SWEETWATER SPRINGS WATER DISTRICT

TO: Board of Directors **AGENDA NO. V-E**

FROM: Steve Mack, General Manager

Meeting Date: February 4, 2010

Subject: REQUEST FOR CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR CIP IV-B

RECOMMENDED ACTION: Approve Resolution 10-3 which authorizes the General Manager to execute an agreement with Brelje and Race to provide construction management and inspection services for CIP IV-B.

FISCAL IMPACT: The estimated cost based on the amount of work and the Brelje and Race fee schedule is $277,000 with an allowance of $10,000 for extra or changed work to be approved by the express direction or permission of the General Manager.

DISCUSSION:

The District is moving forward with construction of CIP IV-B, Projects 1 and 2 (Table 1). Project 1 is being advertised with award of bid expected at the March Board meeting. Project 2 is anticipated to start in July 2010. Construction management and inspection services are needed for successful completion of the projects. It has been the District's practice to have engineering consulting firms do this work.

We have received a proposal for Brelje and Race for the construction management and inspection services for these projects (Exhibit A with Resolution 10-3). The cost estimated in the proposal is $277,000 and there is also a provision for extra services up to $10,000. The District currently has a design contract with Brelje and Race (B&R) for design of CIP IV-B, and B&R did the construction management and inspection services for CIP IV-A with a contract that was competitively bid through a request for proposals process. The proposal submitted by B&R for CIP IV-B is consistent with the CIP IV-A contract in scope and estimated cost and the services provided through that contract were excellent.

Of note, the proposal submitted by B&R includes adding SCADA (Supervisory Control and Data Acquisition) monitoring at Harrison Tank. This tank is in the proximity of the Schoolhouse Tanks to be constructed as part of CIP IV-B and which will have SCADA work done to include them into the District's SCADA system. The Harrison Tank currently has no SCADA and it makes sense to have this tank also included into the District system at this time. We do not have a cost estimate at this time but expect it to be in the $40,000 range. We do not

expect the addition of this work to increase the total bid price of Project 1 above the estimated Project 1 cost in Table 1. We will work with CDC staff to ensure that this add on is eligible for funding assistance under the RDA grant.

Staff recommend approval of Resolution 10-3. The construction management and engineering services proposal received from B&R, a qualified engineering firm that has done good work for the District in the past and is very familiar with the work needed for CIP IV-B, shows an appropriate effort level and staff billing rates consistent with the CIP IV-A contract.

Table 1. CIP IV-B		
Year	**Projects**	**Estimated Cost**
2010	**CIP IV-B, Project 1**	
	Schoolhouse Tank and Upper Schoolhouse Tank (MR) – Construct a storage tank with a capacity of approximately 65,000 gallons at the top of Bonita Terrace, install a booster station, and connect with replacement reservoir at Upper Schoolhouse site.	$638,000
	Bonita Terrace (MR) - Replace 1,500 ft of existing main and appurtenances on Bonita Terrace, including ties to Schoolhouse Tank and Delta Way (CIP IV-A), to create a loop.	$238,000
	Riverlands Road (GV) - Replace 1,600 lf of existing main and appurtenances in Riverlands Road, including two ties at Drake Road to create a loop.	$393,000
	Handy Andy Booster Feed Line (GV) – Replace 300 lf of existing main between Hwy 116 and the booster pump at Old Monte Rio Road.	$59,000
	2010 - CIP IV-B, Project 1 Total	**$1,328,000**
	75% CDC/RRROC Funding Amount	**$899,250**
2011	**CIP IV-B, Project 2**	
	Alder Road, Pebble Way, & Heller Streets (MR) – On River Blvd, Alder Rd., Willow Rd., and Railroad Ave., replace existing mains and appurtenances with approximately 6,000 lf of 6-inch water main, to complete loop.	$1,515,000
	2011 - CIP IV-B, Project 2 Total	**$1,515,000**
	75% CDC/RRROC Funding Amount	**$1,095,000**
	Total CDC/RRROC Funding Amount for CIP IV-B	**$1,994,250**
	District Funding Amount for CIP IV-B	**$848,750**
	Total Estimated Cost of CIP IV-B	**$2,843,000**

RESOLUTION 10-3

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SWEETWATER SPRINGS WATER DISTRICT APPROVING AN AGREEMENT FOR CONSULTING CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES FOR CIP IV-B, PROJECTS 1 AND 2, AND AUTHORIZING THE GENERAL MANAGER TO SIGN

WHEREAS, the consulting engineering firm of Brelje and Race is under contract to the District for design services for CIP IV-B, Projects 1 and 2; and

WHEREAS, Brelje and Race has performed well in doing construction management and inspection services in past projects for the District, including recently for CIP IV-A; and

WHEREAS, CIP IV-B consists of the following elements:

- Schoolhouse Tank and Upper Schoolhouse Tank
- Riverlands Road (GV) - Replace 1,600 lf
- Bonita Terrace – replace 1,500 lf
- Handy Andy Booster Feed Line (GV) **–** Replace 300 lf of existing main
- Alder Road, Pebble Way, & Heller Streets (MR) – replace existing mains and appurtenances with approximately 6,000 lf of 6-inch water main; and

WHEREAS, the CIP IV-B projects have a total estimated cost of $2,843,000; and

WHEREAS, Brelje and Race has submitted a proposal for all elements of CIP IV-B with a projected cost of $277,000 to perform the construction management and inspection services, and the work effort and staff rate schedule are consistent with the recent CIP IV-A construction management and inspection services contract ; and

WHEREAS, it is appropriate to include an allowance of $10,000 for extra or changed work that may be authorized only by express permission or direction by the General Manager.

NOW, THEREFORE BE IT RESOLVED, that:

1. The Phase IV-B Water Distribution Project Agreement for construction management and inspection services with Brelje and Race, a copy of which is attached hereto as Exhibit A, is hereby approved in the sum of $277,000 with an extra services allowance of $10,000; and

2. The General Manager is authorized to execute said Agreement on behalf of the District.

I hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted and passed by the Board of Directors of the SWEETWATER SPRINGS WATER DISTRICT, Sonoma County, California, at a meeting held on February 4, 2010, by the following vote.

Director	**Aye**	**No**
Sukey Robb-Wilder	_____	_____
Jim Quigley	_____	_____
Wanda Smith	_____	_____
Gaylord Schaap	_____	_____
Victoria Wikle	_____	_____

_____
Jim Quigley
President of the Board of Directors

_____
Attest: Julie A. Kenny
Clerk of the Board of Directors

AGREEMENT FOR
CONSULTING CONSTRUCTION MANAGEMENT
AND INSPECTION SERVICES

SWEETWATER SPRINGS WATER DISTRICT
CAPITAL IMPROVEMENT PROJECT PHASE IV-B

The following is an Agreement dated as of February 4, 2010 by and between the Sweetwater Springs Water District, hereinafter referred to as "DISTRICT" and Brelje & Race, hereinafter referred to as "CONSULTANT".

RECITALS

WHEREAS, CONSULTANT represents to DISTRICT that it is a duly qualified firm experienced in construction management and inspection of projects involving the construction of water pipelines, storage tanks and other water facilities; and

WHEREAS, in the judgment of the Board of Directors of DISTRICT, it is necessary and desirable to employ the services of CONSULTANT for construction management and inspection services associated with SWEETWATER SPRINGS WATER DISTRICT CAPITAL IMPROVEMENT PROJECT PHASE IV-B, Projects 1 and 2, in the Guerneville and Monte Rio areas of Sonoma County (Table 1 in Exhibit A).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Services. This Agreement is consummated for the purpose of performing construction management and inspection services associated with the SWEETWATER SPRINGS WATER DISTRICT CAPITAL IMPROVEMENT PROJECT PHASE IV-B, Projects 1 and 2, (as listed in Table 1 of Exhibit A, attached), in the Guerneville and Monte Rio areas of Sonoma County.

1.1 Scope of Services. In accordance with the terms and conditions set forth in this Agreement, CONSULTANT agrees to perform all services described in the Scope of Work attached as Exhibit A, with respect to Projects 1 and 2 as listed in Table 1 of Exhibit A. In the event of a conflict or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

1.2 Performance Standard. CONSULTANT shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONSULTANT's profession. If DISTRICT determines that any of CONSULTANT's work is not in accordance with such level of competency and standard of care, DISTRICT, in its sole discretion and in addition to any other remedies provided herein or by law, shall have the right to do any or all of the following:

a. Require CONSULTANT to meet with DISTRICT to review the Quality of the work and resolve matters of concern;
b. Require CONSULTANT to repeat the work at no additional charge until it is satisfactory to the DISTRICT; or
c. Terminate this Agreement in accordance with the provision of Section 4 herein.

1.3 Key Personnel. The parties hereto acknowledge that the availability of John S. Locey and Brent Beazor of Brelje & Race were a material inducement to DISTRICT to enter into this Agreement, and without whose services DISTRICT would not have entered into this Agreement.

CONSULTANT shall not remove, replace, or substitute for Mr. Locey or Mr. Beazor without the prior written consent of DISTRICT.

1.4 Assigned Personnel. CONSULTANT shall assign only competent personnel to perform the work hereunder. In the event that at any time DISTRICT, in its sole discretion, desires the removal of any person or persons assigned by CONSULTANT to perform work hereunder, CONSULTANT shall remove such person or persons immediately upon receiving notice from DISTRICT.

2. Payment.

2.1 Notwithstanding anything stated to the contrary herein, for performance of the Services (including, without limitation, all tools, equipment, labor, supplies, supervision and materials), DISTRICT agrees to pay, and CONSULTANT agrees to accept compensation for salary expenses in accordance with the Schedule of Rates specified in Exhibit B attached hereto and incorporated herein, and for non-salary expenses in accordance with Section 2.2, provided, however, that the total sum of all costs shall not exceed $171,000 for Tasks 1 thru 12 for Project 1 and $106,000 for Project 2, as provided in Section 1.1 of this Agreement, and additional compensation as authorized by the DISTRICT's General Manager for tasks performed pursuant to Section 12 of this Agreement in an amount not to exceed an additional $10,000. Billing rates for labor categories in Exhibit B cover all salary-related costs including, without limitation, salary, fringe benefits, overhead, and profit.

2.2 CONSULTANT may request remaining funds from completed Project 1 to be redistributed to Project 2. DISTRICT General Manager may approve redistribution of funds between Project 1 and 2 upon written request by CONSULTANT.

2.3 Monthly invoices shall be submitted by CONSULTANT. They shall identify the number of hours for the period, by job classification, time spent on each task, the percent of each task complete during the period, and total percent of each task completed.

2.4 DISTRICT shall make monthly payments based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.

2.5 All payments will be made in accordance with this Agreement.

3. Term of Agreement. The term of this Agreement shall commence in accordance with Section 8 below and CONSULTANT shall complete Tasks 1 through 11 prior to 12/31/10 unless otherwise extended by the DISTRICT.

4. Termination. At any time and without cause, DISTRICT shall have the right in its sole discretion, to terminate this Agreement by giving ten (10) days prior written notice to CONSULTANT. In the event of such termination, DISTRICT shall pay CONSULTANT for services satisfactorily rendered to such date. If CONSULTANT should fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, DISTRICT may immediately terminate this Agreement by giving CONSULTANT written notice of such termination, stating the reason for such termination. In such event, CONSULTANT shall be entitled to receive payment for all services satisfactorily rendered, provided, however, that there shall be deducted from such amount the amount of damage, if any, sustained by DISTRICT by virtue of the breach of the Agreement by CONSULTANT. For agreements where payment is based upon a lump sum in total or by individual task, payment for services satisfactorily rendered shall be an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by CONSULTANT bear to the total services otherwise required to be performed for such total fee, provided, however, that there shall be deducted from such amount the amount of damage, if any sustained by DISTRICT by virtue of the breach of the Agreement by CONSULTANT

5. Options upon Breach by CONSULTANT. If CONSULTANT materially breaches any of the terms of this Agreement, District's remedies shall included, but not be limited to, the following:

5.1 Immediately terminate the Agreement;

5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by CONSULTANT pursuant to this Agreement;

5.3 Retain a different consultant to complete the Services not finished by CONSULTANT pursuant to this Agreement; or

5.4 Charge CONSULTANT the difference between the costs to complete the Services that are unfinished at the time of breach and the amount that District would have paid CONSULTANT pursuant to Section 2 if CONSULTANT had completed the work.

6. Indemnification.

CONSULTANT shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the District and its officials, commissioners, officers, employees, agents and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the CONSULTANT. CONSULTANT will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnity the District shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the District. With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the District.

The foregoing obligation of CONSULTANT shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the District or its officers, employees, agents, or volunteers and (2) the actions of CONSULTANT or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, CONSULTANT acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

7. Insurance. Before beginning any work under this Agreement, CONSULTANT, at its own cost and expense, shall procure and maintain the types and amounts of insurance listed below for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

7.1 **Verification of Coverage**

a. Properly executed certified Certificates of Insurance clearly evidencing all coverage's, limits and endorsements required above. Said Certificates shall be submitted prior to the execution of the Agreement.

b. Certified copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

7.2 **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Errors and omissions liability insurance appropriate to the consultant's profession.

7.3 **Minimum Limits of Insurance.** CONSULTANT shall maintain limits no less than:

a. General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: $1,000,000 per occurrence for bodily injury and property damage.

c. Employer's Liability: $1,000,000 per accident for bodily injury or disease.

d. Professional Liability: CONSULTANT shall maintain professional liability insurance for licensed professionals performing work in connection with this Agreement in an amount no less than $1,000,000 combined single limit and $1,000,000 annual aggregate for claims made covering the professionals' errors and omissions. CONSULTANT shall provide insurance covering claims made as a result of negligent performance of this Agreement and shall maintain such insurance in effect for not less than two (2) years following completion of performance of this Agreement.

e. Worker's Compensation: CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees. The insurance must be endorsed to waive all rights of subrogation against the District and its officials, officers, employees, and volunteers for loss arising from or related to the Services.

7.4 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7.5 **All Policies Requirements.** The policies are to contain, or be endorsed to contain, the following provisions:

a. The District shall be named as an additional insured. The District, its officers, officials, employees, and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT, or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, officials, employees, or volunteers.

b. For any claims related to this project or the performance of the Services, the CONSULTANT's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees or volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

c. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its officers, officials, employees, or volunteers.

d. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability.

e. A certified endorsement must be attached to all each insurance policy required by this clause stating that coverage suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District.

7.4 **Policy Obligations.** CONSULTANT’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

7.5 **Material Breach.** If CONSULTANT, for any reason, fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a

material breach of contract. DISTRICT, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, DISTRICT may purchase such required insurance coverage, and without further notice to CONSULTANT, DISTRICT may deduct from sums due to CONSULTANT any premium costs advanced by DISTRICT for such insurance. These remedies shall be in addition to any other remedies available to DISTRICT.

8. Commencement of Work. CONSULTANT is authorized to proceed with the performance of this Agreement upon date of issuance, by the DISTRICT's General Manager, of written notice to proceed with the Services, and shall complete said performance in accordance with the time specified in this Agreement, provided, however, that if the scheduled performance is delayed by earthquake, flood, high water, other Act of God or by strike, lockout or similar labor disturbances, the time for CONSULTANT's scheduled performance of this Agreement shall be extended by a number of days equal to the number of days the schedule has been delayed.

9. Extra or Changed Work. Only the DISTRICT's General Manager may authorize extra or changed work. Failure of CONSULTANT to secure such a written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter CONSULTANT shall be entitled to no compensation whatsoever for the performance of such work. CONSULTANT further waivers any and all right or remedy by way of restitution or quantum merit for any and all extra work performed without such express and prior written authorization of the General Manager.

10. Representations and Warranties of CONSULTANT.

10.1 Standard of Care. DISTRICT has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT hereby warrants that all Services will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of CONSULTANT's Services by DISTRICT shall not operate as a waiver or release.

10.2 Status of CONSULTANT. The parties intend that CONSULTANT, in performing the services hereinafter specified, shall act as an independent CONSULTANT and shall have control of the work and the manner in which it is performed. CONSULTANT shall have no authority, express or implied, to act on behalf of the DISTRICT in any capacity whatsoever as an agent. CONSULTANT is not to be considered an agent or employee of DISTRICT, and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits DISTRICT provides its employees. In the event DISTRICT exercises its right to terminate this Agreement pursuant to Section 4 above, CONSULTANT expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable employees.

10.3 Taxes. CONSULTANT agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but no limited to, state and federal income and FICA taxes. CONSULTANT agrees to indemnify and hold DISTRICT harmless from any liability which it may incur to the United States or to the State of California as a consequence of CONSULTANT's failure to pay, when due, all such taxes and obligations. In case DISTRICT is audited for compliance regarding any withholding or other applicable taxes, CONSULTANT agrees to furnish DISTRICT with proof of payment of taxes on these earnings.

10.4 Cost Disclosure. In accordance with Government Code §7550, CONSULTANT agrees to state in a separate portion of its filed report, the numbers and amounts of all contracts and subcontracts relating to the preparation of the report.

10.5 Records Created As Part of CONSULTANT's Performance**.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that CONSULTANT prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. CONSULTANT hereby agrees to deliver those documents to the District upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the District and are not necessarily suitable for any future or other use. District and CONSULTANT agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

10.6 Records Maintenance. CONSULTANT shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compassable under this Agreement and shall make such documents and records available to DISTRICT for inspection at any reasonable time. CONSULTANT shall maintain such records for a period of not less than five (5) years, or for any longer period required by law, from the date of final payment to the CONSULTANT to this Agreement

10.7 Inspection and Audit of Records. Any records or documents that Section 10.6 of this Agreement requires CONSULTANT to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the DISTRICT. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS ($10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of DISTRICT or as part of any audit of the DISTRICT, for a period of three (3) years after final payment under the Agreement.

10.8 Conflict of Interest. CONSULTANT may serve other clients, but none whose activities within the corporate limits of DISTRICT or whose business, regardless of location, would place CONSULTANT in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

CONSULTANT shall not employ any DISTRICT official in the work performed pursuant to this Agreement. No officer or employee of DISTRICT shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

CONSULTANT hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the DISTRICT. If CONSULTANT was an employee, agent, appointee, or official of the DISTRICT in the previous twelve (12) months, CONSULTANT warrants that it did not participate in any manner in the forming of this Agreement. CONSULTANT understands that, if this Agreement is made in violation of Government Code §1090, *et.seq.*, the entire Agreement is void and CONSULTANT will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and CONSULTANT will be required to reimburse the DISTRICT for any sums paid to the CONSULTANT. CONSULTANT understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.9 Nondiscrimination. CONSULTANT shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability or national origin. CONSULTANT agrees to comply with the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection, during the term of this Agreement and any extension of the term.

10.10 Licenses and Permits. CONSULTANT represents and warrants to District that CONSULTANT and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice in their respective professions. CONSULTANT expressly represents and warrants that CONSULTANT and its employees, agents, and any subcontractors shall at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

11. Demands for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and, until the party receives such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

12. Assignment. Neither party hereto shall assign, delegate, sublet or transfer any interest in or duty under this Agreement without written consent of the other, and no assignment shall be of any force or affect whatsoever unless and until the other party shall have so consented. CONSULTANT hereunder offers and agrees to assign to DISTRICT, and agrees to require its subcontractors to offer and agree to assign the DISTRICT, all rights, title, and interest in and to all causes of actions it may have under Section 4 of the Clayton Act (15 USC Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract or any subcontracts entered into hereunder. This assignment shall be made and become effective at the time DISTRICT tenders final payment to CONSULTANT, without further acknowledgement of the parties.

13. Ownership and Disclosure of Work Product. DISTRICT shall be the owner of and shall be entitled to immediate possession of accurate reproducible copies of any design computations, plans, specifications, copies of correspondence, maps, or other pertinent data and information gathered or computed by CONSULTANT in the performance of and prior to termination of this Agreement by DISTRICT or upon completion of the work pursuant to this Agreement. CONSULTANT may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of DISTRICT, during the term of this Agreement and for a period of one hundred eighty (180) days following expiration of the term of the Agreement.

14. Miscellaneous Provisions.

14.1 No Waiver of Breach. The waiver by DISTRICT of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

14.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Thereby, CONSULTANT and DISTRICT acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. CONSULTANT and DISTRICT acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

14.3 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

14.4 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for breach thereof shall be brought and tried in the County of Sonoma.

14.5 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

14.6 Merger. This writing, including all exhibits attached hereto, is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure §1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

14.7 Time of Essence. Time is and shall be of the essence in this Agreement and of each and every provision contained in this Agreement.

14.8 Notices. Any written notice to CONSULTANT shall be sent to:

Brelje & Race
ATTENTION: John S. Locey
5570 Skylane Blvd. Phone: (707) 576-1322
Santa Rosa, CA 95403 Fax: (707) 576-0469

Any written notice to DISTRICT shall be sent to:

Sweetwater Springs District
ATTENTION: General Manager
P.O. Box 48 Phone: (707) 869-4000
Guerneville, CA 95446 Fax: (707) 869-4005

With a copy to:
Mike Gogna, District Counsel
401 Mendocino Avenue, Suite 100
Santa Rosa, CA 95401

14.9 Professional Seal. Where applicable in the determination of the DISTRICT, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

14.10 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any

provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

14.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CONSULTANT:

By: _____

DISTRICT:

By: _____
Stephen Mack, General Manager
Sweetwater Springs Water District

APPROVED AS TO FORM FOR DISTRICT:

By: _____
Mike Gogna, District Counsel

Date: _____

EXHIBIT A

SCOPE OF
CONSTRUCTION MANAGEMENT AND INSPECTON SERVICES

SWEETWATER SPRINGS WATER DISTRICT
CIP PHASE IV-B, PROJECTS 1 AND 2

Understanding of Project Objectives

Sweetwater Springs Water District desires to continue their ongoing program to replace aged and deteriorating water system infrastructure. The District has selected items from their Capital Improvement Project (CIP) list for design and construction in 2009/10 and 2010/11. The items have been packaged into a two construction projects that are referred to as CIP Phase IV-B, Project 1 and Project 2 (See Table 1).

Phase IV-B, Project 1 will involve replacement of approximately ¾ miles of water main with new piping and appurtenances in Riverlands Road, Bonita Terrace, below the Schoolhouse tank and between Hwy 116 and Old Monte Rio Road (replacing the Handy Andy Booster feed line). The project will also involve construction of a new storage tank at the Schoolhouse site, replacement of the Upper Schoolhouse tank and installation of storage level monitoring facilities at the Harrison Tank site.

Phase IV-B, Project 2 will involve the replacement of approximately 1-1/4 miles of water main and appurtenances in Alder Road, Pebble Way, Heller Street, River Blvd., Birch Lane, Elm Avenue and Railroad Avenue and the abandonment of approximately 4,500 lf of parallel undersized water main including the transfer of water services to the larger main.

The terrain within some of the work areas is steep and access will be limited. The construction program will need to be sensitive to resident needs and allow for life-safety vehicular access. Brelje & Race is familiar with working in these conditions and are prepared to accept the challenges associated with managing the project.

Project Approach

Brelje & Race will provide the full range of services necessary to successfully complete the water system rehabilitation projects. Our project manager and design/resident engineers will remain involved in the project during the construction phases. The following pages list the specific project tasks required during the construction phase for each project, in sequential order.

Construction Phase Tasks

Task 1 Bid Services

Services during the bid process will include arranging for bid advertisement, attendance at the pre-bid meeting, preparation of required addenda, and distribution of bid documents to prospective bidders and local Builder's Exchange. Conduct bid opening, prepare bid tabulation and provide letter recommendation of bid award to District.

Task 2 Shop Drawings
Brelje & Race will log and process shop drawings and forward a copy of all submittals and associated correspondence to the District.

Task 3 Requests for Information (RFI)
Respond to RFI's submitted by contractor. Forward a copy of all RFI's and responses to District.

Task 4 Schedule Review
Review contractor's as-planned schedule for conformance with the contract documents and for reasonableness of activity durations and sequence. Transfer review comments to contractor and meet with contractor to discuss and clarify any significant issues.

Task 5 Construction Observation
Make a pre-construction video of the work areas to document existing conditions. Provide District with a DVD of the video. Provide day-to-day field observation of the work (includes construction observation activities to be performed by electrical and geotechnical subconsultants) to check for conformance with the requirements of the contract documents, including project permits and any mitigation requirements. Make reasonable efforts to take digital photos and prepare a photo log for transfer to District at completion of project. Mark up a field set of drawings to incorporate contractor's record drawing markups. Prepare project punch list.

Task 6 Partial Payment Processing
Review and comment on draft partial payment estimate submitted by Contractor. Prepare and process final partial payment estimates.

Task 7 Construction Progress Meetings
Organize and conduct construction progress meetings with contractor and District staff on a bi-weekly basis, or more frequently if needed, to review progress and identify and discuss outstanding potential claims issues.

Task 8 Changes & Claims Management
Perform changes and claims management including but not limited to performing quantity and cost analysis for negotiation of change orders, negotiating change order costs and time extensions, analyzing claims and compiling video history of project. Prepare and present change orders to District for approval.

Task 9 Board Meeting Attendance
Attend monthly meetings of the Board of Directors on an as-requested basis during the duration of the construction project. Prepare and present monthly progress payment requests and report summarizing work preformed to date to General Manager.

Task 10 Testing Coordination
Coordinate materials testing services for quality control of backfill and paving for those portions within County rights-of-way.

Task 11 Construction Staking
Provide construction staking for the two water storage tanks and alignment of the directional drilled water main that will replace the Handy Andy Booster Feed main.

Task 12 Project Closeout Services
Prepare and provide District with a set of Record Drawings in paper and digital format that include Contractor and Resident Engineer markups. Obtain documentation from the permitting agencies that the permits have been closed. Verify that all post construction mitigation measures have been implemented. Issue a statement of substantial completion of all construction in letter format to the District with a recommendation that a Notice of Completion be prepared and filed. Prepare and forward a draft Notice of Completion to District counsel. Record the Notice of Completion following approval of the Board of Directors.

Task 13 Miscellaneous Work & Claims Defense
No work will be performed under this task unless specifically authorized in writing by the District's General Manager who shall also define the scope of services to be provided.

Table 1
CIP Phase IV-B Projects

Project 1

Schoolhouse Tank and Upper Schoolhouse Tank - Construction of a new storage tank and booster station at the Schoolhouse site, replacement of the Upper Schoolhouse tank and installation of storage level monitoring facilities at the Harrison Tank site.

Riverlands Road – Construction of approximately 1,600 lf of new water main and appurtenances in Riverlands Road including two tie-ins to the main in Drake Road.

Handy Andy Booster Feed Line – Construction of approximately 400 lf of new main between HWY 116 and the main in Old Monte Rio Road including a crossing of a newly reconstructed viaduct.

Harrison Tank – Install tank liquid level monitoring equipment and connect to existing telemetry system at site for remote monitoring.

Bonita Terrace – Construction of approximately 1,500 ft of new water main and appurtenances in Bonita Terrace, including ties to Schoolhouse Tank and Delta Way, to create a loop.

Project 2

Alder Road, Pebble Way & Heller Streets - Construction of approximately 1-1/4 miles of water main and appurtenances in Alder Road, Pebble Way, Heller Street, River Blvd., Birch Lane, Elm Avenue and Railroad Avenue and the abandonment of approximately 4,500 lf of parallel undersized water main including the transfer of water services to the larger main.

EXHIBIT B
SERVICES RATE SCHEDULE
EFFECTIVE JANUARY 1, 2010

PROFESSIONAL SERVICES

Senior Principal	$165.00/hour
Associate Principal	140.00/hour
Associate	105.00 to 130.00/hour
Senior Engineer	110.00 to 120.00/hour
Engineer	95.00 to 110.00/hour
Engineering Technician	80.00 to 90.00/hour
Senior Planner	100.00 to 150.00/hour
Planner	80.00 to 95.00/hour
Senior Surveyor	105.00 to 115.00/hour
Surveyor	95.00 to 100.00/hour
Survey Technician	80.00 to 90.00/hour
CAD Technician	85.00 to 95.00/hour
Construction Technician	80.00 to 90.00/hour

EXPERT WITNESS & MEDIATION SERVICES	$300.00/hour
FIELD SURVEYING	
One-man Party (Including Survey Equipment & Vehicle)	$145.00/hour
Two-man Party (Including Survey Equipment & Vehicle)	$200.00/hour
Three-man Party (Including Survey Equipment & Vehicle)	$235.00/hour
TYPING AND CLERICAL	$60.00/hour
OUTSIDE CONSULTANTS	Cost + 15% Handling Charge
MATERIALS & OUTSIDE SERVICES Stakes, Pipes, Monuments, Maps, Reproduction Services, etc.	Cost + 15% Handling Charge
IN-HOUSE PLOTTING	
Vellum or Bond	$8.00/sheet
Mylar	20.00/sheet
MILEAGE	$0.50/mile