



## REQUEST FOR QUALIFICATIONS

### W-6 Upper Segment: Highway 90 to SW Military Drive Sewer Main

Solicitation No.: PS-00068

Addendum 1 | November 21, 2018

CHANGES TO THE RFQ
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**1. II. Selection Process, Section D. Submission Restrictions**

Page 15 - Delete subsection 2. in its entirety, under Request for Qualifications, II. Selection Process, Section D. Submission Restrictions.

Page 15 - Renumber subsection 3., under Request for Qualifications, II. Selection Process, Section D. Submission Restrictions.

The remainder of the section shall remain.

**2. Attachment II Submittal Response Checklist**

Page 25 - Remove and replace the entire Attachment II Submittal Response Checklist with the revised version included in this Addendum. Respondents will utilize this version of the Submittal Response Checklist when submitting.

**3. Exhibits**

Insert the following Exhibits included in this Addendum:

- Exhibit A – Insurance Requirements
- Exhibit B – Good Faith Effort Plan
- Exhibit C – Conflict of Interest Questionnaire
- Exhibit D – Security Procedures
- Exhibit E – Sample Contract

Respondents will utilize these versions of Exhibits B and C when submitting. Exhibits A, D, and E are for review. Respondents will acknowledge Exhibits D and E on the Respondent Questionnaire Form.

END OF CHANGES TO THE RFQ

CLARIFICATIONS TO THE RFQ

1. Request for Qualifications, II. Selection Process, Section D. Submission Restrictions, Subsection 2: *This subsection has been deleted since none of the alternatives analysis work was implemented in the Sewershed; which was part of the Capacity Remedial Measures Plan and the Condition Remedial Measures Plan performed by the Basin Planning Consultant.*
2. Submittal Response Checklist: *Changes to the RFQ, listed above to Attachment II Submittal Response Checklist, were made to properly reflect the Quality Control Plan to be two (2) pages in total.*
3. Exhibits: *Exhibit A – Insurance Requirements, Exhibit B – Good Faith Effort Plan, Exhibit C – Conflict of Interest Questionnaire, Exhibit D – Security Procedures, and Exhibit E – Sample Contract were inadvertently not attached.*

END OF CLARIFICATIONS

No other items, dates, or deadlines for this RFQ are changed.

END ADDENDUM 1

This Addendum, including these two (2) pages, is fifty-nine (59) pages with attachments in its entirety.

Attachments:

- Attachment II Submittal Response Checklist (*1 page*)
- Exhibit A – Insurance Requirements (*8 pages*)
- Exhibit B - Good Faith Effort Plan (*4 pages*)
- Exhibit C – Conflict of Interest Questionnaire (*2 pages*)
- Exhibit D – Security Procedures (*1 page*)
- Exhibit E – Sample Contract (*41 pages*)

**Attachment II**  
**SUBMITTAL RESPONSE CHECKLIST**

Project Name: W-6 Upper Segment: Highway 90 to SW Military Drive Sewer Main

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

Use the checklist below to ensure that the proposal is complete by checking off each item included with within Respondent's Proposal.

- Attachment III– Respondent Questionnaire
- Organizational Chart and Description of Team Composition (*under Team Experience and Qualifications*) (3 page limit)
- Resumes (*under Team Experience and Qualifications*) (7 page limit)
- Attachment IV - Evaluation Criteria Forms (*under Team Experience and Qualifications*)  
4.) Respondent and Sub-consultant Table
- Attachment IV - Evaluation Criteria Forms (*under Similar Projects and Past Performance*)  
1.) Five (5) projects (5 page limit)
- Attachment IV - Evaluation Criteria Forms (*under Similar Projects and Past Performance*)  
2.) OPCC Table
- Project Approach Questions 1.), 2.), 3.), 4), and 5) (7 page limit)
- Quality Control Plan (2 page limit)
- Exhibit B – Good Faith Effort Plan
- Exhibit C – Conflict of Interest Questionnaire
- Copy of Current Certificate of Liability Insurance
- Completed and signed W-9 Form
- CD or USB of all documents within the Original Proposal

Sign and date this form and include this page with proposal.

I certify that the proposal submitted includes the items as indicated above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**EXHIBIT A**  
**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 the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) 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 sub-consultant, 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) **Workers' Compensation (WC)** insurance that will protect the CONSULTANT, SAWS and the City from claims under statutory Workers' Compensation laws, disability laws or such other employee benefit laws and that will fulfill the requirements of the jurisdiction in which the work is to be performed.

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

This **line of insurance coverage** shall be endorsed to provide a **Waiver of Subrogation** in favor of SAWS and the City with respect to both this insurance coverage and the **Employers' Liability (EL)** insurance (as specified immediately below in section **1.a.2**)).

- 2) **Employers' Liability (EL)** insurance (**Part 2** under the standard Workers' Compensation insurance policy) that will protect the CONSULTANT, SAWS and the City for damages because of bodily injury, sickness, disease of vendor's employees apart from that imposed by Workers' Compensation laws.

The **EL** line of insurance coverage shall have minimum policy limits of liability of not less than:

\$1,000,000.00	Bodily Injury by Accident
\$1,000,000.00	Bodily Injury by Disease - Each Employee
\$1,000,000.00	Bodily Injury by Disease - Policy Limit

- 3) **Commercial General Liability (CGL)** insurance that will protect the CONSULTANT, SAWS and the City from claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance that will protect the

CONSULTANT, SAWS and the City 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 the City as an **Additional Insured** for both ongoing and completed operations; and
  - To provide a **Waiver of Subrogation** in favor of SAWS and the City.
- 4) **Commercial/Business Automobile Liability (AL)** insurance that will protect the CONSULTANT, SAWS and the City from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles.

Minimum policy limits of liability for this line of insurance coverage for bodily injury and property damage **combined** shall be not less than \$1,000,000.00 per each occurrence.

This line of insurance coverage shall be endorsed:

- Naming SAWS, and the City as an **Additional Insured**; and
- To provide a **Waiver of Subrogation** in favor of SAWS and the City.

5) **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 Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants' 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 the City 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 WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.
- h. Each line of insurance coverage that is specified under these Requirements shall be so written so as to provide SAWS and the City 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.

- i. 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.
- j. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.
- k. 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.
- l. 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.
- m. 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, the City and their employees and agents for liability arising out of operations under this Contract.
- n. 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.

- o. 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 the City allow modification whereupon SAWS and the City 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 five (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 Automobile Liability ("AL") and 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 AL and 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 AL and 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 AL, COL and Workers' Compensation/Employers' Liability ("WC/EL") 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 AL, CGL and WC/EL 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 AL, CGL and WC/EL 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 AL, CGL and WC/EL Waiver of Subrogation endorsements documents or the policy wording from each of the AL, CGL and WC/EL 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  
c/o Ebix BPO  
PO Box 100085-ZD  
Ref. # LAWSON ID-PS-00068-01  
Duluth, GA 30096**

*\* SAWS Contracting Official will include above the correct address, complete Ref# in tile 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:
    - a) By Mail:

San Antonio Water System  
C/O Ebix BPO  
P.O. Box 100085-ZD  
Ref. # LAWSON ID-PS-00068-01  
Duluth, GA 30096
    - b) By **E-Mail**:           saws@ebix.com
    - c) By **Fax**:                1-770-325-6502
  - 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 B

### Good Faith Effort Plan for Professional Services SUBCONSULTING for:

NOTE: Effective 1/1/17, SMWB points shall only be assessed for consultants and/or subconsultants that are local, certified as SBEs (including MBEs and WBEs), and certified by the South Central Texas Regional Certification Agency or the Texas Historically Underutilized Business (HUB) Program.

NAME OF PROJECT: W-6 Upper Segment: Highway 90 to SW Military Drive Sewer Main

**SECTION A - PRIME CONSULTANT INFORMATION**

Legal Name of Firm, including "doing business as" if applicable: \_\_\_\_\_

Address of Office to Perform Project Work: \_\_\_\_\_

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Email Address: \_\_\_\_\_ Is your firm Certified as an SMWVB? Yes: \_\_\_\_\_ No: \_\_\_\_\_

If "Yes", Certification Agency that granted SMWVB designation: \_\_\_\_\_

Type/s of Certification: SBE: \_\_\_\_\_ MBE: \_\_\_\_\_ VBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Prime Consultant's Percentage of Participation: (Ex: 100% is the total value of the contract) \_\_\_\_\_%

**1. List ALL SUBCONSULTANTS/SUPPLIERS that will be utilized on this project/contract. (SMWB AND Non-SMWB)**

	Legal Name of Sub-consultant/ Supplier (including "doing business as", if applicable).	Address of Office Location to Perform Project Work or Provide Supplies:	Scope of Work/Supplies to be Performed/Provided by Firm:	Estimated Percentage of Participation on this Project:	Certification Type & Certification Agency:
1					
	<b>**List SMWVB Firm in this row, if Applicable, that will be performing 10% of Design Services for Large Diameter Pipe (up to 60-inch) Open Cut**</b>				
2					
3					

4					
5					
6					
7					
8					
9					
10					

SECTION B. – SMWB COMMITMENTS

The SMWB goal on this project is 40%

1. The undersigned proposer has satisfied the requirements of the BID specification in the following manner (please check the appropriate space):

The proposer is committed to a minimum of 40 % SMWB utilization on this contract.

The proposer, (if unable to meet the SMWB goal of 40%), is committed to a minimum of % SMWB utilization on this contract.  
 \_\_\_\_\_(If contractor is unable to meet the goal, please fill out Section C and submit documentation demonstrating good faith efforts).

2. Name and phone number of person appointed to coordinate and administer the SMWB requirements on this project.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

IF THE SMWB GOAL WAS MET, PROCEED TO AFFIRMATION AND SIGN THE GFEP. IF GOAL WAS NOT MET, PROCEED TO SECTION C.

SECTION C – GOOD FAITH EFFORTS (Fill out only if the SMWB goal was not achieved).

1. On a separate sheet of paper, list and attach to this Good Faith Effort Plan written, posted, or published notification to all firms you contacted with sub-consulting/supply opportunities for this project that will not be utilized for the contract by choice of the proposer, sub-consultant, or supplier. Notices to firms contacted by the proposer for specific scopes of work identified for sub-consulting/supply opportunities must be provided to sub-consultant/supplier **not less than five (5) business days prior to proposal due date**. This information is required for all firms that were contacted of sub-consulting/supply opportunities.

**Copies of said notices must be provided to the SMWB Program Manager at the time the response is due. Such notices shall include information on the plans, specifications, and scope of work.**

2. Did you attend the pre-submittal conference scheduled for this project? \_\_\_\_\_Yes \_\_\_\_\_No

3. List all SMWVB listings or directories, contractor associations, and/or any other associations utilized to solicit SMWB sub-consultants/suppliers:

\_\_\_\_\_

4. Discuss efforts made to identify elements of the work to be performed by SMWVBs in order to increase the likelihood of achieving the goal:

\_\_\_\_\_

\_\_\_\_\_

5. Indicate advertisement mediums used for soliciting SMWVBs. (Please attach a copy of the advertisement(s):

\_\_\_\_\_

\_\_\_\_\_

**AFFIRMATION**

I hereby affirm that the above information is true and complete to the best of my knowledge. I further understand and agree that, this document shall be attached thereto and become a binding part of the contract.

**Name and Title of Authorized Official:**

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

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**NOTE:**

This Good Faith Effort Plan is reviewed by SAWS Contracting Department. For questions and/or clarifications, please contact Marisol V. Robles, SMWVB Program Manager, at 210-233-3420 or marisol.robles@saws.org.

## **DEFINITIONS**

**Note: To be eligible for participation in the SAWS Small, Minority, Woman, and Veteran-owned Business Program, a firm must be local, and must be certified as a Small Business Enterprise (SBE). This includes firms certified as Minority and/or Woman-owned Business Enterprises (MBEs and WBEs). SAWS tracks Veteran-owned Business Enterprises (VBEs) for statistical purposes, but does not award points for VBE participation.**

**Local:** A business located in the San Antonio Metropolitan Statistical Area (SAMSA) , which includes the counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde and Wilson. A business's presence in the SAMSA that consists solely of a P.O. Box, a mail drop, or a telephone message center does not count as being local.

**Prime Consultant/Contractor:** Any person, firm partnership, corporation, association or joint venture which has been awarded a San Antonio Water System contract.

**Sub-consultants/contractor:** Any named person, firm partnership, corporation, association or joint venture identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing under contract with a prime consultant/contractor on a San Antonio

**Small, Minority, and Woman-owned Business (SMWB):** All business structures Certified by the Texas State Comptroller's Office (HUB), or the South Central Texas Regional Certification Agency that are 51% owned, operated, and controlled by a Small Business Enterprise, a Minority Business Enterprise, or a Woman-owned Business Enterprise.

**Small Business Enterprise (SBE):** A business structure that is Certified by the Texas State Comptroller's Office (HUB), or the South Central Texas Regional Certification Agency as being 51% owned, operated and controlled by someone who is legally residing in or a citizen of the United States, and the business structure meets the U.S. Small Business Administration's (SBA) size standard for a small business within the appropriate industry category.

**Minority Business Enterprise (MBE):** A business structure that is Certified by the Texas State Comptroller's Office (HUB), or the South Central Texas Regional Certification Agency as being 51% owned, operated, and controlled by an ethnic minority group member(s) who is legally residing in or a citizen of the United States. For purposes of the SMWB program, the following are recognized as minority groups:

- a. **African American** – Persons having origins in any of the black racial groups of Africa.
- b. **Hispanic American** – Persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.
- c. **Asian-Pacific American** – Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- d. **Asian-Indian American** – Persons whose origins are from India, Pakistan, Bangladesh or Sri Lanka.
- e. **American Indian/Native American** – Persons having no less than 1/16 percentage origin in any of the American Indian Tribes, as recognized by the U.S. Department of the Interior's Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Woman-owned Business Enterprise (WBE):** A business structure that is Certified by the Texas State Comptroller's Office (HUB), or the South Central Texas Regional Certification Agency as being 51% owned, operated and controlled by a woman or women who are legally residing in or citizens of the United States.

**African American Business Enterprise (AABE):** A business structure that is Certified by the Texas State Comptroller's Office (HUB), or the South Central Texas Regional Certification Agency as being 51% owned, operated and controlled by African American minority group member(s) who are legally residing in or are citizens of the United States.

**Joint Venture:** A limited association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skills and knowledge. A Joint Venture is not currently eligible for SMWVB certification.

**Veteran-Owned Business Enterprise (VBE):** A business structure that is at least 51% owned, operated and controlled by an individual who served in the United States Armed Forces, and who was discharged or released under conditions other than dishonorable. Please note: This certification type should not be confused with the Service Disabled Veteran designation available through the Small Business Administration.

### **Web Submittal of Sub-consultant/Supplier Payment Reports:**

The Contractor will be required to electronically report the actual payments to all sub-consultants and suppliers utilizing the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, beginning with the first SAWS payment for services under the contract, and with every payment thereafter (for the duration of the contract). Electronic submittal of monthly subcontractor payment information will be accessed through a link on SAWS' "Business Center" web page. This information will be utilized for subcontractor participation tracking purposes. Any unjustified failure to comply with the committed SMWB levels may be considered breach of 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 also be accessed through the following internet address: <https://saws.smwbe.com/>

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

**FORM CIQ**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2**  **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_   
 Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_   
 Signature of vendor doing business with the governmental entity

\_\_\_\_\_   
 Date



## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

## Exhibit “D”

# SECURITY PROCEDURES

If work will be conducted on SAWS property, on a SAWS customer’s property, involve any SAWS networks or any SAWS facility, the Contractor shall ensure a Prime Contractor Data Form (PCDF) and a Background Screening Letter (provided by SAWS Security) is properly completed for all employees performing work under this Agreement and is on file with SAWS Security prior to work commencement. Any person found to have an unacceptable background check will not be allowed to perform work under this Agreement (A waiver may be given by SAWS Security for an unacceptable finding but must be signed off by the Director of SAWS Security). Sub-Contractors performing work must be listed on the PCDF and the Background Screening Letter. Contractor shall be responsible for the accuracy of information on the PCDF and the Background Screening Letter, and for obtaining any and all required items (badges and parking tags) necessary to fulfilling the work under this Agreement. The PCDF and Background Screening Letter must be sent electronically to [securitygroup@saws.org](mailto:securitygroup@saws.org). Contractor shall advise the SAWS Project Manager/Inspector of any employee terminations or changes to personnel performing work under this Agreement and the Contractor shall immediately turn in any and all badges and/or parking tags of employees who are terminated or no longer performing work under this Agreement. If there are any changes in the information contained in the PCDF or the Background Screening Letters, Contractor shall immediately notify the SAWS Project Manager/Inspector and provide updated PCDF and Background Screening Letters, with copies to [securitygroup@saws.org](mailto:securitygroup@saws.org).

Contractor, its employees, and agents shall obtain a SAWS photo identification badge (Contractor's Badge) and parking tag, prior to any work on SAWS property, which shall be used only for purposes necessary to perform the work under this Agreement. SAWS Badge Office hours are Monday, Wednesday and Friday 9:00am to 12:00pm excluding SAWS holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost or damaged badges or parking tags. As a condition of final payment, Contractor shall return all badges and parking tags to the Security Office. In the event Contractor fails to return all security badges and parking tags, in addition to any other rights or remedies to which SAWS may be entitled at law or in equity, SAWS may withhold from payment to the Contractor the sum of \$500.00 dollars per badge or parking tag as liquidated damages. Contractor agrees that the actual amount of damages for failure to return the badges and/or parking tags are difficult to determine, and the liquidated damages herein are not a penalty, but are a reasonable estimate of the costs and expenses that may be incurred by SAWS for failure to return the badges or parking tags.

SAWS facilities require a SAWS employee to physically escort Contractor at all times. SAWS may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of Contractor are approved by SAWS Security.

Sub-Contractors must always be under escort of the Contractor while performing work on any SAWS property. Sub-Contractors must display either a company photo badge, with name, or a valid driver’s license at all times while working on any SAWS property. Contractor is solely responsible for the actions of its employees, agents, sub contractors and Contractors.

Contractor MUST be prepared for additional security requirements at its expense if violations of SAWS Security procedures are noted. Some examples of additional requirements 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 Contractor as to details of doing any work under this Agreement or to exercise a measure of control over any security measures or such work shall be deemed to mean that Contractor shall follow the desires of SAWS in the **results** of the work or security measures only.

Advance coordination by Contractor with SAWS Security for these security requirements is necessary to ensure no delays with timely performance of the work. In the event Contractor fails to comply with SAWS Security requirements, SAWS may, with no penalty or claim against SAWS:

- 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 are remedied.

**Exhibit “E”  
SAMPLE CONTRACT**

**PROFESSIONAL SERVICES AGREEMENT  
ENGINEERING SERVICES**

**Agreement for**

**W-6 Upper Segment: Highway 90 to SW Military Drive Sewer Main  
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]**

engineers(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 engineering services hereinafter set forth in connection with the design and development of **W-6 Upper Segment: Highway 90 to SW Military Drive Sewer Main** (the “Project”) for the Water System.

**I. Scope of Work.**

The term “Work” 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 this 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, such changes to be effective only upon the execution of a written agreement specifically identifying the additional work, fee, and time prior to the performance of such work. Any adjustment to the Contract Price (as defined below) or the Production Schedule shall be made in writing in accordance with the terms of this Contract, or in the absence of such provisions, on terms agreed to in writing by both Consultant and Water System. Consultant shall not be entitled to any additional compensation in excess of the Contract Price for its performance of the Work for any reason whatsoever unless, prior to the performance of any services giving rise to Consultant’s claim for additional compensation for work outside the Scope

of the Work, Consultant shall have received Water System's express written authorization to perform such additional Work.

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 engineering services. The Consultant, in consideration for the compensation set forth expressly herein, shall at all times utilize its skill and attention to fully, 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 engineers 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 engineer 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 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 engineer. 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 VII are approved by the Water System unless Consultant is subsequently notified 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 VII 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 SMWVB Program Manager, to substitute any SMWVB 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 Schedule A 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 federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work. In the event of any change in the applicable federal, state and local laws, rules, regulations, statutes, ordinances and directives 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 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. Conflicts between any applicable federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work shall be brought to the attention of the Water System by Consultant.

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

**I. 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, 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 defective, deficient or improper work. 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 Vice President over the engineering 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 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 herein for completion of a milestone, task or phase of Work will cause injury and damage to the Water System. Water System reserves the right to extend Consultant's Production Schedule as the Water System deems necessary.

B. Upon acceptance and approval of each milestone, task, or phase of Work, the Water System may authorize in writing the Consultant to proceed with the next appropriate 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 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 or phase of the Work, the Water System does not authorize Consultant to proceed with the next subsequent milestone, task 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 governmental authority (as defined below), 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, or by fire, embargo, riot, tornado, earthquake, hurricane, flood, strike of a national scope against the Project site, or any unreasonable delay by a governmental authority, or by causes beyond Consultant's control, 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, Water System and Consultant shall negotiate reasonable additional compensation only for Work required by Consultant to complete the changes attributable solely due to the Force Majeure

Event. 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 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. Within thirty (30) days from the occurrence of any Force Majeure Event (for which time for performance by Consultant shall be extended under this subsection D), Consultant shall give written notice thereof to the Water System stating the reason for such extension and the actual time necessitated thereby or 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 Production Schedule attached as Exhibit IV 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 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.

#### **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. To assist the Consultant in this coordination, the Water System shall make available for the Consultant's use in planning and designing 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 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 on-the-ground observation and checks of existing infrastructure; provided however, Consultant is not responsible for verification of data that Consultant cannot reasonably confirm or check or observe from on-the-ground observations and measurements. Unless otherwise provided in the Scope of Services for the Work, ordinary care does not include potholing. 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 engineering practice to verify specific information that cannot be readily confirmed by the Consultant by on-the-ground observation and/or measurement. 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, **Project Manager**, or his/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 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 amount without appropriate approval.

C. Unless otherwise required by this Contract, the Water System shall furnish approvals and permits received by Water System from governmental authorities having jurisdiction over the Project, and such approvals and consents from others as may be necessary for the completion of the Project. The Consultant will 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, but shall not be required to develop additional data, prepare extensive reports or attend hearings, unless otherwise required by the Consultant as set forth in the Scope of Work, or unless directed to do so for a fee and within a time frame agreed to in writing by the Water System and Consultant.

## **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 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, reasonable minor 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 minor revisions, as the scope of the Project is refined, and that such reasonable minor 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 minor revisions and/or corrections to the Work as may be required. The Contract Price shall be equitably adjusted through a written amendment to this Contract 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 the 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 entitle Consultant to a written amendment to this Contract for additional compensation for such extra services and expenses, which compensation shall be agreed upon in writing by 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 any and 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.

B. Consultant agrees and covenants to protect any and all proprietary rights 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, 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, 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, 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 engineers, 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 "Final Documents"). Consultant shall not be liable for changes made to the Final 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 record drawings of the Project as constructed (“Record Drawings”), the Water System may use and rely upon such Record Drawings 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 Record Drawings; provided, however, it is agreed and understood that the Record Drawing is a compilation of a copy of the sealed engineering drawing for the Project; modified by addenda, 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 Record Drawings 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 SAWS’ attention, questions or concerns regarding the Record Drawing data provided to Consultant by Contractor and/or the Water System.

Consultant and Water System agree that if the Water System uses record drawings prepared as part of this Project for the purposes of representing the as-built location of this Project with respect to a subsequent project, Consultant’s obligation with respect to the accuracy of the record drawings is commensurate with the effort allowed for preparation of the record drawings as set out in the Scope of Work. Any re-use of the documents by the Water System for any project other than the Project for which it was prepared without specific written verification or adaptation by Consultant will be at the Water System's sole risk and without any liability or legal exposure to Consultant, except for errors and omissions in Consultant’s work in connection with the original Project. Water System agrees that the accrual of the Statute of Repose, Texas Civil Practice and Remedies Code §16.008, shall be based upon the date of substantial completion of the Project on which the Record Drawings originally were prepared (as opposed to the date of substantial completion of subsequent projects in which the Record Drawings were used).

H. All digital drawings provided to the Water System must conform to the SAWS CADD standards as found on the Water System webpage. All digital utility layouts must be ready to electronically integrate into the Water System utility mapping system.

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

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

This Contract may be terminated for cause by either party for material breach by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Contract.

##### **(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 engineers 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 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 Systems;
- (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 on the twentieth (20<sup>th</sup>) day following receipt of notice, or upon the scheduled completion date of the milestone, task, or phase of work in which Consultant is then currently authorized to work, whichever occurs first.

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 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 or partially completed designs, plans, specifications and reproducibles prepared under this Contract, as well as all other documents, property records, tests, charts, reports and other materials, or information pertaining to the Project and/or Consultant's services hereunder (the "Project Documents") shall be delivered 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 reproducibles 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 reproducibles prepared under this Contract, prior to the effective date of suspension, and all other Project 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 Project 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, Woman, and Veteran-owned Business (SMWVB) Policy to establish and oversee a program that will support the inclusion of local small, minority, woman, and veteran-owned businesses (SMWVB). It is the policy of SAWS that it will ensure that local small, minority, woman, and veteran-owned businesses have an equal opportunity to compete for, receive and participate in SAWS contracts. 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 at least the minimum percentage of participation for SMWVBs set out in Consultant's proposal to the Water System. Consultant shall be required to electronically report the actual payments to all subcontractors, whether SMWVB or non-SMWVB, using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, beginning with the first SAWS payment for services under the contract, and with every payment thereafter (for the duration of the contract). After Consultant receives payment from SAWS, electronic submittals will require data entry of the amount paid to each subcontractor, whether SMWB or non-SMWB, listed on the Contractor's Good Faith Effort Plan. Data entry is required even if the actual payment amount is zero dollars and zero cents (\$0.00). This information will be used for subcontractor utilization tracking purposes. Any unjustified failure to comply with the committed SMWVB levels may be considered breach of contract.

Electronic submittal of subcontractor payment information will be accessed through a link on SAWS' "Business Center" web page. Consultant and all subcontractors will be provided a unique log-in credential and password to access the SAWS subcontractor payment reporting system. The link may also be accessed through the following internet address: <https://saws.smwbe.com>.

Respondents and/or their agents may contact the SMWVB Program Manager at 210-233-3420 for assistance or clarification with issues specifically related to the Small, Minority, Woman, and Veteran-owned Business (SMWVB) 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 V (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 VII attached.

A change of more than thirty percent (30%) (cumulatively during the term of this Contract) of the ownership of 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 ownership of twenty-five percent (25%) or greater during the term of the Contract.

## **XII. Indemnification.**

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 engineer or state licensee 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, 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.**

Consultant has no control over the cost of labor, materials or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions. Thus, Consultant's opinions of probable Project cost or construction cost provided for herein are made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a design professional familiar with the construction industry, but the Consultant cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by Consultant.

**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 City's Ethics Code, 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 sub-consultant 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 sub-consultants. 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  
Contract Administration  
2800 U.S. Hwy. 281 North  
San Antonio, Texas 78212  
Attn: Project Manager  
Email: \_\_\_\_\_

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

If to Consultant: Consultant  
Address  
City, State, Zip  
Attn:  
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.

**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
Exhibit III.	Insurance Specifications
Exhibit IV.	Production Schedule
Exhibit V.	Security Exhibit
Exhibit VI.	Consent Decree
Exhibit VII .	List of Sub-Consultants
Exhibit VIII	No Boycotting Israel Verification

**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  
Director, Contracting

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

**CONSULTANT**

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

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

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

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



**EXHIBIT I  
COMPENSATION FOR PROFESSIONAL SERVICES  
LUMP SUM BY PHASE**

**Section 1 - Basis for Compensation**

LUMP SUM BY PHASE:

- 1.1 The total of all fees, costs and expenses for the services set forth in Exhibit II of this Contract shall be the lump sum amount of **\$00.00 - dollars and no cents** (the “Contract Price”). Consultant agrees that the Contract Price, when earned, is full and complete compensation for the full and timely performance of the services in this Contract, and Consultant shall not be entitled to any compensation in excess of the Contract Price.
- 1.2 The Contract Price shall be allocated to the Phases of the services set forth on Exhibit II of this Contract based on the following Schedule of Values:

<u>PHASE</u>	<u>AMOUNT</u>
30% Design Phase	\$.00
60% Design Phase	\$.00
90% Design Phase	\$.00
100% Design Phase	\$.00
Construction Phase	<u>\$.00</u>
Total Basic Services	\$.00
Supplemental Services	<u>\$.00</u>
Contract Price	<u>\$.00</u>

- 1.3 For the purpose of establishing costs to the Water System for any additional services payable on 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

<u>DISCIPLINE</u>	<u>HOURLY RATE</u>
Principal	\$
Project Manager	\$
Clerical/Secretarial	\$

## **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**

Internet-Based Project Management System. SAWS shall administer its services through an Internet-Based Project Management System (hereafter referred to as "CPMS"). In such case, Consultant shall conduct 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, requests for information, vouchers, compensation requests and processing, amendment, change orders and other administrative activities as may be required in the Contract. 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 invoices shall be submitted through the CPMS.

Monthly payments for services performed 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.

### **LUMP SUM BY PHASE:**

- 3.1 Payment shall be made to the Consultant based upon the schedule set forth in Section 1.2 above, in the following intervals:
- 3.2 Phase "30% Design" - \$.00 of the Contract Price shall be payable after the acceptance and approval of the Phase "30% Design" by the Water System.
- 3.3 Phase "60% Design" - \$.00 of the Contract Price shall be payable after the acceptance and approval of the Phase "60% Design" by the Water System.
- 3.4 Phase "90% Design" - \$.00 of the Contract Price shall be payable after the acceptance and approval of the Phase "90% Design" by the Water System.
- 3.5 100% Design Phase – \$.00 of the Contract Price shall be payable after the successful award of a construction contract for the Work.
- 3.6 Construction Phase – \$.00 of the Contract Price as follows:
- 3.6.1 90% of the portion of the fee for the Construction Phase will be made in monthly installments during the period of construction in proportion to the percentage of construction work as completed and approved by SAWS, by the construction Contractor on the Project designed under this Agreement.

- 3.6.2 The remaining 10% of the fee for the Construction Phase will be paid only at such time as the "Record Drawings" have been properly prepared and furnished to the Water System by the Consultant as required herein, and the final Field Alteration adjusting quantities has been properly prepared and submitted to the Water System by the Consultant.
- 3.7 Supplemental Services – \$0.00 of the Contract Price shall be allocated to the Supplemental Services and portions of that amount will be paid for each service successfully completed and approved in accordance with the prior written authorization in the form of a Work Order by the Water System to perform the service.

#### **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 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 Federally Funded projects 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 the cost plus fixed fee 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 corporate overhead percentage, and the percentage of the fixed fee allocated to the invoice, and the activity or activities performed by all consultants and employees. Payroll time sheets shall be provided on request of the Water System.

- 5.9 For project assignments that are to be compensated on a lump sum basis, the Consultant's invoice shall include a detailed summary of the progress and completion of tasks to substantiate the percentage of completion of services as rendered during the previous month.

### **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 record drawings 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 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.
- 7.8 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.
- 7.9 Failure of the Consultant to render any service required by this Contract per Exhibit V, Production Schedule.
- 7.10 Any claim for Indemnification that arise under Article 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 Services in accordance with the terms and conditions of this Agreement.

**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 the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) 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 sub-consultant, 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) **Workers' Compensation (WC)** insurance that will protect the CONSULTANT, SAWS and the City from claims under statutory Workers' Compensation laws, disability laws or such other employee benefit laws and that will fulfill the requirements of the jurisdiction in which the work is to be performed.

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

This **line of insurance coverage** shall be endorsed to provide a **Waiver of Subrogation** in favor of SAWS and the City with respect to both this insurance coverage and the **Employers' Liability (EL)** insurance (as specified immediately below in section **1.a.2**)).

- 2) **Employers' Liability (EL)** insurance (**Part 2** under the standard Workers' Compensation insurance policy) that will protect the CONSULTANT, SAWS and the City for damages because of bodily injury, sickness, disease of vendor's employees apart from that imposed by Workers' Compensation laws.

The **EL** line of insurance coverage shall have minimum policy limits of liability of not less than:

\$1,000,000.00	Bodily Injury by Accident
\$1,000,000.00	Bodily Injury by Disease - Each Employee
\$1,000,000.00	Bodily Injury by Disease - Policy Limit

- 3) **Commercial General Liability (CGL)** insurance that will protect the CONSULTANT, SAWS and the City from claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance that will protect the

CONSULTANT, SAWS and the City 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 the City as an **Additional Insured** for both ongoing and completed operations; and
  - To provide a **Waiver of Subrogation** in favor of SAWS and the City.
- 4) **Commercial/Business Automobile Liability (AL)** insurance that will protect the CONSULTANT, SAWS and the City from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles.

Minimum policy limits of liability for this line of insurance coverage for bodily injury and property damage **combined** shall be not less than \$1,000,000.00 per each occurrence.

This line of insurance coverage shall be endorsed:

- Naming SAWS, and the City as an **Additional Insured**; and
- To provide a **Waiver of Subrogation** in favor of SAWS and the City.

5) **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 Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ 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 the City 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 WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.
- h. Each line of insurance coverage that is specified under these Requirements shall be so written so as to provide SAWS and the City 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.

- i. 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.
- j. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.
- k. 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.
- l. 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.
- m. 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, the City and their employees and agents for liability arising out of operations under this Contract.
- n. 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.

- o. 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 the City allow modification whereupon SAWS and the City 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 five (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 Automobile Liability ("AL") and 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 AL and 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 AL and 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 AL, COL and Workers' Compensation/Employers' Liability ("WC/EL") 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 AL, CGL and WC/EL 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 AL, CGL and WC/EL 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 AL, CGL and WC/EL Waiver of Subrogation endorsements documents or the policy wording from each of the AL, CGL and WC/EL 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  
c/o Ebix BPO  
PO Box 100085-ZD  
Ref. # LAWSON ID-PS-00068-01  
Duluth, GA 30096**

*\* SAWS Contracting Official will include above the correct address, complete Ref# in tile 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:
    - a) By Mail:

San Antonio Water System  
C/O Ebix BPO  
P.O. Box 100085-ZD  
Ref. # LAWSON ID-PS-00068-01  
Duluth, GA 30096
    - b) By **E-Mail:**           saws@ebix.com
    - c) By **Fax:**                1-770-325-6502
  - 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  
PRODUCTION SCHEDULE**

Project: \_\_\_\_\_

Engineering Firm: \_\_\_\_\_

	SCHEDULED	ACTUAL
<b>PHASE 30% Design:</b>		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	__ Days
Water System Review & Approval:	_____ Days	__ Days
 <b>PHASE 60% DESIGN:</b>		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	__ Days
Water System Review & Approval:	_____ Days	__ Days
 <b>PHASE 90% DESIGN:</b>		
Beginning Date:	_____	_____
Completion Date:	_____	_____
Calendar Days Used:	_____ Days	__ Days
Water System Review & Approval:	_____ Days	__ Days

PHASE 100% DESIGN:

Beginning Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Calendar Days Used: \_\_\_\_\_ Days    \_\_ Days

Water System Review & Approval: \_\_\_\_\_ Days    \_\_ Days

CONSTRUCTION PHASE:

Beginning Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Calendar Days Used: \_\_\_\_\_ Days    \_\_ Days

Water System Review & Approval: \_\_\_\_\_ Days    \_\_ Days

## **EXHIBIT V SECURITY PROCEDURES**

If work will be conducted on SAWS property, on a SAWS customer's property, involve any SAWS networks or any SAWS facility the Consultant shall ensure a Prime Contractor Data Form (PCDF) and a Background Screening Letter (provided by SAWS Security) is properly completed for all employees performing work under this Agreement and is on file with SAWS Security prior to work commencement. Any person found to have an unacceptable background check will not be allowed to perform work under this Agreement ( A waiver may be given by SAWS Security for an unacceptable finding but must be signed off by the Director of SAWS Security ). Sub- Consultants performing work must be listed on the PCDF and the Background Screening Letter. Consultant shall be responsible for the accuracy of information on the PCDF and the Background Screening Letter, and for obtaining any and all required items (badges and parking tags) necessary to fulfilling the work under this Agreement. The PCDF and Background Screening Letter must be sent electronically to [securitygroup@saws.org](mailto:securitygroup@saws.org). Consultant shall advise the SAWS Project Manager/Inspector of any employee terminations or changes to personnel performing work under this Agreement and the Consultant shall immediately turn in any and all badges and/or parking tags of employees who are terminated or no longer performing work under this Agreement. If there are any changes in the information contained in the PCDF or the Background Screening Letters, Consultant shall immediately notify the SAWS Project Manager/Inspector and provide updated PCDF and Background Screening Letters, with copies to [securitygroup@saws.org](mailto:securitygroup@saws.org).

Consultant, its employees, and agents shall obtain a SAWS photo identification badge (Consultant's Badge) and parking tag, prior to any work on SAWS property, which shall be used only for purposes necessary to perform the work under this Agreement. SAWS Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding SAWS holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost or damaged badges or parking tags. As a condition of final payment, Consultant shall return all badges and parking tags to the Security Office. In the event Consultant fails to return all security badges and parking tags, in addition to any other rights or remedies to which SAWS may be entitled at law or in equity, SAWS may withhold from payment to the Consultant the sum of \$500.00 dollars per badge or parking tag as liquidated damages. Consultant agrees that the actual amount of damages for failure to return the badges and/or parking tags are difficult to determine, and the liquidated damages herein are not a penalty, but are a reasonable estimate of the costs and expenses that may be incurred by SAWS for failure to return the badges or parking tags.

SAWS facilities require a SAWS employee to physically escort Consultant at all times. SAWS may, in its sole discretion, waive the escort requirements if the PCDF and a "clean" Background Screening Letter, signed by an authorized representative of Consultant are approved by SAWS Security.

Sub-Consultants must always be under escort of the Consultant while performing work on any SAWS property. Sub-Consultants must display either a company photo badge, with name, or a valid driver's license at all times while working on any SAWS property. Consultant is solely responsible for the actions of its employees, agents, Sub-Consultants and Consultants.

Consultant **MUST** be prepared for additional security requirements at its expense if violations of SAWS Security procedures are noted. Some examples of additional requirements 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 Agreement 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 the work. In the event Consultant fails to comply with SAWS Security requirements, SAWS may, with no penalty or claim against SAWS:

- 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 are remedied.



## EXHIBIT VI

### CONSENT DECREE NOTICE PROVISION

The San Antonio Water System (“SAWS”), the United States of America and the State of Texas have entered into a Consent Decree in Civil Action No. 5:13-cv-00666, United States of America and State of Texas v. San Antonio Water System, in the United States District Court for the Western District of Texas, San Antonio Division (the “Consent Decree”). A copy of the Consent Decree is available at:

[http://www.saws.org/infrastructure/epa/docs/20130723\\_SAWS\\_EPA\\_FinalDecree.pdf](http://www.saws.org/infrastructure/epa/docs/20130723_SAWS_EPA_FinalDecree.pdf)

Work performed pursuant to this contract is work that SAWS is required to perform pursuant to the terms of the Consent Decree. In the event of any conflict between the terms and provisions of this Consent Decree Notice Provision and any other terms and provisions of this Contract or the Contract Documents, the terms and provisions of this Consent Decree Notice Provision shall prevail.

#### Retention of documents.

Contractor shall retain and preserve all non-identical copies of all documents, reports, research, analytical or other data, records or other information of any kind or character (including documents, records, or other information in electronic form including, but not limited to e-mails) in its or its sub-contractors’ or agents’ possession or control, or that come into its or its sub-contractors’ or agents’ possession or control, and that relate in any manner to this contract, or the performance of any work described in this contract (the “Information”). This retention requirement shall apply regardless of any contrary corporate or institutional policy or procedure or legal requirement. Contractor, Contractor’s sub-contractors and agents shall retain and shall not destroy any of the Information until such time as Contractor has received written approval from the General Counsel of SAWS that the Information or any part of the Information may be destroyed. Contractor shall, within 30 days after receipt of a written request by SAWS, deliver the Information to SAWS. Contractor shall instruct and require its agents and sub-contractors performing any part of the work described in this contract to comply with the requirements of this paragraph.

**EXHIBIT VII  
LIST OF SUB-CONSULTANTS**

<b>Sub Consultant</b>	<b>Services to be Performed</b>	<b>Level of Participation</b>
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## **EXHIBIT VIII**

### **NO BOYCOTTING ISRAEL VERIFICATION**

Consultant agrees that it does not boycott Israel and will not do so during the term of this Contract. This provision is in compliance with §2270.001 of the Texas Government Code. SAWS agrees to comply with the United States and Texas Constitutions in consideration of whether to enforce this provision.