

## LEGAL NOTICE

### BIG BEAR AREA REGIONAL WASTEWATER AGENCY

#### REQUEST FOR PROPOSAL – INDEPENDENT AUDITING SERVICES

The Big Bear Area Regional Wastewater Agency is currently requesting proposals for contracts for independent auditing services from qualified certified public accounting firms to prepare and audit its annual financial statements for the fiscal year ending June 30, 2012. The official Request for Proposal may be obtained from the Agency's web site at [www.bbarwa.org](http://www.bbarwa.org). To be considered, please submit four (4) copies of your sealed proposal prepared as outlined in the Request for Proposal **by 4:00 p.m. on February 15, 2012** to: **Big Bear Area Regional Wastewater Agency, Attn: Jennifer McCullar, P.O. Box 517, 121 Palomino Drive, Big Bear City, CA 92314-0517**. The outer envelope in which the proposals are submitted should be marked, "Proposal for Audit for BBARWA." Proposals submitted via e-mail or facsimile will not be accepted. All questions regarding the proposal must be in writing and submitted via email to [jmccullar@bbarwa.org](mailto:jmccullar@bbarwa.org). All questions along with the Agency's response will be posted to the Agency's web site at [www.bbarwa.org](http://www.bbarwa.org) as received. The Agency reserves the right to reject any or all proposals submitted.

Jennifer McCullar, Finance Manager  
Big Bear Area Regional Wastewater Agency

DATED: January 8, 2012



**REQUEST FOR PROPOSAL**  
**FOR**  
**INDEPENDENT AUDITING SERVICES**

Proposal due February 15, 2012 by 4:00 p.m.

Jennifer McCullar, Finance Manager  
Big Bear Area Regional Wastewater Agency  
121 Palomino Drive  
P.O. Box 517  
Big Bear City, CA 92314

## I. Introduction

The Big Bear Area Regional Wastewater Agency (“Agency”) is currently requesting proposals for contracts for independent auditing services from qualified certified public accounting firms to prepare and audit its annual financial statements for the current fiscal year ending June 30, 2012. The parties may extend the term of this Agreement for additional one-year terms upon mutual agreement and satisfactory negotiation of terms.

To be considered, please submit **four (4) copies** of your sealed proposal by 4:00 p.m. on February 15, 2012 to:

**Big Bear Area Regional Wastewater Agency  
Attn: Jennifer McCullar  
PO Box 517  
121 Palomino Drive  
Big Bear City, CA 92314-0517**

The outer envelope in which the proposals are submitted should be marked, “Proposal for Audit for BBARWA.”

If you have any questions about the proposal, please contact Jennifer McCullar at (909) 584-4522. All questions regarding the proposal must be in writing and submitted via email to [jmccullar@bbarwa.org](mailto:jmccullar@bbarwa.org). All questions along with the Agency’s response will be posted to the Agency’s web site at [www.bbarwa.org](http://www.bbarwa.org) as received.

It is anticipated, as outlined in the Selection of Proposal Schedule, that the selection of a firm will be completed by March 14, 2012 with Board approval of that selection on March 28, 2012.

The Agency reserves the right to reject any or all proposals submitted and to request additional information if required.

## II. Services Required

### A. General

1. During the annual audit cycle, the following meetings shall occur:
  - a) Prior to the start of the interim audit work (prior to the Agency’s fiscal year end), the auditor shall schedule a meeting to determine and specify the upcoming audit schedule and responsibilities, discuss events or changes in the Agency’s operating and financial activities during the year that might impact the Agency’s financial statements, review issues or concerns related to the audit or otherwise, provide an opportunity for questions and answers for both the auditor and the Agency’s management staff.

- b) Upon commencement of the audit and related field work, the auditor will be available for meetings by telephone or in person to provide updates on the status of the audit as needed or as requested by management staff.
  - c) Upon completion of the audit and related field work and prior to the issuance of any reports or management letter, the auditor shall schedule a meeting with the Agency's management staff (to include the General Manager and the Finance Manager) to discuss the audit results including all findings and recommendations, and any matters to be included in the management letter.
  - d) The auditor shall annually attend the Agency's regularly scheduled Board meeting which falls on the nearest date subsequent to the completion of the audit. During such Board meeting, the auditor shall present the audit findings and recommendations.
2. During the term of the Agreement, the auditor is expected to be available, as needed, to consult with management staff on an informal basis regarding various accounting and financial matters at no additional cost. Any matter requiring a formal and written response or significant resource requirements by the auditor may be charged separate from the terms of the Agreement at a mutually agreed upon rate. In addition, the Agency should be informed of new developments affecting special district accounting and reporting as well as any other relevant issues.

## B. Term of Agreement

The Agency is currently requesting proposals for contracts for independent auditing services from qualified certified public accounting firms to prepare and audit its annual financial statements for the current fiscal year ending June 30, 2012. The parties may extend the term of this Agreement for additional one-year terms upon mutual agreement and satisfactory negotiation of terms.

## C. Audit Services

### 1. Audit Standards

Each audit is to be performed in accordance with the following requirements:

- a) Generally Accepted Auditing Standards as set forth by the American Institute of Certified Public Accountants.
- b) The standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards* (1994).
- c) The provisions of the Single Audit Act of 1984 (as amended in 1996), if applicable (currently not applicable).

- d) The U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
- e) Minimum audit requirements and reporting guidelines for Special Districts pursuant to Title 2 California Code of Regulations Section 1131.2 entitled "Minimum Audit Requirements and Reporting Guidelines for Special Districts".

## 2. Reports to be Issued

All report preparation, printing and binding shall be the responsibility of the auditor. Following the completion of the audit and preparation of the fiscal year's financial statements, the auditor shall issue, as applicable:

### a) Financial Reports:

Prepare and issue the General Purpose Financial Statements (including Notes) and Schedules in a manner similar to prior periods (10 bound copies and 1 PDF).

### b) Auditor's Reports (the Agency shall be provided with 3 copies and 1 PDF of any written report prepared by the Auditor):

- (1) Issue a report on the fair presentation of the financial statements in conformity with generally accepted accounting principles in the United States of America;
- (2) Issue a Management Report, including Audit Procedures under Office of Management and Budget Circular A-133. Under generally accepted auditing standards, the auditor shall report on significant deficiencies in the design or the operation of the internal control structure that, in the auditor's judgment, could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. A letter indicating no material weaknesses or areas for improvement would be required if no findings exist. In addition, the auditor should report, in a separate management letter, less material issues;
- (3) Issue a written report of any fraud, irregularities and illegal acts or indications of illegal acts of which they become aware, to the General Manager, the General Counsel for the Agency, and/or the Finance Manager;
- (4) Issue a report on compliance and internal controls over financial reporting based on an audit of the financial statements; and
- (5) Issue and transmit the Special District's Financial Transaction Report to the State Controller.

#### D. Comprehensive Annual Financial Report (CAFR)

One of the Agency's goals is to complete and submit a CAFR to the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting program (stand-alone business-type activities). While the Agency currently does not prepare a CAFR, its intention is to do so for the fiscal year ending June 30, 2013. The proposal should include a plan that transitions from the basic financial statements to a CAFR, and the costs associated with preparation of the CAFR.

### III. Description of the Agency

#### A. Operations and Governance

The Agency was established in 1974 as a joint powers agency to provide wastewater treatment services to its member agencies: the City of Big Bear Lake, the Big Bear City Community Services District, and the County of San Bernardino on behalf of County Service Area 53B. Each underlying public entity maintains and operates its own wastewater collection system, and delivers wastewater to the Agency's interceptor system for transport to the regional plant for treatment and disposal. The Agency's annual revenues and expenses were approximately \$4.6 million and \$4.4 million, respectively for FY 2011.

Each member agency appoints representation to the Agency's five-member Governing Board of Directors.

#### B. Basis of Accounting and Budgeting

The Agency operates and reports as an enterprise utilizing the accrual method of accounting. The Agency's annual operating and capital budget may be found online at [www.bbarwa.org](http://www.bbarwa.org). The budget contains a summary of the Agency's financial management policies.

#### C. Pension and Other Post Employment Benefits

The Agency participates in the California Public Employees' Retirement System (CalPERS), a central system managing retirement benefits for California public agencies. The Agency also participates in the California Employers' Retiree Benefit Trust (CERBT) Fund – an investment vehicle to prefund the Agency's future retiree health and Other Post Employment Benefit (OPEB) costs.

#### D. Financial Management and Systems

The Finance Department is headed and managed by Jennifer McCullar, the Finance Manager, and includes an Accounting Technician. The Agency uses Peachtree

Accounting Software which is networked among the Finance Manager, Accounting Technician and Part-Time Administrative Clerk.

#### **IV. Proposal Submission**

To be considered, please submit **four (4) copies** of your sealed proposal by 4:00 p.m. on February 15, 2012 to:

**Big Bear Area Regional Wastewater Agency  
Attn: Jennifer McCullar  
PO Box 517  
121 Palomino Drive  
Big Bear City, CA 92314-0517**

The outer envelope in which the proposals are submitted should be marked, "Proposal for Audit for BBARWA."

If you have any questions about the proposal, please contact Jennifer McCullar at (909) 584-4522.

#### **The sealed proposal should include:**

1. A cover page showing the firm's name, contact information, and date of proposal.
2. A table of contents identifying a complete list of materials submitted.
3. A cover letter summarizing the firm's interest and qualifications in response to the RFP requirements and including a statement that the proposal is irrevocable for ninety (90) days from the date of proposal.
4. The detailed proposal should follow the order provided in the Proposal Elements, below.

#### **V. Proposal Elements**

##### *1. General Requirements*

The purpose of this proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of the Agency in conformity with the requirements of this Request for Proposal. As such, the substance of proposals will carry more weight than their form or manner of presentation. The proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement.

The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposing firm's capabilities to satisfy the requirements of the RFP. While additional information may be presented, the following subject items 2 through 10 must be included. They represent the criteria against which the proposal will be evaluated.

## 2. *Independence*

The firm should provide an affirmative statement that it is independent of the Agency as defined by generally accepted auditing standards and the standards set forth for financial audits in the U.S. General Accounting Office's Government Auditing Standards (1994).

## 3. *License to Practice in California*

A statement should be included indicating that the firm, and all assigned key professional staff, are properly licensed to practice in the State of California.

## 4. *Firm Qualifications, Experience and Education*

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on part-time basis. Specific experience and /or education related to special district audits and enterprise fund accounting should be indicated.

## 5. *Partner, Supervisory and Staff Qualifications and Experience*

The firm should identify the principal and management staff, including engagement partners, manager, other supervisors, and specialists, who would be assigned to the engagement. The firm should indicate 1) whether such person is licensed to practice as a certified public accountant in California, 2) the government auditing experience of each person, including continuing professional education during the last three years, and 3) membership in professional organizations that is relevant to this audit.

Please indicate how the quality of staff over the term of the agreement will be assured, how and when a change in audit staff may occur and how the engagement will be managed as it relates to consistent and qualified staffing.

## 6. *Peer Review Report and Other Reviews*

The firm should include its most recent peer review report. The proposal shall also provide information on results of any federal or state desk reviews or field reviews of the firm's audits during the past three years. In addition, the proposal shall include information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three years with state regulatory bodies or professional organizations.

7. *Prior Engagements with the Agency or its Member Agencies*

The proposal should list all current or prior engagements with the Agency and all engagements with its member agencies: the City of Big Bear Lake, the Big Bear City Community Services District, and the County of San Bernardino on behalf of County Service Area 53B.

8. *Similar Engagements with Other Government Agencies and References*

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements performed (maximum of five) in the last five years that are similar to the engagement described in this Request for Proposal. Indicate the scope of work, date, engagement partners, and the name and telephone number of the principal client contact.

List the firm's client references for which similar services are currently being provided. The references should include the name and agency, the appropriate contact information with address and telephone number, the type of service provided, and the date of service provided. The Agency may contact any and all references regarding services provided by your firm.

9. *Audit Work Plan*

The Agency's fiscal year end is June 30, 2012. The Agency's audit is typically finalized by the end of September and the State Controller Report of Financial Transactions is submitted by October 15<sup>th</sup>. Based on this general timetable, please provide an audit work plan of the essential timelines that you foresee, beginning with the initial meeting prior to the interim fieldwork. If there are any additional requirements included in the audit work plan above that are associated with the preparation and completion of a CAFR (as noted in II. D.), please distinguish these from the other items in the work plan.

10. *Client-Prepared Audit Schedules*

The proposal shall include a list of client-prepared audit schedules that the firm anticipates Agency staff to provide.

**VI. All-Inclusive, Not-to-Exceed Price**

The proposal shall provide the firm's audit fee stated separately by fiscal year for each activity and/ or report on a not-to-exceed basis (see Fee Structure below). It is understood that if a certain portion of the audit and/or reporting services are not required for a given year, then the fee pertaining to that audit/reporting task becomes non-applicable. The fee shall include hourly rates for all personnel service provided in connection with any "Extra Work" (as such term is defined in the proposed Professional Services Agreement ("Agreement")), attached hereto as Exhibit "A" and incorporated

herein). Rates may be increased by some predetermined method no more than once a year.

The audit firm will not be reimbursed for any travel, per diem, photocopying, telephone bills, or other related expenses unless incurred at the specific request of the Agency. All reimbursable out-of-pocket expenses will be charged against the all inclusive, not-to-exceed price.

A. Fee Structure

The audit fee structure should be broken down as follows:

	<u>2012</u>
Audit of General Purpose Financial Statements	
Preparation of all applicable financial statements and related disclosures	
Management Report, including Audit Procedures under Office of Management and Budget Circular A-133	
Out-of- Pocket Expenses	
Total All-Inclusive, "Not-To-Exceed" Price	[REDACTED]
Additional Cost to Prepare CAFR	
Total All-Inclusive, "Not-to-Exceed" Price Including CAFR	

**VII. Selection**

During the evaluation and selection process, an interview with the General Manager and Finance Manager may be scheduled with the highest scoring respondents. It is anticipated, as outlined in the Selection of Proposal Schedule, that the selection of a firm will be completed by March 14, 2012 with Board approval of that selection on March 28, 2012.

The Governing Board reserves the right to enter into an agreement with the top-scoring auditing firm, or may determine not to enter into an agreement. The decision of the Governing Board is final.

Exceptions Certification to this RFP – in submitting a Proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to

the “Professional Services Agreement” attached hereto as Exhibit “A.” If any exceptions are taken, such exceptions must be clearly noted in the Proposal and may be reason for rejection of the Proposal. As such, Proposer is directed to carefully review the proposed Professional Services Agreement and, in particular, the insurance and indemnification provisions therein.

#### **VIII. Authority to Withdraw**

The Agency reserves the right to reject any and all proposals and waive any irregularities or informalities in the Request for Proposals process. The Agency further reserves the right to award the contract to other than the lowest, responsible proposer if such action is deemed to be in the best interest of the Agency. The Agency also reserves the right to award the proposal together or in parts depending on the nature of the responses.

#### **IX. Indemnification**

The chosen audit firm(s) will agree to protect, defend, indemnify and hold harmless the Agency, its officers officials, directors, agents, employees, servants, and volunteers free and harmless from any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons and damage to property, directly or indirectly out of the obligations herein undertaken or out of the operations conducted by the audit firm, its employees, agents, representatives or subcontractors under or in connection with the work performed under this proposal.

#### **X. Agency Discretion, Non-Liability Waivers and Hold Harmless**

The information in this RFP is intended to provide general information regarding the need for services. This information is not intended or warranted to be a complete statement of all of the information respondents may be required to ultimately submit.

This RFP does not commit the Agency to pay any costs incurred in the preparation of a response to this RFP. The Agency reserves the right to accept or reject any proposal in part or in its entirety. The Agency reserves the right to choose any number of qualified finalists. In addition, the Agency reserves the right to issue written notice to all participants of any changes in the proposal submission process and schedule, should the Agency determine, at its sole and absolute discretion, that such changes are necessary. The RFP should be limited to 20 pages. **The proposing entity, by submitting a response to the RFP waives all rights to protest or seek any legal remedies whatsoever regarding any aspect of the RFP.**

**XI. Selection of Proposal Schedule**

Agency reserves the right to modify these dates as may be required.

January 15, 2012	Request for Proposal Issued
February 15, 2012	Deadline for Proposals
March 28, 2012	Contract Awarded

# EXHIBIT A TO REQUEST FOR PROPOSAL

## BIG BEAR AREA REGIONAL WASTEWATER AGENCY PROFESSIONAL SERVICES AGREEMENT

### Independent Auditing Services

#### 1. PARTIES AND DATE.

This Agreement is made and entered into this \_\_\_\_\_ day of March, 2012, by and between the **Big Bear Area Regional Wastewater Agency**, a California joint powers authority with its principal place of business at 121 Palomino Drive, Big Bear City, California 92314 ("Agency") and [\_\_\_\_INSERT NAME\_\_\_\_], a [\_\_\_\_[INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY]\_\_\_\_] with its principal place of business at [\_\_\_\_INSERT ADDRESS\_\_\_\_] ("Consultant"). Agency 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 the Agency on the terms and conditions set forth in this Agreement. Consultant represents that all assigned key professional staff are experienced in providing independent auditing services to public clients by certified public accountants, is licensed to practice in the State of California, and is familiar with the plans of Agency.

##### 2.2 Project.

Agency desires to engage Consultant to render independent auditing services as set forth in the Request for Proposal issued on January 15, 2012 ("Project") attached hereto as Exhibit "A" and incorporated herein by reference.

#### 3. TERMS.

##### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the Agency all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional independent auditing services for the Project ("Services"). The Services are particularly described in Exhibit "A". 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.

3.1.2 Term. The term of this Agreement shall commence upon Consultant's receipt from the Agency of a fully-executed Agreement for the Services and terminate at the end of the fiscal year, unless earlier terminated as provided herein. The Parties may extend the term of this Agreement for additional one-year terms upon mutual agreement in writing and satisfactory negotiation of terms. 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. Agency retains Consultant on an independent contractor basis and not as an employee. 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 also not be employees of Agency 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, disability insurance, and workers' compensation insurance.

3.2.2 Audit Work Plan. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Audit Work Plan (as described in Section V(9) of Exhibit "A") set forth in Exhibit "B" or as may be amended in writing by the Agency. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Audit Work Plan, Agency shall respond to Consultant's submittals in a timely manner. Upon request of Agency, Consultant shall provide a more detailed schedule of anticipated performance to meet the Audit Work Plan.

3.2.3 Inspection of Work. All work prepared by Consultant shall be subject to the approval by the Agency in accordance with the provisions of this Agreement and the Audit Work Plan.

3.2.4 Substitution of Key Personnel. Consultant has represented to Agency 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 upon written approval of Agency. In the event that Agency and Consultant cannot agree as to the substitution of key personnel, Agency shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the Agency, or who are determined by the

Agency to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the Agency. The key personnel for performance of this Agreement are as follows: [\_\_INSERT NAMES\_\_].

3.2.5 Agency's Representative. The Agency hereby designates the Finance Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Agency's Representative"). Agency's Representative shall have the power to act on behalf of the Agency for all purposes under this Contract.

3.2.6 Consultant's Representative. Consultant hereby designates [\_\_INSERT NAME OR TITLE\_\_], 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 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.

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

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all 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 subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants 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 the Agency, 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. Any employee of the Consultant or its subconsultants who is determined by the Agency 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 the Agency, shall be promptly removed from the Project by the Consultant and shall not be re-employed 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 the Agency, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Agency, its officials, directors, officers, employees 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 the Services under this Agreement until it has provided evidence satisfactory to the Agency that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the Agency that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the Agency to terminate this Agreement for cause.

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 subconsultants. Consultant shall also require all of its subconsultants 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) *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 including but not limited to CG 2503, 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) *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 Services, errors and omissions liability insurance appropriate to their

profession. Such insurance shall be in an amount not less than \$1,000,000 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 on forms supplied or approved by the Agency to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Agency, 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 the Agency, 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 the Agency, 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) the Agency, 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 the Agency, 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 the Agency, 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 the Agency, 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 the Agency; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Agency, 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 the Agency, 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 no higher than \$50,000. Consultant shall guarantee that, at the option of the Agency, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, 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 the Agency.

3.2.10.8 Verification of Coverage. Consultant shall furnish Agency with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Agency within thirty (30) days after the execution of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Agency if requested. All certificates and endorsements must be received and approved by the Agency before work commences. The Agency reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.9 Reporting of Claims. Consultant shall report to the Agency, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with Services under this Agreement.

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.

### **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", Consultant Proposal, that is attached hereto and incorporated herein by reference. The total compensation shall not exceed [INSERT WRITTEN DOLLAR AMOUNT] (\$[INSERT NUMERICAL DOLLAR AMOUNT]) without written approval of Agency's Finance Manager. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to Agency 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. Agency 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 Agency.

3.3.4 Extra Work. At any time during the term of this Agreement, Agency may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by Agency 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 Agency's Representative.

### **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 under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Agency 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. Agency may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to Agency up to the date of termination, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except in the event Agency fails to cure its material breach of this Agreement after at least thirty (30) days written notice and demand to cure such material breach.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, Agency may require Consultant to provide all finished or unfinished Documents and Data 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, Agency 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:**

[\_\_ INSERT NAME, ADDRESS & CONTACT PERSON \_\_]

**Agency:**

Big Bear Area Regional Wastewater Agency  
121 Palomino Drive  
Big Bear City, California 92314

Attn: Finance Manager

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 and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for Agency to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, 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 subconsultants to agree in writing that Agency is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Agency 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 Agency’s sole risk.

3.5.3.2 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 to the extent they are not subject to disclosure pursuant to the Public Records Act. Such materials shall not, without the prior written consent of Agency, 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 Agency'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 Agency.

3.5.4 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.

3.5.5 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 all other costs of such action.

3.5.6 Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the Agency, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subconsultants, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Consultant shall defend, with Counsel of Agency's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by this Section that may be brought or instituted against Agency or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against Agency or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse Agency for the cost of any settlement paid by Agency or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for Agency's attorney's fees and costs, including expert witness fees. Consultant shall reimburse Agency and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Agency, its directors, officials officers, employees, agents, or volunteers.

3.5.7 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.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

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

3.5.10 Agency's Right to Employ Other Consultants. Agency reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

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 the Agency. 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 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 personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to Agency include its elected officials, officers, employees, agents, 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.

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

3.5.15 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.

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

3.5.17 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.

3.5.18 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, Agency shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Agency, during the term of his or her service with Agency, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, 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 Agency Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 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 Worker's 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.

3.5.21 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.

3.5.22 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 required by this Agreement, except as expressly stated herein, without prior written approval of Agency. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**BIG BEAR AREA REGIONAL  
WASTEWATER AGENCY**

**[INSERT NAME OF CONSULTANT]**

By: \_\_\_\_\_  
Steven Schindler  
General Manager

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

*Attest:*

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Agency Secretary

*Approved as to Form:*

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Best Best & Krieger LLP  
Agency Counsel

# **EXHIBIT "A"**

## **Request For Proposal For Independent Auditing Services**

# **EXHIBIT "B"**

## **Consultant Proposal**