



**REQUEST FOR QUALIFICATIONS**

**Vista Ridge Regional Supply Project Technical Advisor**

**Solicitation No.: Q-15-009-MF**

**Addendum 1 | December 4, 2015**

**CHANGES TO THE RFQ**

1. The contract entitled “Professional Services Agreement – Engineering Services” is to be deleted in its entirety and replaced with the attached document, entitled “Consulting Agreement.”

**END CHANGES TO THE RFQ**

**QUESTIONS AND ANSWERS**

The Questions and Answers will be provided in a successive Addendum.

**END OF QUESTIONS AND ANSWERS**

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

**END ADDENDUM 1**

**SAN ANTONIO WATER SYSTEM  
CONSULTING AGREEMENT**

AGREEMENT FOR

**[INSERT PROJECT NAME]**  
(the "Project")

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

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

**INSERT CONSULTANT NAME**  
**ADDRESS 1**  
**ADDRESS 2**

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

1. Consulting.

(a) Consulting and Advisory Services. During the term of this Agreement, the Consultant will provide consulting and advisory services to the Water System in accordance with the highest professional standards. Consultant shall perform the services described on Exhibit B attached hereto and incorporated herein. The Consultant shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E (remove if not using Exhibit E). Acceptance of work of the Consultant by the Water System shall not constitute or be deemed a release of the responsibility, obligations or liability of the Consultant under this Agreement for any errors, omissions, defect in the design, drawings, specifications, documents, reports and work performed by the Consultant. Consultant will utilize only qualified personnel to perform the work under this Agreement. All of such work shall be under the direct supervision of properly licensed professionals as appropriate for the Project and work. All reports and completed documents submitted for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a professional engineer licensed in the State of Texas. Any document that is a draft or partial submittal shall bear an appropriate notice that it is a draft or partial submittal only.

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

(c) Independent Contractor. It is acknowledged and agreed that the Consultant is an independent contractor of the Water System and not an employee or agent or fiduciary of Water System, and each of the parties to this Agreement agrees to take actions consistent with the foregoing. Consultant is not being engaged to perform any fiduciary functions of Water System. Further, nothing in this Agreement shall be construed to create a partnership, joint venture, or other association between the parties.

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

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

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

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

(h) Insurance. Consultant shall maintain and keep in force for the duration of this Agreement such insurance as set forth on Exhibit C of this Agreement, which is attached hereto and incorporated herein for all purposes as if fully set forth herein. Approval of insurance by the Water System shall not relieve or decrease the liability of the Consultant hereunder and shall not be construed to be a limitation of liability on the part of the Consultant. Consultant 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, c/o Ebix BPO, P.O. Box 257, Portland, MI 48875-0257.

(i) Right To Audit. Consultant agrees to maintain appropriate accounting records of costs, expenses, and payrolls of its employees and agents working on the Project for a period of three years after final payment for completed work has been made and all other pending matters concerning the Agreement have been closed. Consultant 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 Consultant which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits and examinations.

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

(j) Equal Employment Opportunity/Minority Business Enterprise. The Consultant agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, disability, genetic information or political belief or affiliation. Specifically, the Consultant agrees to abide by all applicable provisions of the Nondiscrimination Clause and the Small and Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office. In the event non-compliance occurs the Consultant, upon written notification by the Water System, will commence compliance procedures within thirty (30) days.

(k) Sub-consultants. The Consultant acknowledges that it is the policy of the Water System to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman-owned Businesses ("SMWB") to afford greater opportunity for such groups to obtain and participate in Water System contracts. Consultant agrees to complete and submit a Good Faith Effort Plan as part of its response to the Water System's request for a proposal. Consultant shall take all reasonable steps to be in compliance with and maintain compliance with at least the minimum percentage participations for SMWB set out in Consultant's proposal to the Water System. Consultant shall be required to electronically report the actual payments to all subcontractors, whether SMWB or non-SMWB, 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). After Consultant receives payment from SAWS, electronic submittals will require data entry of the amount paid to each subcontractor, whether SMWB or non-SMWB, listed on the Contractor's

Good Faith Effort Plan. Data entry is required even if the actual payment amount is zero dollars and zero cents (\$0.00). This information will be utilized for subcontractor utilization tracking purposes. Any unjustified failure to comply with the committed SWMB levels may be considered breach of contract.

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

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

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

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

(m) Indemnification. To the maximum extent permitted by law, Consultant agrees to and does hereby fully **INDEMNIFY AND HOLD HARMLESS** Water System and the City of San Antonio, and their respective members, agents, employees, officers, directors, trustees and representatives (collectively, "Indemnitees"), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees (including, without limitation, attorneys' fees), fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including, without limitation, personal injury or death and property damage, incurred by, asserted against or made upon any of the Indemnitees **ARISING OUT OF, RESULTING FROM OR RELATED TO THE NEGLIGENT ACTS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, ERRORS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, SUBCONSULTANT OF CONSULTANT, OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES, while in the exercise or performance of the rights or duties under this Contract.** The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole, joint, or concurrent negligence of Indemnitees. **IN THE EVENT CONSULTANT AND THE INDEMNITEES ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL**

**IMMUNITY AVAILABLE TO THE INDEMNITEES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE FOREGOING NOTWITHSTANDING, IT IS AGREED THAT, WITH RESPECT TO ANY STATUTORY RESTRICTIONS AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREIN, IT SHALL BE SUBJECT TO SUCH RESTRICTIONS, AND THE INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREIN SHALL BE DEEMED TO BE AMENDED, TO THE MINIMUM EXTENT NECESSARY TO CONFORM THEREWITH, AND SHALL OTHERWISE CONTINUE IN FULL FORCE AND EFFECT.**

(n) Default. In the event Consultant fails to perform its duties or obligations under this Agreement, Water System shall be entitled to any and all remedies available at law or in equity (including, without limitation, the recovery from Consultant of all losses and damages, whether actual, direct, consequential, liquidated or otherwise, and all reasonable attorneys' and other professional fees and costs suffered or incurred by the Water System arising from such default), and, in addition, the Water System shall have the right to terminate this Agreement by written notice as provided in Section 2 below. The Water System shall be entitled to recover reasonable attorneys' fees and costs of dispute resolution incurred in connection with enforcement of this Agreement. In addition, the Water System shall have the right to (1) take possession of all materials and work completed under this Agreement, (2) accept assignment of any subconsultant agreements relating to this Agreement on terms and conditions acceptable to the Water System, and (3) recover from the Consultant and/or deduct from any sums then owed to the Consultant, all losses, damages, penalties and fines, whether actual or liquidated, direct, consequential and/or exemplary, and all reasonable attorneys' and other professional fees and costs suffered or incurred by the Water System by reason of or as a result of Consultant's default. Such amounts, together with interest on same at the highest rate allowed by law until paid in full, shall be binding on Consultant and are due upon demand. No action by the Water System shall constitute an election of remedies.

2. Term, Termination and Suspension.

(a) Term. The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D. In the event that Consultant has not completed the work specified on Exhibit B prior to the end of the term of this Agreement, in addition to any other remedies to which the Water System may be entitled, at law or in equity, Consultant shall pay to Water System, or the Water System may withhold from sums then due and owing the Consultant.

(b) Termination For Cause. Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by Consultant of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by Water System to Consultant, (ii) the engaging by Consultant in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by Consultant to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by Water

System to Consultant. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the Consultant shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by Consultant in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(n) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

(c) Other Termination. The Water System may terminate this Agreement at any time for any reason upon thirty (30) days written notice to the Consultant. Upon termination of this Agreement, the Consultant will be entitled only to the compensation and expenses which have been earned for services rendered in accordance with this Agreement through the date of such termination. No termination of this Agreement shall impair or defeat those obligations set forth elsewhere in this Agreement which require either party to do or refrain from doing any specified act or acts after termination of this Agreement, or to perform any obligation which by its terms or normal meaning survives termination of this Agreement.

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

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

### 3. Miscellaneous.

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

If to Water System:	San Antonio Water System Contract Administration 2800 U.S. Hwy. 281 North
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San Antonio, Texas 78212  
Attn: [Insert Project Manager Name]  
Email: \_\_\_\_\_

With copy to: San Antonio Water System  
2800 U.S. Hwy. 281 North  
San Antonio, Texas 78212  
Attn: General Counsel  
Email: [nancy.belinsky@saws.org](mailto:nancy.belinsky@saws.org)

If to Consultant: (Consultant Name)  
(Address)  
(City, State, Zip)  
Attn: (Insert Name)  
Email: \_\_\_\_\_

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

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

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

(c) Gift Policy. Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; 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.

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



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

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

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

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

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

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

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

shall be to terminate this Agreement by written notice to Water System, and neither the Water System nor the Consultant shall have any further duties or obligations hereunder, except those which expressly survive.

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

THE WATER SYSTEM:

San Antonio Water System

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

Robert Puente  
Chief Executive Officer

\_\_\_\_\_  
Date

CONSULTANT:

(Insert Consultant Name)

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

Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

LIST OF EXHIBITS:

- Exhibit A: Compensation for Consulting Agreement
- Exhibit B: Scope of Services
- Exhibit C: Standard Insurance Specifications
- Exhibit D: Term and Timeframe for Deliverables
- Exhibit E: Security Procedures
- Exhibit F: List of Subconsultants
- Exhibit G. Contract & Project Management System User Agreements

**EXHIBIT A  
COMPENSATION FOR CONSULTING AGREEMENT  
LUMP SUM PAYMENT METHOD**

Section 1 - Basis of Compensation

- 1.1 Total Fee for all services defined by this contract is to be a lump sum amount of \$.00 - dollars and no cents and it is agreed and understood that this amount, when earned, will constitute full compensation to the Consultant. This amount has been approved and appropriated by the San Antonio Water System for expenditure under this agreement.
- 1.2 The Fee for all optional services, if any are authorized in writing by the Water System in connection with Exhibit B shall be a lump sum in the amount of \$.00 - dollars and no cents, including expenses, and it is agreed and understood that this amount will constitute full compensation for any optional services when authorized in writing by the President/CEO or his designated representative. This amount has been approved and appropriated by the San Antonio Water System expenditure under this contract. (Use 1.2 only if the optional services \$ value is negotiated in advance)
- 1.3 For the purpose of establishing costs to the Water System for any additional services payable on an hourly rate basis authorized in writing by the Water System, the following Hourly Billing Rate Table of the fees shall apply:

Hourly Billing Rate Table

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

Section 2 - Changes

The Consultant and the Water System acknowledge the fact that the Lump Sum Amount contained in paragraph 1.1 above has been established on the scope of work outlined in Exhibit B. For additional services beyond the scope defined in Exhibit B or optional services set forth in section 1.2 above, compensation shall be subject to re-negotiation and/or Section 1.2 above respectively.

Section 3 - Method of Payments

Payment may be made to the Consultant based upon the following:

## Lump Sum

Internet-Based Project Management System. SAWS shall administer its services through an Internet-Based Project Management System (hereafter referred to as "CPMS"). In such case, Consultant shall conduct communication through CPMS and perform all Project-related functions utilizing CPMS, with the exception of Sub-Consultant payment monitoring activities, which shall be through the S.P.U.R. system. This includes any and all correspondence, submittals, requests for information, vouchers, compensation requests and processing, amendment, change orders and other administrative activities as may be required in the Contract. SAWS shall administer the CPMS software, shall provide CPMS training to Project Team members and shall make the software accessible via the Internet to all necessary Project Team members. All invoices shall be submitted through the CPMS.

Monthly payments for services performed for the various services shall be reviewed by SAWS upon Consultant entering itemized invoices, with all required back-up, within CPMS. The invoice shall indicate the value of the services performed to date.

### Section 4 -Reimbursable Expenses

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

### Section 5 - Payment for Services

- 5.1 No initial payment shall be paid to the Consultant prior to rendering services.
- 5.2 Invoices shall be submitted separately for each individual project assignment on a monthly basis to the Project Manager identified in Section 3.a.
- 5.3 For all services rendered, payment by the Water System is due within thirty (30) days after receipt of invoice. If payment of the amounts due, or any portion thereof, is not made as described above, interest on the unpaid balance thereof will accrue at the lesser rate of 6 percent per annum (0.5 percent per month) or the maximum lawful rate under Section 271.005 (c) of the Texas Local Government Code until such payment is made, unless delay in payment is due to improper invoicing procedures followed by the Consultant.
- 5.4 For all services rendered, Consultant's payment to subconsultant is due within ten calendar days after receipt of payment from the Water System.
- 5.5 For services that are to be compensated on an hourly rate basis, the Consultant's invoice shall show the name of all Consultant, employees, titles, charging time to the project, the amount of time billed, the hourly rates, and the activity or activities performed by all Consultants and employees. Payroll time sheets shall be provided on request of the Water System.
- 5.6 For services that are to be compensated on a lump sum basis, the Consultant's invoice shall include a detailed summary of the progress and completion of tasks to substantiate the percentage of completion of services as rendered during the previous month.

### Section 6 - Payment for Additional Services

Payments for Consultant's additional services shall show the same information required in

subparagraphs 5.2 through 5.6 dependent upon the type of compensation and other evidence of expenses.

### Section 7 - Payments Withheld

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

- 7.1 Consultant's failure to provide adequate documentation for reimbursable expenses.
- 7.2 Consultant's failure to invoice as required in subparagraphs 5.2 through 5.6.
- 7.3 Errors or mistakes in the Consultant's invoice and/or defects, errors and omissions in the documents prepared by the Consultant/Contractor or Consultant's sub-consultants which are the basis for the payment request.
- 7.4 Water System's receipt of evidence that the Consultant's sub-consultants have not been duly paid for their services in connection with this project subsequent to the Water System having disbursed compensation to the Consultant in consideration of and stemming from the efforts extended by the sub-consultant.
- 7.5 Failure of the Consultant to render any service as stipulated by this Agreement.

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

**EXHIBIT B  
SCOPE OF SERVICE**

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**EXHIBIT C**  
**SAWS STANDARD INSURANCE SPECIFICATIONS**

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**EXHIBIT D  
TIME FRAME FOR DELIVERABLES**

*I. The Term of this Agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2014, and automatically expire on \_\_\_\_ day of \_\_\_\_\_, 2015.*

*Use item I only **IF** the contract term is mentioned in the Board Resolution, then add the information and match the language used on this Exhibit.*

Time Frame for Deliverables:

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## **EXHIBIT E SECURITY PROCEDURES**

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

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

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

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

Contractor **MUST** be prepared for additional security requirements at its expense if violations of SAWS Security procedures are noted. Some examples of additional requirements include hiring of SAWS approved security guards, temporary fencing, mobile Closed Circuit Television Monitoring trailer(s), or extra lighting. Notwithstanding anything herein to the contrary, any provisions in these Security Procedures that may appear to give SAWS the right to direct Contractor as to details of doing any work under this Agreement or to exercise a measure of control over any security measures or such work shall be deemed to mean that Contractor shall follow the desires of SAWS in the **results** of the work or security measures only.

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

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

**EXHIBIT F**  
**LIST OF SUBCONSULTANTS**

(Add to list of attachments on page 9 of 9 if used.)

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**EXHIBIT G**  
**User Agreement (Business Entity)**

The parties to this Agreement are the San Antonio Water System, a municipally-owned utility and

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a [corporation/partnership/joint venture/sole proprietorship]. In this Agreement, the parties shall be referred to respectively as "SAWS" and "Primary User." Primary User is currently working with SAWS to plan, estimate, design or construct one or more projects. The project(s) will be referred to as "Project." This Agreement shall terminate upon the completion of the Project or revocation of access rights to the Contract and Project Management System.

In order to facilitate the exchange of documents and information between SAWS, its contractors, Primary Users, and other entities, SAWS has instituted an automated document exchange system, document storage system, project schedule system, and invoice submittal system known as Contract and Project Management System, (hereafter the "System"). Use of the System is currently mandatory and based on the potential for improved communication between all of the parties involved in the Project; the Primary User agrees to assume all risks of using the System for the Project.

As between the parties hereto, SAWS shall be the sole owner of the System, including any copyrights, patents or trade secrets associated with the System.

SAWS MAKES, AND PRIMARY USER RECEIVES, NO WARRANTIES, EXPRESSED, IMPLIED, STATUTORY, OR MADE IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION, REGARDING THE SYSTEM, AND SAWS SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Further, it is understood that there is no expectation that service will be uninterrupted. Primary User accepts the likelihood that the System will be unavailable from time to time for scheduled maintenance and as the result of unintended interruptions for whatever reasons.

SAWS shall provide Primary User with one or more user ids, passwords, instructions on use and access to the System. SAWS shall provide Primary User with training in the use of the System at no charge. At SAWS' sole option the training may be computer based, classroom instruction, web-based, telephonic or electronic. By using the password and access procedures supplied, Primary User certifies to SAWS that it and its Individual Users, have successfully completed user training, have tested the System to Primary User's satisfaction and that any use of the System by Primary User or its Individual Users, shall be in strict accordance with the adopted procedures contained in the training material and official user instructions. Primary User shall safeguard and protect the documents exchanged through the System to the same extent as it is obligated to treat similar paper documents under the terms of the contract for the Project.

Primary User shall provide SAWS with a list of persons that shall be Individual Users of the System. Those individuals are referred to in this Agreement as "Individual User(s)." Primary User shall at all times be liable for any use of the System by one or more of the Individual Users granted access to the System by reason of Primary User's request. Each Individual User shall personally sign a copy of the Individual User's Agreement in effect at the time the user begins using the system and at such times as SAWS may, in its sole discretion, adopt changes to the terms of this agreement or the Individual User's Agreement. If at any time Primary User, and/or one or more of Primary User's Individual Users is unable or unwilling for whatever reason to abide by the terms of this Agreement or the Individual User's Agreement, SAWS will immediately terminate the authorization to use the System and shall terminate all appropriate access rights. Should an Individual User's employment be terminated, either by Primary User or Individual User, access to the System will be cancelled by Primary User submitting his or her name and other requested information to SAWS by email within one business day of termination.

Primary User agrees to abide by any license, copyright or other intellectual property rights of any other party in and to the software, instructional material and other documents supplied in electronic format or in any other format.

Primary User agrees to immediately notify SAWS' CPMS Security Administrator for the Project in the event:

- a) there is any change of status of any Individual User under Primary User's control such as the person leaves employment or is reassigned to other duties not requiring access to the System; and/or
- b) it, or any of its Individual Users, becomes aware of any security breach in the System; and/or
- c) if any password or other access control becomes lost, compromised in any way such as but not limited to, disclosure to any person other than the Individual User to whom it was issued; and/or
- d) it, or any of its Individual Users, discover that a document has been inadvertently included within the portion of the System devoted to the Project or if they believe that a document submitted to the System as part of the Project has been inadvertently included in the files for another, unrelated project.; and/or
- e) it, or any of its Individual Users, discover any type of computer virus or other destructive code that may have been transferred to the System.

Primary User is responsible for using the System at its own expense. Primary User will use an Internet connection at its own cost of sufficient bandwidth to successfully use the System.

This Agreement may not be modified except by a writing signed by authorized representatives of both parties. A waiver by SAWS of its rights hereunder shall not be binding unless contained in a writing signed by an authorized representative of the SAWS. The non-enforcement or waiver of any provision of this Agreement on one occasion shall not constitute a waiver of such provision

on any other occasion unless expressly so agreed in writing. It is agreed that no use of trade or other regular practice or method of dealing between the parties hereto shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

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Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_

Primary User

By \_\_\_\_\_, its President

San Antonio Water System

By \_\_\_\_\_, SAWS CPMS Security Administrator

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## Firm Information

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

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

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

POC Phone: \_\_\_\_\_

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

Note: Point of Contact (POC) is Firm employee to be contacted for questions related to System use.

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### User Agreement (Individual)

Name: Last \_\_\_\_\_ First: \_\_\_\_\_ MI: \_\_\_\_\_

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

Phone No: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

I am [employed by, an owner, Primary User, officer of] an authorized Individual User of the Primary User. Primary User has designated me as an Individual User of the automated document exchange system known as the Contract and Project Management System which is referred to in this Agreement as the "System."

In exchange for access to and use of the System, I hereby warrant and agree to the following:

1. I have read the User Agreement (Business Entity) between Primary User and SAWS concerning access to and use of the System. The User Agreement (Business Entity) is incorporated into this Agreement in full the same as if it had been set out verbatim herein.
2. I understand the Agreement and will comply with the terms of the Agreement.
3. Specifically:
  - a. I will complete the training provided by SAWS;
  - b. I will only use the System for authorized purposes under the Agreement in accordance with the Training provided and the operating procedures as promulgated by SAWS;
  - c. I understand that any other use of the System not related to the Project is unauthorized and could result in immediate termination of access to the System.
  - d. If I discover any security violations or unauthorized use of the System by anyone, I will immediately report the details to SAWS' System Security Administrator; and
  - e. I will protect and safeguard any information obtained through the use of the System in accordance with the applicable laws and ordinances and the terms of the contract for the Project. I will not divulge any information that is confidential by law except as may be permitted by law.
  - f. Upon termination of my employment or other association with Vendor or if my access rights have been terminated by SAWS, I will immediately discontinue using the System and, upon request of the System Security Administrator, destroy, erase or otherwise remove any copy (in whatever form or format) of my former password. I will never

allow any person other than the System Security Administrator to have access to or use my password.

- g. I understand that all communications with SAWS, in written and electronic form, may be subject to disclosure under local, state or federal law, and that I have no exception of privacy in any communication with SAWS.

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

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

SAWS Use Only

SAWS ID: _____	Login ID: _____
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