SAWS_3COLOR_BK

### REQUEST FOR PROPOSALS

**ENDPOINT PATCH MANAGEMENT ASSET INVENTORY SOLUTION**

**BID NO: 19-19084**

**BIDS DUE: AUGUST 12, 2019 by 3:00 PM CENTRAL TIME**

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

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1. **Project Information**

A. Background

The San Antonio Water System (SAWS) is a local water and wastewater utility company in San Antonio, Texas. Our service territory is quite expansive, with approximately 460,000 water customers, 411,000 wastewater customers, and 12,000 miles of water and wastewater mains to maintain. SAWS employs approximately 1,800 people, of which a good majority of employees use SAWS provided equipment to carry out the mission and objectives of the organization. SAWS has approximately 2,400 user end point systems and 600 servers on the corporate network. SAWS uses Windows and Linux servers, windows laptops, and various mobile devices.

B. Objective

The San Antonio Water System (SAWS) is seeking a vendor to provide a Multiplatform Endpoint Patch Management (Windows, Linux and Mac) with third party and driver patching, software distribution, with the ability to tier deployments to Test, Development, and Production environments. Provide asset inventory System Configuration Management and Remote Desktop solution. Additionally, this system should be able to interact with our current SIEM and Vulnerability Management System.

C. Scope of Services

Proposals for the Endpoint Management solution shall provide software packaging, distribution, and automated rollout projects to SAWS laptops, workstations, mobile devices, and servers. The proposal shall include all hardware, software, installation, and training required for a turnkey fully operational solution. SAWS may add additional endpoints throughout the life of the contract.

Below are operational issues that shall be addressed in your proposal:

* Software Installation:
  + Assist SAWS with the configuration, tuning, testing and scheduling of the proposed multiplatform endpoint patch management system, including:
    - Operating system updates (Windows, Linux and Mac)
    - Third party patching
    - Hardware driver updates
    - Setup tier deployment into TEST, DEV and PROD environments
  + Assist SAWS with configuration, tuning, testing and scheduling of asset discovery and inventory.
  + Assist administrators to define configuration baselines, create rules based checks on all endpoints to ensure that they meet established policies and be in compliance, including running reports that will provide detail information.
  + Assist SAWS with OS provisioning and migration, including testing and deployment into production
  + Provide automated alerting and email notifications.
  + Creation of dashboards and reports.
  + Provide Remote Control capabilities
  + Advertise and push applications
* Integration:
  + System shall be able to integrate with our SIEM (Splunk), natively or via API
  + System shall be able to integrate with our Vulnerability Management System (Nessus), natively or via API
  + System shall be able to integrate with our Cherwell CMDB, natively or via API
* High Availability:
  + System must be able to provide failover functions for Business Continuity
* Equipment: Virtual or appliance base system
  + Virtual is preferred

***Vendors are required to submit with their proposal*** complete technical specifications (to include warranty coverage, brochures, literature, etc.) on all items offered. Each section below shall be responded to in detail, addressing each item in response.

**1.** **Corporate Qualifications and Vendor Information**

Response shall include the following information:

1. Location of Vendor (include locations of project office, support, services and product development).
2. Market penetration of vendor's product in utility sector or like sectors.
3. Vendor's proficiency and practices in securing product, network and customer data.
4. Vendor's staff skill sets and experience developing, implementing and supporting Endpoint Management products and hardware, software and network technology.
5. Vendor's ability to meet SAWS, local, state, and federal regulatory requirements including applicable licenses.
6. Vendor’s support resources including but not limited to training, on-call tech support, support forums, and user groups.

**2. Support**

Vendor shall provide the following:

1. Dedicated full time project level representative to assist and service SAWS at no additional cost.
2. Support for SAWS’ account and technical needs during regular business hours (8:00 AM to 5:00 PM CT; Monday through Friday, excluding national and SAWS’ holidays).
3. An internet-based self-serve customer service and technical support system 7/24/365 to provide technical support.
4. Support in meeting all SAWS, local, state, and federal regulatory requirements including applicable licenses.
5. Service network and technical staff ready and able to provide superior level of maintenance and support for a large government customer.

**3.** **Software, Hardware, & Installation**

All hardware, software, equipment, storage, licenses, upgrades, installation, support, and any other associated resources shall fully support the Endpoint Management solution’s ability to maintain a 99.9% availability rate. Vendor shall provide a Service Level Agreement for SAWS review with the submittal. Vendor shall provide details of the solution’s ability to do the following along with related hardware and software specifications.

**Installation**

a. Furnish, install, and configure all specified solution components, as requested by SAWS, within 30 days of the contract award for prioritized group and remaining equipment by agreed upon schedule.

**Hardware**

a. Provide a response time of 24 hours or less on inquiries of hardware and equipment installation, maintenance, and repair service requests. Weekends and public holidays are excluded.

b. It is strongly preferred that the manufacturer, in the selection of components, use material and design practices that are the best available in the industry for the type of operating conditions to which the hardware/equipment will be subjected.

1. Solely cloud hosted providers and hybrid providers will not be accepted. The system shall be on SAWS premise.

**4.** **Maintenance, Upgrades, & Support**

a. Vendor must notify SAWS via email with notifications on system upgrades, hotfixes, or security patches. Also provide timeframes for scheduled system outages within three (3) days of scheduled outage.

b. The Endpoint Management system offered shall be the manufacturers most current and updated design and technology that both meets SAWS' specifications and requirements and is currently in use by other clients.

c. Upgrades to system and software shall be backward compatible and support at least two previous versions based on industry standard.

d. Throughout the terms of the agreement and any extensions thereof, Vendor shall perform at least semiannual firmware, software, or other system upgrades to keep the Endpoint Management current and able to fully utilize new and developing technologies and functionalities, where appropriate for SAWS' business needs.

e. As technology in equipment and hardware advances, SAWS shall have the option to upgrade equipment and hardware at the proposed pre-determined rate. SAWS fully expects its existing Endpoint Management equipment and hardware to continue to work as if first installed without any degradation of functionalities and/or performance.

f. Any upgrades that are mandated by the Vendor shall be at the cost of the Vendor.

g. Provide implementation support during project start to include suggested preparation and deployment schedules and configuration of roles and security support.

**5. Features**

Vendor shall provide the following:

1. Asset management lifecycle tracking
2. Asset repository
3. Product catalog
4. Barcode scanning
5. Asset data importing capabilities
6. CMDB integration
7. Cloud based offerings
8. Vendor management
9. Microsoft patching
10. Third party patching
11. Patch lifecycle management
12. Distributed and remote patching
13. Automated updates
14. Multiple platform support
15. Reporting and dashboards

**6.** **Training**

a. The start-up training shall be conducted on-site at a SAWS facility and shall consist of "train-the-trainer" and "train the administrator" sections. “Train-the-trainer” sessions may consist of at least two (2) persons, while “train-the-administrator” may also consist of 2 persons. Specific groups will be provided to Vendor upon award. SAWS envisions only requiring a single train the trainer and train the administrator session.

b. The successful Vendor shall provide a detailed training plan with the proposal package.

c. Vendor and SAWS departments shall mutually schedule the training but will commence training no later than 15 days after installation.

d. Training materials, whether online or hard copies (with access to an electronic version), must be adequate and relevant to the system proposed and ultimately utilized under this agreement.

D. Period of Contract

1. Contract shall begin upon the effective date of award and terminate 12 months after acceptance of solution.
2. At SAWS option, this Contract may be renewed under the same terms and conditions for five (5) additional one (1) year periods. Renewals shall be in writing and signed by SAWS Director of Purchasing or his designee, without further action by the San Antonio Water System Board of Trustees, subject to and contingent upon appropriation of funding therefore.
3. SAWS shall also have the right to extend this contract under the same terms and conditions beyond the original term or any renewal thereof, on a month to month basis, not to exceed 6 months. Said month to month extensions shall be in writing, signed by SAWS Director of Purchasing or his designee, and shall not require Board approval, subject to and contingent upon appropriation of funding therefore.

E. Estimated Timeline – *The dates listed below are subject to change without notice.*

July 10, 2019 RFP Released

July 19, 2019 by 4:00 PM (CT) Receipt of Written Questions Due

July 26, 2019 by 4:00 PM (CT) Q & A Posted to Website

August 12, 2019 by 3:00 PM (CT) Proposals Due

August 2019 Proposals Evaluated

August - September 2019 Proof of Concept Period

August - September 2019 Interviews, if necessary

August - September 2019 Selected Firm Notified

November 5, 2019 SAWS Board Approval and Award *(If Required)*

November 2019 Non-Selection Notices E-mailed

November 2019 Start Work

1. **Selection Process**

A. Selection

All proposals received will be evaluated by a Technical Evaluation Committee that will review, evaluate and rank the proposals according to a numerical scoring system based on the responses to the criteria listed below. The Technical Evaluation Committee may select two or more firms to participate in a Proof of Concept, based wholly on qualifications.

B. Interviews/Demonstrations

After the Proof of Concept, in the event that interviews or demonstrations are deemed necessary, the Proof of Concept Respondents may be requested to provide a brief presentation to the Technical Evaluation Committee summarizing the firm’s qualifications and project approach and answer any questions posed by the Committee members.

C. Evaluation Criteria Summary

Respondents not providing a response to each of the criteria listed in this RFP shall be considered non-responsive and ineligible for consideration.

|  |  |
| --- | --- |
| **Evaluation Criteria** | **Points** |
| 1. Functionality, Usability, and Project Approach | 35 |
| 1. References, Similar Prior Experience, Project Team, and Resumes | 25 |
| 1. Compensation Proposal | 30 |
| 1. Adherence to Small, Minority, Woman and Veteran Owned Business (SMWB) Participation (Exhibit “B” Good Faith Effort Plan) | 10 |
| **TOTAL** | **100** |

D. Proof of Concept

As part of the evaluation, at SAWS request the respondent shall allow SAWS to test equipment and software in order to validate product meets the requirements and the performance criteria as outline in the ***Features*** section in the Scope of Services outlined above in this RFP on page 3. At SAWS written request respondent shall deliver (if appliance based), install, and maintain one Endpoint Management Solution system on site at SAWS HQ Tower 1 datacenter for a two week period to be determined by SAWS. Respondent shall also provide SAWS instructions on how to obtain the data during the Proof of Concept period and provide SAWS access to the data. The equipment shall be returned to the respondent upon completion of the Proof of Concept period.

Respondents need to provide insurance as required by SAWS prior to installing the equipment. Respondents may contact **Gina Cappa**, Contracting & Purchasing Specialist via email at [Gina.Cappa@saws.org](mailto:Gina.Cappa@saws.org), or via fax at 210-233-4373 to provide Insurance Certificate as specified in this bid document.

Proof of Concept - Respondent shall be evaluated based upon the ***Features*** section on page 3 of the Scope of Services outlined above in this RFP.

1. **Communication**

A. Restrictions

1. Respondents or their representatives are prohibited from communicating with any City of San Antonio officials to include:

* + City Council members (as defined by the City of San Antonio Ethics Code),
  + City Council member’s staff, and
  + San Antonio Water System (SAWS) Board of Trustees regarding the RFP from the time the RFP is released until it has been acted upon by the Board of Trustees.

2. Respondents or their representatives are prohibited from communicating with SAWS employees regarding this RFP, except as provided under TECHNICAL QUESTIONS, from the time the RFP/RFQ is released until the contract is awarded.

3. This includes “thank you” letters, phone calls, emails, and any contact that results in the direct or indirect discussion of the RFP and/or proposal submitted by Respondents.

4. Violation of this provision by the Respondent and/or their agent may lead to disqualification of the Respondent’s proposal from consideration.

B. Pre-Submittal Conference – A meeting is not schedule for this RFP.

C. Technical Questions

1. Respondents may submit technical questions concerning the services in this RFP in writing; however electronic inquiries by e-mail or fax will be accepted. The Contact Person for this project is:

Gina Cappa

Contracting & Purchasing Specialist

San Antonio Water System

Administrative Building

2800 U.S. Hwy 281 North

San Antonio, TX 78212

Email: [Gina.Cappa@saws.org](mailto:Gina.Cappa@saws.org)

Fax to 210-233-4373

2. Questions regarding this RFP received after 4:00 PM Central Timeon July 19, 2019 will not be answered in order to allow ample time for distribution of answers and/or addendums to this RFP.

3. Answers to the questions will be posted on the SAWS website by 4:00 PM Central TimeJuly 26, 2019.

4. Verbal questions are not permitted other than as described in this section and during interviews, if any.

D. **SMWVB Reporting Requirements**

The successful Respondent will be required to report actual payments to all subcontractors by using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, beginning with the first SAWS payment for services under the contract, and with every payment thereafter (for the duration of the contract). This information will be used for subcontractor utilization tracking purposes. Any unjustified failure to comply with the committed SWMB levels may be considered breach of contract.

**Web Submittal of Subcontractor Payment Reports**

The Respondent is required to electronically submit subcontractor payment information using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, accessed through a link on SAWS’ “Business Center” web page. The Contractor and all subcontractors will be provided a unique log-in credential and password to access the SAWS subcontractor payment reporting system. The link may be accessed through the following internet address: <https://saws.smwbe.com/>

Training on the use of the system will be provided by SAWS. After the prime receives payment from SAWS, electronic submittals will require data entry of the amount paid to each subcontractor listed on the Contractor’s Good Faith Effort Plan.

Please contact the SMWVB program manager, Marisol V. Robles, at 210-233-3420 or [marisol.robles@saws.org](mailto:marisol.robles@saws.org) for any questions pertaining to the Good Faith Effort Plan or the

SMWVB Program.

E. SMWVB Questions

1. Respondents and/or their agents may contact Marisol V. Robles, SMWVB Program Manager at 210-233-3420 for assistance or clarification with issues specifically related to the Small, Minority, Woman and Veteran-owned businesses (SMWVB) Program policy and/or completion of the *Good Faith Effort Plan,* and S.P.U.R. System reporting.

1. Exhibit “B” contains the required forms in order to respond to this RFP.

F. Status Questions

1. To check the status of an RFP after the due date, visit our website located at [www.saws.org](http://www.saws.org), select Business Center, Procurement Bids, then select Archive, scroll down to locate the RFP. The RFP status is indicated.

2. If the website does not provide sufficient information, please call Gina Cappa, at 210-233-3412 for assistance.

G. Submittal Clarification

SAWS reserves the right to contact any Respondent for clarification after responses are opened and/or to further negotiate with any Respondent if such is deemed desirable by SAWS.

1. **Submitting a Response**

A. Deadline

Proposals are due no later than 3:00 PM Central Time on **August 12, 2019**.

B. Submission

* + - 1. Submission of Proposals – Submit the proposal in CD Format/ Flash Drive and hard copies. The CD/ Flash Drive should contain the entire Proposal as submitted, and be clearly marked with the RFP information.
      2. One (1) hard copy shall be clearly marked as **“ORIGINAL”** on the document cover and on signature sheet. Seven (7) copies must be submitted as well, and ***shall not contain*** the **Compensation Proposal**. The CD/ Flash Drive, original and all copies should be submitted in a sealed package, with the project information and due date and time clearly identified on the outside of the package.

San Antonio Water System

Attn: Purchasing Department

Administrative Building

2800 U.S. Hwy 281 North

San Antonio, Texas 78212

* + - 1. Responses submitted via any form of electronic transmission, such as electronic mail, or facsimile, will not be considered.
      2. If the submittal to this RFP is by any means other than personal delivery, then it is the Respondent’s sole responsibility to ensure the submittals are delivered to the exact location by the time specified.
      3. If submission is by personal delivery, allow fifteen (15) minutes for check-in with the guard.
      4. Responses are limited to a maximum of **50** pages per proposal. A single side equals to a single page. **Required forms do not count toward the page limit**.
      5. Responses should be clear, concise, and complete. They should be submitted using an 8 ½” by 11” portrait format. Illustrations, if required, may be submitted on 11” by 17” sheets. These pages will notcount towards the page limit amount of **50** pages.
      6. Responses must be **securely** bound by any means **except** by 3-ring binders and paper/binder clips.
      7. By submission of a response, the Respondent acknowledges that it has read and thoroughly understands the Scope of Service, agrees to all terms and conditions stated herein, and acknowledges that it can perform all tasks as required.

1. Response Format - The response shall be organized as follows, and each section shall be titled accordingly:
2. Submittal Response Checklist

Complete and include the Submittal Response Checklist within the proposal. Verify that the checklist is signed and that all documents on the checklist have been included with the proposal.

1. Respondent Questionnaire

The Respondent Questionnaire captures general information regarding the firm submitting a proposal in response to this RFP. It also includes acknowledgements for the attached exhibits and addendums. The questionnaire is a required submittal and must be completed and included in the proposal.

1. W-9 Form

Please submit a completed and signed W-9 Form with your proposal. Please go to <http://www.irs.gov/formspubs/index.html?portlet=3> to download the form, if needed.

1. Functionality, Usability, and Project Approach

The following criteria will measure the respondent’s ability and capability in meeting or exceeding the scope of work requirements. At a minimum, the following should be included:

* Solutions to SAWS identified challenges within the Scope of Services.
* Complete technical specifications for proposed solution (to include warranty coverage, brochures, literature, etc.) on all items offered.
* Respondent shall list each criteria specified in the Scope of Services and shall provide a response for each item. Response shall include detail to include whether item criteria is met, as well as any additional information that demonstrates the ability to meet or exceed the requirement.
* SAWS is seeking highly accurate detection technology that finds targeted data while at the same time minimizing the risk of false positives. Provide your percentage of false positives so that SAWS can use this as a distinguisher.
* Describe your project approach to implementing your proposal to include approach, schedule, tasks and resources required. Also, specify required resources required from SAWS for a successful implementation.
* Vendor shall identify if the equipment is virtual or an appliance based system.

Proof of Concept - Respondent shall be evaluated based upon the ***Features*** Section on Page 3 of the Scope of Services outlined above in this RFP and will be evaluated within this section of the outlined criteria.

1. References, Similar Prior Experience, Project Team, and Resumes

Respondent shall provide supporting documentation that they have had experience with projects of similar size, scope, and objective. Provide a list of at least three (3) previous projects in the last five (5) years, in which the Respondent has performed services and addressed issues for agencies that have had similar operational needs to those sought in this solicitation. This list should include:

* + Name of client
  + Location (city and state)
  + Duration of assignment
  + Scope of the project
  + Respondent’s role in project
  + Reference contact to include name, email, and phone number

Provide an organizational chart identifying each team member and their role in providing the scope of services and a resume of not more than two (2) pages per person on the capabilities, experience and qualifications of each team member. Resumes should include: the team member’s name, title, education, brief overview of professional experience, and team member licenses or professional affiliations.

1. Compensation Proposal

Respondent shall provide pricing giving SAWS the option to choose either perpetual or annual licenses. The pricing will be evaluated based upon the lowest total price submitted on the Compensation Proposal. The Proposal with the lowest price will receive thirty (30) points. All other proposals will be allotted a percentage of the 30 points based on a comparison with the lowest priced proposal. The following formula will be used:

**[(Lowest price) ÷ (Bidder’s price)] x 30 = Bidder’s allotted points**

***\* All pricing shall be enclosed in a separate sealed envelope, marked “PRICING” with the ORIGINAL ONLY. All vendors submitting a bid will be notified of the date and time for the opening of pricing.***

1. Vendor Technical Specifications

Vendors are required to submit with their proposal complete technical specifications (to include warranty coverage, brochures, literature, etc.) on all items offered.

1. Vendor Service Level Agreement

Vendors are required to submit with their proposal a Service Level Agreement that provides information on what is included with the support service.

1. Vendor Contract Clauses

Vendors are required to submit with their proposal any clauses they would like to be considered for informational purposes only. SAWS reserves the right to negotiate any additional clauses proposed by the respondent.

1. Exhibit “A” - Proof of Insurability
   * 1. Respondent shall submit a copy of a Certificate(s) of Insurance giving evidence of the various lines of Respondent’s commercial insurance coverage currently in force; and
     2. Respondent shall submit a letter on Respondent’s Company stationary stating Respondent’s commitment to provide the various lines of insurance coverage required, and at the limits of coverage specified in Exhibit “A”, if awarded a contract under this RFP.
2. Exhibit “B” - Good Faith Effort Plan (GFEP)

Policies on Equal Employment Opportunity and SMWVB

a. Equal Employment Opportunity Requirements - SAWS highly encourages Respondents to implement Affirmative Action practices in their employment programs. This means Respondents should not discriminate against any employee or applicant for employment because of race, color, religion, sex, pregnancy, sexual orientation, national origin, political belief or affiliation, age, disability or genetic information.

The SAWS Board of Trustees has adopted the Small, Minority, Woman, and Veteran-owned Business (SMWVB) Policy to establish and oversee a program that will support the inclusion of local small, minority, woman, and veteran-owned businesses (SMWVB). It is the policy of SAWS that it will ensure that local small, minority, woman, and veteran-owned businesses have an equal opportunity to compete for and participate in SAWS contracts. It is our policy to:

* Ensure nondiscrimination in the award and administration of SAWS contracts;
* Create a level playing field on which SMWVBs can compete fairly for SAWS contracts;
* Ensure that only firms that attempt to meet small, minority, woman-owned business good faith efforts are considered for contract awards.

Respondent’s commitment to SAWS SMWVB policy will be based on meeting or exceeding the minimum SMWVB goal of 19%. The minimum goal is based on the total contract value. Points will be awarded based on the tiered scales below.

Please note that as of 1/1/2017, an updated SMWVB Policy and scoring methodology are being implemented by San Antonio Water System. Veteran-owned Business Enterprises (VBEs), are tracked for statistical purposes, but are not eligible for points. **The maximum number of Small, Minority, and Woman-owned Business (SMWB) points to be earned is 10 points**. Self-performance and subconsulting may be used to achieve the aspirational goals and earn points. **SMWB Respondents and/or subconsultants must be certified by the South Central Texas Regional Certification Agency. Eligible firms (including MBEs and WBEs) must also be certified as a Small Business Enterprise (SBE), and must perform a commercially-useful function on the project in order to be counted for SMWB points.** Please see the Good Faith Effort Plan for definitions of terms. All Respondents, whether SMWB or not, may earn the maximum number of SMWB points **10** by adhering to the point structures below when attempting to meet the aspirational goals:

**SMWB Scoring Method: 10 Points (By percentage)**

• SMWB Participation Percentage between 1% and 5.99%: 2 Points

• SMWB Participation Percentage between 6% and 11.99%: 4 Points

• SMWB Participation Percentage between 12% and 15.99%: 6 Points

• SMWB Participation Percentage between 16% and 18.99%: 8 Points

* SMWB Participation Percentage meeting or exceeding 19%: 10 Points

b. All firms submitted as SMWVB must provide a copy of their certification certificate.

c. The SMWB goal is expressed as a percentage of the total dollar amount of the contract going to SMWBs for those areas which the Respondent has subcontracted or anticipates to subcontract, including any future contract amendments. The goal shall also apply to contract amendments that require work beyond the scope of services originally required to accomplish the project.

d. The Respondent agrees to employ good faith efforts to carry out this policy through award of subconsultant contracts to SMWVBs to the fullest extent possible.

e. The SAWS Good Faith Effort Plan (GFEP) will be used for scoring purposes based upon SMWB participation. However, **all subcontractors and/or suppliers,** **whether SMWVB-certified or not**, **must be listed in the GFEP**, because the information provided in the GFEP will be utilized in the development of the final contract/agreement. The GFEP format is attached as Exhibit “B.” This form is required and considered part of the response to the RFP or BVB. Should the Good Faith Effort Plan not be submitted, the proposal may be considered non-responsive.

f. The successful Respondent will be required to report actual payments to all subcontractors by using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, beginning with the first SAWS payment for services under the contract, and with every payment thereafter (for the duration of the contract). This information will be used for subcontractor utilization tracking purposes. Any unjustified failure to comply with the committed SWMB levels may be considered breach of contract.

**Web Submittal of Subcontractor Payment Reports**

The Respondent is required to electronically submit subcontractor payment information using the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, accessed through a link on SAWS’ “Business Center” web page. The Contractor and all subcontractors will be provided a unique log-in credential and password to access the SAWS subcontractor payment reporting system. The link may be accessed through the following internet address: <https://saws.smwbe.com/>

Training on the use of the system will be provided by SAWS. After the prime receives payment from SAWS, electronic submittals will require data entry of the amount paid to each subcontractor listed on the Contractor’s Good Faith Effort Plan.

Please contact the SMWVB program manager, Marisol V. Robles, at 210-233-3420 or [marisol.robles@saws.org](mailto:marisol.robles@saws.org) for any questions pertaining to the Good Faith Effort Plan or the SMWVB Program.

1. Exhibit “D” - Disclosure of Interested Parties

**DISCLOSURE OF INTERESTED PARTIES (new clause effective January 1, 2016)**

Section 2252.908 of the Government Code is an ethics law that was enacted by H.B. 1295 in 2015, that prohibits a governmental entity from entering into a contract with a business entity (contractor) unless contractor submits a disclosure of interested parties for applicable contracts entered into after January 1, 2016.

The Texas Ethics Commission website, <https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm> provides the electronic filing application that must be used by the successful contractor to file Form 1295.

Upon notification from SAWS, the successful contractor will be required to use the electronic application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the contractor will be required to sign the printed copy of the form and have the form notarized. The electronic form requests a Contract ID be entered which should be the Bid Number **18-18005**.

Respondent to acknowledge that if selected for award, form will be completed as required.

Please consult your own legal advisor if you have questions regarding the statute or form. This form is required and is considered part of the response to this RFP.

13. Exhibit “E” – Conflict of Interest

The Bidder is required to submit a completed Conflict of Interest Questionnaire (CIQ Form). Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with SAWS shall file a completed Conflict of Interest Questionnaire (CIQ) with SAWS. The CIQ Form will be submitted as part of the bid. This form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Please consult your own legal advisor if you have questions regarding the statute or form. To report suspected ethics violations impacting The San Antonio Water System, please call 1-800-687-1918.

14. Exhibit “F” – No Boycotting Israel Verification

Submit this exhibit signed with your proposal.

**V. Security Procedures**

The Security Procedures are attached as Exhibit “G”. Respondent must acknowledge the requirements of this exhibit on the Respondent Questionnaire Form.

**VI. Sample Contract**

A. The Contract terms and conditions are attached as Exhibit “H” for review purposes only. Respondent must acknowledge the contract terms and conditions on the Respondent Questionnaire. Respondent must include with their response any additional clauses they’d like considered to be included in the contract at time of submitting a response for informational purposes only. SAWS reserves the right to negotiate any additional clauses proposed by the respondent. If agreement cannot be reached with the “tentative” selected Respondent, SAWS reserves the right to terminate negotiations and proceed to begin negotiations with the next “tentative” selected respondent. The contract sample may be replaced by addendum to provide a sample contract more specific to the requested scope of services.

B. Contract Requirements after award:

Upon receipt of the notice of pending Board award of a Contract for Services, the selected Respondent shall prepare all necessary:

1. Certificates of Liability Insurance in compliance with Section 2. Certificate(s) of Liability Insurance (“Certificate”) Requirements detailed in Exhibit “A” – “SAWS STANDARD INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS” attached to the contract. Certificate(s) submitted must include the SAWS contract number, project name and job number to which this Contract applies. The distribution of the completed certificates shall be in strict accordance with Section 2.h. Distribution of Completed Certificates.

From this point forward the verification and tracking of insurance compliance throughout the life of this contract will be performed through the services of Ebix BPO.

1. A “Corporate Authorization Resolution” listing by name or position the individuals authorized to contractually bind the company must accompany the signed contract returned to SAWS.
2. **Proposal Protest Procedures**

Any Respondent who is adversely affected in connection with the solicitation, evaluation, or proposed award of a contract may file a protest appealing the adverse decision to the SAWS Purchasing Director or her designee. The SAWS Purchasing Director or her designee decision on such an appeal shall be final.

Vendor must deliver a written notice of protest to the Purchasing Director or designee within seven (7) calendar days of SAWS notice of non-selection. If vendor does not file a written notice within this time, the vendor will have waived all rights to formally protest the intent to award.

**VIII. Requests for Debriefings**

Firms not selected for a contract award may request a debriefing for this solicitation within ten (10) days of SAWS Board of Trustees award. Requests for debriefings after ten (10) days of award will not be granted. To schedule a debriefing, please send a written or e-mail request to the contact person listed in Section III, Communication.

**IX. Other Requirements**

Other key requirements that should be noted are as follows:

1. Unresolved issues with SAWS may affect your competitiveness.
2. All contracts will require the provision for a "Right-to-Audit" clause.
3. The SAWS shall retain the right to approve or disapprove all sub-consultant selections on all projects.
4. The SAWS shall retain the right to approve or disapprove any changes/variances of proposed sub-consultants and their related percentage of work "as proposed" from the original submittal form of the selected Respondents.
5. All resulting contracts from this solicitation will be required to define and provide supporting documentation for reimbursable costs with no additional markup applied.
6. Gift Policy: SAWS employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System’s Code of Ethical Standards.  Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

**X. Reservation of Rights**

A. SAWS reserves the right to:

1. Reject any and all proposals received;
2. Issue a subsequent RFP;
3. Cancel the entire RFP;
4. Remedy technical errors in the RFP process;
5. Negotiate with any, all, or none of the Respondents to the RFP;
6. Accept the written proposal as an offer;
7. Waive informalities and irregularities;
8. Accept multiple proposals;
9. Make multiple recommendations to the Board;
10. Request additional information or clarification;
11. All responses and their contents will become the property of SAWS.

B. SAWS will not reimburse Respondents or sub-contractors for any costs associated with any travel and/or per diem incurred in any presentations associated with the selection process.

C. This RFP does not commit SAWS to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of proposals or in anticipation of a contract.

**SUBMITTAL RESPONSE CHECKLIST**

**RFP Name: Endpoint Patch Management Asset Inventory Solution, RFP Bid # 19-19084**

Use the checklist to ensure that the proposal is complete by checking off each item included with your response. Sign and date this form and include this page with each proposal.

Completed and Signed Submittal Response Checklist

Respondent Questionnaire

Completed and Signed W-9 Form

Functionality, Usability, and Project Approach

References, Similar Prior Experience, Project Team, and Resumes including

Organizational Chart

Vendor Technical Specifications

Vendor Service Level Agreement

Vendor Contract Clauses

Exhibit “A” – Copy of Current Certificate of Liability Insurance and Respondent’s commitment letter to provide the lines of insurance coverage required.

Exhibit “B” – Good Faith Effort Plan

Exhibit “C” – Compensation Proposal – ***In a separate sealed envelope.***

Exhibit “D” – Disclosure of Interested Parties

Exhibit “E” – Conflict of Interest Questionnaire

Exhibit “F” – No Boycotting Israel Verification

Exhibit “G” – Security Procedures

Exhibit “H” – Sample Contract and any other Contracts for Consideration

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

Signature Date

Printed Name

Title

**RESPONDENT QUESTIONNAIRE**

**RFP NAME: Endpoint Patch Management Asset Inventory Solution, RFP Bid # 19-19084**

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

**GENERAL INFORMATION**

1. **Respondent Information:** Provide the following information regarding the Respondent.

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

Respondent Name:

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

Principal Address:

City: State: Zip Code:

Telephone No. Fax No:

Social Security Number or Federal Employer Identification Number:

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

Name:

Address:

City: State: Zip Code:

Telephone No. Fax No:

Email:

3. Identify the principal contact person authorized to commit the Respondent to a contractual agreement.

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

Yes  No

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

Yes  No  If “Yes”, list authorizations/licenses.

6. **Affirmative Action -** Respondent agrees to adhere to the EEO requirements contained in the RFP section IV, sub-section “C.” paragraph 10.a.

Yes  No  If “No”, state reason.

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

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

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

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

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

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

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

Yes  No

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

Yes  No

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

Yes  No

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

11. **Compliance Agreement:**

Nondisclosure. No information obtained by Respondent from SAWS shall be disclosed by Respondent to any third party. In the event Respondent is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Respondent, Respondent shall provide notice to SAWS within 24 hours of receiving the of the request along with a copy of the request, and give SAWS the opportunity to respond to the request prior to its release by Respondent.

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

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

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

Does the Respondent agree to the above?

Yes  No

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

Yes  No

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

No Exceptions  Exceptions  If “Exceptions”, they must be submitted with the proposal. Respondents shall submit exceptions with proposed alternative language to SAWS as an attachment accompanying this questionnaire.

Exceptions will not be accepted after the proposal due date and time. At the sole discretion of SAWS, the type and nature of exceptions may be grounds for disqualification.

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

None  Yes  If “Yes”, Identify.

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

Signature Date

Printed Name

Title

**Completed and signed W-9 Form**

Please submit a completed and signed W-9 Form with your proposal. Please go to http://www.irs.gov/formspubs/index.html?portlet=3 to download the form, if needed.

**Functionality, Usability, and Project Approach**

The following criteria will measure the respondent’s ability and capability in meeting or exceeding the scope of work requirements. At a minimum, the following should be included:

* Solutions to SAWS identified challenges within the Scope of Services above.
* Complete technical specifications for proposed solution (to include warranty coverage, brochures, literature, etc.) on all items offered.
* Respondent shall list each criteria specified in the Scope of Services and shall provide a response for each item. Response shall include detail to include whether item criteria is met, as well as any additional information that demonstrates the ability to meet or exceed the requirement.
* SAWS is seeking highly accurate detection technology that finds targeted data while at the same time minimizing the risk of false positives. Provide your percentage of false positives so that SAWS can use this as a distinguisher.
* Describe your project approach to implementing your proposal to include approach, schedule, tasks and resources required. Also, specify required resources required from SAWS for a successful implementation.
* Vendor shall identify if the equipment is virtual or an appliance based system.

Proof of Concept - Respondent shall be evaluated based upon the ***Features*** Section on Page 3 of the Scope of Services outlined above in this RFP and will be evaluated within this section of the outlined criteria.

**References, Similar Prior Experience, Project Team, and Resumes including**

**Organizational Chart**

Respondent shall provide supporting documentation that they have had experience with projects of similar size, scope, and objective. Provide a list of at least three (3) previous projects in the last five (5) years, in which the Respondent has performed services and addressed issues for agencies that have had similar operational needs to those sought in this solicitation. This list should include:

* + Name of client
  + Location (city and state)
  + Duration of assignment
  + Scope of the project
  + Respondent’s role in project
  + Reference contact to include name, email, and phone number

Provide an organizational chart identifying each team member and their role in providing the scope of services and a resume of not more than two (2) pages per person on the capabilities, experience and qualifications of each team member. Resumes should include: the team member’s name, title, education, brief overview of professional experience, and team member licenses or professional affiliations.

**Vendor Technical Specifications**

Vendors are required to submit with their proposal complete technical specifications (to include warranty coverage, brochures, literature, etc.) on all items offered.

**Vendor Service Level Agreement**

Vendors are required to submit with their proposal a Service Level Agreement that provides information on what is included with the support service.

**Vendor Contract Clauses**

Vendors are required to submit with their proposal any clauses they would like to be considered for informational purposes only. SAWS reserves the right to negotiate any additional clauses proposed by the respondent.

**Exhibit A**

SAWS STANDARD INSURANCE SPECIFICATIONS &

CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. **Commercial Insurance Specifications:**
   * 1. Commencing on the date of this Contract, the CONTRACTOR shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any Sub-contractor, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:
2. **Workers' Compensation (WC)** insurance that will protect the CONTRACTOR, SAWS and the City from claims under statutory Workers' Compensation laws, disability laws or such other employee benefit laws and that will fulfill the requirements of the jurisdiction in which the work is to be performed.

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

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

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

This line of insurance coverage shall have minimum policy limits of liability of not less than:

$ 1,000,000.00 Bodily Injury by Accident

1,000,000.00 Bodily Injury by Disease - Each Employee

1,000,000.00 Bodily Injury by Disease - Policy Limit

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

This line of insurance coverage shall:

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

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

$ 1,000,000.00 Occurrence Limit

2,000,000.00 General Aggregate

2,000,000.00 Products/Completed Operations Aggregate

1,000,000.00 Personal and Advertising Injury

1,000,000.00 Contractual Liability

This line of insurance coverage shall be endorsed:

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

1. **Commercial/Business Automobile Liability (AL)** insurance that will protect the CONTRACTOR, SAWS and the City from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles.

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

This line of insurance coverage shall be endorsed:

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

1. **Professional Liability Insurance (Technology E&O) –** insurance with limits of at least $10,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any action, malpractice, error or omissions in providing professional services.
2. **Security and Privacy Liability** insurance to defend and cover the information security and privacy liability exposures (financial loss, penalties, and defense costs) that exist with the Vendor, SAWS and the City, with minimum coverage limits of $10,000,000 per claim, $10,000,000 in the aggregate.

The Security and Privacy Liability insurance shall provide the following coverage:

* + Broad coverage for the expenses associated with an incident, including:
  + Compliance with data breach notification laws;
  + Securing legal counsel to advise on incident response;
  + Providing credit file monitoring to victims;
  + Hiring forensic experts to investigate the breach; Paying regulatory defense and penalties from privacy law violations; and
  + Coverage for HIPAA related claims.
  + Coverage for legal liabilities including those arising from failure to comply with state or federal breach notification laws or privacy policies and/or to administer a government-mandated identity theft prevention program.

If Security and Privacy Liability line of coverage is written on a “Claims Made” form, the CONSULTANT must maintain this line of insurance coverage for a period of at least twenty-four (24) months after the date of Contract termination.

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

* Claims-made form; if the coverage form declared on the Certificate is the Claims-made form, the “Retro-date” for this line of coverage must also be included on the Certificate as well; or
  + Occurrence basis – no additional wording required.

1. CONTRACTOR shall require all Sub-contractors to carry lines of insurance coverage appropriate to their scope of Work.
2. CONTRACTOR agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.
3. CONTRACTOR shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.
4. CONTRACTOR is responsible for the deductibles under all lines of insurance coverage required by these Specifications.
5. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the CONTRACTOR's responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONTRACTOR's liability.
6. These minimum limits of insurance coverage may be either basic policy limits of the WC/ EL, CGL and AL or any combination of basic limits or umbrella limits.
7. SAWS acceptance of Certificate(s) of Liability Insurance that in any respect, do not comply with these Specifications does not release the CONTRACTOR from compliance herewith.
8. Each line of insurance coverage that is required under these Specifications shall be so written so as to provide SAWS and the City thirty (30) calendar days advance written notice directly of any cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
9. Within five (5) calendar days of cancellation or non-renewal of coverage, the CONTRACTOR shall provide a replacement Certificate of Liability Insurance and applicable endorsements to SAWS. SAWS shall have the option to suspend the CONTRACTOR's performance should there be a lapse in coverage at any time during this Contract.
10. Failure to provide and to maintain continuous coverage by each of the required lines of insurance shall constitute a material breach of this contract.
11. In addition to any other remedies SAWS may have upon the CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, SAWS shall have the right to order the CONTRACTOR to stop performing services hereunder and/or withhold any payment(s) which become due to the CONTRACTOR hereunder until the CONTRACTOR demonstrates compliance with the specifications hereof.
12. Nothing herein contained shall be construed as limiting in any way the extent to which the CONTRACTOR may be held responsible for payments of damages to persons or property resulting from the CONTRACTOR 's or its Sub-contractor's performance of the services covered under this Contract.
13. It is agreed that the CONTRACTOR’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.
14. CONTRACTOR agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an **A.M. Best** rating of "**A- (“A”- minus)”** and a **Financial Size Category** of a “**VII**" or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Contractor’s Pollution Liability line of insurance coverage.

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

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

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

* 1. **Certificate(s)** **of Liability Insurance (“Certificate”) Requirements**

Prior to the commencement of any work under this Contract and once notified by SAWS Purchasing Division that your Company has been selected as the apparent, lowest responsive Bidder, pending Board final approval, and you will be requested to submit your Company’s Certificate(s) of Liability Insurance, that Certificate(s) must meet all of the following requirements:

1. The CONTRACTOR shall have completed by its insurance agent(s), a Certificate(s) providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.4) listed above.
2. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person’s name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (**Certificate Holder**) and 2.h. (**Distribution of Completed Certificates**) below.
3. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.
4. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.
5. SAWS shall have no duty to pay or perform under this Agreement until such certificate(s) and endorsements have been received, reviewed and deemed 100% compliant with SAWS Purchasing Bid document Insurance Specifications by SAWS’ Risk Management/Purchasing Division. No one other than SAWS Risk Manager shall have authority to waive any part of this requirement.
6. **Additional Insured:**

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

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

***EITHER*** use,

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

***OR*** use,

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

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

1. **Waiver of Subrogation:**

SAWS requires that the AL, CGL and Workers’ Compensation/Employer’s Liability (“WC/EL”) policies must be endorsed with the **Waiver of Subrogation** in favor of Certificate Holder (as per item 2. i. below) and, so noted in the **DESCRIPTION OF OPERATIONS** section of the Certificate;

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

***EITHER*** use,

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

***OR*** use,

The AL, CGL and WC/EL policies are endorsed with the **Waiver of Subrogation** in favor of the Certificate Holder.

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

1. The SAWS Bid number(s) and the Bid name **shall be included** in the Description of Operations section located in the bottom half of the standard ACORD Certificate of Liability Insurance forms.
2. **Certificate Holder** - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate of Liability Insurance forms and formatted as follows:

San Antonio Water System/City of San Antonio

c/o Ebix BPO

P.O. Box 100085-ZD

Duluth, GA 30096

**\*NOTE:** *SAWS Purchasing Division will provide the above address, to include a correct, complete Reference Number, in the written confirmation of being selected as the lowest responsive Bidder pending final Board approval.*

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

1. **Distribution of Completed Certificates** - Completed **Certificates of Liability Insurance** shall be distributed by the CONTRACTOR within 5 days after receipt of written confirmation of being notified as the lowest, responsive Bidder pending final Board approval, as follows:
2. Send Original:
   1. By **Mail**:

San Antonio Water System

C/O Ebix BPO

P.O. Box 100085-ZD

Duluth, GA 30096

* 1. By **Fax**: (770) 325-6502
  2. By **E-Mail**: saws@ebix.com

1. Send Copy by mail to:

San Antonio Water System

Attention: Purchasing Division

P.O. Box 2449

San Antonio, TX 78298-2449

1. CONTRACTOR shall be responsible for obtaining Certificates of Liability Insurance from the first tier Sub-contractor, and upon request furnish copies to SAWS.
2. **SURVIVAL**

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

SAWS_3COLOR_BK **EXHIBIT B**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Good Faith Effort Plan for SUBCONTRACTING.**  NOTE: Effective 1/1/17, SMWB points shall only be assessed for consultants/contractors and/or subconsultants, subcontractors, and suppliers who are certified as SBEs (including MBEs and WBEs).  **NAME OF PROJECT: Endpoint Patch Management Asset Inventory Solution, RFP Bid # 19-19084**  **SECTION A - PRIME CONSULTANT/CONTRACTOR INFORMATION**  **Legal Name of Firm, including "doing business as" if applicable: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Address of Office to Perform Project Work:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | | | | | | |
| **City:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **State:\_\_\_\_\_** | **Zip Code:** | | **\_\_\_\_\_\_** |  | |
| **Telephone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | | | | |
| **Contact Person:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | | | | | | |
| **Email Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | **Is your firm Certified as an SMWVB?** | | | **Yes: \_\_\_\_\_\_\_\_** **No:\_\_\_\_\_\_\_\_** | |
| **If "Yes", Certification Agency that granted SMWVB designation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | | | | | | |
| **Type/s of Certification:** | **SBE: \_\_\_\_\_\_\_ MBE:** **\_\_\_\_\_\_\_** **VBE:** **\_\_\_\_\_\_\_ WBE: \_\_\_\_\_\_\_** | | | | | | | |
| **Prime Consultant/Contractor's Percentage of Participation: (Ex: 100% is the total value of the contract.) \_\_\_\_\_%** | | | | | | | | |

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Legal Name of Subconsultant/Subcontractor/ Supplier (including “doing business as”, if applicable).** | **Address of Office Location to Perform Project Work or Provide Supplies:** | **Scope of Work and/or Supplies to be Performed/ Provided by Firm:** | **Estimated Percentage of Participation on this Project:** | **Certification Type & Certification Agency:** |
| **1** |  |  |  |  |  |
| **2** |  |  |  |  |  |
| **3** |  |  |  |  |  |
| **4** |  |  |  |  |  |
| **5** |  |  |  |  |  |

|  |
| --- |
| **SECTION B. – SMWB COMMITMENTS**  The SMWB goal on this project is 19% |
| 1. The undersigned proposer has satisfied the requirements of the BID specification in the following manner (please check the appropriate space): |
| The proposer is committed to a minimum of 19 % SMWB utilization on this contract.  \_\_\_\_\_\_\_\_\_\_\_The proposer, (if unable to meet the SMWVB goal of 19%), is committed to a minimum of %  SMWB utilization on this contract. (If contractor is unable to meet the goal, please fill out Section C  and submit documentation demonstrating good faith efforts). |
| 2. Name and phone number of person appointed to coordinate and administer the SMWB requirements on this project. |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Phone Number: |
| Email Address: |
| IF THE SMWB GOAL WAS MET, PROCEED TO AFFIRMATION AND SIGN THE GFEP. IF GOAL WAS NOT MET, PROCEED TO SECTION C. |
| **SECTION C – GOOD FAITH EFFORTS (Fill out only if the SMWB goal was not achieved).** |
| 1. On a separate sheet of paper, list and attach to this Good Faith Effort Plan written, posted, or published notification to all firms you contacted with subconsulting/subcontracting/supply opportunities for this project that will not be utilized for the contract by choice of the proposer, subconsultant/subcontractor, or supplier. Notices to firms contacted by the proposer for specific scopes of work identified for subconsulting/supply opportunities must be provided to subconsultant/supplier ***not less than five (5) business days prior to proposal due date*** . This information is required for all firms that were contacted of subconsulting/supply opportunities. |
| Copies of said notices must be provided to the SMWVB Program Manager at the time the response is due. Such notices shall include information on the plans, specifications, and scope of work. |

|  |
| --- |
| 2. Did you attend the pre-submittal/pre-bid conference scheduled for this project? Yes: \_\_\_\_\_ No: \_\_\_\_\_ |
| 3. List all SMWB listings or directories, contractor associations, and/or any other associations utilized to solicit SMWB subconsultants/suppliers: |
| 4. Discuss efforts made to identify elements of the work to be performed by SMWBs in order to increase the likelihood of achieving the goal: |
|  |
| 5. Indicate advertisement mediums used for soliciting SMWBs. (Please attach a copy of the advertisement(s): |
|  |
| **AFFIRMATION** |
| I hereby affirm that the above information is true and complete to the best of my knowledge. I further understand and agree that, this document shall be attached thereto and become a binding part of the contract. |
| **Name and Title of Authorized Official:** |
| Name: |
| Title: |
| Signature: |
| Date: |
| **NOTE:** |
| This Good Faith Effort Plan is reviewed by SAWS Contracting Department. For questions and/or clarifications, please contact Marisol V. Robles, SMWVB Program Manager, at 210-233-3420. |

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

**DEFINITIONS**

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

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

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

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

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

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

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

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

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

**Joint Venture:** A limited association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skills and knowledge.

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

**Web Submittal of Subconsultant/Supplier Payment Reports:** The Contractor will be required to electronically report the actual payments to all subconsultants and suppliers utilizing the Subcontractor Payment and Utilization Reporting (S.P.U.R.) System, beginning with the first SAWS payment for services under the contract, and with every payment thereafter (for the duration of the contract). Electronic submittal of monthly subcontractor payment information will be accessed through a link on SAWS’ “Business Center” web page. This information will be utilized for subcontractor participation tracking purposes. Any unjustified failure to comply with the committed SMWB levels may be considered breach of contract.

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

EXHIBIT C

Compensation Proposal

**1. Base Year Period**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **PERPETUAL OPTION** | | | |  | **ANNUAL OPTION** | | | |
| **Item** | **Description** | **UOM** | **Price** |  | **Item** | **Description** | **UOM** | **Price** |
| 1 | Hardware | LP | $ |  | 1 | Hardware | LP | $ |
| 2 | Software | LP | $ |  | 2 | Software | LP | $ |
| 3 | Solution  Implementation / Installation | LP | $ |  | 3 | Solution  Implementation/  Installation | LP | $ |
| 4 | Training | LP | $ |  | 4 | Training | LP | $ |
| 5 | Maintenance Upgrades and support (initial year) | LP | $ |  | 5 | Maintenance Upgrades and support (initial year) | LP | $ |
|  | **Total Price Year 1** |  | $ |  |  | **Total Price Year 1** |  | $ |

**2. Optional Extension Years**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **PERPETUAL OPTION** | | |  | **ANNUAL OPTION** | | |
| **Item** | **Description** | **Price** |  | **Item** | **Description** | **Price** |
| 1 | Maintenance Upgrades, Support, & Warranty – Price Option Year 1 | $ |  | 1 | Maintenance Upgrades, Support, & Warranty – Price Option Year 1 | $ |
| 2 | Maintenance Upgrades, Support, & Warranty – Price Option Year 2 | $ |  | 2 | Maintenance Upgrades, Support, & Warranty – Price Option Year 2 | $ |
| 3 | Maintenance Upgrades and Support Price Option Year 3 | $ |  | 3 | Maintenance Upgrades and Support Price Option Year 3 | $ |
| 4 | Maintenance Upgrades and Support Price Option Year 4 | $ |  | 4 | Maintenance Upgrades and Support Price Option Year 4 | $ |
| 5 | Maintenance Upgrades and Support Price Option Year 5 | $ |  | 5 | Maintenance Upgrades and Support Price Option Year 5 | $ |
|  | **Total** | $ |  |  | **Total** | $ |

The pricing will be evaluated based upon the lowest total price submitted on the Pricing Schedule. The Proposal with the lowest price will receive thirty (30) points. All other proposals will be allotted a percentage of the 30 points based on a comparison with the lowest priced proposal. The following formula will be used:

**(Lowest price) ÷ (Respondent’s price)] x 30 = Respondent’s allotted points**

***\*All pricing shall be enclosed in a separate sealed envelope, marked “PRICING”.***

**EXHIBIT D**

**DISCLOSURE OF INTERESTED PARTIES**

If selected for an award, Respondent acknowledges that form 1295 will be completed as required.

Respondent Name:

Respondent Point of Contact Name:

Respondent Point of Contact Signature:

**EXHIBIT E**

**CONFLICT OF INTEREST**

Respondent is required to submit a completed Conflict of Interest Questionnaire (CIQ Form). Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with SAWS shall file a completed Conflict of Interest Questionnaire (CIQ) with SAWS. The CIQ Form will be submitted as part of the proposal. This form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Please consult your own legal advisor if you have questions regarding the statute or form. To report suspected ethics violations impacting The San Antonio Water System, please call 1-800-687-1918.

Respondent Name:

Respondent Point of Contact Name:

Respondent Point of Contact Signature:

**EXHIBIT F**

**NO BOYCOTTING ISRAEL VERIFICATION**

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

Respondent Name:

Respondent Point of Contact Name:

Respondent Point of Contact Signature:

**EXHIBIT G**

SECURITY PROCEDURES

If work will be conducted on SAWS property, on SAWS infrastructure, on a SAWS customer’s property, or involve any SAWS networks, or any SAWS facility, the Contractor shall ensure a Prime Contractor Data Form (PCDF) and a “Background Screening Letter” (provided by a third party background screening service) are properly completed for all employees and sub-contractors performing work under this Contract and is on file with SAWS Security prior to work commencement. Background checks must at a minimum include National Criminal Check, Verify Employment Eligibility (E-Verify), and Terrorist Watch List with this information being provided in the Background Screening Letter from the third party screening service. Any person found to have an unacceptable background check will not be allowed to perform work under this Contract (however, a at SAWS sole discretion a waiver may be given by SAWS Security for an unacceptable finding provided that it must first be approved and signed off on by the Director of SAWS Security). Any Sub-Contractors performing work must also be listed in the PCDF and the Background Screening Letter. Contractor shall be responsible for the accuracy of information on the PCDF and the Background Screening Letter, and for obtaining any and all required items (badges and parking tags) necessary to fulfilling the work under this Agreement. The PCDF and Background Screening Letter must be sent electronically to securitygroup@saws.org. Contractor shall advise the SAWS Project Manager/Inspector of any employee terminations or changes to personnel performing work under this Agreement and the Contractor shall immediately turn in any and all badges and/or parking tags of employees who are terminated or no longer performing work under this Contract. If Contractor becomes aware or reasonably should have become aware of any changes in the information contained in the PCDF or the Background Screening Letters, Contractor shall immediately notify the SAWS Project Manager/Inspector and provide updated PCDF and Background Screening Letters, with copies to [securitygroup@saws.org](mailto:securitygroup@saws.org).

Contractor, its employees, and agents shall obtain a SAWS photo identification badge (Contractor's Badge) and parking tag, prior to any work on SAWS property, which shall be used only for purposes necessary to perform the work under this Agreement. SAWS Badge Office hours are Monday, Wednesday and Friday 9:00am to 12:00pm excluding SAWS holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. Once the project is completed the Contractor shall return all badges and parking tags to the Security Office. Contractor who does not return the badges or parking tags are not in compliance with these procedures.

SAWS facilities require a SAWS employee to physically escort the Contractor at all times. SAWS may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of a third party background screening service are approved by the SAWS Project Manager and SAWS Security. Waiver of the escort requirement shall only be through a written correspondence to Contractor from SAWS Security.

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

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

If the Contractor plans to stage or store their property such as equipment, storage boxes, tools, trailers or high-priced supplies needed for the project on SAWS Production or Treatment sites the Contractor will be responsible to provide a security guard, who will be subject to SAWS prior approval, when the Contractor is not on the site working.

If the Contractor plans to leave the site unsecure or open during the project they must provide an employee or SAWS approved security guard to monitor ingress and egress to the site. If the Contractor plans to leave the site open or unsecure when not working on the site the Contractor must provide a SAWS approved security guard.

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

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

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

*Rev. 04/12/2019* SP-10

Respondent Name:

Respondent Point of Contact Name:

Respondent Point of Contact Signature:

**EXHIBIT H**

**SAMPLE CONTRACT**

**SAN ANTONIO WATER SYSTEM**

**SERVICES AGREEMENT**

AGREEMENT FOR

**PURCHSE OF ENDPOINT PATCH MANAGEMENT ASSET INVENTORY SOLUTION**

**BID NO: 19-19084**

(this “Agreement”) by and between

(“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”) (collectively, the “Parties”), 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:

WHEREAS, Contractor desires to sell a Endpoint Management Solution to the Water System; and

WHEREAS, the Water System desires to purchase the Endpoint Management Solution from Contractor, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity, or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Approved Open Source Components**” means Open Source Components that may be included in or used in connection with the Software and are specifically identified in **Exhibit A**.

“**Authorized Services**” means any and all services performed by any Authorized User for the Water System for or in connection with the Water System’s use of the Software or Documentation in accordance with this Agreement, including any services comprising or relating to the analysis, development, delivery, installation, configuration, integration, testing, deployment, maintenance, support, repair, storage, copying, reproduction, modification, enhancement, improvement, or disaster recovery of, or training of Authorized Users concerning, the Software or Documentation.

“**Authorized Users**” means all officers, directors, and employees/employees of the Water System each of whom is authorized to use the Software. Authorized Users also include all Persons, including all agents, contractors, consultants, and their respective employees that the Water System retains or grants any sublicense to hereunder to provide Authorized Services.

“**Business Day**” means a day other than a Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by Law to be closed for business.

“**Confidential Information**” has the meaning set forth in [Section 10.1](#co_anchor_a971962_1).

“**Contractor Personnel**” means all employees of Contractor and any Permitted Subcontractors involved in the performance of Services hereunder.

“**Designated Sites**” means any of the Water System’s facilities set forth in **Exhibit A**.

“**Documentation**” means Contractor’s user manuals, handbooks, and installation guides relating to the Software, Hardware, and Equipment in any form or media, that describe the functionality, components, features, or requirements of the Software, Hardware and Equipment, including any aspect of the installation, configuration, integration, operation, or use of the Software, Hardware and Equipment.

“**Effective Date**” has the meaning set forth in the preamble.

**“Endpoint Management Solution”** means the Products and Services.

**“Equipment”** means the equipment being sold by Contractor to the Water System as set forth in **Exhibit A**.

**“Fees”** means the fees for Products and Services set forth in **Exhibit B**.

“**Hardware**” means the hardware being sold by Contractor to the Water System as set forth in **Exhibit A**.

“**Harmful Code**” means any: (a) virus, trojan horse, worm, backdoor or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive the Water System of its lawful right to use such software.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**License Fee**” has the meaning set forth in [Section 9.1](#co_anchor_a393476_1).

“**Loss”** or “**Losses**” means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Maintenance Release**” means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Contractor may generally provide to its licensees from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, and includes any New Version.

“**New Version**” means any new version of the Software that the Contractor may from time to time introduce and market generally as a distinct licensed product, as may be indicated by Contractor’s designation of a new version number.

“**Open Source Components**” means any software component that is subject to any open source copyright license agreement, including software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

“**Open Source License**” has the meaning set forth in [Section 2.3](#co_anchor_a143054_1).

“**Operating Environment**” means the Water System’s computer systems on which the Software is intended to be installed and operate, as set forth in the attached **Exhibit A**.

“**Permitted Use**” means use of the Software and Documentation by any Authorized User for the benefit of the Water System for any and all lawful purposes.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Pricing**” means any and all fees, rates, and prices payable under this Agreement, including pursuant to any Exhibit hereto.

**“Products”** means all Software, Hardware, Equipment, and Documentation,and all code, specifications and other documents, work product, information, data, and materials that Contractor is required to or otherwise provides to the Water System or its designee(s) under this Agreement

“**Representatives**” means, with respect to a Party, that Party’s employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“**Services**” means any of the services, including Support Services and training (if applicable), Contractor is required to or otherwise does provide under this Agreement as more fully described in the body of this Agreement and **Exhibit A**.

“**Software**” means the executable, object code version of the [NAME OF SOFTWARE, CURRENT SOFTWARE VERSION, AND RELEASE NUMBER], and any Maintenance Releases provided to and Water System Modifications made by or for the Water System pursuant to this Agreement, and all copies of the foregoing permitted hereunder, as more fully described in Exhibit A.

“**Source Code**” means the human readable source code of the Software to which it relates, in the programming language in which the Software was written, together with all related flow charts, code, and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain, and develop modifications, upgrades, updates, adaptations, enhancements, new versions, and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

“**Support Commencement Date**” means, with respect to any Product, the date on which the Warranty Period for such or Service expires or such other date as may be set forth in the Support Schedule for such Product or Services.

“**Support Schedule**” means the exhibit attached as **Exhibit A**, setting forth the Support Services and the Parties’ additional rights and obligations with respect thereto.

“**Support Services**” means the software support Services Contractor is required to or otherwise does provide to the Water System under this Agreement as described in this Agreement and **Exhibit A**.

“**Term**” has the meaning set forth in **Exhibit C**.

“**Warranty Period**” means: i) with respect to Software, the one (1) year period commencing on (a) installation of the Software and (b) any and all subsequent Maintenance Releases; ii) with respect to Hardware and Equipment, the one (1) year period commencing on installation of such Hardware or Equipment; and iii) with respect to Services, the ninety (90)-day period commencing on completion of such Services.

“**Water System Data**” means all data, information, and other content of any type and in any format, medium, or form, whether audio, visual, digital, screen, or other, that is input, uploaded to, placed into, or collected, stored, processed, generated, or output by any device, system, or network by or on behalf of the Water System, including any and all works, inventions, data, analyses, and other information and materials resulting from any use of the Products by or on behalf of the Water System under this Agreement, except that Water System Data does not include the Software or data, information, or content, including any audio, visual, or digital or other display or output, that is generated automatically upon executing the Software without additional user input.

“**Water System Modifications**” means all modifications, corrections, repairs, translations, enhancements, and other derivative works and improvements of the Products permitted to be made by the Water System, or for the Water System by any Authorized User pursuant to this Agreement.

1. Software License.

2.1 License Grant. Contractor hereby grants to the Water System [during the Term] a non-exclusive, royalty-free, [perpetual,] irrevocable, freely transferable, and freely sublicensable license to use the Software and Software Documentation for the Permitted Use in accordance with the terms and conditions of this Agreement.

2.2 Scope of Licensed Access and Use. Pursuant to the license granted under [Section 2.1](#co_anchor_a784030_1) and in accordance with the terms and conditions thereof, the Water System has the right and license to do each of the following for or in connection with the Permitted Use:

(a)install, execute and run [[NUMBER] of copies of/one (1) copy of] the Software on [up to [NUMBER]/its] computer(s) [at a time] [and] on the Water System’s network for use by [up to [NUMBER]/the] Authorized Users [at a time] [at [any/each] of the Designated Site(s)];

(b)have Authorized Users access and use the Software by any means whatsoever, including via the internet or any WAN, LAN or VPN, from any other device;

(c)generate print, copy, download and store all Water System Data and other data, information and content, including all audio, visual, or digital and other displays and output, as may result from any execution or other use of the Software;

(d) use the Software in object code form, except that the licensed uses of the Software hereunder will include use in both Source Code and object code form for any Open Source Components, in accordance with the license therefor;

(f) prepare and use as many copies and Water System Modifications of the Software and Documentation for the Permitted Use, including for purposes of: (i) operation with other software or systems; (ii) hardware or system maintenance or repair; (iii) software, hardware or system testing; (iv) disaster recovery; and (v) backup and archiving;

(g) procure and use, and have Authorized Users perform, all Authorized Services, it being understood and agreed that no such procurement, use or performance of the Authorized Services, or any use of any computers, devices, networks or copies of the Software or Documentation permitted under [Section 2.1](#co_anchor_a784030_1) or this [Section 2.2](#co_anchor_a512952_1), for or in connection with the Authorized Services will be included in the calculation of the quantity or amount of the Water System’s use of the Software for any purpose, including for assessing any fees or other consideration payable to Contractor or determining the Water System’s compliance with the maximum usage permitted by [Section 2.2(a)](#co_anchor_a779985_1) or [Section 2.2(b)](#co_anchor_a978885_1);

(h) grant any and all such sublicenses as may be required to authorize any Authorized Users to perform any of the Authorized Services;

(i) train Authorized Users in any and all uses of the Software and Documentation permitted hereunder; and

(j) perform, and have Authorized Users perform, any other act, including the provision of any service, that is reasonably incidental to the operation of the Software in accordance with the terms and conditions of this Agreement.

2.3 Open Source Licenses. Any use hereunder of Open Source Components shall be governed by, and subject to, the terms and conditions of the applicable open source license (”Open Source License”). Contractor shall:

1. Identify and describe in **Exhibit A** each of the Approved Open Source Components of the Software.
2. Provide the Water System a complete, machine-readable copy of the Source Code for each such Approved Open Source Component in accordance with the terms of the corresponding controlling Open Source License, a copy of each of which as of the Effective Date is attached as an exhibit to **Exhibit A**.
3. Update **Exhibit A** to include (a) all Approved Open Source Components, if any, of any Maintenance Release or other Products and (b) an exhibit attaching all applicable Open Source Software Licenses or identifying the URL where these licenses are publicly available.

2.4 Software License Restrictions. Except as this Agreement expressly permits, or as reasonably necessary to make any use of the Software permitted by [Section 2.1](#co_anchor_a784030_1), [Section 2.2](#co_anchor_a512952_1) or elsewhere in this Agreement, the Water System shall not, and shall not permit others to:

1. modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Software except as expressly permitted by [Section 2.2(f)](#co_anchor_a707784_1);

1. rent, lease, lend, sell, distribute, publish, or otherwise make the Software available to any third party; or
2. reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the Source Code of the Software, in whole or in part, except as and only to the extent: (i) this restriction is prohibited by applicable Law; (ii) such action is taken for purposes of ensuring or assessing interoperability or otherwise qualifies as a “fair use” under US Copyright Act or other applicable Law or; (iii) with respect to Open Source Components included in the Software, these acts are permitted under the applicable Open Source License.

1. Hardware and Equipment.

4. Delivery and Installation.

4.1 Delivery, Risk of Loss and Installation. Within [NUMBER] Business Days after the Effective Date, Contractor shall deliver the Products **FOB Destination** and install the Products in accordance with the specifications set forth in **Exhibit A**.

4.2 Documentation. Contractor shall provide the Water System with complete and accurate Documentation for all Products prior to or concurrently with their delivery. The Documentation will include all technical and functional specifications and other such information as may be reasonably necessary for the effective installation, testing, use, support and maintenance of the Products in the Operating Environment, including the effective configuration, integration, and systems administration of the Products, and the operation and the performance of all its functions.

4.3 Documentation Specifications. Contractor shall provide all Documentation in both hard copy and electronic form, in such formats and media as are set forth in **Exhibit A**, or as the Water System may otherwise request.

5. Performance of Services.

5.1 Provision and Quality of Services. Contractor shall provide all Services and Products hereunder in a timely, skillful, professional, and workmanlike manner by qualified personnel exercising care, skill, and diligence consistent with best practices in the industry, and will devote adequate resources to meet its obligations hereunder, in accordance with the terms and conditions of this Agreement and the Documentation.

5.2 Time of the Essence. Contractor acknowledges that time is of the essence with respect to Contractor’s performance hereunder and agrees that prompt and timely performance of all Services and other Contractor obligations in accordance with this Agreement is strictly required.

6. Training. Contractor shall provide, at no additional charge, training on all uses of the Products permitted hereunder in accordance with the times, locations and other terms set forth in **Exhibit A**. Upon the Water System’s request, Contractor shall timely provide training for additional Authorized Users or other additional training on all uses of the Products for which the Water System requests such training, at such reasonable times and locations as the Water System requests and pursuant to such rates and other terms as are set forth in **Exhibit B**.

7. Maintenance Releases; New Versions.

7.1 Maintenance Releases. During the Term, Contractor shall provide the Water System, at no additional charge, with all Maintenance Releases, each of which will constitute Software and be subject to the terms and conditions of this Agreement.

7.2 New Versions. The Water System shall have the right, in its sole discretion, to receive any New Versions of the Software that the Contractor may release from time to time, at the best price then charged by Contractor for such New Version. All New Versions provided under this Agreement will constitute Software and be subject to the terms and conditions of this Agreement.

7.3 Installation. The Water System has no obligation to install or use any Maintenance Release or New Version. If the Water System wishes to install any Maintenance Release or New Version, the Water System shall have the right to have such Maintenance Release or New Version installed, in the Water System’s discretion, by Contractor or Authorized Users. If the Water System requests that Contractor install any Maintenance Release or New Version, Contractor shall do so promptly and in no case more than [NUMBER] Business Days after the Water System’s notice of such request.

8. Support Services. Contractor shall provide the Water System with the Support Services described in **Exhibit A**. Such Support Services will be provided: (a) free of charge during the applicable Warranty Period, it being acknowledged and agreed that the Fees include full consideration for such Services during such period and (b) thereafter, for so long as the Water System elects to receive Support Services for the Software, in consideration of the Water System’s payment of Support Services fees in accordance with [Section](#co_anchor_a111830_1) 9 and the rates set forth in **Exhibit B**.

9. Fees and Payment.

9.1 License Fees. In consideration of, and as payment in full for, the rights and license to use the Software and Software Documentation as provided in this Agreement, the Water System shall pay to Contractor, subject to and in accordance with the terms and conditions of this Agreement, including the applicable provisions of **Exhibits B**.

9.2 Hardware & Equipment Purchase Fees. In consideration of, and as payment in full for, the purchase of Hardware and Equipment, the Water System shall pay to the Contractor the fees set forth in **Exhibit B**, subject to and in accordance with the terms and conditions of this Agreement, including the applicable provisions of **Exhibit B** and this Section 9.

9.2 Service Fees. In consideration of Contractor providing the Services as required hereunder, the Water System shall pay to Contractor the fees set forth in **Exhibit B** subject to and in accordance with the terms and conditions of this Agreement, including the applicable provisions of **Exhibit B** and this Section 9.

9.3  Invoices. Contractor shall invoice the Water System for all Fees in accordance with the invoicing requirements set forth in **Exhibit B**. Contractor shall submit each invoice in both hard copy and electronic format, via such delivery means and to such address as are specified by the Water System in writing from time to time.

9.4 Payment. Subject to the terms and conditions of this [Section 9.4](#co_anchor_a507039_1), the Water System shall pay all properly invoiced fees within [30] days after the Water System’s receipt of a proper invoice therefor.

9.5 Form of Payment. All payments hereunder will be in US dollars and made, at the Water System’s option, by [check or wire transfer/[PAYMENT METHOD]]. Payments will be made to the address or account specified by Contractor in writing from time to time, provided that Contractor shall give the Water System at least [NUMBER] Business Days’ prior notice of any account, address or other change in payment instructions. The Water System will not be liable for any late or misdirected payment caused by Contractor’s failure to provide timely notice of any such change.

9.6 Payment Disputes. The Water System may withhold from payment any and all payments and amounts the Water System disputes in good faith, pending resolution of such dispute.

Contractor shall not withhold any Services or fail to perform any obligation hereunder by reason of the Water System’s good faith withholding of any payment or amount in accordance with this [Section 9.6](#co_anchor_a562870_1) or any dispute arising therefrom.

9.7 Firm Pricing/Fee Changes. All Pricing set forth in this Agreement is firm and will not be increased.

9.10 Right of Setoff. Without prejudice to any other right or remedy it may have, the Water System reserves the right to set off at any time any amount owing to it by Contractor against any amount payable by the Water System to Contractor under this Agreement or otherwise.

10. Confidentiality. While the Water System may have a proprietary interest in this Agreement, Water System Data, Water System Modifications, 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 the 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 the Water System of the request along with a copy of the request, and give the 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 Services, or with information obtained in connection with the Services, 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.

11. Intellectual Property Rights.

11.1 Ownership Rights in Software.

1. Subject to the rights and licenses granted by Contractor in this Agreement , and the provisions of [Section 11.1(a)(ii)](#co_anchor_a898534_1):

(i) Contractor reserves and retains its entire right, title and interest in and to all Intellectual Property Rights arising out of or relating to the Software; and

(ii) none of the Water System or Authorized Users acquire any ownership of Intellectual Property Rights in or to the Software or Software Documentation as a result of this Agreement.

1. As between the Water System, on the one hand, and Contractor, on the other hand, the Water System has, reserves and retains, sole and exclusive ownership of all right, title and interest in and to the Water System Data and Water System Modifications, including all Intellectual Property Rights arising therefrom or relating thereto. The Water System Data and Water System Modifications are the Confidential Information of the Water System, and neither Contractor nor any third party has or will:

(i)have, acquire, or claim any right, title, or interest in or to any Water System Data or Water System Modifications as a result of this Agreement or any interest in the Software or any Open Source Components; or

(ii) have any right or license to, and shall not, use any Water System Data or Water System Modifications except solely as and to the extent necessary to perform the Services hereunder.

11.2 Rights in Open Source Components. Ownership of all Intellectual Property Rights in Open Source Components remains with the respective owners thereof, subject to the Water System’s rights under the applicable Open Source Licenses.

12. Representations and Warranties.

12.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

1. it is a duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

1. it has the full right, power, and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;

1. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and

1. when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

12.2 Additional Contractor Representations and Warranties. Contractor further represents, warrants and covenants to the Water System that:

1. it is and throughout the license term will remain the sole and exclusive legal and beneficial owner of the entire right, title, and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto;
2. it is, and until the sale to the Water System of the Hardware and Equipment will remain, the sole and exclusive legal and beneficial owner of the entire right, title and interest in and to the Hardware and Equipment, including all Intellectual Property Rights relating thereto;

1. it has and throughout the license term will retain the unconditional and irrevocable right, power, and authority to grant and perform the license hereunder;
2. it has the unconditional and irrevocable right, power, and authority to sell the Hardware and Equipment to the Water System;

1. the Software and Software Documentation, and the Water System’s use thereof, is and throughout the license term will be free and clear of all encumbrances, liens and security interests of any kind;
2. The Hardware and Equipment and the Documentation thereon are free and clear of all encumbrances, liens and security interests of any kind;

1. neither its grant of the license, nor the provision of Products or Services or any other performance by or on behalf of Contractor under this Agreement does or will at any time:

1. conflict with or violate any applicable Law;

(ii) require the consent, approval, or authorization of any governmental or regulatory authority or other third party other than to the extent required by the Water System; or

(iii) require the provision of any payment or other consideration to any third party;

1. it has not granted and will not at any time during the license term grant any license or other contingent or non-contingent right, title or interest under or relating to the Software or Documentation that does or will conflict with or otherwise affect this Agreement, including any of Contractor’s representations, warranties or performance or the Water System’s rights or licenses hereunder;

1. when used by the Water System or any Authorized User, no Product or Documentation as delivered or installed by Contractor does or will:

(i) infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party; or

(ii) fail to comply with any applicable Law;

1. there is no settled, pending, or threatened litigation, claim or proceeding (including in the form of any offer to obtain a license):

(i) alleging that any use of the Products or Documentation does or would infringe, misappropriate, or otherwise violate any copyright, patent, trade secret or other Intellectual Property Right of any third party;

(ii) challenging Contractor’s ownership of, or right to use or license, any Products or Documentation, or alleging any adverse right, title, or interest with respect thereto;

(iii) alleging the invalidity, misuse, unregistrability, unenforceability or non-infringement of any copyrights, trade secret rights, or patent rights in the Products or Documentation; or

(iv) alleging any third-party infringement, misappropriation, or violation of any copyrights, trade secrets, or patent rights in the Products or Documentation, nor is any third party infringing, misappropriating, or violating, or preparing or threatening to infringe, misappropriate, or violate, any copyrights, trade secrets or patent rights in the Products or Documentation, and it has no knowledge after reasonable investigation of any factual, legal, or other reasonable basis for any such litigation, claim or proceeding;

1. it has not received any written, oral or other notice of any litigation, claim or proceeding described in [Section 12.2(j)](#co_anchor_a467942_1);

1. no expiration or loss of any patent or application for patent rights in the Software is pending, or, to Contractor’s knowledge after reasonable inquiry, threatened or reasonably foreseeable, and Contractor has no reason to believe that any claims of any such patent or patent application are or will be invalid, unenforceable, fail to issue, or be materially limited or restricted beyond the current claims, except for patent rights expiring at the end of their statutory term;
2. as provided and installed by Contractor, no Software does or will at any time during the license term contain any:

1. Harmful Code; or

(ii) Open Source Components or operate in such a way that it is developed or compiled with or linked to any Open Source Components, other than Approved Open Source Components specifically described in **Exhibit A** and the controlling Open Source License.

1. all Documentation is and will be complete and accurate when provided to the Water System such that at no time during the license term will the Software have any undocumented feature; and

1. it will perform all Services in a timely, skillful, professional, and workmanlike manner in accordance with best industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet its obligations under this Agreement.

12.3 Performance Warranty and Limited Remedy.

1. Contractor represents, warrants, and covenants to the Water System that throughout the Warranty Period relevant thereto:

(i) when used in the Operating Environment (or any successor thereto) in accordance with the Documentation, all Software as provided and installed by Contractor, will be fully operable, meet all applicable specifications, and function in all respects, in conformity with this Agreement and the Documentation; and

(ii) any media on which any Software or Documentation is delivered will be free of any damage or defect in design, material or workmanship, and will remain so under ordinary use as contemplated by (A) this Agreement and, with respect to the Software, (B) the Documentation; and

(iii) no Maintenance Release or New Version, when properly installed in accordance with this Agreement, will have an adverse effect on the functionality or operability of the Software.

1. If the Contractor breaches any of the warranties set forth in [Section 12.3(a)](#co_anchor_a1002425_1), Contractor shall, upon written notice from the Water System and at Contractor’s sole cost and expense, remedy such breach in accordance with the remedial plan set forth in **Exhibit A**, including the time periods set forth therein. In the event Contractor fails to remedy such breach on a timely basis, the Water System shall be entitled to any and all such remedies as are specified in the Support Schedule or as may otherwise be available under this Agreement, at law or in equity for breach of its Support Services obligations. Nothing in this [Section 12.3(b)](#co_anchor_a1005016_1) shall limit the Water System’s right to indemnification pursuant to [Section 13.1](#co_anchor_a186600_1).

12.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THIS AGREEMENT.

13. Indemnification.

13.1 Indemnification. Contractor shall indemnify, defend, and hold harmless the Water System and the City of San Antonio, and their respective members, agents, employees, officers, directors, trustees and representatives (collectively, “Indemnitees”) from and against any and all Losses incurred by the Indemnitee resulting from any Action by a third party:

1. that the Products, or any use of the Products in accordance with this Agreement, infringes or misappropriates such third party’s Intellectual Property Rights;
2. Contractor’s breach of any representation, warranty, covenant, or obligation of Contractor under this Agreement (including any action or failure to act by any Contractor contractor that, if taken or not taken by Contractor, would constitute such a breach by Contractor); or

1. any action or failure to take a required action or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance of any Services or other activity required of, or performed by or on behalf of, Contractor or any Contractor contractor under this Agreement.

13.2 Indemnification Procedure. The Water System shall promptly notify Contractor in writing of any Action for which the Water System believes it is entitled to be indemnified pursuant to [Section 13.1](#co_anchor_a186600_1) and cooperate with Contractor at Contractor’s sole cost and expense. Contractor shall promptly assume control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Water System to handle and defend the same, at Contractor’s sole cost and expense. The Water System may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Contractor shall not settle any Action without the Water System’s prior written consent. If the Contractor fails or refuses to assume control of the defense of such Action, the Water System shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Contractor, in each case in such manner and on such terms as the Water System may deem appropriate. The Water System’s failure to perform any obligations under this [Section 13.2](#co_anchor_a290822_1) will not relieve Contractor of its obligations under this [Section 1](#co_anchor_a539083_1)3 except to the extent that Contractor can demonstrate that it has been materially prejudiced as a result of such failure.

13.3 Mitigation.

1. If any Product, or any component thereof, is or in Contractor’s opinion is likely to be claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if the Water System’s use of any Product or any component thereof is enjoined or threatened to be enjoined, Contractor shall, at Contractor’s sole cost and expense:

(i) obtain the right for all Indemnitees to continue to use such Product to the full extent contemplated by this Agreement; or

(ii) modify or replace the materials that infringe or are alleged to infringe (”Allegedly Infringing Materials”) to make the Product and all of its components (as so modified or replaced) non-infringing while providing fully equivalent features and functionality, in which case such modifications or replacements will constitute Product under this Agreement; or

1. if neither of the foregoing ((a)(i) or (a)(ii)) is possible notwithstanding Contractor’s best efforts, then Contractor may, by written notice to the Water System, direct all Indemnitees to cease any and all use of materials that have been enjoined or finally adjudicated as infringing, provided that Contractor shall:

(i) refund to the Water System a pro rata portion of all amounts paid by the Water System in respect of such Allegedly Infringing Materials and any other parts, features or functions of the Products or Services that the Water System cannot reasonably use as intended under this Agreement proportionate with the extent to and period during which the Water System’s exercise of its rights under this Agreement respecting the Allegedly Infringing Materials have been and will be materially impaired; and

(ii) in any case, at its sole cost and expense, secure the right for all Indemnitees to continue using the Allegedly Infringing Materials for a transition period of up to [NUMBER] months to allow the Indemnitees to replace the affected features of the Product without disruption; and

1. if none of the remedies set forth in [Section 13.3(a)](#co_anchor_a1007680_1) or [Section 13.3(b)](#co_anchor_a202536_1) is reasonably available with respect to the Allegedly Infringing Materials, Contractor may terminate this Agreement, including the rights and licenses granted pursuant to [Section 2](#co_anchor_a406042_1), and the Water System shall promptly return to Contractor the original copy and all other partial and complete copies of the Software other than the Water System Modifications and Contractor shall refund to the Water System:

(i) the Fees paid hereunder less the amortized portion of such Fees;

(ii) a pro rata share of any prepaid fees for the Support Services that corresponds to the percentage of the service period remaining after the effective date of such termination; and

(iii) all prepaid fees for other Services to the extent such other Services have not been provided.

The remedies set forth in this [Section](#co_anchor_a694493_1) 13.3 are in addition to, and not in lieu of, all other remedies that may be available to the Water System, including the indemnification rights under this [Section 1](#co_anchor_a539083_1)3.

13.4 The terms and provisions of this Section 13 shall survive the expiration of the term or earlier termination of this Agreement. Nothing in this Section 13 shall be interpreted to constitute a waiver of any governmental immunity available under Texas law or any available defenses under Texas law. IN THE EVENT CONTRACTOR AND THE WATER SYSTEM ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE WATER SYSTEM UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14. Term and Termination.

14.1 Term. The term of this Agreement shall be for the period provided in **Exhibit C** attached hereto and incorporated herein, beginning and ending on the dates provided in **Exhibit** **C**.

14.2 Termination for Cause. The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the 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 the Water System to Contractor, (ii) the engaging by Contractor in willful or fraudulent conduct that is injurious to the 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 the Water System to Contractor. Notice shall be deemed given as provided in Section 15.3 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 9.10 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 14.3.

14.3 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.

14.4 Survival. 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.

15. Miscellaneous.

15.1 Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Agreement are and will be deemed to be rights and licenses to “intellectual property,” and the subject matter of this agreement, including all Products, is and will be deemed to be “embodiment[s]” of “intellectual property”, for purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the “Code”) (11 U.S.C. § 365(n)). The Water System shall have the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Agreement, and the subject matter hereof. Without limiting the generality of the foregoing, Contractor acknowledges and agrees that, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding:

1. subject to the Water System’s rights of election, all rights and licenses granted to the Water System under this Agreement will continue subject to the terms and conditions hereof, and will not be affected, even by Contractor’s rejection of this Agreement;

1. the Water System shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the Water System’s possession, will be promptly delivered to the Water System, unless Contractor elects to and does in fact continue to perform all of its obligations under this Agreement.

15.2 Further Assurances. On a Party’s reasonable request, the other Party shall, at the requesting Party’s sole cost and expense, execute, and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

## 15.3 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 the Water System: **San Antonio Water System**

Purchasing Division

2800 US Hwy 281 North

San Antonio, Texas 78212

Attn: Yvonne C. Torres

Phone: 210.233.3821

Fax: 210.233.4167

With copy to: **San Antonio Water System**

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:

15.4. Independent Contractor. Contractor’s work shall be performed by Contractor as an independent contractor and not as an agent, employee or partner of the 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 the 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 the Water System or the Contractor.

15.5*.* Right To Audit. Contractor agrees to maintain appropriate accounting records of costs, expenses, and payrolls of its employees and agents performing under this Agreement 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 representativesshall 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.

15.6. Subcontractors. Contractor shall not be permitted to subcontract any portion of the Services without the prior written consent of the Water System, other than authorized subcontractors as set forth in **Exhibit D**. 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 the 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.

15.7. Compliance with Law and the Water System’s Policies. In performing this Agreement, Contractor agrees to comply with applicable laws and regulations and the Water System’s Policies, including but not limited to the Security Procedures attached as **Exhibit E** and compliant submittal of the Interested Parties Form 1295 attached as **Exhibit F** 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.

15.8. Insurance. Contractor shall maintain and keep in force for the duration of this Agreement such insurance as set forth on **Exhibit G** 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 Contractor hereunder and shall not be construed to be a limitation of liability on the part of 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.

15.9 Interest in Water System Agreements Prohibited. No officer or employee of the City shall have a financial interest, director 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 the Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of Contractor contracting with the Water System shall render this Agreement voidable by theBoard 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.

15.10 Gift Policy. The Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources. A copy of the 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.

15.11 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.

15.12 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.

15.13 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.

15.14 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, G, and H, 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.

15.15 No Waiver. The failure of any party to this Agreement at any time or times to require the performance of any provisio7ns 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.

15.16 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 andsole venue shall exclusively be inthe courts of Bexar County, Texas.

15.17 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.

15.18 Non-Appropriation. Contractor agrees that the Water System has projected costs for this Agreement and the 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 the Water System’s obligations under the terms of this Agreement, then the Water System’s obligations under this Agreement shall terminate, and Contractor’s sole option and remedy shall be to terminate this Agreement by written notice to the Water System, and neither the Water System nor Contractor shall have any further duties or obligations hereunder, except those which expressly survive.

15.19 Export Regulation. The Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Water System shall not, directly or indirectly, export, re-export, or release the Services or the underlying software or technology to, or make the Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Water System shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the underlying software or technology available outside the US.

15.20 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

THE WATER SYSTEM: San Antonio Water System

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

Yvonne C. Torres

Director Purchasing

Date

CONTRACTOR: Company Name

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

Signature

Title

Date

LIST OF EXHIBITS

***(Exhibits not included herein)***

Exhibit A: Products and Services

Exhibit B: Fees – Compensation Schedule

Exhibit C: Term and Extensions

Exhibit D: List of Subcontractors

Exhibit E: Security Procedures

Exhibit F: Interested Parties Form 1295

Exhibit G: SAWS Standard Insurance Specifications & Certificate of Liability Insurance Requirements

Exhibit H: No Boycotting Israel Verification