

PROGRAM MANAGEMENT AND
ENGINEERING SERVICES AGREEMENT
FOR THE
SAN ANTONIO WATER SYSTEM
BRACKISH GROUNDWATER DESALINATION PROGRAM

between

THE SAN ANTONIO WATER SYSTEM

and

[PROGRAM MANAGER]

Dated as of

_____, 2011

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SAMPLE

PROGRAM MANAGEMENT AND ENGINEERING SERVICES AGREEMENT

THIS PROGRAM MANAGEMENT AND ENGINEERING SERVICES AGREEMENT, hereinafter referred to as the "Agreement", is made and dated as of _____, 2011, between the San Antonio Water System, an agency of the City of San Antonio established and created pursuant to the provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, having its principal offices at 2800 U.S. Hwy 281 North, San Antonio, Texas 78212, hereinafter referred to as "SAWS", and _____, a _____ organized and operating under the laws of the State of _____, having an office at _____, hereinafter referred to as the "Program Manager", for program management, professional engineering and construction administration services in connection with the San Antonio Water System Brackish Groundwater Desalination Program.

RECITALS

SAWS has determined to implement a program for the design and construction of a brackish groundwater desalination project, consisting of certain water treatment and related facilities, including raw water production wells, a raw water conveyance system, a 10 million gallons per day (MGD) reverse osmosis water treatment plant (designed for expansion up to 40 MGD), a post treatment storage tank, a Residuals disposal conveyance system, monitoring wells and injection wells.

The program will be completed using the construction manager at risk (CMAR) project delivery method in accordance with Section 271.118 of the Texas Local Government Code.

SAWS has determined to contract with a professional engineering firm to perform program management, professional engineering, geological consulting, environmental permitting, construction administration, construction materials engineering and verification of testing services necessary for acceptance and to assume overall supervisory control of the planning and execution of the facilities comprising the desalination project. The services will include working and coordinating with the CMAR to be selected pursuant to a separate procurement.

SAWS issued a Request for Qualifications for Program Management and Professional Engineering Services for the Brackish Groundwater Desalination Program, Solicitation No: P-10-009-DS, on _____, 2011 (the "RFQ").

Statements of Qualifications submitted in response to the RFQ were received on _____, 2011 from _____ firms, including the Program Manager.

The SOQs were reviewed by SAWS and assigned a score based on the evaluation criteria and scoring method set forth in the RFQ.

Based on the evaluations and scoring of the SOQs, SAWS determined that the Program Manager possessed the best qualifications for the performance of the contract services among the firms responding to the RFQ.

In _____ of 2011, SAWS initiated negotiations with the Program Manager for performance of the contract services, which have concluded with this Agreement.

On ____ __, 2011, by Resolution No. _____, the governing body of SAWS authorized the execution and delivery of this Agreement on behalf of SAWS.

SAWS desires to receive, and the Program Manager desires to provide, the contract services under the terms and conditions of this Agreement.

In consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

SAMPLE

ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Agreement, the following words and terms shall have the respective meanings set forth in this Section.

“Affiliate” means any person directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

“Agreement” means this Program Management and Engineering Services Agreement for the performance of the Contract Services in connection with the Program between SAWS and the Program Manager, including the Appendices, as the same may be amended or modified from time to time in accordance herewith.

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Agreement and identified as such in the Table of Contents.

“Applicable Law” means (1) any federal, State or local law, code, regulation, consent order or agreement; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; and (4) any Governmental Approval, in each case having the force of law and applicable from time to time to: (a) the siting, permitting, design, acquisition, construction, equipping, start-up, testing, operation, maintenance, repair, replacement or management of water treatment facilities, including the facilities contemplated by the Project; (b) the conveyance, treatment, storage or supply of Raw Water; (c) the air emissions therefrom; (d) the transfer, handling, transportation or disposal of Residuals; and (e) any law pertaining to water treatment, health, safety, fire, environmental protection and building codes.

“Capacity Demonstration Plan” has the meaning specified in Section 3.13 (Project Performance Standards).

“Capacity Demonstration Test” has the meaning specified in Section 3.3 (Project Completion Schedule).

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferences with, delays or increases the cost of performing the Scope of Services:

- (1) the adoption, amendment, promulgation, issuance, modification, repeal or written change in any Applicable Law, or the administrative or judicial interpretation thereof, on or after the Contract Date, unless such Applicable Law was on or prior to the Contract Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(2) the order or judgment of any Governmental Body issued on or after the Contract Date enforcing any Change in Law described in subsection (1) of this definition to the extent such order or judgment is not the result of intentional or negligent action, error or omission or lack of reasonable diligence of the Program Manager; or

(3) the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Contract Date in connection with the issuance, renewal or failure of issuance or renewal of, any Governmental Approval to the extent that such occurrence is not the result of intentional or negligent action, error or omission or a lack of reasonable diligence of the Program Manager.

“City” means the City of San Antonio, Texas.

“CMAR” means any construction manager at risk selected by SAWS in accordance with Section 271.118 of the Texas Local Government Code, for the performance of construction manager at risk services in connection with the Program.

“CMAR Agreement” means the construction manager at risk agreement between the CMAR and SAWS.

“Concentrate” means the membrane output stream that contains Raw Water rejected by the membrane, including dissolved solids and other concentrated Raw Water constituents.

“Contract Date” means the date this Agreement is fully executed and delivered by the parties hereto.

“Contract Services” means the services required to be performed by the Program Manager under this Agreement, except for the Warranty Period Services, including program management, professional engineering, planning, geological consulting, environmental permitting, construction administration and testing services, as more particularly described in the Scope of Services set forth in Appendix 1.

“Deliverable Material” has the meaning set forth in subsection 3.4(C).

“Design Engineer Subcontractors” means the professional engineering firms engaged by the Program Manager for the performance of the Subcontracted Design Services.

“Design Project Completion Date” has the meaning specified in Appendix 3.

“Electrical Infrastructure” means the electrical supply infrastructure required for the Project.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Final Record Drawings” has the meaning set forth in subsection 7.7(B).

“Governmental Approvals” means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Project.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Initial Term” has the meaning set forth in Section 5.1.

“Injection Wells” means the injection wells to be drilled into the Edwards Formation for the disposal of Residuals.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a material bearing upon this Agreement or the performances of the parties hereunder, and all appeals therefrom.

“Loss-and-Expense” means, and is limited to, any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, tax, cost or expense relating to third-party claims for which the Program Manager is obligated to indemnify the SAWS Indemnitees hereunder, including all Fees and Costs.

“Lump Sum” has the meaning specified in Section 4.2.

“Maximum Compensation” has the meaning specified in subsection 4.4(A).

“MGD” means million gallons per day.

“Notice to Proceed” means a written notice delivered by SAWS to the Program Manager in accordance with subsection 3.1(B), directing the Program Manager to commence its performance of the Contract Services with respect to a particular phase of the Scope of Services.

“Pipelines” means the pipelines and related assets for the conveyance of Raw Water, Treated Water and Residuals, including a Raw Water conveyance system, a Treated Water conveyance system, a Residuals disposal conveyance system, production well pumps, injection well pumps, a post treatment storage tank and pre-injection facilities.

“Plant” means a 10 MGD reverse osmosis plant (expandable ultimately up to 40 MGD) for the treatment of Raw Water, and related administration, laboratory, access road and yard piping.

“PM Representative” has the meaning specified in subsection 3.8(A).

“Production Wells” means the wells to be drilled into the Carizzo Formation for the production of Raw Water.

“Program Manager” means _____, a _____ organized and existing under the laws of the State of _____ and authorized to do business in the State of Texas.

“Program Manager Fault” means any breach (including the untruth or breach of any representation or warranty herein set forth), failure, non-performance or non-compliance by the Program Manager with respect to its obligations and responsibilities under this Agreement, and which materially and adversely affects SAWS’ rights, obligations or ability or costs to perform under this Agreement.

“Project” means the Production Wells, Pipelines, Plant, Injection Wells, Electrical Infrastructure and Project SCADA System, as more particularly described in the Scope of Services.

“Project Completion Date” means the date by which planning, permitting, design, construction, and commissioning of the Project, and successful performance of the Capacity Demonstration Test, has actually occurred.

“Project Completion Schedule” means the schedule for the completion of each phase of the Scope of Services, as set forth in Appendix 3.

“Project SCADA System” means the supervisory control and data acquisition system required for the Project.

“Raw Water” means brackish groundwater made available for treatment by the Plant.

“Relief Event” means (1) a Change in Law; (2) a force majeure event; (3) unreasonable delays by a Governmental Body in issuing any required Governmental Approval; (4) action or inaction by SAWS that is materially inconsistent with the Contract Administration Assumptions; or (5) action or inaction by the CMAR that is materially inconsistent with the CMAR Performance Assumptions, to the extent that any such act, event or circumstance is beyond the reasonable control of the Program Manager and is not caused by the Program Manager’s breach of this Agreement, or willful or negligent act, error or omission, or failure to act in accordance with the Standard of Care, including the duty to mitigate.

“Renewal Term” has the meaning specified in Section 5.1(B).

“Required Insurance” has the meaning specified in Appendix 6.

“Residuals” means any semi-solid or solid material resulting from the treatment of Raw Water which requires disposal as waste material.

“RFQ” means the Request for Qualifications for Program Management and Professional Engineering Services for the Brackish Groundwater Desalination Program, Solicitation No: P-10-009-DS, issued by SAWS on _____, 2011.

“SAWS” means the San Antonio Water System, an agency of the City established and created pursuant to the provisions of Ordinance No. 75686 and Texas Local Government Code Sections 402.141 et seq.

“SAWS Indemnitee” has the meaning set forth in Section 6.2.

“SAWS Representative” has the meaning set forth in subsection 3.11(B).

“Scheduled Project Completion Date” means October 1, 2016.

“Scope of Services” means the services set forth in Appendix 1.

“Standard of Care” has the meaning specified in Section 3.5.

“State” means the State of Texas.

“Subcontracted Design Services” means the professional architectural and engineering design services to be performed by the Design Engineer Subcontractors pursuant to this Agreement under the supervision and direction of the Program Manager with respect to the development and completion of each package of engineering plans, drawings and specifications that are prepared for each component of the Project.

“Subcontractor” means the Design Engineer Subcontractors, subconsultants and every other person (other than employees of the Program Manager) employed or engaged by the Program Manager or any person directly or indirectly in privity with the Program Manager (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the performance of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise. The term “Subcontractor” does not include the CMAR.

“Term” means the period of the Initial Term and the Renewal Term, if any.

“Treated Water” means Raw Water which is treated at the Plant for conveyance to the SAWS drinking water system.

“Warranty Period” means a period of two years from the end of the Term.

“Warranty Period Services” means the services to be provided by the Program Manager during the Warranty Period, as set forth in subsection 3.1(C) (Warranty Period Services).

SECTION 1.2. INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after the date of execution and delivery of this Agreement.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ, the statement of qualifications of the Program Manager submitted in response thereto, and any amendments or supplements to any of the foregoing.

(F) Causing Performance. A party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Agreement.

(G) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly or by reimbursement to the other party.

(H) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(I) Applicable Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Texas.

(J) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

(K) No Third-Party Rights. This Agreement is exclusively for the benefit of SAWS and the Program Manager and shall not provide any third parties (with the sole exception of the rights of any third-party SAWS Indemnitee to the extent provided in Section 6.2) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(L) Approvals. Except as otherwise specifically provided in this Agreement, all approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(M) Defined Terms. The definitions set forth in Section 1.1 shall control in the event of any conflict with any definitions used in the recitals hereto.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE PROGRAM
MANAGER.

The Program Manager hereby represents and warrants that:

(A) Existence and Powers. The Program Manager is a _____
duly organized, validly existing and in good standing under the laws of the State of
_____, with the full legal right, power and authority to enter into and perform its
obligations under this Agreement.

(B) Due Authorization and Binding Obligation. This Agreement has been
duly authorized, executed and delivered by all necessary corporate action of the Program
Manager and constitutes the legal, valid and binding obligation of the Program Manager,
enforceable against the Program Manager in accordance with its terms, except to the extent
that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting
creditors' rights from time to time in effect and equitable principles of general application.

(C) Information Supplied by the Program Manager. The information
supplied and representations and warranties made by the Program Manager in all submittals
made in response to the RFQ with respect to the Program Manager (and to the best of its
knowledge after due inquiry, all information supplied in such submittals with respect to any
Subcontractor) are true, correct and complete in all material respects.

(D) No Conflict of Interest. The Program Manager understands that the
City's Charter and Ethics Code prohibit any City officer or employee, as such terms are defined
in the Ethics Code, from having a financial interest, directly or indirectly, in any contract with
the City or any City agency, including SAWS. The Program Manager represents and certifies
that its officers, employees and agents are neither officers nor employees of the City or SAWS,
and that it has tendered to SAWS all necessary disclosures and other documents in compliance
with the City's Ethics Code, including, without limitation, a discretionary contracts disclosure
statement.

(E) Registration. The Program Manager is registered with the Texas Board of
Professional Engineers as required by Applicable Law.

ARTICLE III
PERFORMANCE OF THE CONTRACT SERVICES

SECTION 3.1. SCOPE OF SERVICES.

(A) Generally. The Program Manager shall render and perform the Contract Services to and for SAWS in accordance with the Scope of Services set forth in Appendix 1 and the terms and conditions of this Agreement. The Program Manager's responsibility to perform the Contract Services shall include the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Scope of Services, and the performance of all services reasonably inferable from the Scope of Services.

(B) Phases of the Project; Notices to Proceed. The Program Manager acknowledges that the Scope of Services is segregated into discrete phases associated with the implementation of the Project. The Program Manager shall commence performing the Contract Services associated with each specific phase identified in Appendix 1 (Scope of Services Description) only upon the issuance by SAWS of a Notice to Proceed with the specific phase. SAWS shall have the right to issue a Notice to Proceed with a specific phase of the Scope of Services at any time in consultation with the Program Manager, whether prior or subsequent to the completion by the Program Manager of any other phase of the Contract Services. In no event shall the Program Manager be entitled to compensation for the performance of Contract Services associated with a specific phase of the Scope of Services prior to the issuance by SAWS of a Notice to Proceed with the specific phase.

(C) Warranty Period Services. The Program Manager shall also render and perform, on an as-needed basis, any additional professional services required by SAWS relating to the Project during the Warranty Period in the event that SAWS elects to renew and extend the Initial Term (the "Warranty Period Services"). The nature and extent of any such Warranty Period Services, and the compensation therefor, shall be negotiated by the parties, acting reasonably.

SECTION 3.2. CHANGES TO THE SCOPE OF SERVICES.

(A) Generally. SAWS shall have the right to make changes to the Scope of Services at any time and for any reason, in its sole and absolute discretion, by written notice to the Program Manager, subject to the terms and conditions of this Section. Changes to the Scope of Services may be made by SAWS to account for a Relief Event or any other reason determined by SAWS.

(B) Changes that Expand the Scope of Services. The Program Manager shall be entitled to an equitable adjustment to the Maximum Compensation and the Project Completion Schedule in the event of any expansion of the Scope of Services pursuant to this Section; provided, however, that compensation to the Program Manager for any additional services performed pursuant to any such expansion of the Scope of Services shall be in accordance with the hourly billing rates established pursuant to Section 4.1(C) (Hourly Rate Compensation for Contract Services Other Than Subcontracted Design Services). Any expansion of the Scope of Services under this subsection shall require a written agreement between the parties setting forth the specific amendment to the Scope of Services and the equitable adjustment to the Maximum Compensation and the Project Completion Schedule.

The Program Manager shall not be entitled to compensation for any additional services beyond the Scope of Services unless, prior to the performance of any such additional services, the Program Manager shall have received express written authorization from SAWS through its Director of Engineering to perform the additional services. In the absence of any SAWS-directed change to the Scope of Services, the Program Manager shall have no obligation to perform work outside the Scope of Services.

(C) Changes that Reduce the Scope of Services. SAWS shall have the right to reduce the Scope of Services at any time by written notice to the Program Manager. Changes to the Scope of Services that reduce the Scope of Services shall be effective upon the delivery of the written notice by SAWS pursuant to this subsection. Any reduction in compensation attributable to the reduction in the Scope of Services shall be addressed as provided in subsection 4.4(A) (Maximum Compensation).

SECTION 3.3. PROJECT COMPLETION SCHEDULE.

(A) Generally. The Project Completion Schedule is set forth in Appendix 3 (Project Completion Schedule). The Project Completion Schedule includes time allowances for all work necessary to plan, permit, design, construct, and commission the Project, as well as an allowance for the performance of the test required in order to demonstrate the capacity of the Project to meet the treated water quality standards and water production levels in accordance with the Capacity Demonstration Plan (the “Capacity Demonstration Test”). Project commissioning and the performance of the Capacity Demonstration Test shall not be performed until Substantial Completion of the construction of the Project. The Capacity Demonstration Test shall be successfully performed by the Scheduled Project Completion Date.

(B) Substantial Completion. Substantial Completion shall occur when all of the following conditions have been satisfied:

(1) the Program Manager has submitted and SAWS has approved in writing, a certification by the CMAR that construction of the Project is physically complete and all other work pertaining to the Project, except the Capacity Demonstration Test, is complete and in all respects is in compliance with this Agreement;

(2) a preliminary or temporary certificate of occupancy has been issued for the Project, if required by Applicable Law; and

(3) the Program Manager or the CMAR is authorized by all appropriate Governmental Bodies to perform the procedures necessary to conduct the Capacity Demonstration Test.

(C) Time of the Essence. Time is of the essence in the performance of the Program Manager’s duties under this Agreement. The Program Manager shall complete the various phases of work, tasks, and milestones under this Agreement in strict accordance with the Project Completion Schedule. In particular, the Program Manager shall cause the design of the Project to be completed by the Design Project Completion Date identified in the Project Completion Schedule, and shall work with the CMAR to cause the Project Completion Date to occur on or before the Scheduled Project Completion Date. The Program Manager acknowledges and agrees that any delays in the Program Manager’s completion of its Scope of

Work under this Agreement or performance beyond the number of days agreed to herein for completion of a milestone, task or phase of the Scope of Work, will cause injury and damage to SAWS. SAWS reserves the right to extend the Project Completion Schedule as SAWS deems necessary.

SECTION 3.4. CHANGES TO THE PROJECT COMPLETION SCHEDULE.

(A) Suspension and Delay. SAWS may elect to suspend the Program Manager's efforts for any reason and, in such event, the total time expended by the Program Manager 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 SAWS elects to suspend the Program Manager's efforts for more than 30 consecutive days, the Project Completion Schedule and time for completion shall be equitably adjusted, expanded or lengthened as appropriate to complete the required Scope of Work. The Program Manager shall notify SAWS of any additional time the Program Manager believes it is entitled to within 15 days of its receipt of a request to resume suspended work or for additional Deliverable Material outside the Scope of Work or changes in the Scope of Work, or such claim shall be deemed to have been conclusively waived.

(B) Delay in Authorization of Particular Phases. If within 180 consecutive days after the Program Manager's full and final completion of any milestone, task or phase of the Scope of Work, SAWS does not authorize the Program Manager to proceed with the next subsequent milestone, task or phase of the Deliverable Material, and such delay in authorization is solely the fault of SAWS, and not the result of a delay by the Program Manager or a Governmental Body, then SAWS' delay in authorizing the Program Manager to proceed with such phase will be deemed to have been a suspension of the Project by SAWS, enabling the Program Manager to have the right to initiate termination of this Agreement as provided in subsection 5.3(B).

(C) Relief Events. Should the Program Manager's performance of a critical activity be materially delayed by a Relief Event and the delay caused by the Relief Event could not have been known, foreseen, avoided or mitigated by the Program Manager by any reasonable method or action, the Program Manager shall be entitled to an extension of the time in which to complete such activity. The Program Manager shall not be entitled to any increase in compensation as a result of a Relief Event, except when a Relief Event causes Project conditions to change such that the Program Manager's activities completed at the time of the Relief Event must be revised. In such event, SAWS and the Program Manager shall negotiate reasonable additional compensation only for activities required by the Program Manager to complete the changes attributable solely due to the Relief Event. The extension of time for a Relief Event shall be a period equal to the time lost by reason of the delay, provided the Program Manager has taken all reasonable steps to proceed with the performance of the Agreement and has provided SAWS with written notice of the delay and any corrective action taken to mitigate the delay. The term "delay by a Governmental Body" shall include delays that are outside the control of the Program Manager and the result of the lack of Governmental Approvals from Governmental Bodies, which are not due to the late filing or request of the Program Manager, and which should not have been known or reasonably foreseeable by the Program Manager. Within 30 days from the occurrence of any Relief Event, the Program Manager shall give written notice thereof to SAWS stating the reason for such extension and the actual time necessitated thereby or such claim shall be deemed to have been conclusively waived.

(D) Payment for Hindrance or Delay. Except as provided in subsection (D) of this Section, the Program Manager 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 Scope of Work, whether such hindrance or delay be avoidable or unavoidable.

SECTION 3.5. RESPONSIBILITY FOR PERFORMANCE.

(A) Reliance. The Program Manager acknowledges and agrees that SAWS is entering into this Agreement in reliance on the Program Manager's expertise with respect to the Contract Services.

(B) Responsibility for Employees, Agents and Subcontractors. All obligations of the Program Manager under this Agreement shall be performed by employees, agents or Subcontractors (subject to the limitations set forth in Section 3.9 (Subcontractors)) of the Program Manager who are experienced and skilled in their business or profession and in accordance with the standards of their business or profession and the requirements of this Agreement. The Program Manager shall be fully responsible, in accordance with the terms and conditions of this Agreement, for all Contract Services performed by its employees, agents or Subcontractors to the Standard of Care, including the Subcontracted Design Services as provided in Section 3.10 (Design Services).

(C) Completeness and Accuracy of Deliverable Material. The Program Manager shall be fully responsible for the completeness and accuracy of all work, data, documents, drawings, specifications and other deliverables required hereunder that are prepared by its employees, agents or Subcontractors ("Deliverable Material"). In no event shall SAWS be responsible for discovering deficiencies in any Deliverable Material. The Program Manager shall correct any deficiencies in the Deliverable Material at its sole cost and expense and without any additional compensation hereunder. All design and engineering Deliverable Material submitted for final approval by SAWS or for issuance of a Governmental Approval shall be dated, signed and sealed by a licensed professional engineer registered in the State. Any partial submittal of Deliverable Material shall bear an appropriate notice that such submittal is a partial submittal only.

SECTION 3.6. STANDARD OF CARE.

(A) Standard of Care. In performing the Contract Services, the Program Manager shall use the degree of skill, care and diligence applicable to program managers and professional engineers having experience with programs and projects similar in scope, function, schedule, budget, quality and complexity to the Program and the Project and having responsibilities similar to those of the Program Manager under this Agreement.

(B) Failure to Perform in Accordance with the Standard of Care. The Program Manager shall be responsible for all actual and direct damages incurred by SAWS as a result of the failure of the Program Manager to properly perform, or cause to be performed by the Design Engineer Subcontractors and other Subcontractors, its obligations under this Agreement in accordance with the Standard of Care. The Program Manager shall not be entitled to any compensation for Contract Services not performed in accordance with the Standard of Care.

SECTION 3.7. COMPLIANCE WITH FUNDING AGENCY REQUIREMENTS.

The Program Manager shall comply with the TWDB requirements set forth in Appendix 7 (TWDB Requirements). The Program Manager shall include requirements substantially identical to those set forth in Appendix 7 in all of its subcontracts in a manner that effectively establishes the right of TWDB to enforce such requirements. The Program Manager shall also comply with any guidelines promulgated from time to time by the TWDB with respect to TWDB-funded projects procured using the CMAR project delivery method. In the event the U.S. Environmental Protection Agency or any other Governmental Body provides grant or loan funding for the Contract Services, the Program Manager shall comply, and shall cause its Subcontractors to comply, with any requirements imposed by such agency as a condition to funding.

SECTION 3.8. COMPLIANCE WITH APPLICABLE LAW.

The Program Manager shall design the Project to meet all requirements of Applicable Law, and shall comply and cause its Subcontractors to comply with Applicable Law in the performance of the Contract Services. Without limiting the generality of the foregoing, the Program Manager shall ensure that all persons performing Contract Services, including all employees, agents and Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body.

SECTION 3.9. PERSONNEL.

(A) Program Manager Representative. The Program Manager shall designate an individual licensed to practice as a professional engineer in the State who shall serve as the Program Manager's principal representative with respect to its obligations under this Agreement (the "PM Representative"). The PM Representative is identified in Appendix 4 (Key Personnel and Subcontractors). The PM Representative shall attend all meetings of an official nature concerning the performance of the Contract Services, including, but not limited to, scope meetings, review meetings, pre-bid meetings, pre-construction meetings and construction meetings with SAWS staff, consultants and contractors, including the CMAR, and shall be responsible for providing executive or management expertise and oversight with respect to the performance of the Contract Services. If the Program Manager formally or informally replaces the PM Representative absent SAWS' request and absent good cause shown, (as defined in subsection (B) of this Section), a deduction of \$150,000 shall be applied to the compensation otherwise payable by SAWS to the Program Manager pursuant to Article IV for performance of the Contract Services. Any successor PM Representative shall be subject to the approval of SAWS through its Director of Engineering given in its sole discretion.

(B) Key Personnel. The Program Manager acknowledges that the identity of the key management and supervisory personnel identified by the Program Manager and its Subcontractors in its statement of qualifications submitted in response to the RFQ was a material factor in the selection of the Program Manager to perform the Contract Services. Such personnel, their affiliations and anticipated roles in the performance of the Contract Services are set forth in Appendix 4 (Key Personnel and Subcontractors). The Program Manager shall utilize such personnel to perform the services indicated in Appendix 4 unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the Program Manager or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement or resignation. In the event of any

such permissible unavailability, the Program Manager shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any personnel change shall be proposed to SAWS for its review, consideration and determination of compliance with this subsection with reasonable advance notice. The Program Manager shall replace any individual at the request of SAWS, after notice and a reasonable opportunity for corrective action, in the event that SAWS determines, in its reasonable discretion, that an unworkable relationship has developed between SAWS or the CMAR and the individual.

(C) Co-Location in San Antonio. Promptly following the execution of the CMAR Agreement, the Program Manager shall jointly establish a common office in San Antonio. The purpose of this co-location requirement is to facilitate, coordinate, and optimize the performance by the Program Manager and the CMAR of their respective services to SAWS. The common office shall be located at a site approved by SAWS, in Bexar County, within 20 miles of SAWS' Aquifer Storage and Recovery Facility, and shall be maintained for the Term. The PM Representative shall be resident at the common office, and the Contract Services directed and performed principally by the PM Representative shall be directed and performed primarily out of the common office.

SECTION 3.10. SUBCONTRACTORS.

(A) Generally. The Program Manager may use Subcontractors for the performance of the Contract Services, subject to the restrictions set forth in this Section. The Program Manager shall be fully responsible to SAWS for the performance of all work under this Agreement performed by any Subcontractor.

(B) Reporting of Payments. The Program Manager shall be required to report the actual payments to all Subcontractors, utilizing the Subcontracting Payment and Utilization Reporting (S.P.U.R.) System, in the time intervals and format prescribed by SAWS.

(C) Approval Required. The Subcontractors identified in Appendix 4 (Key Personnel and Subcontractors) are approved by SAWS for the performance of the specific services identified in Appendix 4, subject to the rights of SAWS under this Section. The Program Manager shall retain such Subcontractors to perform such services, unless otherwise agreed to in writing by SAWS. All other Subcontractors shall be subject to the approval of SAWS, which approval shall not be unreasonably withheld. The Program Manager shall replace any Subcontractor at the request of SAWS, after notice and a reasonable opportunity for corrective action, in the event that SAWS determines, in its reasonable discretion, that an unworkable relationship has developed between SAWS or the CMAR and the Subcontractor.

(D) Percentage of Deliverable Material to be Performed by Subcontractors. The Program Manager shall not, without the prior written approval of the SAWS Representative, change (1) the overall percentage of Contract Services to be performed by Subcontractors, as specified in Appendix 4 (Key Personnel and Subcontractors), by more than a total of three percent (3%) or (2) the percentage of Contract Services to be performed by any one Subcontractor by more than three percent (3%).

SECTION 3.11. SUBCONTRACTED DESIGN SERVICES.

The Contract Services include establishing the design standards for the various components of the Project and all other design engineering services required for Project

completion. The Program Manager shall not, however, self-perform, either directly or through any Affiliate, any Subcontracted Design Services. All Subcontracted Design Services shall be performed by the Design Engineer Subcontractors listed in Appendix 4 (Key Personnel and Subcontractors) in accordance with the requirements of this Agreement under the direct supervision of the Program Manager in accordance with good engineering and design practice. The Program Manager shall, notwithstanding these requirements, be responsible for the performance of all of the Subcontracted Design Services as if directly performed by the Program Manager, and shall maintain professional liability insurance with respect thereto as provided in subsection 6.1(B) (Professional Liability Insurance for Design Services.)

SECTION 3.12. COORDINATION WITH SAWS.

(A) Meetings and Reports. The Program Manager shall hold periodic meetings and conferences with SAWS, at least monthly, to verify and confirm that the development of the Project (1) has the full benefit of SAWS' experience and knowledge of existing needs and facilities, and (2) is consistent with SAWS' current policies and standards. The Program Manager shall keep SAWS regularly informed as to the progress of the Contract Services through the submittal of periodic reports in accordance with the requirements set forth in the Scope of Services.

(B) SAWS Representative. SAWS has designated the Manager of Engineering to administer this Agreement and act as the SAWS representative for the Program Manager in connection with the Contract Services (the "SAWS Representative"). The SAWS Representative shall have the authority to transmit instructions, receive information and interpret and define SAWS' policies and decisions with respect to materials, equipment elements and systems pertinent to the performance of the Contract Services. The Program Manager understands and agrees that the SAWS Representative has only limited authority with respect to the implementation of this Agreement and cannot bind SAWS with respect to any amendment of this Agreement or to incurring costs in excess of the amounts appropriated therefor.

(C) Information Provided by SAWS. SAWS shall make available for the Program Manager's use in the performance of the Contract Services all existing plans, maps, field notes, statistics, computations, and other data in SAWS' possession relative to existing facilities and to the Project, as requested in writing by the Program Manager, at no cost to the Program Manager. All such SAWS provided information is provided to the Program Manager for the sole purpose of the Program Manager's convenience and for use in relation to the performance of the Contract Services. The Program Manager shall promptly notify SAWS in writing when it reasonably believes or suspects that information provided by SAWS is not accurate or cannot be checked. Any and all information provided by SAWS shall remain the property of SAWS and shall be returned to SAWS upon written demand by SAWS to the Program Manager.

(D) Required Design Information. Notwithstanding the provisions of subsection (C) of this Section, the Program Manager shall be responsible for obtaining or verifying all water quality, geotechnical and other information required in order to properly design the Project so that it performs in accordance with Applicable Law, and so that it is constructed in accordance with Applicable Law and all applicable industry codes and standards. In particular, the Program Manager shall independently perform pilot testing on Raw Water to confirm its parameters and characteristics for use in establishing the basis of

design of the Project, or shall independently verify such information provided by SAWS based on previous pilot testing work done by third parties.

(E) Revisions to Drawings and Specifications. Notwithstanding anything in this Agreement to the contrary, the Program Manager shall, at no additional expense to SAWS, provide reasonable minor revisions, whether previously approved and accepted, as may be required to satisfy the Scope of Work established by this Agreement. 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 Agreement. The Program Manager shall make, without additional expense to SAWS, such reasonable minor revisions or corrections to the Deliverable Material as may be required.

SECTION 3.13. PROJECT PERFORMANCE STANDARDS.

In order to develop the design of the Project in an optimal, efficient and expeditious manner, the Program Manager shall initially develop a set of performance standards that the Project will be expected to meet when operated and maintained in accordance with good industry practice. The performance standards shall include specific Project treated water quality standards and water production levels, based on specified assumed raw quality parameters developed by the Program Manager in the performance of the Contract Services. The Program Manager will then develop options for technology, equipment, system layout and design and construction quality standards that will meet the performance standards, together with recommendations for SAWS' consideration. The Program Manager shall also develop a plan of commissioning and testing in order to demonstrate the capacity of the Plant to meet the treated water quality standards and water production levels (the "Capacity Demonstration Plan").

SECTION 3.14. COST ESTIMATES.

Any estimates of probable cost of construction of the Project made by the Program Manager are matters of opinion only, and any discrepancy between estimated cost and actual cost shall not create any liability for the Program Manager.

ARTICLE IV
COMPENSATION

SECTION 4.1. HOURLY RATE COMPENSATION FOR CONTRACT SERVICES OTHER THAN SUBCONTRACTED DESIGN SERVICES.

The Program Manager shall be paid on the basis of hourly rates for the performance of all Contract Services, except for the Subcontracted Design Services, subject to the Maximum Compensation. The hourly rates applicable to the performance of the Contract Services are set forth in Appendix 5 (Maximum Compensation and Payment Terms and Conditions). Such hourly rates shall be paid on the basis of employee classifications set forth in Appendix 5, irrespective of whether the employee is employed by the Program Manager or a Subcontractor. The Program Manager acknowledges and agrees that the hourly rates set forth in Appendix 5 include all overhead and profit for the performance of all Contract Services, except for the Subcontracted Design Services, and that, except as set forth in Section 4.2, the Program Manager shall be entitled to no additional payment for the performance of the Contract Services.

SECTION 4.2. LUMP SUM COMPENSATION FOR SUBCONTRACTED DESIGN SERVICES.

The Program Manager shall be paid a total lump sum in the amount of \$_____ for the performance of the Subcontracted Design Services (the “Lump Sum”). The Program Manager shall prepare a progress payment schedule in accordance with Appendix 5 (Maximum Compensation and Payment Terms and Conditions) and shall be paid the Lump Sum on a progress payment basis in accordance with the terms and conditions of this Section and Appendix 5.

SECTION 4.3. NEGOTIATED COMPENSATION FOR CONTRACT SERVICES DURING THE WARRANTY PERIOD.

The Program Manager shall be paid on the basis of hourly rates for the performance of all Warranty Period Services. The hourly rates applicable to the performance of the Warranty Period Services shall be negotiated between SAWS and the Program Manager in the event that SAWS requires any Warranty Period Services.

SECTION 4.4. GENERAL COMPENSATION PROVISIONS.

(A) Maximum Compensation. The Program Manager acknowledges and agrees that the maximum amount of hourly rate compensation payable for the performance of all Contract Services associated with each specific phase of the Scope of Services shall not exceed the amount set forth in Appendix 5 (Maximum Compensation and Payment Terms and Conditions) as the maximum compensation for the specific phase of the Scope of Services (the “Maximum Compensation”). The Program Manager shall be responsible for all costs and expenses necessary to complete the Contract Services associated with any specific phase of the Scope of Services in excess of the Maximum Compensation. If the actual or projected costs to perform the Contract Services associated with any specific phase of the Scope of Services are less than the Maximum Compensation associated with such phase, including any reductions attributable to reductions in the Scope of Services pursuant to subsection 3.2(C) (Changes that

Reduce the Scope of Services), the difference shall accrue to SAWS and may be reallocated in the sole discretion of SAWS to other phases of the Scope of Services.

(B) Changes to Maximum Compensation. The Maximum Compensation shall be subject to adjustment solely in accordance with Section 3.2 (Changes to the Scope of Services) and Section 4.5 (Performance Incentives).

(C) No Reimbursable Costs. The Program Manager shall not be entitled to any additional reimbursement for any meals, lodging, transportation, or other incidental expenses, in excess of the compensation provided in Sections 4.1 (Hourly Rate Compensation for Contract Services other than Subcontracted Design Services) and 4.2 (Lump Sum Compensation for Subcontracted Design Services). Consideration for such costs has been included in the hourly rates and Lump Sum amounts.

(D) Invoices and Payment. The Program Manager shall provide SAWS with an invoice for the performance of the Contract Services on a monthly basis in accordance with the specific requirements set forth in Appendix 5 (Maximum Compensation and Payment Terms and Conditions). Each invoice shall specify, for any employee paid on the basis of hourly rates, the number of hours worked and billed by such employee during such month, and the applicable phase of the Scope of Services. SAWS shall make payment to the Program Manager of all properly supported invoiced amounts within 30 days of receipt of the invoice, subject to the terms and conditions of the Agreement and the specific withholding rights of SAWS set forth in Appendix 5, provided that the final payment to the Program Manager may be withheld pending delivery to SAWS of the Final Record Drawings, as further described in subsection 7.7(B) (Delivery).

(E) Direct Payments to Suppliers. SAWS, in its sole discretion, shall have the right, but not the obligation to (1) make direct payments to any suppliers to the Program Manager of labor, materials, or equipment; and (2) issue checks jointly payable to the Program Manager and any suppliers to the Program Manager of labor, materials, or equipment. All such payments shall be deemed payments made to the Program Manager for purposes hereof. SAWS may exercise the rights in this subsection only in the event that (a) there is not a good faith dispute between the Program Manager and its suppliers of labor, materials or equipment, (b) SAWS has provided at least 10 business days prior written notice to the Program Manager, (c) such payment is necessary in the opinion of SAWS to continue with the timely progress of the Scope of Work under this Agreement, and (d) authorization is made by the President or a Vice President of SAWS.

(F) Non-Compliant Services. Nothing contained in this Agreement shall require SAWS to pay for any unsatisfactory or duplicative work or for work that is not in compliance with the terms of this Agreement. SAWS shall not be required to make any payments to the Program Manager at any time the Program Manager is in breach or default under this Agreement.

SECTION 4.5. PERFORMANCE INCENTIVES.

(A) General. SAWS shall pay the Program Manager performance incentive payments, available as several components, to reward completion of the Project: (1) on or under budget, (2) on schedule or earlier than scheduled, and (3) with the cost of change orders representing a minimal percentage of Project construction costs, as further described in

subsection (B) of this Section. In addition, SAWS may, but shall not be obligated, to pay the Program Manager a performance incentive payment to reward the superior performance of the Contract Services, as further described in subsection (C) of this Section. The Program Manager's entitlement to any performance incentive payments is subject to the following: (1) the total amount of all performance incentive payments available for the Program Manager is \$250,000; (2) all performance incentive payments may be withheld pending delivery to SAWS of the Final Record Drawings, as further described in subsection 7.7(B); and (3) successful completion of the Capacity Demonstration Test. An example of the computation of performance incentive payments is included in Appendix 8 (Performance Incentive Payment Example).

(B) Non-Discretionary Performance Incentives. The amount of all non-discretionary performance incentive payments available for the Program Manager is \$200,000, of which each component is further described below.

(1) The total Project cost budget shall be determined by SAWS with the assistance of the Program Manager and the CMAR. If the total Project cost is on or under budget, SAWS shall pay the Program Manager a performance incentive payment of \$87,500. If the Project is over budget, the Program Manager shall not receive a performance incentive payment for this component.

(2) The total performance incentive payment available for completion of the Project on or before the Scheduled Project Completion Date is \$87,500. The Program Manager shall receive a percentage of such performance incentive corresponding to how many months early the Project is completed. If the Project is completed 5-6 months early, SAWS shall pay the Program Manager 100% of the performance incentive (\$87,500). If the Project is completed 3-5 months early, SAWS shall pay the Program Manager 75% of the performance incentive (\$65,625). If the Project is completed 1-3 months early, SAWS shall pay the Program Manager 50% of the performance incentive (\$43,750). If the Project is completed 0-1 months early, SAWS shall pay the Program Manager 25% of the performance incentive (\$21,875). If the Project is completed later than the Scheduled Project Completion Date, the Program Manager shall not receive a performance incentive payment for this component.

(3) The total Project construction costs shall be determined by SAWS with the assistance of the Program Manager and the CMAR. The total performance incentive payment available for completion of the Project with the cost of change orders representing a minimal percentage of Project construction costs is \$25,000. The Program Manager shall receive a percentage of such performance incentive corresponding to the cost of change orders as a percentage of total Project construction costs. If there are no change orders requiring a monetary adjustment, SAWS shall pay the Program Manager 100% of the performance incentive (\$25,000). If change orders represent an increased cost of 0-1% of Project construction costs, SAWS shall pay the Program Manager 75% of the performance incentive (\$18,750). If change orders represent an increased cost of 1-1.5% of Project construction costs, SAWS shall pay the Program Manager 50% of the performance incentive (\$12,500). If change orders represent an increased cost of 1.5-2% of Project construction costs, SAWS shall pay the Program Manager 25% of the performance incentive (\$6,250). If change orders represent an increased cost of greater than 2% of Project construction costs, the Program Manager shall not receive a performance incentive payment for this component.

(C) Discretionary Performance Incentives. The total discretionary performance incentive payment available to reward the Program Manager for superior performance of the Contract Services is \$50,000. SAWS may award such discretionary performance incentive payment in whole or in part, or not at all, in its sole and absolute discretion. In making its decision, SAWS expects to request the director of engineering, the manager of engineering and the manager of construction to rate the Program Manager on a scale of 1-10 on successful partnering, quality of service, conflict resolution and timeliness of responses. SAWS further expects to compile the scores by (a) averaging the three scores for each component to obtain total scores for each of the four components and then (b) averaging such four total component scores to obtain one final averaged score ranging from 1-10. SAWS expects to consider making any such discretionary award as follows: if the Program Manager's score is 9-10, the performance incentive would be \$50,000; if the Program Manager's score is 8 to less than 9, the performance incentive would be \$37,500; if the Program Manager's score is 7 to less than 8, the performance incentive would be \$25,000; and if the Program Manager's score is less than 7, the Program Manager would not receive a performance incentive payment for this component.

(D) Related CMAR Performance Incentives. The parties acknowledge that the CMAR Agreement is expected to contain similar provisions, with different sums, to incentivize similar performance by the CMAR, and that it is SAWS' intention to award incentive payments to both the Program Manager and to the CMAR, or to neither, in order to incentivize a cooperative and optimally productive working relationship that delivers a superior Project on or under budget, on schedule or earlier than scheduled, and with the cost of change orders representing a minimal percentage of Project construction costs.

SECTION 4.6. AMOUNTS SUBJECT TO APPROPRIATIONS.

The Program Manager agrees that SAWS has projected costs for this Agreement and SAWS expects to pay all obligations of this Agreement from projected revenues of SAWS. All obligations of SAWS are subject to annual appropriations by its Board of Trustees. It is understood that neither this Agreement, nor any representation by any SAWS employee or officer creates any obligation to appropriate or make monies available for the purpose of this Agreement. Accordingly, notwithstanding anything in this Agreement to the contrary, in the event that SAWS fails to appropriate funds to pay any of SAWS' obligations under the terms of this Agreement, then SAWS' obligations under this Agreement shall terminate, and the Program Manager's sole option and remedy shall be to terminate this Agreement by written notice to SAWS, and neither SAWS nor the Program Manager shall have any further duties or obligations hereunder, except as otherwise provided herein. SAWS agrees to use good faith efforts to provide written notice to the Program Manager when funds have been appropriated for expenditure under this Agreement, and if expected funds are requested and not appropriated, SAWS agrees to use good faith efforts to provide written notice to the Program Manager of the non-appropriation.

ARTICLE V
TERM AND TERMINATION

SECTION 5.1. EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall commence on the Contract Date and shall remain in effect until the Project Completion Date; provided, however, that if this Agreement is terminated earlier pursuant to the termination provisions of this Article, the term shall be deemed to have ended as of the date of such termination (the “Initial Term”). Notwithstanding the foregoing, SAWS shall have the right to extend the Initial Term to the extent reasonably necessary to provide for the design and construction of the Project. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. In no event shall the Program Manager be entitled to any compensation for the performance of the Contract Services prior to the issuance by SAWS of a Notice to Proceed in accordance with subsection 3.1(B) (Phases of the Project; Notices to Proceed). At the end of the Term, all obligations of the parties hereunder shall terminate, except as provided in Section 5.5 (Survival of Certain Provisions Upon Termination).

(B) Renewal Term. SAWS shall have the right, upon written notice to the Program Manager, to renew and extend the Initial Term of this Agreement for an additional term extending through the end of the Warranty Period, during which time the Program Manager shall perform the Warranty Period Services (the “Renewal Term”).

SECTION 5.2. SAWS TERMINATION RIGHTS.

(A) Termination for Convenience. SAWS may terminate this Agreement at any time by giving written notice to the Program Manager of such termination and specifying the effective date thereof, at least seven calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other Deliverable Material shall, at the option of SAWS, become its property and the Program Manager shall be paid for all Contract Services performed through the effective date of termination in accordance with the terms and conditions of this Agreement. In no event shall the Program Manager be entitled to any compensation for termination expenses or other losses, costs or expenses associated with the termination of the Program Manager’s right to perform this Agreement under this subsection.

(B) Termination for Cause. In the event of a failure of the Program Manager to fulfill in a timely and proper manner any of its obligations under this Agreement, SAWS may terminate this Agreement for cause by giving written notice stating that a specified default has occurred, which notice shall describe the default in reasonable detail. In such event, the Program Manager shall have a period of 15 days to cure the specified default. If the default is not cured within such 15 day period, SAWS may thereafter terminate this Agreement by sending a subsequent notice of termination, which termination shall be effective upon the sending of the termination. Upon any such termination, (1) all finished or unfinished documents and other Deliverable Material shall, at the option of SAWS, become its property, (2) SAWS shall have the right to withhold any payments then otherwise due the Program Manager for the purpose of set-off until such time as the exact amount of damages due SAWS from the Program Manager is determined, and (3) SAWS shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Agreement and under Applicable Law.

SECTION 5.3. PROGRAM MANAGER TERMINATION RIGHTS.

(A) Termination for Cause. In the event of a failure of SAWS to pay the Program Manager's invoice submitted in accordance with the terms and conditions of this Agreement within 30 days after receipt of the invoice by SAWS, except as provided in subsection 4.3(D), the Program Manager may terminate this Agreement for cause by giving written notice stating the specified default with reference to this subsection. In such event, SAWS shall have a period of 30 days to cure the specified default. If the default is not cured within such 30 day period, the Program Manager may thereafter terminate this Agreement for cause by sending a subsequent notice of termination, which termination shall be effective upon the sending of the termination. Upon any such termination, the Program Manager shall have the right to pursue a cause of action for the amounts due and owing to the Program Manager under this Agreement and to exercise all other remedies which are available to it under Applicable Law.

(B) Termination for Extended Suspension or Delay. In the event SAWS exercises its right under subsection 3.4(A) (Suspension and Delay) to suspend or delay the Project Completion Schedule, and as a result thereof the Program Manager's local personnel devoted primarily to the performance of the Contract Services are idled for a period of time exceeding 180 days, the Program Manager shall have the right to terminate this Agreement by written notice to SAWS, with the same effect as if SAWS had terminated this Agreement for its convenience under subsection 5.2(A) (Termination for Convenience).

SECTION 5.4. OBLIGATIONS OF THE PROGRAM MANAGER UPON SUSPENSION OR TERMINATION.

(A) Obligations of the Program Manager Upon Suspension or Termination. Upon a termination of the Program Manager's right to perform this Agreement under Sections 3.3(B) (Suspension and Delay), 5.2 (SAWS Termination Rights), or 5.3 (Program Manager Termination Rights), or upon expiration of this Agreement, the Program Manager shall, as applicable:

(1) unless a notice of termination or suspension otherwise directs, immediately begin the phase out and the discontinuance of the Contract Services and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and subcontracts are chargeable to SAWS under this Agreement;

(2) within 30 days after receipt of any notice of termination or suspension, submit to SAWS an updated invoice showing in detail the services performed under this Agreement prior to the effective date of termination or suspension; provided, however, that SAWS shall have the option to grant a written extension to the time period for submittal of such statement;

(3) promptly deliver to SAWS all completed or partially completed designs, plans, specifications and other Deliverable Material prepared under this Agreement without further cost or charge to SAWS; and

(4) at SAWS request, assign any Subcontracts to SAWS, on terms and conditions acceptable to SAWS.

(B) Failure of the Program Manager to Comply. Failure of the Program Manager to comply with this Section shall constitute a waiver by the Program Manager of any and all rights or claims to collect monies that the Program Manager may rightfully be entitled to for services performed under this Agreement.

SECTION 5.5. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.

All representations and warranties of the Program Manager contained in Article II, the Program Manager's indemnity obligations in this Agreement with respect to events that occurred prior to the termination date and all other provisions of this Agreement that so provide shall survive the termination of this Agreement. No termination of this Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude SAWS from impleading the Program Manager in any Legal Proceeding originated by a third party as to any matter occurring during the Term.

SECTION 5.6. NO ACCEPTANCE, WAIVER OR RELEASE.

Unless other provisions of this Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as SAWS' acceptance of any Contract Services which are defective, deficient, improper, or otherwise not in compliance with this Agreement, as SAWS' release of the Program Manager from any responsibility, obligation, or liability under this Agreement, as SAWS' extension of the Project Completion Schedule, as an estoppel against SAWS, or as SAWS' acceptance of any claim by the Program Manager:

- (1) SAWS' payment to the Program Manager of all or any portion of the Maximum Compensation;
- (2) review or acceptance by SAWS or the SAWS Representative of any working drawings, submissions, designs, specifications, other documents, certifications, or Contract Services of the Program Manager or any Subcontractor;
- (3) the failure of SAWS, the SAWS Representative or any other person to respond in writing to any notice or other communication of the Program Manager; or any other exercise of rights or failure to exercise rights by SAWS hereunder.

SECTION 5.7. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall SAWS be liable or obligated in any manner to pay any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material falsity or inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 5.8. PAYMENT OF ENFORCEMENT COSTS AND EXPENSES.

The Program Manager agrees to pay SAWS on demand all Fees and Costs incurred by or on behalf of SAWS in successfully enforcing by Legal Proceeding observance of

the covenants, agreements and obligations contained in this Agreement against the Program Manager.

SAMPLE

ARTICLE VI
INSURANCE AND INDEMNIFICATION

SECTION 6.1. INSURANCE

(A) Program Manager Insurance. At all times during the Term, the Program Manager shall obtain and maintain insurance policies in accordance with Appendix 6 (Required Insurance) (the “Required Insurance”). The Program Manager shall pay all premiums with respect to the Required Insurance as the same become due and payable. The Required Insurance shall be provided concurrently with the execution and delivery of this Agreement and shall remain in effect for the entirety of the Term or for such longer period as may be specified in Appendix 6.

(B) Professional Liability Insurance For Subcontracted Design Services. The Program Manager shall maintain professional liability errors and omissions insurance in compliance with the limits, terms and conditions of Appendix 6 (Required Insurance) providing coverage for any professional liability claims relating to the performance of the Subcontracted Design Services. Such coverage shall be effective notwithstanding the provisions of Section 3.11 (Subcontracted Design Services) prohibiting the Program Manager from self-performing the Subcontracted Design Services and requiring that all Subcontracted Design Services be performed by Design Engineer Subcontractors under the Program Manager’s supervision.

(C) Subcontractor Insurance Requirements. The Program Manager shall cause all Subcontractors working on the Reverse Osmosis Treatment Plant and Injection Well Design & Construction to maintain insurance policies in accordance with this Section and Appendix 6 (Required Insurance). The Program Manager shall cause all other Subcontractors to maintain insurance policies in accordance with this Section and Appendix 6, except that such other Subcontractors may maintain professional liability insurance suitable for the work performed by such Subcontractors, subject to the approval of SAWS.

(D) Insurers, Deductibles And SAWS Rights. All insurance required by this Section shall be obtained and maintained from insurance companies, firms or entities that have an A.M. Best rating of "A-" (“A”- minus) or better and a Financial Size Category of a “VII” or better, selected by the Program Manager with the consent of SAWS, which consent shall not be unreasonably withheld, and authorized to write such insurance in the State. The Program Manager shall be responsible for any deductible amounts and the Program Manager shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Program Manager hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to SAWS and the Program Manager, where applicable and as their respective interests may appear; and (2) at least 30 days’ prior written notice of the cancellation thereof to the Program Manager and SAWS. All policies of insurance required by this Section shall be primary insurance with respect to the Program Manager without any right of contribution from other insurance carried by SAWS. SAWS shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld, conditioned or delayed.

(E) Certificates, Policies And Notice. The Required Insurance, and any renewals thereof, shall be evidenced by certificates of insurance as provided in Appendix 6. (Required Insurance) The Program Manager shall provide SAWS with acceptable certificates of

insurance for all Required Insurance and for insurance provided by Subcontractors within seven days following the execution of this Agreement. The Program Manager shall also, at the request and direction of SAWS, provide copies of such policies to any person designated by SAWS from time to time as its insurance representative. Receipt by SAWS of any certificates of insurance or other documentation provided by the Program Manager which indicates coverage in an amount less than required by this Section shall not constitute a waiver of the Program Manager's Required Insurance obligations hereunder.

(F) Maintenance Of Insurance Coverage. The Program Manager shall comply with all applicable Required Insurance and take all steps necessary to assure the continued effectiveness of the Required Insurance. The failure of the Program Manager to obtain and maintain any Required Insurance shall not relieve the Program Manager of its liability for any losses intended to be insured thereby. Should any failure to provide continuous coverage occur, the Program Manager shall indemnify, defend and hold harmless the SAWS Indemnitees in the manner provided in Section 6.2, from and against any Loss-and-Expense arising out of such failure

(G) Insurance Does Not Limit Liability. Neither the maintenance of the Required Insurance, nor any maximum policy limits, shall be construed to limit the Program Manager's liability under this Agreement.

SECTION 6.2. INDEMNIFICATION BY THE PROGRAM MANAGER.

The Program Manager shall indemnify, defend and hold harmless SAWS and its elected officials, appointed officers, employees, representatives, agents, consultants and contractors (each, a "SAWS Indemnitee"), to the fullest extent permitted by Applicable Law, from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a SAWS Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with): (1) any failure by the Program Manager to comply with the Standard of Care; or (2) the negligence, intentional misconduct, errors or omissions of the Program Manager or any of its officers, directors, employees, agents, representatives or Subcontractors in connection with this Agreement. The Program Manager shall also indemnify, defend and hold harmless the SAWS Indemnitees as and to the extent provided elsewhere in this Agreement. The Program Manager's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Program Manager which is intended to respond to such events. The Program Manager shall not, however, be required to reimburse or indemnify any SAWS Indemnitee for any Loss-and-Expense to the extent caused by the negligence or intentional misconduct of any SAWS Indemnitee. A SAWS Indemnitee shall promptly notify the Program Manager of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Program Manager shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the SAWS Indemnitees only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Agreement.

ARTICLE VII
DELIVERY, OWNERSHIP AND USE OF DOCUMENTS

SECTION 7.1. FORM OF DOCUMENTS.

All Final Record Drawings or final construction documents shall be hard copy. All digital drawings provided to SAWS must conform to SAWS' CADD standards, as in effect from time to time. All digital utility layouts must be ready to electronically integrate into SAWS' utility mapping system.

SECTION 7.2. OWNERSHIP AND PUBLIC USE OF DOCUMENTS AND INFORMATION.

The Program Manager acknowledges and agrees that SAWS shall own exclusively any and all documents and information in whatsoever form and character produced or maintained in accordance with, pursuant to, or as a result of this Agreement. The Program Manager shall not use any such Project documents or information, whether prepared by SAWS, the Program Manager, the CMAR or any Subcontractor, for marketing presentations, or any other promotional, professional, or industry purpose without prior written permission from SAWS. No conference presentations shall be made regarding the Project without the prior permission of SAWS. All such documents and information shall be used as SAWS determines and shall be delivered to SAWS at no additional cost to SAWS upon request or completion or termination of this Agreement.

SECTION 7.3. PROTECTION OF PROPRIETARY RIGHTS.

The Program Manager agrees and covenants to protect any and all proprietary rights of SAWS in any material provided to the Program Manager. Such protection of proprietary rights by the Program Manager shall include, but not be limited to, the inclusion in any copy intended for publication a copyright mark reserving all rights to SAWS in any such material provided by SAWS to the Program Manager. Additionally, any materials provided to the Program Manager by SAWS shall not be released to any third party without the written consent of SAWS and shall be returned intact to SAWS upon completion or termination of this Agreement. The provisions of this subsection shall not apply to material in the public domain on the Contract Date or material that subsequently comes into the public domain by other than an unauthorized disclosure.

SECTION 7.4. COPYRIGHT.

The Program Manager hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to SAWS, including all moral rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this Agreement shall be the subject of any application for copyright by the Program Manager. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of SAWS.

SECTION 7.5. INFRINGEMENTS.

The Program Manager shall, at its own expense, indemnify, defend and hold harmless the SAWS Indemnities, in the manner provided in Section 6.2, all suits or

proceedings instituted against SAWS, its officers, agents and employees, based on any claim that the Deliverable Material, 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. If, in any such suit, a restraining order or temporary injunction is granted, the Program Manager 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 Deliverable Material or any part thereof or the process performed thereby is held to constitute an infringement and its use is permanently enjoined, the Program Manager shall immediately make every reasonable effort to secure for SAWS a license at the Program Manager's expense authorizing the continued use of the alleged infringing portion of the Deliverable Material. If the Program Manager is unable to secure the license within a reasonable time, the Program Manager shall at its own expense and without impairing the performance requirements, either provide non-infringing replacements or modify the Deliverable Material to eliminate the infringements.

SECTION 7.6. COPIES AND CHANGES.

The Program Manager may make copies of any and all items of Deliverable Materials for its files. The Program Manager 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. SAWS shall require that any such changes or other use shall be appropriately marked to reflect what was changed or modified. Deliverable Material 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 Program Manager, the hard copy shall govern.

SECTION 7.7. RECORD DRAWINGS.

(A) Use. SAWS may use and rely upon any record drawings in connection with future work in connection with the Program without further verification or authorization by the Program Manager and the Program Manager shall be responsible for the accuracy and correctness of such record drawings. The Program Manager shall make reasonable observations of the Program as constructed to verify the general accuracy of the record drawings provided by the Program Manager to SAWS, but the Program Manager shall not be liable for errors or omissions in information provided by SAWS, its contractors or others outside of the Program Manager's control.

(B) Delivery. On or before the Project Completion Date, the Program Manager shall coordinate with the CMAR to deliver a final and complete reproducible set of "as-built" construction record drawings for all components of the Project (the "Final Record Drawings").

ARTICLE VIII
MISCELLANEOUS

SECTION 8.1. RELATIONSHIP OF THE PARTIES.

The Program Manager is an independent contractor of SAWS and the relationship between the parties shall be limited to performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Agreement or the performance thereof.

SECTION 8.2. ASSIGNMENT.

This Agreement may not be assigned by the Program Manager without the prior written consent of SAWS.

SECTION 8.3. NO THIRD PARTY RIGHTS.

This Agreement is exclusively for the benefit of the City and the Company and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

SECTION 8.4. FURTHER ACTIONS.

The Program Manager shall take all such action as may be required to preserve the enforceability of this Agreement.

SECTION 8.5. CONSENT TO JURISDICTION.

The Program Manager irrevocably: (1) agrees that any Legal Proceeding related to this Agreement or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 8.6. BINDING EFFECT.

This Agreement shall inure to the benefit of SAWS and its successors and assigns and shall be binding upon the Program Manager and its permitted successors and assigns.

SECTION 8.7. AMENDMENTS, CHANGES AND MODIFICATIONS.

This Agreement may not be amended, changed or modified and none of its provisions may be waived, except with the prior written consent of SAWS and the Program Manager.

SECTION 8.8. EQUAL OPPORTUNITY AND SMALL, MINORITY AND WOMEN-OWNED BUSINESSES.

(A) Equal Employment Opportunity. The Program Manager agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, the Program Manager agrees to abide by all applicable provisions of the “Nondiscrimination Clause” on file in the Office of the SAWS’ SMWB Program Manager. In the event non-compliance occurs the Program Manager, upon written notification by SAWS, will commence compliance procedures within 30 days.

(B) Small, Minority and Women-Owned Businesses. The Program Manager acknowledges that it is the policy of SAWS to assist in increasing the competitiveness and qualifications of Small, Minority and Women-Owned Businesses (“SMWB”) to afford greater opportunity for such groups to obtain and participate in SAWS contracts. Program Manager agrees to complete and submit a Good Faith Effort Plan as part of its response to SAWS’ RFQ. The Program Manager shall take all reasonable steps to comply with, and maintain compliance with at least the minimum aspirational percentage participation goal for SMWB subcontractors, as pledged in the Program Manager’s Good Faith Effort Plan submittal to SAWS made in response to the RFQ. The Program Manager shall maintain records of all SMWB contracts and programs applicable to this Project, and shall be required to report the actual payments to all SMWB Subcontractors, utilizing the Subcontracting Payment and Utilization Reporting (S.P.U.R.) System, in the time intervals and format prescribed by SAWS. This information will be utilized for SMWB participation tracking purposes. Any unjustified failure to comply with the committed SMWB levels may be considered a breach of this Agreement.

(C) Substitutions. In the event that the Program Manager proposes replacing, terminating, or not utilizing an SMWB Subcontractor identified in Appendix 4 (Key Personnel and Subcontractors), the Program Manager shall (1) obtain a “Request for Approval of Change to Original Affirmed List of Subcontractors/Suppliers” form from the SMWB Program Manager and submit the completed form to the SMWB Program Manager and (2) make a good faith effort, working with the SAWS’ SMWB Program Manager, to substitute any Subcontractor with a like certified SMWB subcontractor. Any such substitution is subject to approval by the SMWB Program Manager and the Director of Contracting. If the Program Manager is unable to substitute a subcontractor of like certification, the Program Manager shall provide SAWS with documentation of its efforts to acquire the services of such a replacement subcontractor.

SECTION 8.9. AUDIT; BOOKS AND RECORDS.

(A) Audit. All payments whatsoever by SAWS to the Program Manager and all Contract Services of the Program Manager shall be subject to audit at any time by SAWS. The Program Manager will provide the evidence necessary to substantiate charges related to the Agreement and allow SAWS access to the Program Manager’s books and records. The

Program Manager shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Program Manager and the Subcontractor. The Program Manager shall also require all Subcontractors to include the requirements of this Section in any subcontracts relating to the Project.

(B) Books and Records. The Program Manager shall prepare and maintain proper, accurate and complete books and records regarding the Contract Services and all other transactions related to the Contract Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, subcontracts, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Services, any Subcontract or any operations or transactions in which SAWS has or may have a financial or other material interest hereunder. The Program Manager and its Subcontractors shall produce such books and records for inspection, audit and reproduction for all such purposes within two weeks of request by SAWS. All financial records of the Program Manager and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Program Manager and its Subcontractors shall maintain such books and records for at least four years after termination of the Agreement, or such longer period during which any Legal Proceeding with respect to the Contract Services commenced within four years after the Contract Date may be pending. The provisions of this Section shall survive termination of this Agreement.

(C) Overpayment. In the event an audit by SAWS shall determine that the Program Manager cannot document a cost or expense for which payment has been made, or that SAWS has overpaid the Program Manager, the Program Manager, upon demand, shall refund to SAWS the amounts overpaid or undocumented. If the overpayment exceeds 1% of the total amount that should have been properly paid by SAWS during the period audited, then the Program Manager shall, in addition, reimburse SAWS for any and all fees and costs incurred in connection with the inspection or audit. Payments to the Program Manager or approval by SAWS of any requisition for payment submitted by the Program Manager, shall in no way affect the Program Manager's obligation hereunder or the right of SAWS to obtain a refund of any payment to the Program Manager which is in excess of that to which it was lawfully entitled.

SECTION 8.10. DUTY TO DOCUMENT.

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

SECTION 8.11. CONFIDENTIALITY.

(A) Confidential Nature of Information. The Program Manager shall treat all information obtained from SAWS in the performance of this Agreement as confidential and proprietary to SAWS to the extent permitted by law.

(B) Limitation on Use and Disclosure. The Program Manager shall not use any information obtained as a consequence of the performance of the Contract Services for any purpose other than the performance of the Contract Services in accordance with the Agreement. The Program Manager shall not disclose any information obtained from SAWS or obtained as a consequence of the performance of the Contract Services to any person other than its own employees, agents or Subcontractors who have a need for the information for the performance of work under this Agreement, unless such disclosure is specifically approved in writing by SAWS, which approval may be withheld in the sole and absolute discretion of SAWS.

(C) Texas Public Information Act. In the event the Program Manager is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by the Program Manager in the performance of this Agreement, the Program Manager shall provide written notice to SAWS of the request along with a copy of the request, and give SAWS the opportunity to respond to the request prior to its release by the Program Manager.

SECTION 8.12. SOLICITATION.

The Program Manager represents that the Program Manager has not employed or retained any company or person other than a bona fide employee working solely for the Program Manager, to solicit or secure this Agreement, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this covenant by the Program Manager, SAWS shall have the right to terminate this Agreement in accordance with Section 5.2, in addition to SAWS' other rights and remedies under this Agreement.

SECTION 8.13. NOTICES.

(A) Procedure. All notices, reports, demands or written communications given pursuant to the terms of this Agreement shall be in writing and: (1) delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) SAWS Notice Address. Notices required to be given to SAWS shall be addressed as follows:

San Antonio Water System
Contract Administration
2800 U.S. Hwy, 281 North
San Antonio, Texas 78212
Attn: _____

with a copy to:

Attn: _____

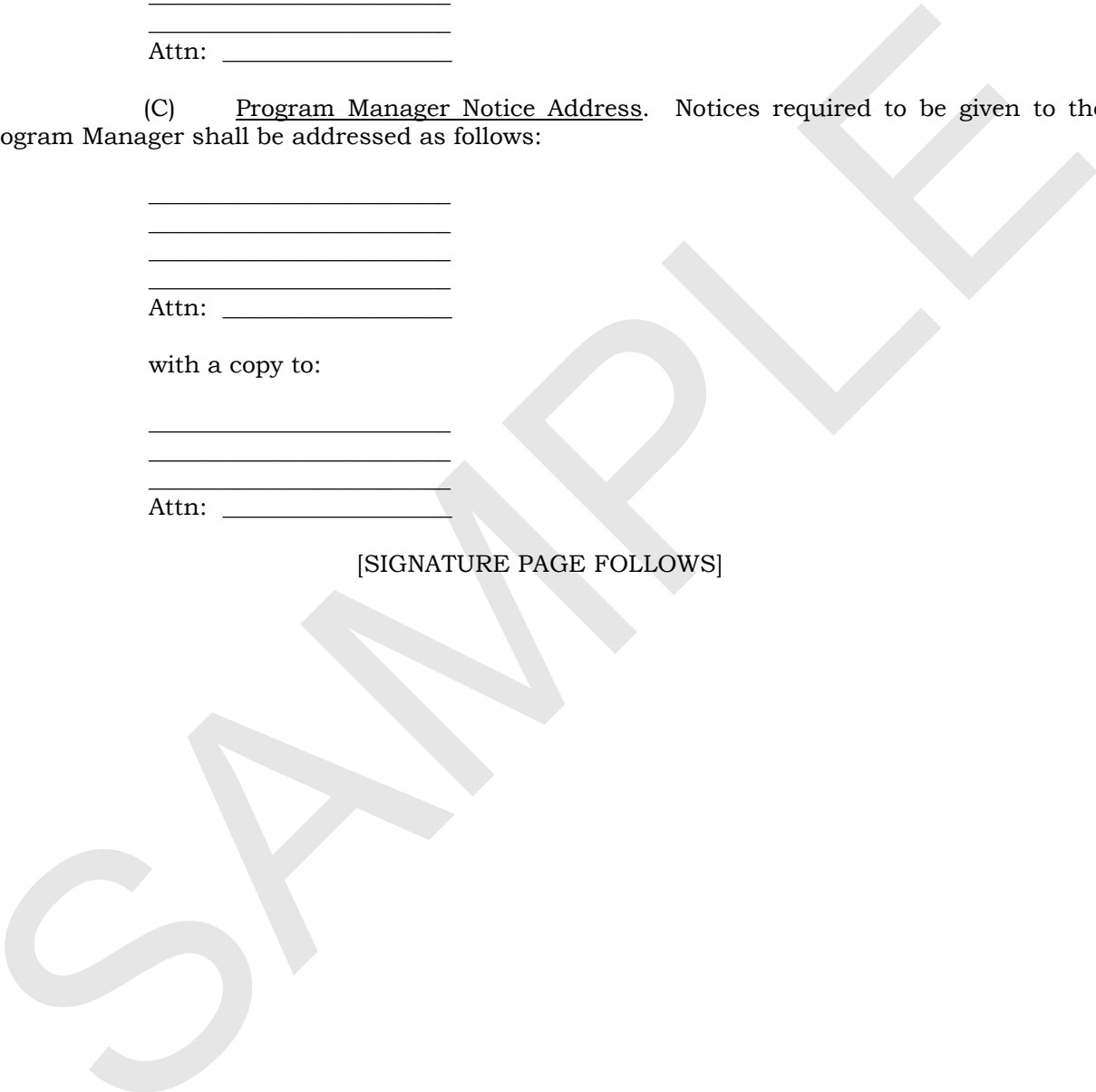
(C) Program Manager Notice Address. Notices required to be given to the Program Manager shall be addressed as follows:

Attn: _____

with a copy to:

Attn: _____

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Program Manager has caused this Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

_____,
as Program Manager

By: _____
Signature

Printed Name

Title

Date

ACCEPTED AND AGREED TO BY:

THE SAN ANTONIO WATER SYSTEM

By: _____
Signature

Printed Name

Title

Date

ATTEST:

APPROVED AS TO FORM:

SAMPLE

APPENDICES
TO THE
PROGRAM MANAGEMENT AND
ENGINEERING SERVICES AGREEMENT
FOR THE
SAN ANTONIO WATER SYSTEM
BRACKISH GROUNDWATER DESALINATION PROGRAM

between

THE SAN ANTONIO WATER SYSTEM

and

[PROGRAM MANAGER]

Dated as of

_____, 2011

APPENDIX 1

SCOPE OF SERVICES DESCRIPTION

[The Scope of Services will be developed based on the workscope summary set forth in the RFP and negotiations with the selected firm]

SAMPLE

APPENDIX 2

EXCLUDED SERVICES DESCRIPTION

APPENDIX 3

PROJECT COMPLETION SCHEDULE

[The Project Completion Schedule will be developed based on the RFP and negotiations with the selected proposer]

APPENDIX 4

KEY PERSONNEL AND SUBCONTRACTORS

[Break down by Project Component; include organization chart]

SAMPLE

APPENDIX 5

MAXIMUM COMPENSATION AND PAYMENT TERMS AND CONDITIONS

SAMPLE

APPENDIX 6
REQUIRED INSURANCE

APPENDIX 6

REQUIRED INSURANCE

7.1 PROGRAM MANAGER INSURANCE

The Program Manager shall obtain and maintain the following insurance policies. All insurance policies, except for professional liability insurance, shall be of an "occurrence" type.

7.1.1 Workers' Compensation. Worker's compensation insurance that will protect the Program Manager, SAWS and the City from claims under statutory workers' compensation laws, disability laws or such other employee benefit laws as required by Applicable Law. 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 line insurance coverage and the employers' liability insurance described in subsection 7.1.2. SAWS will accept worker's compensation coverage written by the Texas Workers Compensation Insurance Fund.

7.1.2 Employers' Liability. Employers' liability insurance (part 2 under standard workers' compensation policies) that will protect the Program Manager, SAWS and the City from claims for damages because of bodily injury, sickness, or disease apart from that imposed by workers' compensation laws. The line of insurance coverage shall have minimum limits of liability of not less than:

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

7.1.3 Commercial General Liability. Commercial general liability insurance that will protect the Program Manager, SAWS and the City from (1) claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance and (2) 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, where applicable;
- Afford coverage for Products Liability or Completed Operations, and Contractual Liability.

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

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

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.

7.1.4 Commercial/Business Automobile Liability. Commercial/business automobile liability insurance that will protect the Program Manager, 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 limits of liability for this line of insurance coverage for bodily injury and property damage combined shall be not less than \$1,000,000 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.

7.1.5 Professional Liability. Professional liability errors and omissions insurance with minimum coverage limits of \$10,000,000 per claim, and \$10,000,000 in the aggregate, if written on a “claims made” form. This policy must have an extended reporting or discovery “tail” period, or be renewed, for a period of not less than ten years after the end of the Term or the earlier termination of the Agreement.

The Program Manager shall include (in writing) on the Certificate of Liability Insurance the coverage form under which this line of insurance coverage is written – either:

- (1) Claims-made form - If the coverage form used is the Claims-made form, the “retro-date” for this line of insurance coverage must also be included in writing on the Certificate of Liability Insurance; or
- (2) Occurrence basis.

The stated limits of insurance required by this Section are MINIMUM ONLY and it shall be the Program Manager's responsibility to determine which limits are adequate and the length of time this coverage shall be maintained; the insurance limits are not a limit of the Program Manager's liability. These minimum limits may be basic policy limits or any combination of basic limits and umbrella limits.

7.2 CERTIFICATES OF INSURANCE

7.2.1 SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms as follows:

San Antonio Water System
 c/o Ebix BP
 Ref. # 107-(will be provided by SAWS Contracting officer)
 PO Box 25
 Portland, MI 48875-0257

7.2.2 Completed Certificates of Insurance shall be distributed as follows:

(1) Send Original:

a. By Mail:

San Antonio Water System
c/o Ebix BPO
Ref. # 107-(same number as Certificate Holder address above)
PO Box 257
Portland, MI 48875-0257

b. By Fax: 1-517-647-7900

c. By E-Mail: CertsOnly@periculum.com

(2) Send Copy to each of the following:

a. San Antonio Water System
Attention: Contracting Department
P.O. Box 2449
San Antonio, TX 78298-2449

b. City of San Antonio
Attention: Risk Management
P.O. Box 39966
San Antonio, TX 78283-3966

SAMPLE

APPENDIX 7
TWDB REQUIREMENTS

APPENDIX 7

TWDB REQUIREMENTS

State Auditor Clause

By executing this Agreement, the Program Manager accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received by SAWS and expended pursuant to this Agreement. The Program Manager shall comply with and cooperate in any such investigation or audit. The Program Manager agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Program Manager also agrees to include a provision in any subcontract related to this Agreement that requires its subcontracting parties to submit to audits and investigation by the State Auditor's Office in connection with any and all State funds received by SAWS and expended pursuant to the subcontract.

Financial Records

The Program Manager and its subcontracted parties shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the Executive Administrator of the Board. Accounting by the Program Manager and its subcontracted parties shall be in a manner consistent with generally accepted accounting principles.

Ownership

The Board shall have unlimited rights to technical or other data resulting directly from the performance of services under this Agreement. It is agreed that all reports, drafts of reports, or other material, data, drawings, computer programs and codes associated with this Agreement and developed by the Program Manager or its contracted parties pursuant to this Agreement shall become the joint property of SAWS and the Board. These materials shall not be copyrighted or patented by the Program Manager or by any consultants involved in this Agreement unless the Executive Administrator of the Board approves in writing the right to establish copyright or patent; provided, however, that copyrighting or patenting by the Program Manager or its Subcontractors will in no way limit the Board's access to or right to request and receive or distribute data and information obtained or developed pursuant to this Agreement. Any material subject to a Board copyright and produced by the Program Manager pursuant to this Agreement may be printed by SAWS or the Board at their own cost and distributed by either at their discretion. The Program Manager may otherwise utilize such material provided under this Agreement as it deems necessary and appropriate, including the right to publish and distribute the materials or any parts thereof under its own name, provided that any Board copyright is appropriately noted on the printed materials.

The Program Manager and its subcontracted parties agree to acknowledge the Board in any news releases or other publications relating to the work performed under this Agreement.

This Agreement shall not be construed as creating any debt by or on behalf of the State of Texas and the Board, and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this Agreement transcends the biennium in which this Agreement is entered into, this Agreement is specifically contingent upon the continued authority of the Board and appropriations therefore.

For the purpose of this Agreement, the Program Manager will be considered an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions. The Program Manager shall obtain all necessary insurance, in the judgment of the Program Manager, to protect themselves, SAWS, the Board, and employees and officials of the Board from liability arising out of this Agreement. The Program Manager shall indemnify and hold the Board and the State of Texas harmless, to the extent the Program Manager may do so in accordance with State law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the Program Manager, arising out of the activities under this Agreement.

The Program Manager shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the Program Manager to perform the subject work.

SAMPLE

SAMPLE

APPENDIX 8

PERFORMANCE INCENTIVE PAYMENT EXAMPLE

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PERFORMANCE INCENTIVE PAYMENT EXAMPLE

Performance Incentive Payment Example

			PM=	\$250,000.00				
Percent of Bonus=	PM	Earned %		Project On Budget	Project Over Budget	Project Budget=	\$145,000,000.00	
35%	\$87,500.00	100%	Budget	100%	0%			
PM	\$87,500.00							
CMAR								
				6-5 months	5-3 months	3-1 months	1-0 months	0 months
35%	\$87,500.00	75%	Early Completion (months)	100%	75%	50%	25%	0%
PM	\$65,625.00							
CMAR								
				0%	1-0%	1.5-1%	2-1.5%	Over 2 %
10%	\$25,000.00	25%	#change orders (as a % of total program construction costs) = \$75,000,000	100%	75%	50%	25%	0%
PM	\$6,250.00							
CMAR								

				10-9	<9-8	<8-7	<7	
20%	\$50,000.00	0%	Superior Project	100%	75%	50%	0%	
PM	\$ -							
CMAR								
Total Incentive earned	\$ 159,375.00	\$ 159,375.00						

Superior Performance Rating Guidelines

Rate 1-10, 10 being best	Success	Director of engineering	Manager of Engineering	Manager of Construction
6	Partnering	6	5	6
8	Quality of service	8	9	7
4	Conflict resolution	5	3	4
6	Timely Responses	4	5	8
6	Total	6	6	6