

**SAN ANTONIO WATER SYSTEM  
SERVICES AGREEMENT**

AGREEMENT FOR

---

THIS IS A SERVICE AGREEMENT (this "Agreement") by and between

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the "Contractor"), and San Antonio Water System, municipally-owned utility of the City of San Antonio in the State of Texas (the "Water System" or "SAWS"), and by which parties to this Agreement, in consideration of the mutual covenants set forth below and other good and valuable consideration (the mutuality, adequacy, and sufficiency of which are hereby acknowledged), hereby agree as follows:

1. Services.

(a) Services. During the term of this Agreement, the Contractor will provide services to the Water System in accordance with the highest professional standards. Contractor shall perform the services described on Exhibit B attached hereto and incorporated herein. The Contractor shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E. Acceptance of work of the Contractor by the Water System shall not constitute or be deemed a release of the responsibility, obligations or liability of the Contractor under this Agreement for any errors, omissions, defect in the design, drawings, specifications, documents, reports and work performed by the Contractor. Contractor will utilize only qualified personnel to perform the work under this Agreement. All of such work shall be under the direct supervision of properly licensed professionals as appropriate for the Project and work.

(b) Compensation and Expenses. The Water System shall pay Contractor as set forth on the attached Exhibit A. If Contractor's services do not conform to the specifications stated on Exhibit B, as determined by Water System, Contractor shall promptly re-perform such services to the satisfaction of Water System at no additional charge to Water System.

(c) Independent Contractor.

Contractor's work shall be performed by Contractor as an independent contractor and not as an agent, employee or partner of Water System. Contractor shall be solely responsible for, and have exclusive control over: (a) the means, methods, tools, techniques, sequences and procedures of the Contractor's work under this Agreement; and (b) the acts, errors and omissions of its employees, subcontractors, sub-subcontractors, suppliers and their respective agents and employees, and other persons or entities performing portions of the work for or on behalf of the

Contractor or any of its subcontractors. Any instruction or direction by Water System with respect to the work performed by Contractor shall be deemed to relate to the results the Water System desires to obtain from the work performed by the Contractor, and shall in no way affect Contractor's status as an independent contractor as described herein. While the Water System has the right to review, approve and accept the Contractor's work, the detailed manner and method of performance of the Contractor's work shall be under the sole control of the Contractor. Nothing in this Contract shall create a partnership or joint enterprise between the Water System and Contractor.

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

(d) Water System's Responsibilities. Water System will use its reasonable best efforts to provide Contractor with all documentation and information in the possession of the Water System required to enable Contractor to provide the services, and will cause its employees and agents to cooperate with Contractor's reasonable requests in order to assist Contractor in providing the services.

(e) Work Papers. All final work product and work papers directly relating thereto delivered to Water System by the Contractor in connection with the performance of services pursuant to this Agreement, including public records obtained by the Contractor, shall be the property of the Water System whether or not in the possession of the Contractor, for use and re-use by the Water System, its agents, employees, contractors and Contractors, as needed from time-to-time.

(f) Nondisclosure. While the Water System may have a proprietary interest in this Agreement and in the services provided by Contractor, the Water System is subject to the Texas Public Information Act. Accordingly, this Agreement, the services, and any information obtained by Contractor through Water System in connection with the performance of the services shall not be disclosed directly by Contractor to any third party. In the event Contractor receives a request for information related to this Agreement, upon receipt of such request Contractor shall provide immediate (within 24 hours) notice to Water System of the request along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by Contractor. In no event shall Contractor provide or participate in any public presentations or prepare or present any papers for public dissemination concerning the Project, or with information obtained in connection with the Project, without receiving the prior written approval from the Water System of the type of public dissemination and the content of any materials presented, which approval may be withheld in the sole and absolute discretion of the Water System.

(g) Compliance with Law. In performing this Agreement, the Contractor agrees to comply with applicable laws and regulations, and to secure, pay for and comply with all permits, governmental fees, licenses, inspections, bonds, security or deposits necessary for proper execution and completion of the services. Contractor agrees to not make or permit to be made any improper payments, or to perform any unlawful acts.

(h) Insurance. Contractor shall maintain and keep in force for the duration of this Agreement such insurance as set forth on Exhibit C of this Agreement, which is attached hereto and incorporated herein for all purposes as if fully set forth herein. Approval of insurance by the Water System shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor. Contractor shall be responsible for all premiums, deductibles and self-insured retentions, if any, stated in the policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance. All endorsements naming the Water System and the City of San Antonio (the "City") as additional insureds, waivers, and notices of cancellation endorsements as well as the Certificates of Insurance shall indicate: San Antonio Water System, Purchasing Division, 2800 US Hwy 281 North, San Antonio, Texas 78212.

(i) Right To Audit. Contractor agrees to maintain appropriate accounting records of costs, expenses, and payrolls of its employees and agents working on the Project for a period of three years after final payment for completed work has been made and all other pending matters concerning the Agreement have been closed. Contractor agrees that the Water System or its authorized representative shall have access during normal business hours to any and all books, documents, papers, and records of the Contractor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits and examinations.

The Contractor further agrees to make the above requirement apply to any and all subcontractor agreements in which the Contractor has a contractual relationship for the services to be performed under the Agreement. All subcontractors shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the subcontractor which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.

(j) Equal Employment Opportunity/Minority Business Enterprise. The Contractor 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 Contractor agrees to abide by all applicable provisions of the Nondiscrimination Clause and the Small and Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office. In the event non-compliance occurs the Contractor, upon written notification by the Water System, will commence compliance procedures within thirty (30) days.

(k) Subcontractors. The Contractor acknowledges that it is the policy of the Water System to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman Businesses (SMWB) to afford greater opportunity for such groups to obtain and participate in Water System contracts. Contractor agrees to complete and submit a Good Faith Effort Plan as part of its response to the Water System's request for a proposal. Contractor shall take all reasonable steps to be in compliance with and maintain compliance with the minimum percentage participations for SMWB set out in Contractor's proposal to the Water System.

Contractor shall maintain records of all SMWB contracts and programs and submit a Vendor/Subcontractor Report Form to the Water System when submitting pay requests to the Water System.

(l) Contractor's Warranty. The Contractor warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not for the purpose of soliciting or securing this Agreement paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the Water System shall have the right to terminate this Agreement under the provisions of Section 2 below.

(m) Indemnification. Contractor agrees to and does hereby fully indemnify, defend, and hold harmless Water System and the City of San Antonio, and their respective members, agents, employees, officers, directors, trustees and representatives (collectively, "Indemnitees"), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees (including, without limitation, attorneys' fees), fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including, without limitation, personal injury or death and property damage, incurred by, asserted against or made upon any of the Indemnitees arising out of, resulting from or related to the acts, commissions or omissions of Contractor, any agent, officer, director, representative, employee, Contractor, contractor or subcontractor of Contractor, and their respective officers, agents, employees, directors, and representatives, while in the exercise or performance of the rights or duties under this Agreement. Contractor shall promptly advise the Water System in writing of any claim or demand against the Contractor or any of the Indemnitees which relates to or arises out of the Contractor's activities under this Agreement at Contractor's cost. Any of the Indemnitees shall have the right, at their option and at their own expense, to participate in such defense without relieving Contractor of any of its obligations under this paragraph. The terms and provisions of this Section 1(m) shall survive the expiration of the term or earlier termination of this Agreement. Nothing in this Section 1(m) shall be interpreted to constitute a waiver of any governmental immunity available under Texas law or any available defenses under Texas law.

(n) Default. In the event Contractor fails to perform its duties or obligations under this Agreement, Water System shall be entitled to any and all remedies available at law or in equity (including, without limitation, the recovery from Contractor of all losses and damages, whether actual, direct, consequential, liquidated or otherwise, and all reasonable attorneys' and other professional fees and costs suffered or incurred by the Water System arising from such default), and, in addition, the Water System shall have the right to terminate this Agreement by written notice as provided in Section 2 below. The Water System shall be entitled to recover reasonable attorneys' fees and costs of dispute resolution incurred in connection with enforcement of this Agreement. In addition, the Water System shall have the right to (1) take possession of all materials and work completed under this Agreement, (2) accept assignment of any subcontractor agreements relating to this Agreement on terms and conditions acceptable to the Water System, and (3) recover from the Contractor and/or deduct from any sums then owed to the Contractor, all losses, damages, penalties and fines, whether actual or liquidated, direct,

consequential and/or exemplary, and all reasonable attorneys' and other professional fees and costs suffered or incurred by the Water System by reason of or as a result of Contractor's default. Such amounts, together with interest on same at the highest rate allowed by law until paid in full, shall be binding on Contractor and are due upon demand. No action by the Water System shall constitute an election of remedies.

(o) Inspection, Testing and Acceptance. All services shall be subject to inspection and testing by Water System at all reasonable times and places. The expenses of inspection and/or testing performed by Water System shall be paid by Water System, but shall be reimbursed to Water System by Contractor if the services tested or inspected do not conform to the specifications of this Agreement and such non-conformity results in rejection of the services by Water System. Inspection and acceptance by Water System does not relieve Contractor from any responsibility regarding defects of other failures to meet Agreement requirements. Nothing herein is intended to require Water System to perform any inspection or testing.

(p) Services Warranty. Contractor warrants that services shall be provided in accordance with the requirements of this Agreement, performed using Contractor's best skill and attention to complete the work with the care, skill and diligence ordinarily exercised by first class contractors performing similar services on projects of a similar scope, and, to the extent applicable, delivered to Water System free from faulty design and workmanship, and constructed from new materials (if furnished by Contractor or any subcontractor) free from faults and defects and of proper size, quality, and material, and conveyed with free and clear title. To the extent applicable, Contractor shall obtain for the benefit of Water System all available warranties of subcontractors, Contractor's suppliers and vendors of all materials installed. Contractor, at its own expense, shall promptly repair, replace or otherwise cure all services that fail to conform to Contractor's warranty. Initiation of repair, replacement or cure of services as provided herein shall be initiated within a period of ten (10) days and completed as soon as possible.

## 2. Term, Termination and Suspension.

(a) Term. The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D. In the event that Contractor has not completed the work specified on Exhibit B prior to the end of the term of this Agreement, in addition to any other remedies to which the Water System may be entitled, at law or in equity, Contractor shall pay to Water System, or the Water System may withhold from sums then due and owing the Contractor, the amount of \$0 per day as "Liquidated Damages" until such time as the work is completed to the Water System's satisfaction. It is hereby acknowledged and agreed that the Liquidated Damages to which the Water System is entitled to hereunder are a reasonable forecast of just compensation for the actual damages for delay of the Project caused by Contractor's failure to complete the work within the time allotted in this Agreement.

(b) Termination For Cause. Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by Contractor of its duties hereunder, and such neglect, breach or inattention has not

been cured within five (5) days after written notice thereof given by Water System to Contractor, (ii) the engaging by Contractor in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by Contractor to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by Water System to Contractor. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the Contractor shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by Contractor in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(n) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

In the event termination for cause is not proper under this Section, the termination shall be deemed to constitute a termination for convenience as set forth in Section 2(c) below.

(c) Other Termination. The Water System may terminate this Agreement at any time for any reason, without cause, upon thirty (30) days written notice to the Contractor. Upon termination of this Agreement, the Contractor will be entitled only to the compensation and expenses which have been earned for services rendered in accordance with this Agreement through the date of such termination. No termination of this Agreement shall impair or defeat those obligations set forth elsewhere in this Agreement which require either party to do or refrain from doing any specified act or acts after termination of this Agreement, or to perform any obligation which by its terms or normal meaning survives termination of this Agreement.

(d) Suspension. The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the Contractor. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the Contractor shall have the right to terminate this Agreement by written notice to the Water System. Contractor may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives Contractor written notice to resume the work. Termination (under this paragraph) by Contractor shall be effective immediately upon the Water System's receipt of said written notice from Contractor.

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

### 3. Miscellaneous.

(a) Notices. Any notice, communication or request under this Agreement to any of the parties shall be in writing and shall be effectively delivered if delivered personally or sent by overnight courier service (with all fees prepaid), or by facsimile as follows:

If to Water System:	<b>San Antonio Water System</b> <b>Purchasing Division</b> 2800 US Hwy 281 North San Antonio, Texas 78212 Attn: Yvonne C. Torres Phone: 210.233.3821 Fax: 210.233.4167
With copy to:	<b>San Antonio Water System</b> 2800 US Hwy 281 North San Antonio, Texas 78212 Attn: Nancy Belinsky, VP General Counsel Fax: 210.233. 4193
or to Contractor:	Name Address  Attn: Fax:

Any such notice, request, demand or other communication shall be deemed to be given if delivered in person, on the date delivered, if made by facsimile, on the date transmitted, or, if sent by overnight courier service, on the date sent as evidenced by the date of the bill of lading; and shall be deemed received if delivered in person, on the date of personal delivery, if made by facsimile, upon confirmation of receipt (including electronic confirmation), or if sent by overnight courier service, on the first business day after the date sent.

(b) Interest in Water System Agreements Prohibited. No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of Contractor contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.

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

(c) Gift Policy. Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources. A copy of Water System's Policy

Section II.M of the Code of Ethical Standards is available upon request. Section M of the Water System's Code of Ethical Standards regarding Gifts or Benefits is also available on the SAWS Business Center website.

(d) Tax Matters. Contractor shall be solely responsible for payment of all taxes related to Contractor's provision of the services. A tax exempt certificate is available upon request for the purchase of materials and goods only with regards to the contracted services of this Agreement.

(e) Assignment; Binding Effect. No assignment, transfer, or delegation of any rights or obligations under this Agreement by Contractor shall be made without the prior written consent of the Water System, which may be withheld in the sole and absolute discretion of the Water System. This Agreement shall be binding upon the parties to this Agreement and their respective legal representatives, heirs, devisees, legatees, or other successors and permitted assigns, and shall inure to the benefit of the parties to this Agreement and their respective legal representatives, heirs, devisees, legatees, or other permitted successors and permitted assigns.

(f) Interpretation; Captions. Whenever the context so requires, the singular number shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders. Titles and captions of or in this Agreement are inserted only as a matter of convenience and for reference and in no way affect the scope for this Agreement or the intent of its provisions.

(g) Entire Agreement. This Agreement constitutes the entire agreement of the parties to this Agreement with respect to its subject matter, supersedes all prior agreements, if any, of the parties to this Agreement with respect to its subject matter, and may not be amended except in writing signed by the party to this Agreement against whom the change is being asserted. This Agreement consists of this document and attached Exhibits A, B, C, D, E, F and G all of which are incorporated herein by reference for all purposes. Should any conflict arise between the terms of this document and the attached Exhibits, this document shall be controlling.

(h) No Waiver. The failure of any party to this Agreement at any time or times to require the performance of any provisions of this Agreement shall in no manner affect the right to enforce the same; and no waiver by any party to this Agreement of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement.

(i) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall exclusively be in the courts of Bexar County, Texas.



(j) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

(k) Non-Appropriation. Contractor agrees that the Water System has projected costs for this Agreement and Water System expects to pay all obligations of this Agreement from projected revenues of the Water System. All obligations of the Water System are subject to annual appropriations by its Board of Trustees. Accordingly, notwithstanding anything in this Agreement to the contrary, in the event that the Water System should fail to appropriate funds to pay any of Water System's obligations under the terms of this Agreement, then the Water System's obligations under this Agreement shall terminate, and the Contractor's sole option and remedy shall be to terminate this Agreement by written notice to Water System, and neither the Water System nor the Contractor shall have any further duties or obligations hereunder, except those which expressly survive.

DULY EXECUTED and delivered by the parties to this Agreement, effective on the date counter signed by the Water System.

THE WATER SYSTEM:

San Antonio Water System

By: \_\_\_\_\_

Yvonne C. Torres  
Director Purchasing

\_\_\_\_\_  
Date

CONTRACTOR:

Company Name

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

LIST OF EXHIBITS

- Exhibit A: Compensation
- Exhibit B: Scope of Services
- Exhibit C: Standard Insurance Specifications
- Exhibit D: Term and Extensions
- Exhibit E: Security Procedures
- Exhibit F: Approved Subcontractors
- Exhibit G: Interested Parties Form 1295