



2023 ARCHITECTURAL SERVICES WORK ORDER CONTRACT (RFQ)
Solicitation No. PS-00144

ADDENDUM NO. 1
January 31, 2023

CHANGES TO THE RFQ

1. Table of Contents, Section Attachments remove in its entirety and replace with the following:

Attachment I Evaluation Criteria Details and Requirements..... 13
Attachment II Example Project Page .....17
Submittal Response Checklist ..... 19
Respondent Questionnaire – Addendum 1..... 20
Exhibit A – SAWS Standard Insurance Requirements..... 24
Exhibit B – Good Faith Effort Plan ..... 29
Exhibit C – Conflict of Interest Questionnaire ..... 32
Exhibit D – Security Procedures ..... 34
Exhibit E – Sample Contract (Review Only)..... 38

All other items shall remain the same

2. IV. Submitting a Response, C. Response Format, 4. Response to Evaluation Criteria and Required Forms insert the following:

See Attachment II Example Project Page to reference when creating resumes and project pages for this RFQ.

All other items shall remain the same

3. Attachment I Evaluation Criteria Details and Requirements, Project Approach, A. Summary of Project Approach, 2. Design Approach remove the paragraph letter d. Management of sub-consultants and replace with the following:

d) Management of sub-consultants: Describe the Respondent’s process for the following tasks relating to the Engineering consultants on your team:

All other items shall remain the same

4. Insert Attachment II Example Project Page after Attachment I Evaluation Criteria Details and Requirements and before Submittal Response Checklist.

5. Respondent Questionnaire, remove in its entirety and replace with the one attached to this addendum. Respondents shall use the revised Respondent Questionnaire when

**submitting a response for this RFQ. Failure to use the revised version may result in the Respondent's proposal being found non-responsive.**

**6. Insert Exhibit E Sample Contract** after Exhibit D Security Procedures.

<b>CLARIFICATIONS</b>
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**1.** Any questions received before the Q&A deadline will be answered in a future Addendum.

<b>END OF ADDENDUM 1</b>
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This addendum is eighty-three (83) pages in its entirety.

Attachments:

Attachment II Example Project (2 pages)

Respondent Questionnaire (4 pages)

Exhibit E - Sample Contract (77 pages)

## Attachment II Example Project Page

When providing Resume and Project pages it is imperative to include all information as required in the Evaluation Criteria Details and Requirements. The examples below are provided only as a reference and, while not intended to be copied for exact design style, these may be used as a template, to ensure all fields are included. If all required fields are not included, the Respondent is at risk for being rejected due to non-responsiveness.

<b>Jane Doe, AIA Project Manager</b>	<i>Area for name and title of proposed personnel</i>	<i>Name of firm and/or firm logo (optional)</i>
<i>Area for photo (optional)</i>	<i>Overview of professional experience</i>	
<b>Proposed role :</b> _____ <b>Years in proposed role:</b> _____ <b>Years with Firm:</b> _____ <b>Total years experience:</b> _____ <b>Education :</b> <i>(include graduation year and university )</i> <b>Additional licensures and certifications:</b> _____	<i>List of completed Projects , with completion dates and budgets, and indicate the role the person held on each project</i>	
<i>Blank areas may be filled in with graphics or photos of person's project work (optional)</i>		

**Attachment II**  
**Example Project Page**

**XYZ building**  
**ABC industries**  
**Anywhere, USA**

*Area for name of  
Project , client or  
company and location*

*Name of firm  
and/or firm logo  
(optional)*

*Area for Project photo(s) or renderings  
(optional)*

**Year complete:**\_\_\_\_\_

**Client's POC or Owner  
Representative and contact  
information:**\_\_\_\_\_

**Initial Owner  
Budget:**\$\_\_\_\_\_

**Contract value:  
Construction:** \$\$\_\_\_\_\_

**Completed Construction cost**  
\$\_\_\_\_\_

*Description of project-  
including scope and size*

*Explanation of your  
firm's role in estimating  
and explanation of any  
variances between  
initial, contract and final  
construction costs*

*List key personnel who led this project,  
and CLEARLY INDICATE their title,  
their specific tasks on the Project, and  
whether they are proposed to  
participate in  
this work order for this RFQ submission*



**San Antonio Water System**

# RESPONDENT QUESTIONNAIRE

**PROJECT NAME:** 2023 Architectural Services Work Order Contract RFQ

**Instructions:** The Respondent Questionnaire is a required questionnaire. Complete the questionnaire by inserting the requested information. Do not modify or delete the questions.

## **GENERAL INFORMATION**

- 1. Respondent Information:** Provide the following information regarding the Respondent.  
(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-Consultants are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: \_\_\_\_\_  
(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Social Security Number or Federal Employer Identification Number: \_\_\_\_\_

- 2. Operational Contact Information:** List the one person who SAWS may contact concerning your proposal or setting dates for meetings.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

- 3. Legal Contact Information:** If a contract were to be awarded, list where all notices under the Contract shall be sent to. This is in addition to the Operational Contact.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

- 4. Identify the principal contact person authorized to commit the Respondent to a contractual agreement.**

\_\_\_\_\_

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5. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes  No

6. Is Respondent authorized and/or licensed to do business in Texas?

Yes  No  If "Yes", list authorizations/licenses.

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7. **Affirmative Action** - Respondent agrees to adhere to the EEO requirements contained in the RFQ section V, sub-section B.,1.

Yes  No  If "No", state reason.

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8. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes  No  If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

9. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes  No  If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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10. Provide any other names under which Respondent has operated within the last 10 years.

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11. **Litigation Disclosure:** Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required in the Litigation Disclosure questions may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

a. Have you or any member of your Firm or Team to be assigned to this project ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes  No

- b. Have you or any member of your Firm or Team to be assigned to this project been terminated (for cause or otherwise) from any work being performed for the San Antonio Water System or any other Federal, State or Local Government, or Private Entity?

Yes  No

- c. Have you or any member of your Firm or Team to be assigned to this project been involved in any claim or litigation with the San Antonio Water System or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes  No

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

**12. Compliance Agreement:**

Nondisclosure. No information obtained by Respondent from SAWS shall be disclosed by Respondent to any third party. In the event Respondent is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Respondent, Respondent shall provide notice to SAWS of the request along with a copy of the request and give SAWS the opportunity to respond to the request prior to its release by Respondent.

No Lobbying and Compliance with Law. During the selection process for the project named in this RFQ, Respondent agrees to comply with all applicable laws and regulations, including but not limited to restrictions against direct or indirect lobbying of public officials. Respondent agrees not to make or permit to be made any improper payments, or to perform any unlawful acts.

This agreement shall be construed to be enforceable to the maximum extent permitted by law.

Failure to complete this question or comply with its terms may subject this firm to elimination from the selection process at any time.

Does the Respondent agree to the above?

Yes  No

- 13. **Security Procedures:** Respondent acknowledges having read the security procedures in Exhibit D and understands the requirements. Respondent is prepared to perform at their own expense background security checks on their employees, or the employees of their consultants or sub-consultants if requested by SAWS.

Yes  No

- 14. **No Boycotting and No Discrimination Verifications:** Respondent acknowledges having read the No Boycotting and No Discrimination Verifications Exhibit "IX" and understands the requirements. Respondent can and will make this verification if awarded a contract.

Yes  No

**15. Government Code Chapter 2274 verifications:**

- a. Are you, Contractor, held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of the State of Texas pursuant to Texas Government Code Chapter 2274?

Yes  No

- b. Are you, Contractor, held or controlled by a company or other entity, including a governmental entity, that is owned or controlled by citizens of or directly controlled by the government of China, Iran, North Korea, Russia or a country designated by the Governor of the State of Texas pursuant to Texas Government Code Chapter 2274?

Yes  No

- c. Are you, Contractor, headquartered in China, Iran, North Korea, Russia, or a country designated by the Governor of the State of Texas pursuant to Texas Government Code Chapter 2274?

Yes  No

16. **Contract Terms and Conditions:** Respondent acknowledges having read the contract attached to this RFQ. By responding to this RFQ, Respondent agrees to these terms and conditions.

No Exceptions  Exceptions  If "Exceptions", they must be submitted with the proposal. Respondents shall submit exceptions with proposed alternative language to SAWS as an attachment accompanying this questionnaire. Exceptions will not be accepted after the proposal deadline.

17. **Addendums:** Each Respondent is required to acknowledge receipt of all addendums.

None  Yes  If "Yes", Identify.

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The information provided above is true and accurate to the best of my knowledge. Furthermore, we understand that failure to complete the Respondent Questionnaire may subject this firm to elimination from the selection process.

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Signature

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Date

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Printed Name

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Title



**PROFESSIONAL SERVICES AGREEMENT  
ARCHITECTURAL SERVICES**

**Agreement for**

**Project Name**

**Contract No.** \_\_\_\_\_

This agreement (“Contract” or “Agreement”) is made and entered into in San Antonio, Bexar County, Texas, between the San Antonio Water System, an agency of the City of San Antonio in the State of Texas, (hereinafter referred to as “SAWS” or the “Water System”) and

**Consultant**

**Address 1**

**Address 2**

architect(s) duly licensed and practicing under the laws of the State of Texas (hereinafter referred to as "Consultant"), said Contract being executed by the Water System, an agency of the City of San Antonio, established and created pursuant to the provisions of Ordinance No. 75686 and Texas Local Government Code Sections 402.141 et. seq., acting by and through its President and CEO, or his authorized representative, and by said Consultant for the provision of architectural services as are hereinafter set forth in connection with the design and development of a **Project**, that are identified on a work order basis as set forth on Exhibit II hereto.

**I. Scope of Work.**

The term “Work” is defined in Exhibit VII and means the services required by this Contract, whether completed or partially completed, and includes all services provided or to be provided by the Consultant to fulfill the Consultant’s obligations hereunder. The Consultant shall not commence Work on a proposed Project until it has been thoroughly briefed on the scope of the Project and has been notified by the Water System in writing to proceed. The scope of the Project and the Consultant's services to be provided under this Contract are set forth in Exhibit II of this Contract (the "Scope of Work").

A. Water System may, without invalidating this Contract, order additional work, deletions, or other modifications to the Scope of Work, for this Agreement or any Work Order issued under this Agreement, such changes to be effective only upon the Consultant sending a Proposal Request for Additional Services, for review and Approval by the Water System. This Proposal Request shall specifically identify the additional work, Fee, and time, prior to the performance of such work or Design Services. Any request for an adjustment to the Contract Price or the Production Schedule shall be made in writing, as a Proposal Request, in accordance with the terms of this Contract. Consultant shall not be entitled to any additional compensation in excess of the Contract Price for any reason whatsoever unless, prior to the performance of any Additional Services, Consultant has issued a Proposal Request and received written Approval to proceed in the form of an Approved Change Order.

B. The Consultant and Water System agree and acknowledge that the Water System is entering into this Contract in reliance on Consultant's expertise with respect to Design Services. The Consultant's Standard of Care, in consideration for the compensation set forth expressly herein, shall at all times utilize its skill, care and attention to fully, and expeditiously as is prudent to timely and properly render professional services for the development of the Project to final completion as set out in, or reasonably inferred from, the Scope of Work in a manner utilizing the degree of care ordinarily used by a competent architect firm performing similar services on projects of a similar nature and scope within the State of Texas, such services including, but not limited to (i) preparation of plans and specifications, (ii) construction administration services, and (iii) preparation of any special or general conditions and instructions to bidders as directed in writing by the Water System.

C. The Consultant shall be represented by a professional architect, licensed to practice in the State of Texas, at all meetings of any official nature concerning the Project, including, but not limited to, scope meetings, review meetings, pre-bid meetings, pre-construction meetings, meetings with Authorities Having Jurisdiction (AHJ) and construction meetings with Water System staff and/or its contractors, unless otherwise set forth in the Scope of Work or approved in writing by the Water System.

D. All completed documents submitted by Consultant to Water Systems for final approval, or issuance of a permit, shall bear the seal with signature and date adjacent thereto of a licensed professional architect. Any design or partial submittal shall bear an appropriate notice that such submittal is a partial submittal only.

E. The Water System shall have the right to approve or disapprove all persons and sub-consultants employed by or under the Consultant to work on the Project, which approval shall not be withheld unreasonably. Neither Consultant nor any sub-consultant shall allow work under this Contract to be performed by any person whose performance of the Work covered by this Contract has been objected to by Water System in writing. All sub-consultants designated or identified in Exhibit VIII are approved by the Water System unless Consultant is subsequently notified otherwise in writing by the Water System. Any other sub-consultants must be approved by the Water System in writing before they may provide professional services of any kind or extent on the Project, which approval shall not be withheld unreasonably. The Consultant agrees to retain the sub-consultants identified in Exhibit VIII to work on the Project unless the Water System agrees otherwise in writing. Consultant is responsible to the Water System for the performance of all such sub-consultants.

F. In the event that the Consultant proposes the termination or change of an identified "Small Business Enterprise", "Minority-owned Business Enterprise" (MBE), or a "Woman-owned Business Enterprise" (WBE) certified sub-consultant firm from its employ on this Project, the Consultant shall make a good faith effort, working with the Water System's SMWB Program Manager, to substitute any SMWB sub-consultant with a like-certified sub-consultant. If the Consultant is unable to substitute a sub-consultant firm of like certification, the Consultant shall provide the Water System with documentation of its efforts to acquire the services of an SBE/MBE/WBE replacement firm.

G. Consultant shall not, without the prior written approval of the Water System, change (i) the overall percentage of Work to be performed by sub-consultants listed in Exhibit VIII or IX by more than a total of five percent (5%) or (ii) the percentage of Work to be performed by any one sub-consultant by more than five percent (5%).

H. All Work, labor, services and materials to be furnished by Consultant shall fully comply with all Applicable Law as required by all AHJ's related to the Project, the Consultant and/or the Work. In the event of any change in the Applicable Law related to the Consultant and/or the Work for the Project, which occur after the Effective Date of, this Contract, and which Consultant was not and should not reasonably have been aware of, which require changes to the Work that has already been completed by the Consultant, or require Additional Services outside of the Scope of Work, then Consultant and the Water System shall attempt to agree in writing, in the form of the Proposal Request process, on the required modifications to the Scope of Work and an equitable fee and time adjustment resulting from such Additional Services. Conflicts between any Applicable Law related to the Consultant and/or the Work in a Work Order shall be promptly brought to the attention of the Water System by Consultant, but no later than 5 business days after the Consultant becomes aware of such conflict.

I. The Consultant shall perform its obligations under this Contract in accordance with the Contract and the Scope of Work described in Exhibit II.

J. The Consultant shall administer its services through an Internet-Based Project Management System (hereafter referred to as "CPMS"). Consultant shall conduct project communication through CPMS and perform all Project-related functions utilizing CPMS, with the exception of Sub-Consultant payment monitoring activities which shall be through the S.P.U.R. system. This includes any and all correspondence; submittals reviews, review and responses to contractor requests for information; review of contract request for proposals; contractor compensation requests; review of contractor change orders and other administrative activities as may be required in the Contract. In performing Project-related functions in CPMS, Consultant shall process tasks and take appropriate review action in CPMS at the following service levels:

- Construction Submittals shall be processed within seven (7) business days;
- Requests for Information (RFIs) shall be processed within two (2) business days;
- Create an independent cost estimate, utilizing RS Means prior to a contractor submitting a Request for Proposal and/or Change Order.
- Review of the contractor's Requests for Proposals (RFPs) and/or Change Orders shall be completed and processed within five (5) business days;
- Review of Scratch sheets and project schedules shall be processed within two (2) business days
- Upload Consultant field notes from site visits to CMPS within 3 business days of the site visit

SAWS shall administer the CPMS software, shall provide CPMS training to Project Team members and shall make the software accessible via the Internet to all necessary Project Team members. All Consultant invoices shall be submitted through the CPMS.

## **II. Acceptance of the Work.**

A. When Consultant can demonstrate that the Work is complete in accordance with the acceptance criteria in the Scope of Work and so notifies the Water System in writing, the Water System shall review the Work for general compliance with this Contract. Acceptance by Water System of Consultant's Work shall not constitute or be deemed a release of the responsibility, obligations, or liability of the Consultant under this Contract for any errors, omissions or defect in the design, working drawings, specifications, or documents and Work performed by the Consultant; nor shall such acceptance be deemed an assumption of responsibility or liability by Water System for any defect in the designs, working drawings, specifications or other documents and work performed by Consultant, its agents, employees and sub-consultants under this Contract. No payment made by the Water System to Consultant under the Contract shall constitute, or be construed as, an acceptance of any Work that omits required scope as indicated in Scope of Services - Exhibit II and as stated in the Work Order, or that is defective, deficient or improper Work under the Contract. In the event that Consultant is requested by the Water System to utilize a procedure or a product that is not on the Standards List of the Water System, and Consultant has a reservation about implementing such request by the Water System, Consultant shall notify the Water System's Project Manager for the project in writing in an attempt to resolve the issue. If the issue is not resolved at the Water System's Project Manager level, the Consultant shall notify the Water System's Vice President over the department in writing and identify the specific reservations with said procedure or product. The Consultant and the Vice President shall attempt to resolve the dispute. In the event the Consultant and the Water System are unable to resolve the dispute, and the Consultant continues to have reservations with the Water System's request, the Consultant shall have the right to treat such dispute as a suspension of the Work in excess of one hundred twenty (120) consecutive days pursuant to Section VIII.C below. Notwithstanding anything in this Contract to the contrary, Consultant shall be solely responsible for, and have exclusive control over the means, methods, tools, techniques, sequences, products and procedures of the Consultant's Work under this Contract.

## **III. Production Schedule.**

A. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF CONSULTANT'S DUTIES UNDER THIS CONTRACT. The Consultant shall complete the various phases of Work, tasks, and milestones under this Contract in strict accordance with the Production Schedule in Exhibit IV issued for each Work Order and with Exhibit V of this Contract. The Consultant acknowledges and agrees that any delays in the Consultant's completion of its Work under this Contract and/or performance beyond the number of days agreed to for each Work Order for completion of a milestone, task or phase of Work will cause injury and damage to the Water System and may cause interruption in the daily business proceedings needed by the Water System. Water System reserves the right to extend Consultant's Production Schedule in a Work Order as the Water System deems necessary at no additional cost to the Water System.

B. Upon acceptance and Approval of each Design Deliverable, milestone, task, or phase of Work, the Water System may authorize in writing, in the form of a Notice to Proceed with the next appropriate Design Deliverable, milestone, task or phase of Work; however, if the Water System elects to terminate or suspend the Consultant's efforts for any reason, the total time expended by Consultant, that is verified by the Water System and is reflected in the Work produced

up to the time of suspension, will be charged against the total allowable time in the same manner as if no termination or suspension had occurred. Notwithstanding the foregoing, in the event Water System elects to suspend the Consultant's efforts for more than thirty (30) consecutive days, the Consultant's Production Schedule and time of completion shall be equitably adjusted, expanded or lengthened as appropriate to complete the required Scope of Work. Consultant shall notify the Water System of any additional time the Consultant believes it is entitled to within fifteen (15) days of its receipt of a request to resume suspended work or for additional Work outside the Scope of Work or changes in the Scope of Work, or such claim shall be deemed to have been conclusively waived.

C. If within one hundred twenty (120) consecutive days after Consultant's full and final completion of any milestone, task, deliverable, or phase of the Work in a Work Order the Water System does not authorize Consultant to proceed with the next subsequent milestone, task, deliverable or phase of the Work, and such delay in authorization is solely the fault of Water System, and not the result of a delay by the Consultant or a delay by a governmental authority (as defined herein), then the Water System's delay in authorizing Consultant to proceed with the Work will be deemed to have been a suspension of the Project by the Water System enabling Consultant the right to initiate termination of this Contract as provided in Section VIII.C of this Contract.

D. Should Consultant's performance of a critical activity be materially delayed by an act or neglect by the Water System, or an employee of Water System, or by any separate contractor hired by Water System, and the Consultant notified the Water system promptly, and the Water System failed to remedy or cease the activities causing the delay, or if a delay is due to fire, embargo, riot, tornado, earthquake, hurricane, flood, strike of a national scope against the Project site, or any unreasonable delay by a governmental authority, and the delay caused by such event could not have been known, foreseen, avoided or mitigated by Consultant by any reasonable method or action (a "Force Majeure Event"), Consultant shall be entitled to an extension of the time in which to complete such Work. Consultant shall not be entitled to any increase in compensation as a result of a Force Majeure Event, except when a Force Majeure Event causes Project conditions to change such that Consultant's Work completed at the time of the Force Majeure Event must be revised. In such event, the Consultant shall provide written notice of the delay and any corrective action taken to mitigate the delay accompanied by a spreadsheet to identify, substantiate, and document the exact number of days that the event delayed the Work. Upon receipt of these documents, along with a request for additional days and compensation in writing, the Water System shall consider and shall not unreasonably reject the request. If the request is deemed reasonable by the Water System, the Water System and Consultant shall negotiate reasonable additional compensation directly related to the time required by Consultant to complete the changes attributable solely due to the Force Majeure Event, in the form of the Proposal Request process. The extension of time for a Force Majeure Event shall be a period equal to the time lost by reason of the delay, provided Consultant has taken all reasonable steps to proceed with the performance of the Contract and has provided the Water System with written notice of the delay and any corrective action taken to mitigate the delay. The term "delay by a governmental authority" shall include and describe the Consultant's claim of unreasonable delays that are outside the control of Consultant and the result of the lack of required approvals or permits from federal, state and/or local governmental entities, including the Water System, CPS Energy and/or the City of San Antonio, which are not due to the late filing or request of Consultant, and which should not have been known or reasonably foreseeable by Consultant. For purposes of

determining an unreasonable delay, attributed to a delay by a governmental authority within this section, a delay will not be Approved by the Water System unless the delay extends more than 30 days beyond the date scheduled for completion in the Production Schedule prepared by Consultant. If Consultant fails to provide written notice to the Water System stating the reason for any such extension due to any Force Majeure Event (for which time for performance by Consultant shall be extended under this subsection (D)), and the actual time necessitated thereby such claim shall be deemed to have been conclusively waived.

E. Consultant shall not be entitled to any payment, compensation or damages in any manner whatsoever for any hindrance or delay from any cause in the commencement or progress of the Consultant's Work, whether such hindrance or delay be avoidable or unavoidable.

F. This Contract shall remain in force for a period commencing on the date of the complete execution of this Contract and ending on the date for completion set forth in the Term of Agreement and Timeframe of Deliverables attached as Exhibit V hereto, unless terminated or discontinued as provided for elsewhere in this Contract. Notwithstanding the foregoing, this Contract may continue in force as may reasonably be required for the design, award of the construction contract and construction of the Work Orders issued under the Project, including any additional Work and required extension thereto, for which Consultant shall be compensated, per written agreement with the Water System in advance of the additional Work or extension of the term. Consultant shall not be entitled to additional compensation if Consultant caused or contributed to the need for additional Work or extension of time, or if Consultant failed to submit their request for Additional Services according to the terms of this Agreement.

#### **IV. Coordination with Water System.**

A. The Consultant shall hold periodic conferences with the Water System to verify and confirm that the Project as developed (i) has the full benefit of the Water System's experience and knowledge of existing needs and facilities, and (ii) is consistent with the Water System's current policies and standards and (iii) is aligned with the scope requirements of the Project. To assist the Consultant in this coordination, the Water System shall make available for the Consultant's use in planning and designing for the Project all existing plans, maps, field notes, statistics, computations, and other data in the Water System's possession relative to existing facilities and to Work Orders for this particular Project as requested in writing by Consultant, at no cost to the Consultant. All such Water System provided information is provided to Consultant for the sole purpose of Consultant's convenience and for use in relation to the completion of this Project. The Consultant shall use ordinary care in verifying the accuracy and sufficiency of the information furnished by Water System and facts necessary for the work, including field investigation and checks of existing infrastructure. Consultant shall promptly notify the Water System in writing when it reasonably believes or suspects, or should reasonably believe or suspect after reasonable inquiry, that information provided by Water System is not accurate or cannot be checked, or that it would be reasonable, prudent and ordinary architectural design practice to verify specific information that cannot be readily confirmed by the Consultant by field investigation and/or measurement. The Consultant shall not be entitled to make any claim to adjust the Contract Price, Fee or the Project Schedule for any Work under this Agreement based upon any error, omission, ambiguity, conflict or discrepancy in any information provided by the Water System, that may at any time become recognized or observed. Consultant may not rely solely on Water

System's provided data unless the Water System has specifically stated in writing at the time the information was provided by the Water System that the Consultant may rely on the information. The Water System shall also furnish in a timely manner, all standard sheets and design criteria applicable to the Project. However, any and all information provided by the Water System shall remain the property of the Water System and shall be returned to the Water System upon written demand by Water System to Consultant.

B. The Water System Project Manager, **Julie Valadez, AIA**, or her representative as designated in writing, will act on behalf of the Water System with respect to the Work to be performed under this Contract. The Project Manager shall have authority to transmit instructions, receive information and interpret and define the Water System's policies and decisions with respect to design, materials, equipment elements and systems pertinent to Consultant's Work under the Contract. Water System agrees to notify Consultant in writing of any change in Project Manager for this Project. The Project Manager does not have authority to direct work to go beyond the Not to Exceed the Project amount without appropriate approval.

C. Unless otherwise required by this Contract, the Consultant will process, coordinate and timely obtain all permits required by AHJ's having jurisdiction over the Project and shall coordinate all required governmental inspections and approvals of the Project. Consultant shall provide the Water System reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by the Consultant pursuant to other provisions of this Contract.

## **V. Compensation.**

A. In return for Consultant's timely and proper completion of all of its obligations under this Contract, Water System shall pay to Consultant the Fee for each earned and completed Work Order as negotiated and based on the Hourly Billing Rate Table as set forth in Exhibit I attached hereto and which is made a part hereof (the "Contract Price"). Consultant acknowledges and agrees that the Work required by this Contract can and will be fully and timely completed by Consultant for the Contract Price as full and complete compensation for Consultant's full and timely completion of the Scope of Work, and Consultant shall not be entitled to any compensation in addition to the Contract Price for the performance of the Scope of Work for any reason whatsoever, unless otherwise expressly provided by the terms of this Contract, or by subsequent mutual written agreement between Water System and Consultant.

B. Water System, in its sole discretion, shall have the right, but not the obligation to (a) make direct payments to any suppliers to Consultant of labor, materials, or equipment; and (b) issue checks jointly payable to Consultant and any suppliers to Consultant of labor, materials, or equipment. All such payments shall be deemed payments made to the Consultant for purposes hereof. Water System may exercise the rights in this Section V.B only in the event that (i) there is not a good faith dispute between the Consultant and its suppliers of labor, materials or equipment, (ii) Water System has provided at least ten (10) business days prior written notice to Consultant, (iii) such payment is necessary in the opinion of the Water System to continue with the timely progress of the Work under this Contract, and (iv) authorization is made by the President or a Vice President of the Water System.

C. Nothing contained in this Contract shall require Water System to pay for any unsatisfactory Work as determined by the Project Manager or for Work that is not in compliance with the terms of this Contract. Water System shall not be required to make any payments to Consultant at any time Consultant is in default under this Contract.

## **VI. Revisions to Drawings and Specifications.**

Notwithstanding anything in this Contract to the contrary, Consultant shall provide, at no additional expense to the Water System, corrective revisions to coordinate drawings under a Standard of Care for A/E services, or corrective revisions in order to satisfy the Scope of Work requirements with the Project, or other reasonable revisions, whether previously approved and accepted, as may be required to satisfy the Scope of Work established by this Contract. It is agreed and understood that the scope of each of the tasks in the Scope of Work may require some reasonable revisions, as the scope of the Project is refined, and that such reasonable revisions are included within the existing Scope of Work under this Contract. The Consultant shall make, without additional expense to the Water System, such reasonable revisions and/or corrections to the Work as may be required, at each benchmark deliverable, and a NTP to the next design phase deliverable shall not be unreasonable withheld as long as the Consultant in good faith, tracks and makes all aforementioned revisions with each subsequent deliverable. The Fee associated with the Work Order shall be equitably adjusted through a written amendment to the Work Order for any revisions requested in writing by Water System that requires Work outside of the Scope of Work or reduces Consultant's obligations under this Contract. Any revisions, additions, or other modifications made at the Water System's request after the Water System's approval of a task or phase of the Work, other than corrective or reasonable revisions as described herein, or correction of errors or omissions by the Consultant, and/or enforcement of any contractual obligation, which involve extra services or expenses to the Consultant beyond that contemplated by this Contract shall be requested in writing by the Consultant in the form of a Proposal Request for Additional Services which, upon review and Approval by the Water System, any compensation and additional time shall be indicated on an Approved Change Order, executed by both the Water System and the Consultant prior to commencement of such services by Consultant. Any disagreement between the Consultant and the Water System over whether additional compensation is owed to the Consultant due to Water System's changes in the Scope of Work shall first attempted to be resolved by mutual agreement, or negotiation, prior to any other method of dispute resolution.

## **VII. Ownership and Use of Documents.**

A. Consultant acknowledges and agrees that Water System shall own exclusively all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this Contract and shall be used as Water System desires and shall be delivered to Water System at no additional cost to Water System upon request or completion or termination of this Contract (the "Work Product").

B. Consultant agrees and covenants to protect any and all proprietary rights and Confidential Information of Water System in any material provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication a copyright mark reserving all rights to Water System in any such material provided by Water System to Consultant. Additionally, any materials provided to Consultant by



Water System shall not be released to any third party without the written consent of Water System and shall be returned intact to Water System upon completion or termination of this Contract. The provisions of this Section VII.B shall not apply to material in the public domain on the Effective Date of this Contract or material that subsequently comes into the public domain by other than an unauthorized disclosure.

C. Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Contract to Water System, including all moral rights. No reports, maps, plans, drawings, documents or other copyrightable works produced in whole or in part by this Contract shall be subject of any application for copyright by Consultant. All reports, maps, project logos, plans, drawings or other copyrightable work produced under this Contract shall become the property of Water System (excluding any instrument of services, unless otherwise specified herein).

D. Consultant shall, at its own expense, defend all suits or proceedings instituted against SAWS, its officers, agents and employees, contractors or vendors based on any claim that the Work, or any part thereof, or the process performed thereby constitutes the infringement of either any patent or copyright or any trademark or trade secret protected by either federal or state law. Consultant shall pay any awards of damages or loss resulting from any such claim, suit or proceeding and shall indemnify and hold the Water System harmless against any and all losses, expenses, costs, fees (including reasonable attorneys' fees), and damages resulting from any such claim, suit or proceeding, including compliance with resulting decrees and compromises. If, in any such suit, a restraining order or temporary injunction is granted, Consultant shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of any such restraining order or temporary injunction. If, in any such suit, the Work or any part thereof or the process performed thereby is held to constitute an infringement and its use is permanently enjoined, Consultant shall immediately make every reasonable effort to secure for the Water System a license at Consultant's expense authorizing the continued use of the alleged infringing portion of the Work. If the Consultant is unable to secure the license within a reasonable time, Consultant shall at its own expense and without impairing the performance requirements, either provide non-infringing replacements or modify the Work to eliminate the infringements.

E. Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by other architects, design professionals, or other persons, subsequent to the completion of the Project. Water System shall require that any such changes or other use shall be appropriately marked to reflect what was changed or modified.

F. Notwithstanding the provisions of Section VII.G, copies of documents that may be relied upon by Water System are limited to the printed copies (also known as hard copies) that are sealed and signed by Consultant (the "Construction Documents"). Consultant shall not be liable for changes made to the Construction Documents that are not made by the Consultant. Documents and reports provided in electronic media form shall not have inaccuracies and anomalies including errors due to electronic translation, formatting or interpretation. In the event of any inconsistency between the electronic media and hard copies provided by the Consultant, the hard copy shall govern.

G. If Consultant is required by the Scope of Work to provide Construction Administration Services that include site visits to observe the progress of the work and provide the Water System with As-Builts of the Project as constructed (“As-Builts”), the Water System may use and rely upon such As-Builts from the Consultant in connection with future Work on the Project without further verification or authorization by the Consultant, and the Consultant shall be responsible for the accuracy and correctness of such As-Builts; provided, however, it is agreed and understood that the As-Built drawings are a compilation of a copy of the sealed drawings for the Project; modified by addenda, architectural supplemental information (“ASIs”), Change Orders, information furnished by others, and observations by Consultant as part of its Construction Administration Services, if any. Consultant shall make reasonable observations of the Project as constructed to verify the general accuracy of the As-Builts provided by Consultant to the Water System, but the Consultant is not liable for errors or omissions in information provided by the contractor or others outside Consultant’s control. Consultant shall promptly bring to the Water System’s attention, questions, concerns, or variances or discrepancies in or between any Contract Documents, Construction Documents or As-Built drawings for the Project.

### **VIII. Termination and/or Suspension of Work.**

#### **A. Right of Either Party to Terminate for Cause**

##### **(1) Consultant’s Default.**

Material breach by Consultant shall include, but is not limited to the following: (a) Consultant has made, or allows to be made, any material misrepresentation with respect to the Contract; (b) Consultant materially fails to timely perform any obligation or duty of Consultant under this Contract; (c) Consultant materially fails to timely cure any default or breach in accordance with the terms of this Contract; (d) Consultant assigns its rights and/or obligations under this Contract without the prior written consent of the Water System; (e) Consultant ceases to continue to do business as a going concern employing the design professionals or sub consultants working on the Project; or (f) Consultant violates any rule, regulation or law applicable to the Project and/or the Contract and fails to timely correct such violations following receipt of notice by Water System.

When any of the reasons described herein exist, Water System may, without prejudice to any other rights or remedies, and after giving Consultant the notice required hereunder, and Consultant’s failure to cure, terminate this Contract and do any one or more of the following, at the sole discretion of the Water System:

- (a) take possession of the Work and of all documents, digital or hardcopy, and materials owned or in the possession of the Consultant;
- (b) accept assignment of service contracts relating to the Consultant’s Work on terms and conditions acceptable to Water System;
- (c) finish the Consultant’s Work by whatever reasonable method Water System may deem expedient, in which event, upon written request of the Consultant, Water System will furnish the Consultant with an accounting of the costs incurred by Water System in finishing Consultant’s Work; and

- (d) recover from the Consultant, or deduct from any sums then owed to the Consultant, the losses, costs and damages incurred by Water System, directly or indirectly arising from Consultant's default, including attorneys' fees.

If Water System terminates this Contract for Consultant's substantial failure as set forth above, Consultant shall not be entitled to receive further payment on the Project for Work performed until all amounts owed to Water System pursuant to the terms hereof have been fully paid.

(2) Water System's Default.

Substantial failure to perform by the Water System shall include, but is not limited to the following: (a) the Water System fails to timely pay Consultant any sums due under the Contract, which are not then the subject of a good faith dispute; (b) the Water System fails to timely cure any noticed default or breach under this Contract; or (c) the Water System fails to timely perform any obligation or duty of the Water System under this Contract, which are not then the subject of a good faith dispute between Water System and Consultant. Upon the Water System's default, the Consultant may terminate this Contract by written notice to Water System as hereinafter provided.

(3) Notice and Opportunity to Cure Default.

The party not in default of the Contract shall send the defaulting party written notice of the alleged default. The party in default shall have a period of fifteen (15) business days from the date notice is received to cure the default. If the default is not cured within the fifteen (15) business day period, then the other party may thereafter terminate the Contract by sending the defaulting party notice of termination, which termination is effective upon sending of the notice.

B. Right of Water System to Terminate for Convenience of the Water System

The Water System reserves the right to terminate this Contract for the convenience of the Water System by issuing a signed, written notice of termination (citing this paragraph), which termination shall become effective immediately or, if Work is in progress, and if the Water System approves a written request by the Consultant, termination may become effective upon the scheduled completion date of the milestone, task, or phase of Work in which Consultant is then currently authorized to work.

C. Right of Water System to Suspend Work

The Water System reserves the right to suspend Work under this Contract at any time and from time-to-time for the convenience of the Water System by issuing a written notice of suspension (citing this paragraph), which notice outlines the reasons for the suspension and the then estimated duration of the suspension. The Water System's estimated duration of the suspension shall in no way constitute a representation or guarantee of the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, then the date the notice of suspension is received by the Consultant. Upon receipt of a notice of suspension in excess of one hundred twenty (120) consecutive days, the Consultant shall have the right as its sole and exclusive remedy, to terminate this Contract by

written notice to the Water System. Consultant may exercise this right to terminate any time after a suspension has continued for more than one hundred twenty (120) consecutive days, but before the Water System gives Consultant written notice to resume the Work. Termination (under this paragraph) by Consultant shall be effective immediately upon the Water System's receipt of written notice from Consultant.

#### D. Legal Prohibition

If any state or federal law, rule or regulation is enacted, promulgated or interpreted to prohibit the performance of any part of this Contract or the Project, that would make the Project unachievable under normal expectations, then either party shall notify the other in writing, and the Consultant shall attempt to mitigate and address the law or regulation in such a manner that the Scope of Services may still be achieved. This may require a change to the scope or to a previously approved design solution. If this is the case, the Water System may choose to accept the change, and potential additional fee to make said changes, in accordance with the process set forth in the Agreement, or the Water System may terminate this Contract by giving the other party not less than twenty (20) days prior written notice of the effective date of termination. Consultant shall be paid for the portion of the Work completed through date of termination.

#### E. Procedures Consultant to Follow upon Receipt of Notice of Termination.

(1) Upon receipt of any notice of termination, unless the notice otherwise directs, Consultant shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Water System under this Contract. Within thirty (30) days after receipt of such notice of termination, the Consultant shall submit a statement showing in detail the services performed under this Contract prior to the effective date of termination. The Water System shall have the option to grant a written extension to the time period for submittal of such statement.

(2) All completed Construction Documents shall be delivered in both hardcopy and digital format, to the Water System without further cost or charge to the Water System. Further payment to the Consultant is conditioned upon delivery of all such documents to the Water System. These documents shall be subject to the restrictions and conditions set forth in Section VII above. In accordance with Section VII.E, Water System is not entitled to rely on incomplete or partial designs, plans, specifications, or reproducible prepared by Consultant.

(3) Upon the above conditions being met, the Water System shall pay the Consultant within thirty (30) days following receipt of an invoice therefore, the unpaid portion of the Contract Price for the services actually performed in accordance with the terms and provisions this Contract, unless the termination is by the Water System for cause, in which event any further payment may be withheld until final completion of the Project.

(4) Failure of the Consultant to comply with the submittal of the statement and documents as required above, shall constitute a waiver by the Consultant of any and all rights or claims to collect monies that Consultant may rightfully be entitled to for services performed under this Contract.

F. Procedures Consultant to Follow upon Receipt of Notice of Suspension

(1) Upon receipt of written notice of suspension, the Consultant shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Water System under this Contract.

(2) Consultant shall prepare a statement showing in detail the services performed by Consultant under this Contract prior to the effective date of suspension and deliver the same to Water System within thirty (30) days after the date of the suspension.

(3) Copies of all completed or partially completed designs, plans, specifications and reproducible prepared under this Contract, prior to the effective date of suspension, and all other Construction Documents shall be prepared for delivery to the Water System but shall be retained by the Consultant until such time as Consultant or the Water System may exercise the right to terminate this Contract.

(4) In the event that Consultant exercises the Consultant's right to terminate this Contract for cause or following a suspension, then the Consultant shall submit to the Water System an update and final statement showing in detail the services performed under this Contract prior to the effective date of suspension.

(5) Upon the above conditions being met, and the final determination that Consultant has the right to terminate for cause or as a result of such suspension, which final determination, to the extent possible, will be made within sixty (60) days following the effective date of termination, the Water System shall promptly pay the Consultant the unpaid proportion of the Contract Price for the services actually performed in accordance with the terms and provisions of this Contract. Final payment shall be made within thirty (30) days of delivery of all Construction Documents, the delivery of which shall be a pre-condition to final payment.

G. Remedies

The Water System's right or act of terminating this Contract, whether for cause or otherwise, shall not be an election of remedies. In addition to any right of termination, the Water System shall be entitled to pursue and enforce any other right or remedy available by contract, law or at equity, including the right to pursue damages. The remedies of the Water System set forth in this Contract shall not be restrictive but shall be cumulative and in addition to all other remedies of Water System hereunder and under applicable state laws, including all laws related to fraud or latent defects. Nothing herein shall restrict, limit or otherwise diminish in any way the liability of the Consultant for errors, omissions, design defects or deficient work under the statutory and common laws of the State of Texas. Notwithstanding anything in this Contract to the contrary, Consultant shall not be entitled to lost or anticipated profits should the Water System choose to exercise its option to terminate this Contract for cause or convenience.

## H. Documentation

Water System, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of the Water System. To this end, Consultant understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

## IX. Solicitation.

The Consultant represents that Consultant has not employed or retained any company or person other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In the event of a breach of this covenant by Consultant, the Water System shall have the right to terminate this Contract under the provisions of VIII above, in addition to Water System's other rights and remedies under this Contract.

## X. Equal Employment Opportunity/Minority Business Enterprise.

The Consultant agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment because of race, color, religion, sex, pregnancy, sexual orientation, national origin, political belief or affiliation, age, disability or genetic information.

The Consultant acknowledges that the SAWS Board of Trustees has adopted a Small, Minority, and Woman-owned Business (SMWB) Policy to establish and oversee a program that will support the inclusion of local SMWBs. It is the policy of SAWS that it will ensure that local SMWBs have an equal opportunity to compete for, receive and participate in SAWS contracts. It is our policy to:

- Ensure nondiscrimination in the award and administration of SAWS contracts;
- Create a level playing field on which SMWBs can compete fairly for SAWS contracts;
- Ensure that only firms that attempt to meet SMWB good faith efforts are considered for contract awards.

Consultant agrees to complete and submit a Good Faith Effort Plan as part of its response to the Water System's request for a proposal. Consultant shall take all reasonable steps to maintain compliance with the percentage of participation for SMWBs set out in Consultant's proposal to the Water System. Consultant shall be required required to electronically submit actual subcontractor payment information using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, accessed through a link on SAWS' "Business Center" web page. Payments shall be reported for all subcontractors or suppliers, whether SMWB or non-SMWB. Payment reporting will begin with the first SAWS payment for services under the contract, and with every

payment thereafter (for the duration of the contract). The Contractor and all subcontractors will be provided a unique log-in credential and password to access the SAWS subcontractor payment reporting system. The link may be accessed through the following internet address: <https://saws.smwbe.com/>.

Training on the use of the system will be provided by SAWS upon request. After the prime receives payment from SAWS, electronic submittals will require data entry of the actual amount paid to each subcontractor listed on the Contractor's Good Faith Effort Plan. Any unjustified failure to comply with the committed SWMB levels may be considered breach of contract.

If there is not an opportunity to subcontract any components of the contract, then use of the S.P.U.R. System is not applicable.

Respondents and/or their agents may contact the SMWB Program Manager at 210-233-3420 or [marisol.robles@saws.org](mailto:marisol.robles@saws.org) for assistance or clarification with issues specifically related to the Small, Minority, and Woman-owned Business (SMWB) Program, and S.P.U.R. System reporting.

By entering into this Contract, the Water System approves the use of subcontractors and sub-consultants identified in Exhibit VIII (attached).

#### **XI. Assignment of Interest or Delegation of Performance.**

The Consultant shall neither assign nor transfer Consultant's interest in this Contract nor delegate any duty or obligation required by this Contract without the express written consent of the Water System. The Water System's approval of an assignment or agreement to use a sub-consultant shall not relieve Consultant of its obligations and duties under this Contract unless such written consent expressly provides for such a release.

By entering into this Contract, the Water System approves the use of subcontractors and sub-consultants identified in Exhibit VIII (attached).

A change of more than thirty percent (30%) (cumulatively during the term of this Contract) of the Consultant's business entity shall be deemed to be an assignment of the Contract, which would give the Water System the right to terminate this Contract in addition to the enforcement of its other rights under this Contract. Consultant shall immediately notify the Water System of any change of twenty-five percent (25%) or greater during the term of the Contract.

#### **XII. Indemnification.**

##### **A. General Indemnity.**

To the maximum extent permitted by law, Consultant agrees to and does hereby fully **INDEMNIFY AND HOLD HARMLESS** Water System and the City of San Antonio, and their respective members, agents, employees, officers, directors, trustees and representatives (collectively, "Indemnitees"), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees (including, without limitation, attorneys' fees), fines,

penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including, without limitation, personal injury or death and property damage, incurred by, asserted against or made upon any of the Indemnitees **ARISING OUT OF, RESULTING FROM OR RELATED TO THE NEGLIGENT ACTS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, ERRORS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, SUB-CONSULTANT OF CONSULTANT, OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES, WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT.** The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole, joint, or concurrent negligence of Indemnitees. **IN THE EVENT CONSULTANT AND THE INDEMNITEES ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE INDEMNITEES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE FOREGOING NOTWITHSTANDING, IT IS AGREED THAT, WITH RESPECT TO ANY STATUTORY RESTRICTIONS AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREIN, IT SHALL BE SUBJECT TO SUCH RESTRICTIONS, AND THE INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREIN SHALL BE DEEMED TO BE AMENDED, TO THE MINIMUM EXTENT NECESSARY TO CONFORM THEREWITH, AND SHALL OTHERWISE CONTINUE IN FULL FORCE AND EFFECT.**

Consultant shall promptly advise the Water System in writing of any claim or demand against the Consultant or against any of the Indemnitees, provided Consultant has actual notice, and which relates to or arises out of the Consultant's activities under this Contract.

Consultant hereby releases Water System and the other Indemnitees from any and all claims or causes of action of any kind whatsoever that Consultant might otherwise possess resulting in or from, or in any way connected with any loss covered, or which should have been covered but for Consultant's failure to purchase and/or maintain the required insurance policy(ies) (including the deductible portion thereof) required by Section XIV, and Exhibit III of this Contract.

All indemnification obligations set forth herein shall survive the termination of the Contract regardless of the reason for such termination.

The provisions of this Section XII are solely for the benefit of the Indemnitees and the parties hereto and not intended to create or grant any rights, contractual or otherwise to any other person or entity.

Nothing in this Section XII shall be interpreted to constitute a waiver of any governmental immunity available under Texas law or any available defenses under Texas law.



### **XIII. Consultant's Liability and Duties.**

In the event of any default or breach of the terms and provisions of this Contract, the Water System shall be entitled to any and all remedies at law or in equity, and the exercise of any one remedy shall not constitute an election of remedies.

Consultant will utilize only qualified personnel to perform the work under this Contract. All of such work shall be under the direct supervision of a properly licensed professional as appropriate for the Project and Work.

Consultant represents that prior to signing this Contract, Consultant has become thoroughly acquainted with all matters relating to the performance of this Contract, and all applicable laws, and all of the terms and conditions of this Contract.

### **XIV. Insurance.**

Consultant shall, at its own expense, purchase, maintain, and keep in force for the duration of this Contract, insurance in accordance with the terms and provisions of Exhibit III hereto.

The Consultant shall provide certificates of insurance to the Water System not later than the date of this Contract. Each certificate shall specifically identify the Project, the name of the Consultant and any other information reasonably requested by the Water System. Approval of insurance by the Water System shall not relieve or decrease the liability of the Consultant hereunder and shall not be construed to be a limitation of liability on the part of the Consultant.

The Consultant's insurance coverage is to be written by companies authorized to do business in the State of Texas at the time the policies are issued and shall be written by companies with an A.M. Best ratings of A- and a Financial Size Category of VII or better. The Water System will accept worker's compensation coverage written by the Texas Workers Compensation Insurance Fund.

The Consultant shall be responsible for all premiums, deductibles and self-insured retention's, if any, stated in the policies. All deductibles or self-insured retention's shall be disclosed on the Certificate of Insurance.

All endorsements naming the San Antonio Water System as additional insured, waivers, and notices of cancellation endorsements, as well as the Certificate of Insurance, shall indicate: San Antonio Water System and the City of San Antonio, c/o Ebix BPO, P.O. Box 100085-ZD, Duluth, GA 30096.

Consultant shall, upon request of the Water System, provide copies of all insurance policies and endorsements required under this Contract.

### **XV. Severability.**

If for any reason any one or more paragraphs of this Contract are held invalid, such judgment shall not affect, impair or invalidate the remaining paragraphs of this Contract but shall be confined in its operations to the specific section, sentences, clauses or parts of this Contract

held invalid and invalidity of any section, sentence, clause or parts of this Contract in any one or more instance shall not affect or prejudice in any way the validity of this Contract in any other instance.

#### **XVI. Estimate of Costs.**

During the initial scoping meeting and verification at the commencement of the Design Phase, the Consultant shall review the Water System's proposed Project Budget and shall confirm that the Project Budget is appropriate as a Class 5 estimate, as per the recommendations of AACE International, for the Work Order's planned Project scope and shall assist in providing recommendations for revisions to the Project scope and corresponding adjustments to the Water System's Project Budget in order to confirm and establish a baseline Project Budget prior to commencing with the Design Phase deliverables.

During the subsequent Design Phase the Consultant shall provide Control Estimates with each deliverable in accordance with the requirements of this Agreement.

At the 100% Construction Document deliverable, the Consultant shall provide the OPCC in accordance with the requirements of this Agreement.

#### **XVII. Interest in Water System Contracts Prohibited.**

Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. Consultant represents and certifies that this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or Water System. Consultant further represents and certifies that it has tendered to the Water System all necessary disclosures and other documents in compliance with the Water System's Code of Ethical Standards, including, without limitation, a Discretionary Contracts Disclosure Statement.

No officer or employee of the Water System shall have a financial interest, directly or indirectly, in any contract with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the Water System as an officer or employee. This prohibition extends to the CPS Energy, the City of San Antonio, and other City boards and commissions other than those which are purely advisory.

Gift Policy – Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System's Code of Ethical Standards. Section M of the Water System's Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

To report suspected ethics violations impacting the San Antonio Water System, please call 1-800-687-1918.

## **XVIII. Accounting Records.**

The Consultant agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project for a period of three years after final payment for completed services and all other pending matters concerning this Contract have been closed, except the foregoing requirement shall not apply if the entire Contract Price is payable on a lump sum basis. The Consultant agrees that the Water System shall have access during normal business hours to any and all books, documents, papers, and records of the Consultant, which are directly pertinent to the services to be performed under this Contract for the purposes of making audits and examinations. Water System agrees to provide Consultant with at least ten (10) business days prior written notice of Water System's request to inspect Consultant's books, documents, papers, and records.

The Consultant further agrees to make the above requirement apply to any and all sub-consultant agreements in which the Consultant has a contractual relationship for the services to be performed under this Contract. The subconsultant shall agree that the Water System shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed for the purposes of making audits and examinations.

## **XIX. Entire Agreement and Amendment.**

This Contract represents the entire and integrated Contract between the Water System and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Contract may be amended only by written instrument signed by both the Water System and Consultant. Any written instrument signed by representatives of both the Water System and Consultant that evidence additional services or a modification of the Scope of Work and the fee for such services shall constitute an amendment to this Contract for all purposes.

## **XX. Independent Contractor; No Third Party Beneficiary.**

Consultant's work shall be performed by Consultant as an independent contractor and not as an agent, employee or partner of Water System. Consultant shall be solely responsible for, and have exclusive control over: (a) the means, methods, tools, techniques, sequences and procedures of the Consultant's Work under this Contract; and (b) the acts, errors and omissions of its employees, sub-consultants, sub-sub-consultants, suppliers and their respective agents and employees, and other persons or entities performing portions of the work for or on behalf of the Consultant or any of its subconsultants. Any instruction or direction by Water System with respect to the Work shall be deemed to relate to the results the Water System desires to obtain from the Work, and shall in no way affect Consultant's status as an independent contractor as described herein. While the Water System has the right to review, approve and accept the Work, the detailed manner and method of performance of the Work shall be under the sole control of the Consultant. Nothing in this Contract shall create a partnership or joint enterprise between the Water System and Consultant.

Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either Water System or the Consultant.

## **XXI. Applicable Law and Venue.**

This Contract shall be governed by and construed in accordance with Texas law. Venue for any action or proceedings arising under or pertaining to this Contract shall be exclusively in Bexar County, Texas.

## **XXII. Interpretation and Contract Construction.**

Paragraph headings are for convenience only and shall not effect in any manner the terms and conditions of this Contract. All parties have participated in the negotiation of the Contract and any rule of interpretation or construction to the effect that an ambiguous term is construed against the drafter shall not apply to the interpretation of this Contract.

## **XXIII. Non-Waiver of Performance.**

A waiver by either party of a breach of any term, condition, covenant, obligation or benefit of this Contract shall not be construed or held to be a waiver of any succeeding, proceeding or other term, condition, covenant, obligation or benefit of this Contract. The failure of either party to insist in any one or more cases upon the strict performance of any term, condition, covenant, obligation or benefit of this Contract or to execute any option or right herein contained, shall in no event be construed as a waiver or relinquishment for the future of such term, condition, covenant, obligation or benefit. Any waiver of performance must be in writing and signed by the parties. No course of conduct or action shall constitute a modification of this Contract.

## **XXIV. Nondisclosure.**

The Water System has a proprietary interest in this Contract and in the advisory and consulting services provided by Consultant. Accordingly, this Contract, the services, and any information obtained by Consultant through Water System in connection with the performance of the services shall not be disclosed by Consultant to any third party. In the event Consultant is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Consultant in the performance of this Contract, Consultant shall provide written notice to Water System of the request along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by Consultant. In no event shall Consultant or any of its sub-consultants provide or participate in any public presentations or prepare or present any papers for public dissemination concerning the Project, or with information obtained in connection with the Project, without receiving the prior written approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

## **XXV. Non-Appropriation.**

Consultant agrees that the Water System has projected costs for this Contract and Water System expects to pay all obligations of this Contract from projected revenues of the Water System. All obligations of the Water System are subject to annual appropriations by its Board of Trustees. Accordingly, notwithstanding anything in this Contract to the contrary, in the event that the Water System should fail to appropriate funds to pay any of Water System's obligations under the terms of this Contract, then the Water System's obligations under this Contract shall terminate,

and the Consultant's sole option and remedy shall be to terminate this Contract by written notice to Water System, and neither the Water System nor the Consultant shall have any further duties or obligations hereunder, except those which expressly survive. Water System agrees to use good faith efforts to provide written notice to Consultant when funds have been appropriated for expenditure under this Contract, and if expected funds are requested and not appropriated, Water System agrees to use good faith efforts to provide written notice to the Consultant of the non-appropriation.

**XXVI. Notices.**

All notices under the Contract shall be in writing and shall be deemed given when either delivered in person, or (ii) deposited in the U.S. Mail, postage prepaid, addressed to the receiving party as follows:

If to Water System: San Antonio Water System  
2800 U.S. Hwy. 281 North  
San Antonio, Texas 78212  
Attn: Project Manager Name, P.E.  
Email: \_\_\_\_\_

With a copy to: San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: Executive Vice President & Chief Legal and Ethics Officer  
Email: [Nancy.Belinsky@saws.org](mailto:Nancy.Belinsky@saws.org)

If to Consultant: Consultant  
Address  
City, State, Zip  
Attn: Project Manager Name, P.E.  
Email: \_\_\_\_\_

**XXVII. Authority.**

The individuals executing this Contract each represent and warrant to the other party that he/she has full authority to execute this Contract on behalf of his/her respective party.

**IN WITNESS WHEREOF**, the Consultant and the San Antonio Water System, their respective representatives execute this Contract effective on the date counter signed by the Water System.

**SAN ANTONIO WATER SYSTEM**

BY: \_\_\_\_\_  
Philip C. Campos Jr., CPA  
Senior Director, Contracting

DATE: \_\_\_\_\_

**CONSULTANT**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**XXVIII. Attachments.**

The following attachments are a part of this Contract:

- Exhibit I. Compensation for Professional Services under this Contract
- Exhibit II. Scope of Services
  - Attachment A: Quality Management Plan (“QMP”) Procedure
  - Attachment B: Quality Management Plan (“QMP”) Certification Letter Form
- Exhibit III. Insurance Specifications
- Exhibit IV. Sample Work Order Request and Production Schedule
- Exhibit V. Term and Timeframe for Deliverables
- Exhibit VI. Security Exhibit
- Exhibit VII. Definitions
- Exhibit VIII. List of Sub-Consultants
- Exhibit IX. No Boycotting and No Discrimination Verifications
- Exhibit X. Preservation of Production of Contracting Information
- Exhibit XI. Quality Management Plan

**EXHIBIT I  
COMPENSATION FOR PROFESSIONAL SERVICES  
WORK ORDER BASIS**

**Section 1 - Basis for Compensation**

1.1 In consideration of the mutual promises, commitments and representations herein stated it is hereby agreed that the total of all fees, costs and expenses for the services set forth in all Work Orders under this Agreement shall not exceed a total amount of **\$000,000.00 – xxxxxxxx Dollars and No Cents** (the “Contract Price”). This amount has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement. Consultant agrees that the Contract Price, or any portion thereof, shall be earned upon the successful completion of a Work Order(s) up to the not to exceed Contract Price amount, and the fees earned pursuant to all of the Work Orders assigned under this Agreement, up to the Contract Price amount shall be full and complete compensation for the full and timely performance of the services provided under this Agreement, and Consultant shall not be entitled to any compensation in excess of the Contract Price. Any provision contained herein notwithstanding, the Consultant expressly understands and agrees that this is a Work Order Contract and as such SAWS makes no representation or warranty and there are no guarantee as to the Work or amount of dollars that will be assigned to the Consultant under this agreement through Work Orders by SAWS. While the not to exceed limit of fees to be incurred under this Contract is **\$000,000.00**, Consultant is not guaranteed that amount of Work to be assigned through Work Orders under this Agreement and SAWS shall only be obligated to pay, and Consultant shall only earn, those amounts agreed to pursuant to each Work Order assigned.

The base Fee, costs and expenses for services performed hereunder shall be defined by an individual Work Order. Such costs and expenses for individual Work Orders shall be based upon a Fee Proposal for the services submitted to SAWS by the Consultant for review, negotiation and acceptance. Upon written acceptance of the proposal by SAWS and in accordance with all other requirements of the Contract, SAWS will issue a Work Order for the services.

1.2 For the purpose of establishing costs to the Water System for any Work Order on an hourly basis and for any additional services beyond the scope of services in Exhibit II (the “Additional Services”), the following Hourly Billing Rate Table of the fees shall apply:

1.3 For the purpose of establishing costs to the Water System for any Work Order Project of for a Proposal Request for Additional Services , Consultant shall use an hourly rate basis authorized in writing by the Water System, the following Hourly Billing Rate Table of the fees shall apply:

Hourly Billing Rate Table

DISCIPLINE

HOURLY RATE

Principal

Project Manager/ Licensed Architect  
Designer  
CAD/ BIM Team lead  
CAD/ BIM tech  
QA/QC manager  
Specification writer  
Construction Administration manager  
Clerical/Secretarial

[Sub-consultant rates also included]

## **Section 2 - Changes**

- 2.1 The Consultant and the Water System acknowledge the fact that the Contract Price Amount contained in paragraph 1.1 above has been established predicated upon the total estimated cost of services to be rendered under the Contract. For additional services or if the Scope of Services are changed materially, compensation shall be re-negotiated.

## **Section 3 - Method of Payments**

Monthly payments for services performed (pursuant to an authorized Work Order issued pursuant to this Agreement) for the various services shall be reviewed by SAWS upon Consultant entering itemized invoices, with all required back-up, within CPMS. The invoice shall indicate the value of the services performed to date.

- 3.1 Consultant agrees that the Contract Price, (or incremental portion thereof as agreed to in an authorized Work Order), shall only be earned upon the successful completion of a Work Order(s) up to the not to exceed Contract Price amount, and that upon earning the Contract Price (or incremental portion thereof as agreed to in an authorized Work Order) it shall be the full and complete compensation for the complete and timely performance of the services in this Agreement, and Consultant shall not be entitled to any compensation in excess of the Contract Price (or incremental portion thereof as agreed to in an authorized Work Order).
- 3.2 Payment upon successful completion of each phase shall be made to the Consultant as set forth in an authorized Work Order based upon the following:

Each Work Order shall be negotiated to arrive at a lump sum base fee and may also contain not to exceed supplemental fee components. The total Fee for each Work Order shall establish a not-to-exceed amount, including expenses; based on the hourly rates provided in section 1.2 of this Exhibit.

## **Section 4 -Reimbursable Expenses**

There are no reimbursable expenses allowed under this contract. All expenses are included in the fee set forth in section 1 above.



## **Section 5 - Payment for Services**

- 5.1 No initial payment shall be paid to the Consultant prior to rendering services.
- 5.2 Invoices shall be submitted separately for each individual Work Order project assignment on a monthly basis to the Project Manager identified in Section XXVI - Notices.
- 5.3 Cost of services furnished by sub-consultants on the Project, shall be reimbursed at invoice cost with no markup. Cost of services furnished by sub-consultants as proposed from the Consultant's submittal from the request of proposal or request of interest statement shall be reimbursed at invoice cost with no markup.
- 5.4 For all services rendered, payment by the Water System is due within thirty (30) days after receipt of invoice. If payment of the amounts due, or any portion thereof, is not made as described above, interest on the unpaid balance thereof will accrue at the lesser rate of 6 percent per annum (0.5 percent per month) or the maximum lawful rate under Section 271.005 (c) of the Texas Local Government Code until such payment is made, unless delay in payment is due to improper invoicing procedures followed by the Consultant.
- 5.5 For all services rendered, Consultant's payment to sub-consultants is due within ten calendar days after receipt of payment from the Water System.
- 5.6 For project assignments that are to be compensated on an hourly rate basis, the Consultant's invoice shall show the name of all consultants, employees, titles, charging time to the project, the amount of time billed, the hourly rates, and the activity or activities performed by all consultants and employees. Payroll time sheets shall be provided on request of the Water System.
- 5.7 For project assignments that are to be compensated on the salary cost multiplier method, the Consultant's invoice shall show the name of all consultants, employees, titles, charging time to the project, the amount of time billed, the raw salary cost, the fringe benefit percentage, the multiplier, and the activity or activities performed by all consultants and employees. Payroll time sheets shall be provided on request of the Water System.
- 5.8 For project assignments that are to be compensated on a lump sum basis, the Consultant's invoice shall include a tally of all staff hours completed and a detailed summary of the progress and completion of tasks to substantiate the percentage of completion of services as rendered during the previous month.
- 5.9 Reimbursable expenses shall be limited to reproductions, copies and blueprints unless otherwise Approved by the Water System in advance and shall be included on the Consultant's invoice shall have copies of invoices, receipts, and other evidence of expenses.

## **Section 6 - Payment for Supplemental and Additional Services**

Payments for Consultant's supplemental and additional services shall show the same information required in subparagraphs 5.6 through 5.9 dependent upon the type of compensation.

## **Section 7 - Payments Withheld**

The Water System may withhold, amend, or reject any request for payment by the Consultant under conditions that include those described below:

- 7.1 Consultant's failure to provide adequate documentation for reimbursable expenses.

- 7.2 Consultant's failure to invoice as required in subparagraphs 5.6 through 5.9 .
- 7.3 Failure of the Consultant to provide updated As-Builts within thirty (30) days after details of deviations from the Contract Documents have been provided to the Consultant by the construction contractor.
- 7.4 Failure of the Consultant to submit timely records of project conference proceedings.
- 7.5 Failure of the Consultant to submit timely job site visit reports of its job site observations.
- 7.6 Failure of the Consultant to design for compliance with the Laws of the City of San Antonio, State, and Federal governments.
- 7.7 Failure of the Consultant to adhere to the service level agreement in processing tasks in CPMS.
- 7.8 Errors or mistakes in the Consultant's invoice and or defects, errors, and omissions in the design, working drawings, specifications or other documents prepared by the Consultant or Consultant's consultants which are the basis for the payment request.
- 7.9 Water System's receipt of evidence that the Consultant's sub-consultants have not been duly paid for their services in connection with this project subsequent to the Water System having disbursed compensation to the Consultant in consideration of and stemming from the efforts extended by the sub-consultants.
- 7.10 Failure of the Consultant to render any service required by this Contract per Exhibit IV, Production Schedule.
- 7.11 Any claim for Indemnification that arise under Section XII of the Contract.

If any of these conditions exist, then interest charges will not be applicable. The Water System shall provide the Consultant with written notice of its intention to withhold, amend, or reject any request for payment by the Consultant. Upon written request by the Consultant to the Water System made within 10 days after the date of notice sent by the Water System, representatives of the Water System will meet with representatives of the Consultant at a mutually agreed time to discuss the circumstances surrounding the determination to withhold, amend, or reject any request for payment by the Consultant.

## **EXHIBIT II SCOPE OF SERVICES**

The Consultant shall perform the following Scope of Work (also referred to herein as a “Scope of Services”) in accordance with the terms and conditions of the Agreement.

The Consultant has overall responsibility for and shall provide and complete the Design Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Scope of Services described herein

### **A. Project Administration**

#### 1. Meetings and Reports.

- (a) The Consultant shall hold periodic meetings and conferences with the Water System to verify and confirm that the performance of the Design Services:
  - (i) has the full benefit of the Water System’s experience and knowledge of existing needs and facilities;
  - (ii) is consistent with the Water System’s current policies and standards; and
  - (iii) is fully coordinated with the Water System’s operational use of the site or facility and coordination with any other Consultant or Contractor engaged in performing work in connection with the Project or any related project.
- (b) The Consultant shall keep the Water System regularly informed as to the progress of the Design Services through the submittal of monthly progress reports. This report shall include the following:
  - (i) Status of the Design Deliverables, (including percent complete, missed deadlines and schedule delays);
  - (ii) Status of permits and approvals, and resolution of any logged corrective measures or substitutions;
  - (iii) The Consultant and their sub-Consultant’s status of addressing all required corrections to the Design Deliverables;
  - (iv) Detailed list and log of any deviations from the Water System’s scope, or from the Water System’s standards list; and
  - (v) Compliance with the QMP including but not limited to Quality control checking review dates and status of design quality control checks (including the responsible design professional assigned for checks) of Design Deliverables prior to the release thereof.

2. Communication.

- (a) The Consultant has designated within their Org chart and Staffing Plan (**QMP**) both a designated project manager to the Consultant, and a designated project manager for each of the Consultant Parties, all of whom shall be licensed in their professions, each of whom shall be continuously involved in and remain fully familiar with the ongoing status of performance of the Services and Work, and be available throughout the Design and Construction Phases of the Project to act as the points of contact for all matters related to design and construction Services and the Project generally. These designated representatives shall not be changed without advance written Approval from the Water System, in accordance with the Agreement. In the event any such designated representative resigns from employment, his or her replacement shall be equally qualified to fulfill the departing representative's role, subject to advance Approval from the Water System. Consultant shall notify Water System in advance of and provide written documentation to the Water System to confirm and attest that, such replacement has received adequate indoctrination on the current status of performance of the Services and Work and the requirements of this Agreement, at no additional cost to Water System.
- (b) Unless otherwise directed by the Water System, the Consultant shall cause all communications from the Consultant to the Water System to be directed to the Water System's Project Manager, who shall act as the single point of contact between the Water System and the Consultant. The Consultant shall not engage in any communication with Water System's employees, stakeholders, vendors, suppliers or Water System's Separate Contractors, and any communications concerning the foregoing persons or entities shall be directed solely to the Water System's Project Manager.
- (c) The foregoing provisions notwithstanding, Water System expressly reserves the right to communicate, and nothing in this Agreement shall be construed to limit or restrict the right of the Water System's Project Manager, or other Water System representatives, to communicate directly, but jointly and simultaneously, with both the Consultant and any Consultant Parties at any time if Water System believes such direct communications will help to expedite or clarify communications for the benefit of the Project. All contracts with the Consultant Parties shall expressly acknowledge Water System's reservation of such right. In no event shall an election by Water System's Project Manager, or any other Water System representative to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of Consultant, or any sub-Consultant parties, or an abrogation of any rights of Water System under this Agreement.

**B. Description of Scope of Services and Work.**

1. Design Phase:

- (a) The Consultant shall commence performance of the Design Services immediately after receiving Water System's Notice to Proceed (NTP) therewith.
- (b) The Consultant and Consultant Parties shall develop full and complete designs for the Project, in accordance with this Agreement and with each Work Order (Exhibit IV). Consultant acknowledges that the requirements of the Project are based in part on the Water System's Standards List and may also include the prior designs of Water System's previously completed Vertical facilities. Consultant agrees that, although the Water System may provide copies of or references to As-Builts, records or other design records for the Water System's existing sites and facilities, as a means of describing Water System's criteria for the Project, Consultant shall independently develop the design for this Project and shall not assume or presume that portions of the design for this Project should be based on such prior designs of previously completed vertical facilities, unless clearly stated otherwise. While prior design information may be useful, Consultant shall exercise its independent professional judgment to fulfill its responsibility to prepare a total and independent design for this Project.
- (c) General Responsibilities.
- (i) During each Design Phase, the Consultant shall provide, and cause its designated project manager and its Consultant Parties to oversee and manage, in accordance with the Standard of Care, the following Services as necessary or appropriate:
- Design Services, generally;
  - LEED related evaluations, recommendation and registration and related Enhanced Commissioning as required;
  - Landscape design;
  - Geotechnical evaluations ;
  - Site assessments, including any environmental assessments or monitoring;
  - Civil Engineering;
  - Structural Engineering;
  - Mechanical Engineering;
  - Electrical Engineering;
  - Fuel facility design;
  - IT and Audio/Visual Engineering;
  - Interior design;
  - Coordination with Water System-furnished FF&E, including the providing of FFE drawings;
  - Construction Cost Estimating;
  - Scheduling;
  - Constructability Review analyses;

Fire Protection/Life Safety/Code reviews;  
Permitting reviews and coordination with AHJs; and  
Any other activities necessary or appropriate to prepare the  
Design.

- (ii) The Consultant shall not proceed with any Phase of the Work and Services, including any phase of the Design, or any design submittal or deliverable except as authorized by Water System's Notice to Proceed (NTP), failing in which Consultant shall solely bear the financial risk of corrections or modifications due to any errors or changes in the Construction Documents or the Work or any corrections required in order to achieve Water System Approval and subsequent NTP.
- (1) Consultant shall submit Drawings and Specifications to Authority Having Jurisdiction (AHJ's) for their preliminary plan reviews only after receiving Approval to do so;
  - (2) Initial Scoping meetings and verification: For each Work Order project (Exhibit IV) The Consultant will review the Water System's requirements and shall meet with the Water System's Project Manager, Water System stakeholder's and staff to discuss and establish the Consultant's tasks, field investigation and requirements, data needs and verification, design and construction requirements and design phases in order to fulfill the Services and Work in accordance with the Agreement. The Consultant shall provide the appropriate staff and Consultant Parties to attend the meeting based on the related expertise. The Consultant shall submit to the Water System's Project Manager a detailed scoping verification document confirming the scope of work and all tasks and items in the Design Deliverables for review and Approval by the Water System. The Consultant shall address all comments and finalize the scoping verification document for Approval. If required, the Consultant shall prepare meeting minutes to document the discussions and decisions.
  - (3) Prior to commencing into Schematic Design Phase (30% phase) the Consultant shall complete a Design Approach Submittal for the performance of the Services and Work at each Worksite. Consultant shall include a narrative description of the Consultant's approach for each Worksite, separately describing the major features of the facility, such as major materials to be used, and any perceived risks to cost and schedule. The Consultant shall have thoroughly reviewed the scope requirements of the Work Order Project and shall provide any input, comments or Value Engineering to Water System's Project Manager, for review and

comment by Water System. Facility designs and associated sitework shall also be reasonably consistent with the designs of the Water System's previously completed service centers or operations centers and the Water Systems standards list in order to provide Water System commonality and consistency of design across all of Water System's facilities (which shall generally be referred to as "**program design consistency**") for purposes of efficiency in Water System's ongoing maintenance and operation of its facilities. The Consultant shall describe the rationale for all variances in or inconsistencies between Consultant's design approach, and Water System's existing facilities and standards list. The Design Approach Submittal shall incorporate and reuse prior design decisions/ specifications as much as possible for program design consistency. Any proposed variances or inconsistencies in design from the Water System's existing facilities and standards list must be Approved in advance. Water System shall be given notice of and Approve the correction of any errors recognized within any as-builts or other information provided by the Water System prior to addressing such errors in a submittal of a Design Deliverable or a Construction Documents Set. Approval of the Design Approach Submittal and any proposed variances from the Water System's standards list are required prior to issuance of an NTP from the Water System to proceed to the next deliverable in accordance with the Agreement.

- (4) Drawings shall be produced in CAD/BIM, and the Drawings and Specifications shall be uploaded as BIM files to CPMS as they are updated. The Consultant shall assign a key team member as listed in the Consultant's Staffing Plan (**QMP**) as a sole point of contact to manage and maintain the architectural and engineering elements of the CAD/BIM electronic files on a daily basis, and all updates of these files. The Consultant shall verify to Water System's Project Manager at least weekly, in writing, that all the Consultant Parties have coordinated updates to respective drawings, communications and files in accordance with the QMP.
- (5) The Consultant shall provide, or subcontract with a licensed surveyor as necessary in the Consultant's professional judgment to provide accurate and complete site surveys, tree surveys, topographical surveys as needed to properly identify all boundary constraints, easements, and other title exception conditions to be observed, avoided, or otherwise taken into consideration in the development of any of the Work Order Projects that require sitework, and as required

for completion for the Work and Services in accordance with the Consultants' Standard of Care..

- (6) The Consultant shall develop and provide during the Design Phase a Permitting Plan and maintain a log reflecting status and resolution of all requirements of AHJs, which log shall be kept up to date throughout the Project until Final Completion and shall copy Water System on all required submittals or other documentation submitted to the AHJs, as well as copies and receipt of all certificates of occupancy for the Project.
- (d) Design Coordination. Consultant shall adhere to the following coordination requirements throughout each Design Phase.
- (i) Review of Meeting Documentation. During the Design Phase, the Consultants designated project manager will prepare and distribute meeting agendas, and meeting minutes. At the conclusion of each meeting and within 48 hours, the Consultant shall promptly distribute the meeting minutes to the Water System's Project manager and all attendees and shall allow for any comments to such meeting minutes by the end of the second business day after receipt of such meeting minutes, failing in which such meeting minutes shall be deemed an accurate record of the decisions, action items and other outcomes of the meeting.
  - (ii) Weekly Reviews. The Consultant shall schedule and participate in weekly status meetings with Water System's Project Manager and to review updated Control Estimates, Production Schedules and Design Deliverables.
  - (iii) Design Deliverable Reviews. Water System shall have ten (10) business days to review each Design Deliverable. The Consultant shall include in the Production Schedule adequate time for each of the following:
    - (1) Consultant and Consultant Parties' internal Quality Control processes in accordance with the QMP, and control estimating prior to submission of a Design Deliverable for Water System's review;
    - (2) Production Schedule shall allow for periodic Control Estimates. Design Deliverables shall not be submitted, and will not be accepted by the Water System, unless Consultant includes Control Estimate and can confirm that the design concept, drawings and specifications are within the Water System's Project Budget.



- (3) Water System's review of the Design Deliverables;
- (4) conducting of review meetings of the Water System, and Consultant and their respective Consultants, in accordance with this Agreement
- (5) evaluation of any comments and questions Water System will log following the review meeting;
- (6) revising the Design Deliverables, including drawings and specifications, and BIM model to correct any noted errors, omissions, code violations, inconsistencies, or other deficiencies observed therein, and to resolve all comments and questions entered on Water System's review log; and
- (7) resubmitting the revised Design Deliverables for Water System's further review and Approval.

Consultant agrees that (i) the Production Schedule and the scheduled dates of the completion of 100% Construction Documents for the Project allow a reasonable time for Water System's review of Design Deliverables, (ii) Water System has the right to review, comment on, and log any and all errors, omissions, code violations, inconsistencies, or other deficiencies observed in the Design Deliverables, (iii) Water System's exercise of such right shall not be the basis of a claim of Water System interference or delay, and (iv) the time required for Consultant to correct errors, omissions, code violations, inconsistencies, or other deficiencies in the Design Deliverables shall not be the basis of a claim of Water System interference or delay.

- (iv) Design Revisions. The Consultant shall be responsible for managing its Consultant Parties and the delivery of Design Services and Design Deliverables so as to ensure that the Project is designed and constructed in accordance with the requirements of this Agreement, and in accordance with the Production Schedule, and Applicable Law or construction codes, for an amount that is within the Contract Price. The Consultant shall follow the Consultant's Quality Management Plan (QMP) on an ongoing and continuous basis to coordinate and make the Drawings consistent with the Specifications, and each design discipline's drawings consistent with all other discipline's Drawings.

The Fee and the Production Schedule shall cover the cost of and time for making, and allowing a reasonable time to make, revisions to Design Deliverables that are appropriate to correct errors, omissions, inconsistencies or other deficiencies identified by either the Water System or Consultant through the design review process by entering them on Water System's log of design review

comments, as described in the Agreement. Upon Notification to the Water System of required corrections to the Design deliverables, the Consultant shall also submit a recovery schedule depicting the manner in which the correction will be completed without impacting the Production Schedule completion dates. If, at any time, Consultant believes an Water System's design review comment or clarification, will result in a change in scope that may affect the Consultant's ability to adhere to the Project Schedule or require consideration of a request to increase the Fee, the Consultant shall give Water System prompt written notice thereof, no later than five (5) business days after Water System's design review comment has been provided to Consultant, explaining with particularity the basis for such belief, and Consultant shall not proceed further with Services related to such design review comment without further direction from Water System. Consultant's notice must comply with the notice requirements of this Agreement for making any claim to extend the Production Schedule and/or increase the Fee. Failure to give such notice shall result in a waiver of Consultant's right to seek an extension of time, Additional Services or an adjustment to the Fee.

(v) Meeting and Training on Water System's Construction Project Management Software Systems. The Consultant shall designate a member of the key personnel, as listed in the Consultant's Staffing Plan, to be solely responsible for all updates to and management of documentation in the use of Water System's construction project management software systems (CPMS). This designated individual shall attend training sessions with the Water System, as appropriate to understand and use CPMS and shall receive access. Water System reserves the right at any time to implement updates to, or use different, construction project management software systems, in order to manage the Project, in which case the Consultant shall be provided training sessions as required.

(vi) Drawing and Compliance Reviews.

(1) The Consultant, at its sole expense, shall provide Water System with the designated number of design document review sets required for each deliverable, as set for in the requirements for each respective Work Order Project. Design Deliverables shall be submitted in both hardcopy and PDF format, in combined sets, and in accurate sheet order.

(2) The Consultant shall pay all costs for plans, specifications and other design and construction documents used by the Consultant and Consultant Parties, and all documents produced for review by the Water System.

- (3) The Consultant shall incorporate into the documents all corrective revisions and design change revisions as necessary to complete each Design Deliverable in accordance with the Production Schedule. Any additional cost incurred due to Consultant's failure to promptly incorporate corrective revisions shall be borne solely by the Consultant, without adjustment to the Production Schedule or Fee or a request for Additional Services.
- (4) The Consultant shall allow in its Project Schedule no less than ten (10) business Days for Water System's review of any Design Deliverable, and the Control Estimates and OPCC, shown in the Production Schedule.
- (5) As the Design Phase proceeds, and unless otherwise provided, if any Control Estimate, including the OPCC required to accompany the 100% Construction Documents, exceeds the Water System's Project Budget for any reason not otherwise expressly excused by the terms of this Agreement, the Consultant shall review with the Water System's Project Manager the scope and latest Control Estimate or OPCC against the Water System's Project Budget, and shall participate in a workshop in order to Value Engineer the Project. At the conclusion of the Value Engineering workshop, the Consultant shall, at its own expense, make all necessary corrections to the Design Deliverable and re-submit the Design Deliverables, with an updated Control Estimate for another review. The Water System may consider an extension to the Production Schedule in order for the Consultant to make such corrections, but any time or services required to make revisions to align the Design Deliverables within the Water System's Project Budget shall not be considered as a basis for adjusting the Consultant's Fee. In such event, Consultant shall also provide a recovery schedule, to the Production Schedule.
- (6) If at any time during any Design Phase the Water System determines in its review of any Design Deliverable that the scope is not being properly addressed in the Design Deliverables or that any space designed by Consultant is less than that required by the Work Order or that scope is omitted, exceeded, ignored or not met, the Consultant shall, unless otherwise expressly excused by the terms of this Agreement, re-design the Project at its own expense, without adjustment to the Fee. The Consultant may request, and Water System may in its sole discretion consider and grant an extension to the Production Schedule in order for the

Consultant to make such corrections, but any additional time or services allowed to make such revisions shall not be considered a basis for adjusting the Fee or for Additional Services. In such event, Consultant shall also provide a recovery schedule, as required by the Agreement

(vii) Pre-Construction Meeting(s). The Consultant, including the Consultant Parties, shall schedule and participate in pre-construction meetings as necessary to provide advice and consultation to the Water System regarding: site usage; earthwork; methods of delivery of materials, systems and equipment; construction sequencing; confining the Work to the construction limit boundaries of the sites; availability of materials, equipment, utilities and labor; time requirements for delivery, installation and construction; safety precautions and programs; temporary facilities; equipment, materials and services for common use by the Water System's General Contractor, and any Separate Contractors; cost savings opportunities such as costs of alternative materials or designs; and any other matters pertaining to the performance of the Work. All such information shall be provided in a timely manner to allow sufficient time for review and discussion while taking into account the overall Project Schedule.

(e) Schematic Design Phase – 30% set.

(i) The Consultant shall review the Water System's scope, specified equipment, materials and finishes, and the approaches to design and construction of the Work Order Project from Water System's previously completed facilities and standards list and review them with the Water System, and shall, if required by the Work Order Project, include whole building energy analysis of the various alternatives through use of energy modeling software. The Consultant shall prepare Schematic Design documents and the coordinating Control Estimate and submit them to the Water System for Approval.

(ii) The Consultant shall direct and cause its Consultant Parties to, develop and prepare the Schematic Design documents for the Project, which documents may include civil, structural, architectural, mechanical, electrical, landscape, interior, and Audio/Visual drawings and specifications.

(iii) The design shall be illustrated sufficiently and, in a manner, so that the Water System can readily understand the proposed design and site development:

(1) These drawings and specifications shall provide information on

selected or acceptable types of construction as well as types of mechanical, electrical, plumbing, and structural systems, and civil engineering and landscaping aspects of the proposed design.

- (2) Any special or other critical elements of the proposed design shall be illustrated or described by Consultant at a preliminary level during this phase of design.
- (iv) The Consultant shall prepare the required Design Deliverables as listed in the Production Schedule including but not limited to the following:
- (1) Drawings and other documents that will indicate the scale and relationship of project components;
  - (2) Conceptual renderings including perspective and isometric views of exterior façade, primary interior spaces and floor plans for Water System's use in presentations to the public, the Board, and Water System's management;
  - (3) Conceptual site plans showing land use, general building location, general parking arrangement, and major site features and proximity to major thoroughfares and highways to adequately depict egress/ingress and traffic patterns,
  - (4) Conceptual building plans showing major plan components, including structural and MEP components, with designations of user departments and departmental blocking and stacking;
  - (5) For each major building façade, generally indicating fenestration, entrances, and design vocabulary;
  - (6) Conceptual building sections to illustrate building shape or spatial features;
  - (7) Conceptual drawings and specifications for the following disciplines: civil, structural, architectural, mechanical, electrical, landscape, interior, and Audio/Visual;
  - (8) Control Estimate with quantities for major components such as concrete, roofing, exterior wall, windows, paving, utility lines, and approximate finish surfaces, and lump sum allocations for yet to be developed elements;
  - (9) An updated Project Schedule for each standalone building, component or site works/utility segment organized under the MasterFormat divisions (except division 00); and

- (10) Any other Design Deliverables required for the resolution of the Worksite Conditions identified during the Worksite Investigation, and any AHJ requirements applicable thereto, that relate to or vary from the Worksite Conditions identified to have a moderate or higher risk of encounter in the Worksite Investigation Report.
- (v) Before proceeding to the Design Development Phase, the Consultant shall obtain Water System's Notice to Proceed (NTP) and the Water System's Approval of the Control Estimate and Production Schedule based on the Schematic Design Deliverables.
- (f) Design Development Phase.
- (i) Upon Water System's Notice to Proceed (NTP) with the Design Development Services and based on the review of the Schematic Design documents and any adjustments to the Project scope or to the Control Estimate authorized by the Water System, the Consultant shall, and shall cause its Consultant Parties to, prepare Design Development documents and an updated Control Estimate, and submit them to the Water System for review. The Design Development Documents shall fix and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Control Estimate shall confirm adherence to the Water System's Project Budget.
- (ii) The Consultant shall direct and oversee the Consultant Parties and its other design professionals in the preparation of performance Specifications for all engineered systems required for the Project. Drawings shall illustrate the engineered systems, showing locations and types of HVAC equipment and devices, any fleet garage crane and lift equipment, electrical systems and equipment, fire/life safety systems, building management systems, plumbing systems, showing compliance with the Water System defined scope.
- (iii) These drawings shall be accompanied by a list of proposed materials, methods and systems ("**Design Development Specifications**") that describe all major cost elements of each MasterFormat division (except Division 00). Provide short form MasterFormat (except Division 00) specification describing primary materials and building systems.
- (iv) The Consultant shall prepare and provide the required Design Deliverables according to the Production Schedule including but not limited to the following:

- (1) Space assignments, sizes and locations of installed and moveable equipment and labeling of net and gross areas for all Projects that fully account for all space identification/allocations in the scope requirements of the Work Order;
- (2) Scaled site plans with building locations dimensionally established in relation to benchmarks shown on Consultant's civil drawings. Site plans shall include street lines, drives, parking lots, property lines, sidewalks, paving materials, setbacks and easements (survey required), underground structures, and entry/exits. Preliminary grades shown on site plan shall be reviewed by the Consultant's civil engineer. All of the above shall include coordination with the surveys developed or verified by the Consultant's civil engineer;
- (3) Floor plans, including enlarged floor plans, with dimensions for major typical elements. On each floor plan, doors and window systems shall be keyed, and all rooms shall be labeled and numbered. All floor plans shall show structural columns and grids as coordinated with the structural drawings;
- (4) Reflected ceiling plans to define/locate major design elements, ceiling grids and lights fixtures, HVAC grilles, security cameras, and other equipment, coordinated with Water System as required;
- (5) All building facades, providing exterior elevations indicating materials, fenestration, entrances, awnings, special features, floor levels and plate heights, and vertical dimensions;
- (6) Enlarged elevation plans to define major critical elements;
- (7) Full-height building sections showing building configurations for predominant or typical locations, indicating relationship in section to the adjacent site grades, as well as building materials, structure, foundations, ceilings and ceiling and plate heights and include room number labels that correspond with the floorplans;
- (8) Enlarged details for typical roof, wall (top and sill), grade, and special elements including overhead doors, canopies, bridge crane at fleet, pit and lift at fleet, truck dock, site plan detail at site vehicular entries, and other specialty items as required to communicate the details for construction;

- (9) Door and window schedules to define general door and window types showing hardware sets, and security swipes and equipment;
  - (10) Room finish schedule;
  - (11) Partition schedule and interior partitions shown at scale;
  - (12) Casework and millwork schedules and material selection;
  - (13) Plumbing fixture and toilet accessory schedule;
  - (14) Major M/E/P systems determined (rooms, shafts, etc.) as indicated;
  - (15) Fire, security, and alarm system layout, external link specifications, and specification of major component selections and testing/maintenance regimens;
  - (16) A three-dimensional computer model in rendered format with images around the overall site, exterior and interior of primary spaces and facades for the buildings, including all major materials and building systems;
  - (17) Current Control Estimate based on the Design Deliverable Phase documents, according to the Production Schedule
  - (18) Production Schedule updated showing the control milestones and all open/incomplete items needed to submit the Design Deliverables
  - (19) Comprehensive, thorough Quality Assurance checklist confirming the Consultant's and the Consultant Parties representations all previous Water System comments from the Schematic Design Phase have been addressed and resolved in the Design Deliverables required for this Design Deliverable Phase;
- (v) Before proceeding to the Construction Documents Design Phase, the Consultant shall obtain Water System's Notice to Proceed (NTP) and the Water System's Approval of the Control Estimate and Production Schedule based on the Design Deliverables.

(g) **Construction Documents Phase.**

- (i) **General Requirements for Preparation of Construction Documents.** Upon Water System's Notice to Proceed (NTP) with the Construction Document Services and based on the review of the Design Development documents and any adjustments to the Project scope or to the Control Estimate authorized by the Water System,



the Consultant shall, and shall cause its Consultant Parties to, prepare Construction Documents and an updated control estimate, and submit them to the Water System for review. The Construction Documents shall fix and describe in detail the requirements for construction of the Project, including the size and character of the entire Project, including site work, civil, architectural, structural, mechanical and electrical systems, materials, and other elements of the Work. The Construction Documents shall provide for the construction of the Project in accordance with the Work Order Project requirements and within the Water System's Project Budget

(ii) **The 90% Set of Construction Documents and related Design Deliverables.** The Consultant shall, in accordance with the Project Schedule (Exhibit IV) for the Design Phase, prepare and timely submit for Approval the 90% Set of Construction Documents and related Design Deliverables, all as required by the Production Schedule as follows:

- (1) The 90% Set of Construction Documents shall show all final space areas and wall locations, have a draft finish table indicating all surfaces, locate and describe all door types, show layout and sizing of all MEP systems ducts, pipes, cable trays, panel boards, fixtures, piping in chases, civil shows all final elevations and structural/paving details, final location and sizing of all utility lines including irrigation, data, security and lighting. The 90% Set of Construction Documents shall represent a complete design (design analysis, specifications, and drawings), pending final detail adds or revisions, with no clouds other than as to notes, and no strike-through text changes/revisions, and suitable for permit review and construction, without further design effort. The 90% Set of Construction Documents shall include annotated specifications and design submittal review comments to answer and/or incorporate all design review comments previously logged by the Consultants project manager, including any comments resulting from any prior Approved AHJ reviews;
- (2) All necessary permit applications, in form have been initiated and this process is underway, and ready for pending Approval to submit for AHJ review in the 100% deliverables;
- (3) BIM model, if required by the work Order Project, in rendered format with images around the overall site, exterior and interior of the buildings, including all major materials

and building systems, complete and suitable for Water System use after Substantial Completion with all elements dimensionally fixed;

- (4) Two-dimensional CADD files and a full size set of PDF files, with each CADD drawing file being free standing and independent, containing no references or cross-references to separate files;
- (5) Updated Control Estimate, submitted according to the Production Schedule based on the 90% Construction Documents and related Design Deliverables;
- (6) Comprehensive, thorough Quality Assurance checklist confirming the Consultant's representations that all previous Water System comments from the Design Deliverable Phase have been addressed and resolved in the Design Deliverables required for this Construction Documents Phase;
- (7) A submittal report listing all design narrative chapters, drawings and specifications being delivered;
- (8) A statement signed by both the authorized representative of the Consultant and its Consultant Parties confirming that the Consultant has thoroughly reviewed the Construction Documents, that all rights of Water System to the use of the Construction Documents have been transferred to the Water System, and that such Documents are free from errors, omissions and defects; and

(iii) **The 100% Set of Construction Documents and related Design Deliverables.** The Consultant shall, in accordance with the Production Schedule for the Design Phase, prepare and timely submit for Approval the 100% Set of Construction Documents and related Design Deliverables, all as required by the Agreement as follows:

- (1) The 100% Set of Construction Documents shall be complete, signed and sealed, including all Drawings and Specifications, clean of all revisions, with no clouds other than as to notes or clouds required to address requirements of AHJs, and no strike-through text changes/revisions, and suitable for permit review and construction, and suitable and ready for issuance of permits and construction of the entire Project, without further design effort or further review by permitting Authorities Having Jurisdiction;
- (2) Proof that AHJ's have completed their preliminary plan

reviews of the Drawings and Specifications Approved for AHJ review, and that all AHJ comments have been satisfactorily resolved and all necessary permit applications are prepared and ready to submit to all AHJs as required to commence construction upon Water System's Notice to Proceed with the Construction Phase;

- (3) BIM model , if required by Work Order Project, in rendered format with images around the overall site, exterior and interior of the buildings, including all major materials and building systems, complete and suitable for Water System use after Substantial Completion and compliant with BIM Protocols that shall be submitted by the Consultant , prior to NTP for any Work Order for review and Approval by the Water System, with all elements dimensionally fixed;
- (4) Two-dimensional CADD files and a full-size set of PDF files, with each CADD drawing file being free standing and independent, containing no references or cross-references to separate files;
- (5) Opinion of Probable Construction Cost (OPCC) submitted in accordance with the Agreement and based on the 100% Construction Documents and related Design Deliverables;
- (6) Performed all internal quality management including control and assurance prior to submitting any Design Deliverables and any Work Product to the Water system in accordance with the QMP, and shall maintain these documents as part of the project records.
- (7) A statement signed by both an authorized representative of the Consultant and its Consultant Parties confirming that the Consultant has thoroughly reviewed the Construction Documents, and that all rights of Water System to the use all Construction Documents have been transferred to the Water System, and that such Documents comply with the QMP for and are, to the best of their knowledge, free from errors, omissions and defects, and adequate for construction in accordance with the terms of this Agreement.

## 2. Bidding Services

The Consultant shall provide bid phase services which may include the following tasks and coordination:

- (a) Upon completion of all deliverables required, in accordance with the Agreement, in the 100% Construction Document Phase, Consultant shall

review and confirm that the signed and sealed set of Contract Documents for Project advertisement includes the most recent Contract Documents, including any Addendum as required to address revisions, corrections or AHJ comments.

- (b) Finalize all permit documents, notices, and applications as required by any AHJ.
- (c) Submit a list of contractors that may be interested in bidding the Project and prepare a proposed construction implementation schedule to accompany the procurement documents.
- (d) Consultant shall attend the Pre-Bid/Pre-Proposal meetings any related site visit and shall, as required, prepare the agenda and a PowerPoint presentation summarizing the Project scope to be used in the Pre-Bid/Pre-Proposal meeting.
- (e) Consultant shall work with the Water System and any independent cost estimators employed by or procured by the Water System, to verify and address comments related to the OPCC, and shall update or cause its Consultant Parties or its sub-consultant Cost Estimating Firm to and finalize and update the OPCC (cost estimate at 100% CDs, shall be a Class 1 estimate). The OPCC estimate shall be in accordance with AACE 17R-97 and 56R-08) and shall be developed in conjunction with the Consultants' estimated construction schedule for the bid advertisement and shall be updated to reflect the most current market conditions based on the expected construction start date, and this updated OPCC shall be used in the advertising of the Project and referred to as the Final OPCC . The bid sets shall be submitted electronically through CPMS
- (f) The Consultant shall provide the required number of hard copies and DVDs/USB flash drives as required for use in the Water Systems bid process.
- (g) The Consultant shall attend and cause its Consultant Parties to attend pre-bid conferences and site visits and provide response to interested contractor questions during and after pre-bid meetings and shall issue addenda to the Approved Construction Documents as necessary.
- (h) The Consultant shall provide Value Engineering and constructability reviews to assess the feasibility and practicability of any proposed means and methods arising from questions from bidders or pre-bid meetings or correspondence.

- (i) The Consultant shall review the feasibility and practicability of the bidder's proposed means and methods
  - (j) The Consultant shall assess the bidder's proposed construction schedule specifically in regard to the availability of labor, materials and equipment; analysis of building systems; identification of equipment, materials or systems that may involve long lead delivery times necessitating early placement of purchase orders
  - (k) The Consultant shall research contractor qualifications and references, and submit a letter of recommendation
- 3. Construction Phase: The Services and Work to be performed during the Construction Phase, referred to as Construction Administration Phase, shall include the following:
  - (a) Construction Authorization.
    - (i) Commencement of Construction Phase Services. The Construction Administration Phase shall be deemed to commence upon the date specified in Water System's Notice to Proceed (NTP) to its General Contractor and shall continue until Final Completion of all Work. Upon issuance of the Water System's Notice to Proceed into the Construction Administration Phase, the Consultant shall proceed to undertake, perform and complete the Work in accordance with and subject to this Agreement.
    - (ii) Overlap of Design and Construction Phases. Consultant shall continue to provide Design Services, including specifically the Construction Administration Services, necessary to fulfill Consultant's responsibilities under this Agreement.
  - (b) Conduct regular site visits and inspections of the Work, as reasonably necessary to monitor and observe, and verify with reasonable certainty that the Water System's General Contractor is accurately reporting, the progress of and quality of the performance of the Services and Work. Consultant shall frequently participate in such visits and inspections to periodically verify all Work is being performed in accordance with the Approved Construction Documents, the Standard of Care, and the other requirements of this Agreement;
  - (c) Inspect portions of Work already performed to determine which such portions are in proper condition to receive subsequent Work;
  - (d) Review the submittals or other Services or Work to confirm it is appropriate

to produce a completed, functioning Project that conforms to the Approved Construction Documents. Evaluate and determine the suitability and acceptability of any substitute or “or-equal” materials and equipment proposed by Water System’s General Contractor for conformance with the requirements of, and compatibility with the Approved Construction Documents, recording such evaluation and rejection/decisions in CPMS;

4. Construction Administration responsibilities.

- (a) Shop Drawing Submittal review: Consultant shall review for compliance with the Contract Documents all required Shop Drawing Submittals with reasonable promptness and in such sequence so as to cause no delay in the Project. The Consultant shall be responsible to either approve or send corrections to the Water System’s General Contractor to correct any defect, error or omission in the Work as a result of any failure to comply with the Contract Documents.
  
- (b) Substitutions. If Water System’s General Contractor or the Consultant elects to propose to Water System a substitution of materials that departs from the Approved Construction Documents, such substitution shall only be considered by Water System after Consultant has submitted the following documentation:
  - (i) a written request for Approval of the substitution, including a complete description of the proposed substitution, including any deviation from the Construction Documents associated therewith, and a written explanation of the reasons the substitution is necessary, including any and all benefits or risks associated with such substitution and any impact to cost or schedule;
  
  - (ii) a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution; and
  
  - (iii) Correspondence between the Water System’s General Contractor and the Consultant confirming the Consultant’s review of the substitution and Approval.

A proposed substitution shall be submitted to Water System in sufficient time to allow for their review no less than fifteen (15) business days for specially fabricated or designed items of equipment, software, or operating systems, and no less than ten (10) business days for all other items. Water System in its sole discretion may reject any substitution submitted by Consultant.

- (c) In addition to site visits for general inspection and observation, the

Consultant shall visit the site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work by others. The Consultant shall provide written reports of all site visits to the Water System and upload into CPMS.

- (d) The Consultant shall promptly respond to any RFI's as necessary for the proper execution or progress of the Work and shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. The consultant's interpretations and recommendations shall be consistent with the intent of, and reasonably inferable from, the Contract Documents, including the Approved Construction Documents. The Consultant's interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents and uploaded to CPMS. Consultant shall obtain Approval from the Water System for any RFI response that deviates from the Approved 100% Set of Construction Documents or will result in or require revision or re-permitting through the AHJ of the Approved 100% Set of Construction Documents.
- (e) The Consultant shall, in accordance with the Standard of Care, perform construction administration for the fulfillment of Consultant's contracts with Water System and others. Consultant shall review, approve and take all appropriate action to assure that the Consultant's RFI responses, (the Consultant's architectural supplemental instructions ("ASIs"), revisions to the Construction Documents, site visit reports, submittals, substitutions, and pay applications, shop drawings, product data and samples are prepared in accordance with the requirements of this Agreement.
- (f) All proposed changes to Construction Documents during the Construction Phase, regardless of how initiated, shall be fully described by the Consultant in a revision to depict changes to the scope of Work added, removed, or changed. All such revisions shall be separately recorded on media acceptable to Water System, including, without limitation, BIM and CAD. Such revisions shall be clearly indicated, and a current revision date shall be included on the reproducible copy. Revisions to the Construction Documents shall be consecutively numbered and dated. Revisions to Construction Documents will be identified by date of the revision, revision number and other customary identification references. Each area affected by the revision will be clouded. Each revision to a Construction Document that results in issuance of an addendum shall remove all clouds from previous revisions to such Construction Document so that only the changes associated with the latest addendum are clouded.
- (g) The Consultant shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Final Completion inspections to determine the dates of Substantial Completion and Final

Completion including obtaining Certificates of Occupancy and turnover of all or a portion of the Project to the Water System. The Consultant shall also participate in the Water System's final walk through inspection after Final Completion..

- (h) The Consultant shall review final As-Builts for accuracy and completeness in the representation of the as-built conditions of the Work and for compliance of the completed Work with the Contract Documents and shall deliver the As-Builts at Final Completion.
- (i) Consultant shall prepare a Punch List of all items, which Punch List shall include and provide for resolution of all comments from the Water System. The resolution of Punch List items may include the reports of government Authorities Having Jurisdiction that Punch List items have been satisfactorily corrected or completed in accordance with the Contract Documents.

**C. Other Supplemental Services that shall only be performed upon written authorization from Water System (As required, but not limited to):**

1. Geotechnical Engineering and Surveying Services: Consultant shall provide Survey Services, including but not limited to setting control points, stakes, and marks to establish lines, slopes, grades, centerlines and create cut sheets. This work shall be provided by a licensed surveyor to provide accurate and complete site surveys, tree surveys, topographical surveys as needed to properly identify all boundary constraints, easements, and other title exception conditions to be observed, avoided, or otherwise taken into consideration in the development of the Project. Consultant shall provide all geotechnical engineering investigations necessary to support the successful planning, execution and completion of the Project, including but not limited to providing all geotechnical and subsurface reports, site surveys, environmental site assessments, tree surveys and topographical surveys, whether required by Applicable Law, or as otherwise necessary and appropriate for the completion of the Design Phase, and proper execution and completion of the Project.
2. Commissioning Support: Consultant shall provide and cause its subcontractors to provide, reasonable assistance to the Program Manager and/or the Water System's Project Manager for the performance of certain independent commissioning services by the Program Manager for the completed Project or systems therein, including the coordinating of subcontractor assistance and the sequencing and scheduling of commissioning activities to achieve Final Completion in accordance with the Project Schedule.
3. Public Outreach. Consultant shall include in their Fee, for any Work Order that requires Public Outreach, their role and participation in public meetings which shall include their support of the Water System's need for support in Water System-led public meetings, as requested by Water System.



4. Coordinate delivery of Water System's furniture, fixtures and equipment ("**Water System's FFE**") with Water System's vendor(s), identified depicted to scale in CADD files and on designated FFE sheets to be produced by the Consultant and included into the Construction Documents and provide all required utilities, in-wall blocking, or any other fixed parts of the facility or Worksite, that are required to connect to or support Water System's FFE, which items shall be clearly depicted to scale in CADD files and coordinated with the Construction Documents.
5. Presentations. Consultant shall allow time in the Production Schedule for formal presentations for Water System's various stakeholders, such as Water System executives, Board members or other public officials or groups, during the Design Phase as requested by Water System. For such presentations, Consultant shall produce renderings in both physical boards, and a PowerPoint format, which include plans and elevations that clearly communicate the proposed design.

Consultant understands and agrees to comply with the Quality Management Plan ("QMP") Procedure as set forth in Attachment A throughout the term of the Agreement.

Both at the time of execution of this Agreement and at 100% completion of the design, Consultant shall submit to SAWS a Quality Management Plan Certification Letter attaching the then current version of the QMP in substantially the form of the Quality Management Plan Certification Letter Form (Attachment B) attached hereto. For the initial QMP submission only, the following items should be attached:

- An organizational chart that depicts the management/organization structure of the QMP.
- Resumes for the review team demonstrating that reviewers have the qualifications and experience to perform quality reviews.

**Attachment A**  
**Quality Management Plan (QMP) Procedure**

- (1) The Consultant agrees to perform quality assurance-quality control/ constructability reviews in accordance with the Consultant's QMP to be developed. The QMP will be incorporated by reference and will include any subsequent revisions required. In addition to implementing the approved QMP, the Consultant agrees to address any QMP comments from SAWS and provide resolution to the SAWS satisfaction. In order to ensure that all comments have reached a resolution that is Approved by the Water System, the Quality Management Plan must include the use of a completion checklist for each document and these completed and signed checklists shall be turned over to the Water System with each Design Deliverable.
- (2) The Consultant shall include this language in all its Subconsultant contracts to ensure Subconsultants understand their responsibility for complying with the QMP requirements.
- (3) The QMP reviews will be performed by a staff member of the Consultant not involved in day-to-day Project tasks, as a peer review process. If the Consultant does not have the internal staff capacity to provide for this independent review, the Consultant must include a QMP Subconsultant on the Project team. The person performing the QMP reviews shall certify, seal and attest that the final construction bid documents have been drafted in full compliance with the QMP.
- (4) The Consultant will perform QMP reviews at intervals during the design phase, specified in the QMP, and shall include the time required for these reviews in the production Schedule so as not to delay the Deliverables. These reviews at frequent intervals are performed in order to ensure plans, specifications, and drawings satisfy accepted quality standards and meet the requirements of the Project scope. Based on the findings of the QMP reviews, the Consultant must make all required corrections to the Design Deliverables prior to submitting to the Water System. If in the course of these reviews, the Consultant determines that a revision to the Project scope or Project Budget is needed, the Consultant shall send that recommendation in writing with detailed description of each item. Documentation will be included that verifies interdisciplinary coordination has occurred.
- (5) The Consultant will perform constructability reviews, and Control Estimates, using persons with construction experience, at appropriate intervals, during the design phase, specified in the QMP to ensure that the Project is buildable, cost-effective, biddable, and maintainable. Based on the findings of the constructability reviews, the Consultant shall make required corrections to the Construction Documents and, if necessary, redesign the Project or portions of the Project, as required, to conform to the agreed upon Project Budget, scope and Standard of Care, at no additional cost to the Water System. The Consultant will provide interim construction Control Estimates as further described in the Scope of Services section of the Agreement.
- (6) Acceptance and/or approval of the Consultant's QMP documentation by SAWS does not constitute a release of the responsibilities and liability of the Consultant for the accuracy

and competency of its QMP reviews and final Construction Documents, as required in this Agreement or in the industry Standard of Care.

**Attachment B**  
**Quality Management Plan Letter Sample**

Date: <Insert Date>

Project Name: <Insert Project Name>

Job Number(s): <Insert Job Numbers XX-XXXX>

The work consists of: <Insert summarized scope of work here>

Phase(s) Completed: <Insert phases>

Consultant Name and TBPE Firm Number: <Insert >

Consultant Contact Information: <Insert contact name, address, e-mail and phone #>

This Quality Management Plan (“QMP”) certification has been reviewed by a Principal of the Consultant Firm, Members of the Project Design Team, and Independent Technical Reviewers. The independent technical reviewers are independent of the project design team and report to a management level higher than the project design team. The signatures below indicate that Consultant is certifying compliance with the current QMP, including assurance and controls describing procedures and documentation, is attached hereto.

Signatures:

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Principal: <Insert Name>

---

Design Leads: <Insert Names/add lines as needed for disciplines>

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Independent Reviewers: <Insert Names/add lines as needed for disciplines>

**EXHIBIT III**  
**SAWS STANDARD INSURANCE SPECIFICATIONS &**  
**CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS**

**(1) Commercial Insurance Specifications (“Specifications”):**

a) Commencing on the date of this Contract, the Consultant shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and San Antonio Water System (SAWS) and City of San Antonio (COSA) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any subconsultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

(1) **Commercial General Liability (CGL)** insurance that will protect the Consultant, SAWS and COSA from claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance that will protect the Consultant, SAWS and COSA from claims for damages to or destruction of tangible property of others, including loss of use thereof.

This line of insurance coverage shall:

- Cover independent contractors;
- Not include any exclusions relating to blasting, explosion, collapse of buildings or damage to underground property;
- Afford coverage for Products Liability and/or Completed Operations and, Contractual Liability.

The minimum policy limits of liability for this line of insurance coverage shall be:

\$ 1,000,000.00	Occurrence Limit
2,000,000.00	General Aggregate
2,000,000.00	Products/Completed Operations Aggregate
1,000,000.00	Personal and Advertising Injury
1,000,000.00	Contractual Liability

This line of insurance coverage shall be endorsed:

- Naming SAWS, and COSA as an **Additional Insured** for both ongoing and completed operations; and
- To provide a **Waiver of Subrogation** in favor of SAWS and COSA.

- (2) **Professional Liability (PL)** (errors and omissions) insurance with minimum coverage limits of **\$1,000,000 per claim, \$1,000,000** in the aggregate **and**, if this line of coverage is written on a “Claims Made” form, the Consultant must maintain this line of insurance coverage for a period of at least twenty-four (24) months after the date of Contract termination.

**NOTE** - For Professional Liability, include in writing on the **Certificate of Liability Insurance** (“Certificate”) the coverage form under which the respective line of coverage is written – either:

- **Claims-made form**; if the coverage form declared on the Certificate is the Claims-made form, the “**Retroactive-date**” for this line of coverage must also be included on the Certificate as well; **or**
  - **Occurrence basis** – no additional wording required.
- (b) Consultant shall require all Subconsultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Subconsultants’ Certificates of Liability Insurance upon request by SAWS.
- (c) Consultant agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and COSA are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.
- (d) Consultant shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.
- (e) Consultant is responsible for the deductibles under all lines of insurance coverage required by these Specifications.
- (f) The stated policy limits of each line of insurance coverage required by these Specifications are **MINIMUM ONLY** and it shall be the Consultant's responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the Consultant's liability.
- (g) These minimum limits required of each line of insurance coverage may be either basic policy limits of the CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.
- (h) SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the Consultant from compliance herewith.
- (i) Each line of insurance coverage that is specified under these Requirements shall be so written so as to provide SAWS and COSA thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

- (j) Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the Consultant shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the Consultant's performance should there be a lapse in coverage at any time during this Contract.
- (k) Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.
- (l) In addition to any other remedies, SAWS may have, upon the Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, SAWS shall have the right to order the Consultant to stop performing services hereunder and/or withhold any payment(s) which become due to the Consultant hereunder until the Consultant demonstrates compliance with the Specifications hereof.
- (m) Nothing herein contained shall be construed as limiting, in any way, the extent to which the Consultant may be held responsible for payments for damages to persons or property resulting from the Consultant's or its sub-consultant's performance of the services covered under this Contract.
- (n) It is agreed that the Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, COSA and their employees and agents for liability arising out of operations under this Contract.
- (o) Consultant agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an **A.M. Best** rating of "A- ("A-minus)" and a **Financial Size Category** of a "VII" or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

SAWS will accept worker's compensation insurance coverage written by the Texas Workers Compensation Insurance Fund.

- (p) SAWS reserves the right to review the above stated insurance specifications during the effective period of this Contract and any extension or renewal hereof and to request modification of lines of insurance coverage and their respective liability limits when deemed necessary and prudent by SAWS' Risk Manager and Legal Department based upon changes in statutory law, court decisions, or circumstances surrounding this Contract.

In no instance will SAWS and COSA allow modification whereupon SAWS and COSA may incur increased risk exposure.

## **2. Certificate(s) of Liability Insurance ("Certificate") Requirements**

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful Consultant pursuant to a Request for Proposal selection process, pending Board final approval,

and, a request is made for you to submit your Company's Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

- a. The Consultant shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a **Certificate(s) of Liability Insurance** ("Certificate(s)") providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.
- b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person's name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (**Certificate Holder**) and 2.h. (**Distribution of Completed Certificates**) below.
- c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.
- d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.
- e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed, and deemed 100% compliant with the Insurance Specifications contained herein by SAWS' Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.
- f. **Additional Insured:**

SAWS requires that the Commercial General Liability ("CGL") policies must be endorsed naming Certificate Holder (as per item 2. i. below) as an **Additional Insured** and, so noted in the **DESCRIPTION OF OPERATIONS** section of the Certificate;

Suggested wording to be placed on the Certificate is as follows:

**EITHER** use,

The CGL policies include a blanket automatic Additional Insured endorsement that provides additional insured status to the Certificate Holder only when there is a written contract between the named Insured and the Certificate Holder that requires such status.

OR use,

The CGL policies are endorsed naming the Certificate Holder as an **Additional Insured**.



NOTE: If the above wording cannot be placed in the **DESCRIPTION OF OPERATIONS** section of the Certificate, please provide SAWS with the completed Certificate, a copy of the specific AL and CGL Additional Insured endorsement documents or the policy wording from both the AL and CGL policies.

g. **Waiver of Subrogation:**

SAWS requires that the CGL policies must be endorsed with the **Waiver of Subrogation** in favor of Certificate Holder (as per item 2. i. below) and, so noted in the **DESCRIPTION OF OPERATIONS** section of the Certificate;

Suggested wording to be placed on the Certificate is as follows:

EITHER use,

The CGL policies include a blanket, automatic **Waiver of Subrogation** endorsement that provides this feature only when there is a written contract between the named Insured, the Certificate Holder that requires such status.

OR use,

The CGL policies are endorsed with the **Waiver of Subrogation** in favor of the Certificate Holder.

NOTE: If the above wording cannot be placed in the **DESCRIPTION OF OPERATIONS** section of the Certificate, please provide SAWS with the completed Certificate, a copy of the specific CGL Waiver of Subrogation endorsements documents or the policy wording from each of the CGL policies.

- h. The SAWS Project/Contract number(s) along with its Descriptor Caption **must be included** in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.
- i. **Certificate Holder** - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

**San Antonio Water System and City of San Antonio**  
**c/o Ebix BPO**  
**PO Box 100085-ZD**  
**Ref. # [Lawson Number]-[Contract Number]**  
**Duluth, GA 30096**

*\*SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.*

**DO NOT BEGIN THE DISTRIBUTION OF ANY CERTIFICATE(S) BEFORE RECEIVING AND INSERTING THE COMPLETE REFERENCE NUMBER INTO THE CERTIFICATE HOLDER ADDRESS SHOWN ABOVE.**

- j. **Distribution of Completed Certificates** - Completed **Certificates** shall be distributed by the Consultant as follows:

1) Send Original:

By E-Mail: [saws@ebix.com](mailto:saws@ebix.com)

By Fax: 1-770-325-6502

To Upload Online: <https://www.ebix.com> (*preferred method*)

2) Send Copy to the following:

San Antonio Water System  
Attention: Contract Administration  
P.O. Box 2449  
San Antonio, TX 78298-2449

- k. Consultant shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

**(3) SURVIVAL**

Any and all representations, conditions and warranties made by Consultant under this Contract including, without limitation, the provisions of Section 1.a.2), 1.a.3) and 1.a.4) of these **Commercial Insurance Specifications and Certificates of Liability Insurance Requirements** are of the essence of this Contract and shall survive the execution and delivery of it, and all statements contained in any document required by SAWS whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.



**EXHIBIT IV  
PROFESSIONAL SERVICES CONTRACT  
DESIGN SERVICES WORK ORDER REQUEST  
AND PRODUCTION SCHEDULE**

CONSULTANT:  
PROJECT NAME:  
SAWS PROJECT MGR:  
SAWS PROJECT ENGR:  
SAWS JOB NO.:  
CATEGORY:  
METHOD OF PAYMENT:  
DATE OF REQUEST:

WORK ORDER NO:

**DESCRIPTION OF THE WORK REQUIRED:**

**PROJECT TIMELINE & SCHEDULE OF FEES (by Phase):**

<b>30% Design Phase:</b>	0	Days	\$	Lump Sum
<b>60% Design Phase:</b>	0	Days	\$	Lump Sum
<b>90% Design Phase:</b>	0	Days	\$	Lump Sum
<b>100% Design &amp; Bid Phase</b>	0	Days	\$	Lump Sum
<b>Construction</b>				Lump Sum
<b>Administration Phase:</b>	0	Days	\$	
<b>Additional Services:</b>	0	Days	\$	Lump Sum
	<hr/>	Days	<hr/>	
	0	Days	\$	

**EXHIBIT V**  
**TERM OF AGREEMENT AND TIME FRAME FOR DELIVERABLES**

1. The Term of this Agreement shall commence upon xxxxxxxx, and automatically expire on xxxxxxxx, or upon the expenditure of all funds provided for in Exhibit I, whichever occurs first. Any Work Order authorized in writing through a notice to proceed prior to xxxxxxxx shall remain in effect until the completion of the Work Order and the Work Order shall survive the termination of the Agreement to the extent necessary to complete the Work Order. The terms and conditions of the Agreement shall continue to be applicable to the Work Order during any period in which a Work Order survives the termination of the Agreement.

Time Frame for Deliverables:

2. Each Work Order which, when accepted by the Water System, shall be incorporated into this agreement and become a part hereof.

## EXHIBIT VI SECURITY PROCEDURES

If work will be conducted on SAWS property, on SAWS infrastructure, on a SAWS customer's property, or involve any SAWS networks, or any SAWS facility, the Consultant shall provide background screening information of their employees and sub-consultants to CastleBranch, the SAWS-approved vendor of background screening services, at [sawsbackgroundcheck@castlebranch.com](mailto:sawsbackgroundcheck@castlebranch.com). Any person found to have an unacceptable background check will not be allowed to perform work under this Contract (however, at SAWS's sole discretion, a waiver may be given by SAWS Security for an unacceptable finding, provided that it must first be approved and signed off on by the Director of SAWS Security). Any sub-consultants performing work must also receive a background screening by CastleBranch. Consultant shall be responsible for the accuracy of information on the background screening information sent to [sawsbackgroundcheck@castlebranch.com](mailto:sawsbackgroundcheck@castlebranch.com). For further questions about background screening, call CastleBranch at 910-679-2979 or 888-723-4263 ext. 7857 and advise them the Consultant is working for SAWS. Once background screening is approved by SAWS Security, Consultant must also complete a Project Consultant Data Form ("PCDF"). The PCDF will be sent to [securitygroup@saws.org](mailto:securitygroup@saws.org). The PCDF is required for the Consultant and its sub-consultants to receive the required badges and parking tags necessary to fulfill the work under this Contract. The PCDF must be sent electronically to [securitygroup@saws.org](mailto:securitygroup@saws.org).

Each employee and agent of Consultant shall obtain a SAWS photo identification badge (a "Consultant's Badge") and parking tag prior to any work on SAWS property or asset, which shall be used only for purposes necessary to perform the work under this Contract. SAWS Badge Office hours are Monday, Wednesday, and Friday from 9:00am to 12:00pm, excluding SAWS holidays (hours are subject to change). SAWS Security staff can be contacted at (210) 233-3177 or (210) 233-3338. Once the Project is completed, the Consultant shall return all Consultant Badges and parking tags to the Security Office. A Consultant who does not return the Consultant Badges or parking tags is not in compliance with these procedures.

SAWS facilities require a SAWS employee to physically escort the Consultant at all times. SAWS may, at its sole discretion, waive the escort requirements if the PCDF and a "clean" background screening from CastleBranch are approved. Waiver of the escort requirement shall only be through a written correspondence to Consultant from SAWS Security.

Subconsultants must always be under escort of Consultant while performing work on any SAWS property or asset. Subconsultants must display the Consultant's Badge at all times while working on any SAWS property or asset. Subconsultants are required to complete a background screening and be listed on the PCDF regardless of receiving a Consultant's Badge. The Consultant is solely responsible for the actions of its employees, agents, subconsultants and consultants.

Consultant shall advise their SAWS Project Manager/Inspector of any employee terminations or changes to personnel performing work under this Contract, and the Consultant shall immediately turn in any and all Consultant's Badges and/or parking tags of employees or agents who are terminated or no longer performing work under this Contract. If Consultant becomes aware of any changes in the information contained in the PCDF or the background screening information, Consultant shall immediately notify the SAWS Project Manager/Inspector and provide an updated

PCDF to [securitygroup@saws.org](mailto:securitygroup@saws.org) and background screening information to [sawsbackgroundcheck@castlebranch.com](mailto:sawsbackgroundcheck@castlebranch.com).

Consultant is responsible for being in compliance with SAWS Security requirements and for maintaining security of SAWS property, infrastructure, SAWS customer's property, networks, and facilities for the length of the Project. Security incidents must be reported to SAWS Security immediately at (210) 233-3338.

If the Consultant plans to leave the site unsecure or open during the Project, they must provide a SAWS-approved security guard to monitor ingress and egress to the SAWS site.

If Consultant takes any action that diminishes the security of a SAWS site, Consultant will be responsible for providing additional security requirements at its expense. Some examples of additional requirements that SAWS may require include hiring of SAWS approved security guards, temporary fencing, mobile Closed Circuit Television Monitoring trailer(s), or extra lighting. Notwithstanding anything herein to the contrary, any provisions in these Security Procedures that may appear to give SAWS the right to direct Consultant as to details of doing any work under this Contract or to exercise a measure of control over any security measures or such work shall be deemed to mean that Consultant shall follow the desires of SAWS in the results of the work or security measures only.

Advance coordination by Consultant with SAWS Security for these security requirements is necessary to ensure no delays with timely performance of work. Any other provision of this Contract notwithstanding, in the event Consultant fails to comply with SAWS Security requirements, SAWS may, with no penalty, claim of any nature (including but not limited to breach of contract) against SAWS by the Consultant:

- Issue a Work Stoppage Order until the security violation (s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave SAWS site immediately and not return until items or deficiencies are remedied to SAWS's satisfaction.

## **EXHIBIT VII DEFINITIONS**

A. To those terms not defined within the Agreement, the following definitions apply in this Agreement:

1. **“Additional Services“** are Design Services which may occur after the Effective Date of, this Contract, or of an Approved Work Order Contract and which Consultant was not and should not reasonably have been aware of, which may require changes to the Work that has already been completed by the Consultant, or require work outside the Scope of Work, then Consultant and the Water System shall attempt to agree in writing on the required modifications to the Scope of Work and an equitable fee and time adjustment resulting from such additional Scope of Work. Any Additional Services performed outside of this review and Approval process shall not be approved.

2. **“Applicable Law(s)”** means the laws, rules, regulations, codes, including building and life safety code requirements, ordinances, directives, and restrictive covenants (whether federal, state, or local) of any kind governing the Project or the development, design, construction, approval, use or occupancy of the Project.

3. **“Application(s) for Payment” or “Pay Applications”** means the invoices for payment for Services and Work performed by the Water System’s General Contractor, to be reviewed and verified by the Consultant in accordance with this Agreement prior to being submitted to the Water System for payment.

4. **“Approval” or “Approved”** means the written approval of Water System, and, as applicable, the Program Manager and/or Architectural Representative. Water System may exercise the right of Approval in its sole discretion. Water System’s Approval shall also require formal approval of Water System’s Board of Trustees whenever Board approval is expressly required by this Agreement, or is otherwise required by Water System’s policies. The act of an Approval shall not constitute a waiver of Water System’s rights hereunder or excuse the Consultant from fulfilling its obligations to perform in accordance with this Agreement.

5. **“As-Builts”** means the Consultant’s detailed record in the Building Information Model, and in AutoCAD format and in hard copy format, certified by the Consultant to show the accurate location of all elements of the Project as constructed, the delivery of which As-Builts shall constitute the Consultant’s and their subcontractor’s representation and warranty that such information is complete and accurate.

6. **“Authorities Having Jurisdiction” or “AHJs”** means any federal, state, or local governmental agency or organization, including the City of San Antonio and the permitting offices of any San Antonio authority or public utility, including CPS Energy, San Antonio Water System (“SAWS”), and San Antonio River Authority (SARA), and any of their authorized representatives, responsible for administering or enforcing the requirements of Applicable Law, or for inspecting or approving any designs for, or equipment and materials to be incorporated into, the Project, and the review of the Construction Documents for purposes of obtaining a building permit, certificate of occupancy, or other governmental action necessary for the

Project, or for conducting inspections or enforcing Applicable Laws related to the Project.

7. “**Board**” shall mean the San Antonio Water System Board of Trustees, which is the governing body of the Water System.

8. “**Building Information Model**” or “**BIM**” means a computable, parametric representation of all the physical and functional characteristics of the Project facilities and their related life-cycle information, to serve as a repository of related information, as required by the Building Information Modeling, for use by the Consultant and the Project Team during the Design Phase and Construction Phase of the Project, and for the Water System to continue to use and maintain the Project throughout its life cycle.

9. “**CPMS**” As defined in Section I, Subsection J, is a form of construction project management software that is the Water System’s Construction Project Management Software for this Project, as defined below, and which will be used by Water System, Program Manager and the Consultant to manage the Project via Water System’s Project-specific website and to make all Project records continuously available to Water System to view or print in electronic form from Water System’s offices and at any of the Worksites, including invoices for payment for the Work and Services.

10. “**Claim(s)**” shall mean any disputed liability, obligation, loss, harm, physical or economic damage, penalty, action, suit, judgment, cost, claim, expense or disbursement or other claim of any form of liability of whatsoever kind and nature, whether founded or unfounded (including without limitation reasonable attorney fees, expert witness fees and expenses, costs of discovery, and all other costs of defense) arising out of or in any way relating to this Agreement, the Consultant Parties’ operations in connection herewith, or the Work and Services, whether due to bodily injury, sickness, disease, or death to any person, or to injury to or destruction of property or the loss of use thereof.

11. “**Change Order**” A written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following: 1) the change in the Work; 2) the amount of the adjustment, if any, in the Contract Sum; and 3) the extent of the adjustment, if any, in the Contract Time.

12. “**Confidential Information**” means all data and information of Water System, including all Work Product, which Water System owns as its proprietary and/or confidential property. Protection of Confidential Information shall also include, but not be limited to, the inclusion in any copy intended for publication a copyright mark reserving all rights to Water System in any such material provided by Water System, as well as trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, source code, schematics, designs, BIM data and models, contracts, vendor and contractor lists, financial information, operational processes, plans and schedules and any of the Water System’s business information.

13. “**Contract Amendment(s)**” shall mean any written amendment to this Agreement, in the form of a Contract Amendment, Approval of Additional Services or a Change Order, when executed by both Parties.



14. “**Contract Documents**” shall mean all the Contract Documents, including the Project Documents, comprising or made a part of this Agreement between the Water System and the Consultant and includes any Contract Amendment signed by the Water System and the Consultant. Contract Documents shall also include, upon Water System’s Approval, the 100% Set of Construction Documents.

15. “**Contract Price**” shall mean the amount established in Exhibit I of this Agreement as the maximum sum Water System shall pay for the Project.

16. “**Construction Administration Services**” means the Consultant’s Services to provide contract administration services, including but not limited to evaluating qualifications of Contractors and Subcontractors providing bids or proposals to perform portions of the Work, visiting the Worksites during construction to inspect the conformity and completeness of the Work to determine it is in accordance with the requirements of the Contract Documents, reviewing and approving submittals, samples, shop drawings, product data, responding to requests for information, evaluating changes, directives and substitutions (other than those proposed by the Water System), making subsequent revisions to the Construction Documents resulting therefrom.

17. “**Construction Change Directive**” or “(CCD)” is a directive for changes in the Work for use where the owner and contractor have not agreed on proposed changes in the contract sum or contract time. Is used to direct changes in the Work which, if not expeditiously implemented, might delay the project.

18. “**Construction Documents**” (as a part of, but distinguished from, the “**Contract Documents**”) means the Consultant’s final approved-for construction Plans, Drawings, and Specifications, setting forth in detail the requirements for design and construction of the Project and the levels of quality and functionality for the materials and systems to be incorporated into the Project, as accepted by Water System.

19. “**Construction Phase**” means that phase of the Project that follows completion of the Design Phase and is implemented by the Water System’s Approval and issuance of Water System’s selection and award of the Contract of Construction to its General Contractor, and subsequently issues a Notice to Proceed with the Construction Phase, and in which the Construction Administration Phase of the Work is performed by the Consultant, and at the conclusion of which Final Completion of the entire Work Order occurs.

20. “**Construction Project Management Software**” or “**CPMS**” means, collectively Water System’s CIP-Aces software management system

21. “**Consultant**” means [CONSULTANT NAME], having its principal corporate headquarters located at [CONSULTANT FIRM ADDRESS].

22. “**Consultant Parties**” means and includes all Consultants’ subcontractors, subconsultants, engineering firms and vendors of any tier who, subject to Water System’s Approval in accordance with the Agreement, enter into a contract to perform any of the Services hereunder.

23. “**Control Estimate**” means the Control Estimate that the Consultant prepares and continuously updates during the Design Phase, and submits with each Deliverable, and such Control Estimate shall be based on the level of completion of the Construction Documents submitted with such Deliverable, and shall be delivered in the same format as shown in the OPCC estimate and shall be developed as per the recommendations of AACE International (formerly the Association for the Advancement of Cost Engineering) as described in AACE’s document 56R-08: Cost Estimate Classification System – as Applied for the Building and General Construction Industries. Control estimates shall correspond with each deliverable as follows:

- 30% Construction Document Deliverable (Schematic Design) shall be a Class 4 Estimate
- 50% Construction Document Deliverable (Design Development) shall be a Class 3 Estimate
- 90% Construction Document Deliverable shall be a Class 2 Estimate

24. “**Day**” as used in the Contract Documents shall mean Calendar Day, unless otherwise specifically defined. A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.

25. “**Design**” means the Consultant’s performance of all professional services, including preparation of the Construction Documents and Design Administration Services, for the Project.

26. “**Design Deliverable(s)**” means any design or design related information required to be submitted for Approval as required by this Agreement. For convenience, most Design Deliverables are listed or otherwise identified and defined herein in “Design Services”

27. “**Design Phase**” means the Services required to be performed by the Consultant firm to prepare the Design and the deliverables required in accordance with this Agreement, prior to Water System’s issuance of Notice to Proceed with the Construction Phase. Consultant shall perform such Services to the level of completion required for Consultant to prepare the Control Estimates and the OPCC.

28. “**Design Services**” means all Services performed by the Consultant or its Consultant Parties to prepare the Design for the Project, including, without limitation, the preparation of the architectural and engineering plans and all Drawings, Specifications, reviews and approvals of Submittals, BIM contributions, applications for governmental approvals and certifications, including the LEED Services as applicable, reviews and responses to requests for information relating to design and Water System’s design review comments, and all other design-related documents and Design Deliverables, as required by this Agreement and as described in the Work Order and inspections and evaluations of the Work throughout the Project, including reviews of Shop Drawing Submittals, responses to Requests for Information (“**RFI(s)**”), and clarifications of design intent. The design phases for preparation of the Design are described as follows:

- (a) “**Schematic Design Phase**” means that phase of the Design Services that represents 30% design completion, required to fulfill the Project, with continuous oversight, that includes the preliminary evaluation of approaches to designing the Project and culminates in the completion of the Design Deliverables required in the Production Schedule for this

phase, including a schematic design package based on the input from Water System and its representatives, and based on the Water System's needs, and consisting of preliminary drawings and other documents illustrating the scale and relationship of the Project components, including but not limited to, a site plan and preliminary building plans, sections and elevations, study models, perspective sketches and/or digital modeling material selections and is expected to be complete in a 30% Design Deliverable.

(b) **“Design Development Phase”** means that phase of the Design Services that represents 50% design completion, required to fulfil the Project, with continuous oversight, and that follows the Schematic Design Phase, resolves to Water System's satisfaction all design review comments from Water System, during the Schematic Design Phase, and culminates in the completion of the Design Phase deliverables, as required in the Production Schedule for this phase, including fully developed design documents that fulfill the needs, based on the input from Water System and its representatives, on the Schematic Design Phase documents, and consisting of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Projects as to architectural, structural, mechanical, and electrical systems, and such other elements as may be appropriate, and specifications that identify major materials and systems and establish in general their quality levels for the Projects and is expected to be complete in a 50% Design Deliverable.

(c) **“Construction Documents Phase”** means that phase of the Design Services required to fulfil the Project with continuous oversight, and which follows the Design Development Phase, resolves to Water System's satisfaction all design review comments from Water System, during the Design Development Phase, and culminates in the completion of the Design Phase deliverables, as which shall be required as a 90% Design Deliverable, followed by a 100% Design Deliverable both of which shall include construction design documents, consisting of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work that fulfill the Water System's scope.

(d) **“Construction Administration Phase”** means that phase of the Design Services that follow completion of the Construction Documents Phase, during which the Consultant continues to perform Design Administration Services.

29. **“Drawings”** means the graphic and pictorial portrayal of portions of the Construction Documents, and including all information required to maintain the BIM, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

30. **“Effective Date”** means the effective date of this Agreement as stated on the first line of this Agreement.

31. **“Enhanced Commissioning”** means a method the Consultant may elect to use during the Schematic and Design Development Phases to achieve points for LEED if required by the Project. If elected, and requested by SAWS or required by the scope, the Consultant's commissioning agent

will review construction submittals and Construction Documents related to the systems to be commissioned and develop a commissioning checklist and commissioning specifications prior to the commencement of the Construction Documents Phase. If elected, Enhanced Commissioning shall also include Consultant's development of a systems manual for Water System's use to train its maintenance and operations personnel to understand and optimally operate the systems to be commissioned, and to verify their completion of such training, and to review performance of such systems at sixteen (16) months after Substantial Completion. For clarity, Enhanced Commissioning is distinguished from the Water Systems separate performance of fundamental third-party commissioning, which includes development and implementation of a commissioning plan, verification of the installation and performance of the building systems, and delivery of a commissioning report.

32. "**Fee**" or "**Fees**" Shall mean the Fee for the performance of the Design Services, in the amount set forth for each specific Work Order and shall be a fixed fee, inclusive of all Design Services required to properly complete the Work and Scope of Services in accordance with this Agreement, and further described within the respective issued Work Order, except as otherwise expressly permitted under this Agreement. The Fee associated with any Work Order shall be limited to that amount derived by applying the Hourly Billing Rate Table originally fixed in the Agreement, to the actual hours of performance required to fulfill the Scope of services for the Work Order. The Fee for any Work Order or combined with all previously issued Work Order shall not exceed the Contract Price.

33. "**Final Completion**" means that phase of completion of the Project by which all Punch List Work and any deficiencies in the Work identified to Water System's General Contractor by the Water System, Program Manager, as applicable, or by building inspectors or other governmental Authorities Having Jurisdiction, have been corrected, completed, or otherwise addressed by the Water System's General Contractor to their respective satisfaction, as applicable, as evidenced by the issuance of a Certificate of Occupancy (non-temporary) by the governmental authority having jurisdiction and the issuance of Water System's Certificate of Final Completion after fulfillment of all other conditions precedent to Final Completion as set forth in Exhibit II.

34. "**Invoices**" means the Consultant's invoices for payment for Services and Work performed hereunder, to be prepared and submitted in accordance with this Agreement.

35. "**Final Completion, Certificate of**" shall mean the certificate prepared by the Consultant, in the Approved form, stating the actual date of Final Completion of the Project, and signed by the Water System and Consultant, confirming that the Water System's General Contractor has achieved Final Completion of the Project as of such date.

36. "**MasterFormat**" means the current edition of the MasterFormat specification writing standards and section or division numbers and titles published by Construction Specifications Institute (CSI) and used in construction of commercial building design and construction projects to organize data about construction requirements, products, and activities.

37. "**Opinion of Probable Construction Cost (OPCC)**" means the Consultant's final Control Estimate prepared during the Design Phase and delivered with the 100% Set of Construction

Documents. The OPCC must be developed as per the recommendations of AACE International (formerly the Association for the Advancement of Cost Engineering) as described in AACE's document 56R-08: Cost Estimate Classification System – as Applied for the Building and General Construction Industries. The OPCC should be a Class 1 Estimate and based on the 100% Set of Construction Documents. The OPCC shall not include construction contingency. Once approved by the Water System, the OPCC shall include adjustments to reflect the ease or difficulty of constructing the project.

38. **“Opinion of Probable Construction Cost (OPCC), Final or “Final OPCC”** means the Consultant's final OPCC cost estimate finalized and delivered during the Bidding Phase issued with the bid advertisement. Final OPCC shall reflect any updates addressing comments related to the OPCC, and shall be developed in conjunction with the Consultants' estimated construction schedule for the bid advertisement and shall be updated to reflect the most current market conditions based on the expected construction start date, and this updated OPCC shall be used in the advertising of the Project

39. **“Project”** means each individual Work Order issued in accordance with Exhibit II that will be drafted for Design Services to be performed by the Consultant, in accordance with the Agreement, at the Water System's designated facilities and sites.

40. **“Project Budget”** shall mean the initial budget set forth by the Water System at the commencement of any given Work Order. Upon receipt of the NTP for a Work Order, the Consultant shall review and verify that the Water Systems budget is sufficient for the anticipated scope and aligns with a Class 5 estimate, as per the recommendations of AACE International (formerly the Association for the Advancement of Cost Engineering) as described in AACE's document 56R-08: Cost Estimate Classification System – as Applied for the Building and General Construction Industries..

41. **“Production Schedule”** shall mean the Approved schedule of required Design Deliverables set forth separately in each distinct **Approved Work Order** which may only be adjusted by written request from the Consultant and written Approval by the Water System. Approval of the Consultants' request for adjustment to the Production Schedule shall not unreasonably withheld, unless the requested adjustments are a result of the requirement of the Consultant to adhere to the QMP or to make required corrections as noted by the Water System during the review period, or as a result of a delay by the Consultant Parties.

42. **“Project Schedule”** shall mean the construction schedule set forth by the Water System's General Contractor. The Substantial Completion Date and Final Completion Date established in the Project Schedule may only be adjusted by the Water System in the form of an Approved Change Order or Contract Amendment. No deviations from the Project Schedule shall be allowed unless such deviation has been specifically reviewed and Approved by the Water System.

43. **“Project Team”** means the Water System, the Water System's Project Manager, Consultant and Consultant Parties and the Water System's General Contractor. The Water System's members on the Project Team may be modified from time to time by Water System, in its sole discretion.

Subject to Approval, the Project Team members will designate their respective individual representatives to participate on the Project Team, who may be changed from time to time with Approval. The constitution of the Project Team may vary at different phases of the Project.

44. **“Proposal Request”** means Consultant’s written request to adjust their Fee or their Design Deliverable Schedule in connection with (i) Water System’s request for an estimate Additional Services or (ii) Consultant’s request for equitable adjustment, but only where such equitable adjustment is expressly allowed by this Agreement. Consultant agrees that any Fee adjustment sought in connection with Consultant’s Proposal Request shall be limited to an adjustment to the Fee for the necessary additional Design Services required as a direct result of an Approved Proposal Request and subsequent Change Order.

45. **“Punch List”** or **“Punch List Work”** means a list of minor incomplete or incorrect items and/or repairs that must be done to achieve Final Completion, but which do not impair the Water System’s safe and beneficial use and occupancy of a field dispatch, fleet, supply operations, or civil/site works facility within a Worksite of the Project, or the safety of individuals, and which items are identified by the Water System, the Consultant or any of the Consultant Parties, during inspection of the Work or any portion thereof, whether at or before Substantial Completion thereof, and which must be completed as a condition precedent to Final Completion.

46. **“Request for Information” “RFIs”**, a written and/or graphic communication from a general contractor to the Consultant or Sub-Consultant seeking information related to the contract documents prepared by the Consultant or Sub-Consultant.

47. **“Schedule of Values”** means a schedule to be established by the Consultant as a supporting document to the Consultant’s establishment of the Control Estimates and OPCC in accordance with this Agreement. The Water System’s selected contractor shall establish a cost of construction and provide its own Schedule of Values during the Construction Phase which is used by the contractor for the calculation of and processing of the contractor’s Applications for Payment during construction, which shall be reviewed, approved and processed by the Consultant in accordance with this Agreement.

48. **“Scope of Work”** as defined in Section I of the Agreement.

49. **“Separate Contractor(s)”** means any contractor or other service provider engaged directly by the Water System (other than Consultant) to perform construction or other services relating to the Project or the operation or maintenance of Water System’s property.

50. **“Services”** means, collectively, all Design Services, Construction Services, and all other services related to the engineering, design, procurement, and/or construction of the Projects, including all consultancy, managerial, budgetary control, scheduling, and other Services (professional or otherwise) to be performed by or on behalf of Consultant hereunder, as necessary to the completion and delivery of the Project in accordance with the requirements of this Agreement.

51. **“Shop Drawings”** or **“Shop Drawing Submittals”** means all submittals of drawing details, diagrams, product data, samples, mockups, and similar items, and any supporting schedules and

other data prepared to demonstrate or illustrate the manner of installation of the Work and how the Consultant proposes to construct certain portions of the Project to the requirements of, and the design concepts expressed in, the Contract Documents. Shop Drawings Submittals are to be submitted to the Consultant for its review and approval. Shop Drawing Submittals and the Consultant's approvals thereof shall be filed in CPMS.

52. **"Specifications"** means that portion of the Construction Documents prepared by the Consultant in the current Master Format, and consisting of the written technical requirements for materials, equipment, systems, standards, and workmanship for the performance of the Work and Services, in accordance with the requirements of this Agreement.

53. **"Standard of Care"**. Shall mean that degree of professional skill and care practiced , and in accordance with industry standards customarily adhered to, by other firms experienced in the performance of the services and undertakings of the same or similar nature for other facilities of comparable value IN THE SOUTH CENTRAL REGION OF THE UNITED STATES.

54. **"Standard's List" or "Water Systems Standard's List"** shall mean the information provided by the Water System that is relevant to the Work Order, which may include construction documents, specifications or guidelines such as the Water System's construction details, Security access system and fence details, or prior designs and material palettes of previously completed facilities

55. **"Substantial Completion"** is the date on which a Worksite for the Project has been tendered by the Consultant as substantially complete as a result of each portion having been formally accepted by issuance of a Certificate of Substantial Completion and a Certificate of Occupancy (non-temporary) having been issued for each building within the Worksite. Partial use or occupancy of a building within a Worksite for which a Temporary Certificate of Occupancy has been received shall constitute Substantial Completion of such building.

56. **"Substantial Completion, Certificate of"** shall mean a certificate prepared by the Consultant, in Approved form, stating the actual date of Substantial Completion of a Worksite, and signed by the Water System and Consultant, confirming that Consultant has achieved Substantial Completion of the Worksite as of such date, and that the same is sufficiently completed, inspected, and approved by the Water System or Consultant's commissioning agent and the appropriate regulatory authority or authorities as evidenced by issuance of a Certificate of Occupancy (non-temporary), excluding only Punch List Work that remains unfinished pending Final Completion and final inspection.

57. **"Value Engineering"** means the process for the Consultant's continuous evaluation of the Drawings, Specifications, related design concepts and design documents, throughout the Design and Construction Phases of the Project, whereby the Consultant proposes value-added design substitutions or solutions, with the goal of an integrated design that encompasses life cycle cost analysis and functional analysis according to evaluation criteria established by the guidelines of the Society of American Value Engineers (SAVE).

58. **"Water System"** means the San Antonio Water System and its authorized representatives, including its Board, and successors in interest.

59. **“Water System Indemnified Parties”** means Water System and Water System’s trustees, directors, officers, employees and any other persons or entities agents and employees or any third party under the Water System’s control or supervision, including Water System’s Program Manager and any other persons or entities expressly identified as Water System Indemnitees in this Agreement For the avoidance of doubt, Consultant and Consultant Parties, are not Water System Indemnified Parties.

60. **“Water System’s Notice to Proceed”** or **“Notice to Proceed”** or **“NTP”** means Water System’s written notice to the Consultant to proceed with the next appropriate Design Deliverable, milestone, task, or phase of work and complete the Services and Work in accordance with this Agreement.

61. **“Water System’s Project Manager”** means the employee of Water System assigned to act on the Water System’s behalf to oversee and manage the Consultant, and Water System’s Separate Contractors in connection with the management of the Project. The person designated as the Water System’s Project Manager is authorized to act on behalf of Water System with respect to the day-to-day management of the Work and Services required under this Agreement.

62. **“Work”** (as distinguished from Design Services) is defined in Article I of the Agreement and shall include Design Services including the performance of the physical construction and related Project management activities required by the Approved Contract Documents, to be performed and managed by and through the Consultant. The Work also refers to the procurement and incorporation of all material and equipment into the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services as required by the Construction Documents. The Work may refer to or describe the whole or a part of Work for the Project, as required by the Construction Documents.

63. **“Work Order”** means an individual request for services for a specific site or facility where the Consultant prepares a Fee Proposal to include the base fee, costs and expenses for services performed hereunder. Fee Proposal for the services shall be submitted to SAWS by the Consultant for review, negotiation and acceptance. Upon written acceptance of the proposal by SAWS and in accordance with all other requirements of the Contract, SAWS will issue a Work Order for the services.

64. **“Work Product”** shall mean all work product, including all Construction Documents, Design Submittals, Shop Drawing Submittals, Building Information Models, plans, data compilations or calculations, studies, reports, or other so-called instruments of service, in any form, including native format, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of Consultant or any Sub Consultants in connection with the Project, and/or the BIM, or other documents or information prepared in connection with the performance of the Work and Services hereunder, which Work Product shall be and remain, and is hereby assigned to Water System as its exclusive property, and which shall not be used by the Consultant or Sub Consultant without the Water System’s prior written consent.



65. “**Worksites**” means the portion of the land(s) or area(s) (, upon which the Work is to be performed within the boundary limits of construction established in each Work Order for each Worksite, and within which the Work shall be restricted, including rights-of way and easements for access thereto, and such other lands furnished or designated by Water System for Consultant’s use at each Worksite, and any offsite location owned or leased by Water System as a location Water System has Approved for the performance of Work and Services hereunder. The Consultant shall design the sitework and other relevant features for the Project at each Worksite so as not to allow the Work to diminish, impair or restrict the use of or otherwise adversely affect Water System’s property, adjacent properties of others, or other areas outside the boundary limits of construction established for each Worksite, including any stream bed, waterway, drainage course.

**EXHIBIT VIII  
LIST OF SUB-CONSULTANTS**

<b>Sub Consultant</b>	<b>Services to be Performed</b>	<b>Level of Participation</b>
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**EXHIBIT IX**  
**NO BOYCOTTING AND NO DISCRIMINATION VERIFICATIONS**

Consultant agrees that, unless i) it is a sole proprietorship or ii) it is a company with fewer than 10 full-time employees and the value of this Contract is less than \$100,000, it:

1. does not boycott Israel and will not do so during the term of this Contract;
2. does not boycott energy companies and will not do so during the term of this Contract; and
3. does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association;

This provision is in compliance with §2271 and §2274 of the Texas Government Code. SAWS agrees to comply with the United States and Texas Constitutions in consideration of whether to enforce this provision.

**EXHIBIT X**  
**PRESERVATION AND PRODUCTION OF CONTRACTING INFORMATION**

To the extent this Agreement has a stated expenditure of or results in an expenditure of at least \$1 million in public funds, then pursuant to Texas Government Code §552.372, Consultant will preserve all contracting information, as defined by §552.003, related to the Agreement for the duration of the Agreement; promptly provide to SAWS any such contracting information related to the Agreement that is in its custody or possession of SAWS on request of SAWS; and on completion of the Agreement, either: A) provide at no cost to SAWS all such contracting information related to the Agreement that is in its custody or possession or B) preserve such contracting information related to the Agreement as provided by the records retention requirements applicable to SAWS.

The Consultant agrees that the Agreement can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of Subchapter J, Chapter 552, of the Texas Government Code.

**EXHIBIT XI**  
**QUALITY MANAGEMENT PLAN**