation shall be paid in accordance with an invoice submitted to RCA by Consultant within fifteen (15) days from the last day of each

calendar month, and RCA shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by RCA.

3.3.4 Extra Work. At any time during the term of this Agreement, RCA may request that Consultant perform Extra Work. As used herein, “Extra Work” means any work which is determined by RCA to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from RCA’s Representative.

3.3.5 Prevailing Wages. By execution of this Agreement, Consultant certified that it is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), 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. RCA shall provide Consultant with a copy of the prevailing rate of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold RCA, its directors, officials, officers, consultants, employees, volunteers 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.

3.3.6 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant.

3.3.7 No Waiver. Failure of RCA to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.3.8 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to RCA as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him or her, or by any sub-consultant under him or her, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

3.4 **Accounting Records.**

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of RCA during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 **General Provisions.**

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Either Party may, by written notice to the other Party, terminate the whole Agreement at any time; provided, however, that such termination shall only be for cause. The non-breaching Party must provide written notice to the breaching party that gives the breaching party at least seven (7) business days to cure the breach ("Cure Period"). If the breach is not cured within the Cure Period, or if such breach cannot be cured within the Cure Period, and the breaching party has not commenced curing the breach and diligently and continuously thereafter pursued curing the breach until it has been cured, then the terminating Party shall send a second written notice ("Termination Notice") to the other Party that shall specify the termination date for the Agreement, which shall be at least thirty (30) calendar days after the Cure Period has expired. If either Party terminates this Agreement, Consultant shall be compensated only for those services which have been fully and adequately rendered to RCA through the effective date of the termination as specified in the Termination Notice, and Consultant shall be entitled to no further compensation.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, RCA may require Consultant to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Consultant in

connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, RCA may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Santa Ana Watershed Association
Attention: Executive Director
P.O. Box 219
Chino, CA 91708

Copy to: Jackson | DeMarco | Tidus | Peckenpaugh
Attention: General Counsel to SAWA
2030 Main Street, 12th Floor
Irvine, CA 92614

RCA: Western Riverside County Regional Conservation Authority
Attention: Executive Director
3403 Tenth Street, Suite 320
P.O. Box 1667
Riverside, CA 92502-1667

Copy to: Best Best & Krieger LLP
Attention: General Counsel to RCA
3750 University Avenue, Suite 400
P.O. Box 1028
Riverside, CA 92502-10281

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials/Confidentiality.

3.5.3.1 Documents & Data. This Agreement creates an exclusive and perpetual license for RCA to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”).

Consultant shall require all subcontractors to agree in writing that RCA is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by RCA.

RCA shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at RCA's sole risk.

3.5.3.2 Intellectual Property. In addition, RCA shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

RCA shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether paid for wholly or in part by RCA, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of RCA.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of RCA.

All materials and documents which were developed or prepared by Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

RCA further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

3.5.4 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the

performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of RCA, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use RCA's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of RCA.

3.5.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.6 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

3.5.7 Indemnification.

3.5.7.1 SAWA Responsibilities. SAWA agrees to indemnify and hold harmless RCA, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by and services to be provided pursuant to this Agreement, due to negligent acts, errors or omissions or willful misconduct of SAWA. SAWA will reimburse the RCA for any expenditures, including reasonable attorneys' fees, incurred by RCA, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of SAWA.

3.5.7.2 RCA Responsibilities. RCA agrees to indemnify and hold harmless SAWA, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by and services to be provided pursuant to this Agreement, due to negligent acts, errors or omissions or willful misconduct of RCA. RCA will reimburse SAWA for any expenditures, including reasonable attorneys' fees, incurred by SAWA, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of RCA.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.11 RCA's Right to Employ Other Consultants. RCA reserves the right to employ other consultants in connection with this Project.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of RCA. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Successor and Assigns. This Agreement shall be binding on the successors and assigns of the Parties, and shall not be assigned by Consultant without the prior written consent of RCA.

3.5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all directors, officials, officers, agents, consultants, employees, and volunteers of Consultant, except as otherwise specified in this Agreement. All references to RCA include its directors, officials, officers, agents, consultants, employees, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.15 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.17 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.19 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, RCA shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of RCA, during the term of his or her service with RCA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any RCA programs or guidelines concerning equal opportunity employment currently in effect or hereinafter enacted.

3.5.21 Labor Certification. By its signature hereunder, Consultant certifies that it 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 agrees to comply with such provisions before commencing the performance of the Services.

3.5.22 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.23 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of RCA. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

<p>RCA</p> <p>By: _____ Charles V. Landry Executive Director</p>		<p>CONSULTANT</p> <p>By: _____ Lee Reeder Executive Director</p>
<p><i>Approved as to form:</i></p> <p>_____</p> <p>RCA General Counsel Best Best & Krieger LLP</p>		<p><i>Approved as to form:</i></p> <p>_____</p> <p>SAWA General Counsel Jackson DeMarco Tidus Peckenpaugh</p>