

**EXHIBIT A**

**PROGRAM MANAGER'S FEE SCHEDULE, STAFFING PLAN, AND LIST OF  
PROGRAM MANAGER PERSONNEL**

[THIS EXHIBIT IS INCLUDED FOR REFERENCE ONLY.  
RESPONDENT SHALL **NOT** SUBMIT FEE RATES UNTIL  
AFTER SELECTION OF A PROGRAM MANAGER BY OWNER  
HAS BEEN MADE FOR CONTRACT NEGOTIATION PURPOSES.]

**EXHIBIT B**

**ACKNOWLEDGEMENT OF DATA USE PROTOCOLS**

**STATE OF TEXAS** § **AGREEMENT**  
§ **USE OF DIGITAL DATA**  
**COUNTY OF BEXAR** § **(Contract No. \_\_\_\_\_)**

This Acknowledgement of Data Use Protocols is given this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by \_\_\_\_\_ (“Data Recipient”), whose principal headquarters are located at \_\_\_\_\_, to induce Owner to cause Architect/Engineer to release certain data and electronic files to Data Recipient, as hereinafter provided. Capitalized terms herein shall have the meaning assigned to such terms in the Contract referenced above, unless expressly provided otherwise herein.

**I. Definitions**

“**Digital Data**” means the information, communications, drawings, building information models, or designs, or other data related to the Projects created or stored for the Projects in digital form, including all such Digital Data as are listed on the attached Data Recipient’s Request for Access to Electronic Files and Other Digital Data (“Request for Access”), and any future Request for Access that Data Recipient may submit from time to time in connection with the Projects.

**II. Acknowledgement of Limited Rights to Use of Digital Data**

In consideration of, and in exchange for, access to Digital Data, Data Recipient hereby acknowledges, agrees, warrants and represents to Owner the following:

1. Data Recipient is aware of and hereby assumes the contractual obligations and duties of the Project Team to maintain security of the Digital Data released hereunder.
2. Data Recipient accepts that Owner retains all rights in the Digital Data and no assignment or transfer of any right of ownership in the Digital Data is intended or to be inferred by acceptance of this Acknowledgment, or the release of Digital Data to the Data Recipient, for any purpose. Owner grants to the Data Recipient only a temporary, non-exclusive, limited license to use the Digital Data solely and exclusively for the purpose of, and only to the extent necessary to perform, its contractual obligations related to the Projects in accordance with the Data Recipient’s obligations assumed hereunder.
3. Data Recipient further acknowledges the Digital Data may become inadvertently altered without detection by the process of electronic transfer, and that no representation concerning the accuracy, completeness, or suitability of Digital Data, or the medium in or

on which it is furnished, is made to or to be inferred by acceptance of this Acknowledgment, or the release of Digital Data to the Data Recipient, for any purpose.

4. Data Recipient shall only be entitled to, and Owner will allow Data Recipient to only have access to or receive transmission of, the Digital Data that Data Recipient has listed on a Request for Access form (included herein as Attachment A) delivered to Owner's Project Manager.
5. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DATA RECIPIENT SHALL FULLY DEFEND, INDEMNIFY AND SAVE HARMLESS ALL OTHER MEMBERS OF THE PROJECT TEAM, INCLUDING THEIR DIRECTORS, BOARD MEMBERS, MANAGERS, OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ALL LOSSES, EXPENSES, LIENS, CLAIMS, INJURY, DEATH, PROPERTY DAMAGE, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER, WITHOUT LIMITATION, RESULTING FROM THE UNAUTHORIZED USE OR DISCLOSURE OF THE DIGITAL DATA BY DATA RECIPIENT OR ANY PERSON OR ENTITY WHO IS PERMITTED ACCESS TO SUCH DIGITAL DATA UNDER AN AGREEMENT (DIRECTLY OR INDIRECTLY) WITH DATA RECIPIENT, OR WHO IS ACTING ON BEHALF OF DATA RECIPIENT, OR FOR WHOM DATA RECIPIENT IS LEGALLY RESPONSIBLE.**
6. The Data Recipient agrees to keep all Digital Data in its possession strictly confidential and shall not disclose it to any other person except to its employees and agents who (i) have a reasonable need to know the contents thereof or to enable Data Recipient to perform its obligations relating to the Projects, and (ii) confirm in writing that they will similarly acknowledge and assume the obligations assumed by Data Recipient hereunder. Every person employed by Data Recipient who receives access to, a copy of, or otherwise obtains knowledge of the Digital Data shall be advised that it is confidential and is being disclosed pursuant to and subject to the terms of this Acknowledgment, and may not be further disclosed except as otherwise provided herein.
7. The non-exclusive limited license granted to the Data Recipient shall lapse upon the occurrence of any of the following events: (i) removal of the Data Recipient from, or cancellation or termination of the Data Recipient's contract related to, the Projects, (ii) Owner's revocation of the non-exclusive limited license established hereunder, (iii) suspension of the Projects for more than six (6) months, or (iv) the expiration of the all warranty obligations relating to the Projects. Upon the occurrence of any such event, or upon Owner's written request, the Data Recipient shall, at Owner's election, return or destroy (and confirm in writing the destruction of) all copies of the Digital Data within its possession or control, whether in electronic form or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and made effective as of the day and year first written above.

EXECUTED ON THE DATE FIRST WRITTEN ABOVE.

**DATA RECIPIENT:** \_\_\_\_\_

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

**Attachment A**  
**Data Recipient’s Request for Access to Electronic Files and Other Digital Data**

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31.	62.

\_\_\_\_\_ (“Data Recipient”) acknowledges and agrees that this Request for Access and Data Recipient’s use of the Digital Data is and shall remain subject to and limited by the terms of the Data Recipient’s Acknowledgement of Data Use Protocols, dated \_\_\_\_\_.

**DATA RECIPIENT:**

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

## EXHIBIT C

### CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is made by and between the San Antonio Water System (“Owner”) and \_\_\_\_\_ (“Program Manager”), in connection with that one Program Management Services Agreement for the Service Center Facilities Program with \_\_\_\_\_ (“Contract”), pursuant to which Program Manager is to provide program and project management services for Owner’s benefit in connection with the planning, engineering, design, procurement and construction of facilities for the expansion of Owner’s Service Center facilities in Bexar County, Texas, as therein described (the “Projects”).

Capitalized terms used in this Agreement shall have the meaning assigned to such terms in the Contract, unless expressly provided otherwise herein.

Program Manager, in consideration of the sum of TEN and NO/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby assumes with respect to Confidential Information, the following duties and responsibilities:

**1. Disclosure of Confidential Information.** Owner will allow access to or may disclose the Confidential Information to Program Manager, either orally, in writing, or through data transfer.

**2. Protection of Confidential Information.** Program Manager agrees to take all steps reasonably necessary to hold in confidence the Confidential Information. Program Manager shall bind its affiliates, employees, agents, consultants, contractors and other representatives to this Agreement before sharing Confidential Information with them, and to only provide them access to the Confidential Information to the extent reasonably necessary in the planning for or performance of program services for Owner. Program Manager agrees to use the Confidential Information solely to plan for the performance of and, if contracted to do so, to perform, program management services for the Projects. Program Manager’ obligations with respect to the Confidential Information also extend to any third party’s proprietary or confidential information disclosed to Program Manager in the course of providing service to Owner. Program Manager’ obligations hereunder shall survive the termination of the Contract and this Agreement. This confidentiality obligation will not apply to the extent that Program Manager can demonstrate that:

(a) the Confidential Information of Owner is, at the time of disclosure, part of the public domain;

(b) the Confidential Information of Owner became part of the public domain, by publication or otherwise, except by breach of the provisions of this Agreement;

(c) the Confidential Information of Owner is received by Program Manager from a third party without similar restrictions and without breach of this Agreement;

(d) the Confidential Information of Owner was developed by employees or agents of Program Manager independently of Program Manager' planning for the performance of, or performance of program management services and without reference to any Confidential Information of Owner (Program Manager shall bear the burden of proving such independent development); or

(e) the Confidential Information of Owner is required to be disclosed by Program Manager because of an order or ruling of a court or other government agency; provided, however, that Program Manager will immediately notify Owner of such order or ruling and use its best efforts to minimize the disclosure of such information and will consult with and assist Owner in obtaining a protective order prior to such disclosure.

**3. Materials.** All materials, including, without limitation, documents, drawings, models, apparatus, sketches, designs, and lists furnished to or prepared for Owner by Program Manager based upon Owner's Confidential Information and any tangible embodiments of Owner's Confidential Information created by Program Manager shall remain the property of Owner. Program Manager shall return to Owner or destroy such materials and all copies thereof upon the written request of Owner.

**4. No License.** This Agreement does not grant Program Manager any license to use Owner's Confidential Information.

**5. Successors and Assigns.** Program Manager may not assign its rights or obligations arising under this Agreement without Owner's prior written consent. Owner may assign its rights and obligations arising under this Agreement. This Agreement will be for the benefit of Owner's successors and assigns, and will be binding on Program Manager' affiliates, employees, agents, legal representatives and permitted assignees. Program Manager shall bind all Program Management Personnel to this Agreement.

**6. General Provisions.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the United States and of the State of Texas.

(b) Notwithstanding Section 6(a) and notwithstanding any other dispute resolution provision in any agreement pertaining to the performance of Services, Owner shall have the right to obtain preliminary relief on any equitable claim in any court of competent jurisdiction, where such judgment is necessary to preserve its property and/or proprietary rights under this Agreement.

(c) Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, (b) sent by commercial overnight courier with written verification of receipt, or (c) mailed postage prepaid by certified or

registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this section. Such notice will be treated as having been received upon the earlier of actual receipt or five days after posting.

(d) Program Manager agrees that the breach of the provisions of this Agreement by Program Manager will cause Owner irreparable damage for which recovery of money damages would be inadequate. Owner will, therefore, be entitled to obtain timely injunctive relief to protect Owner's rights under this Agreement in addition to any and all remedies available at law.

(e) This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties.

(f) No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

(g) If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

(h) Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall (a) be deemed a commitment to engage in any business relationship, contract or future dealing with the other party, or (b) limit either party's right to conduct similar discussions or perform similar work to that undertaken pursuant hereto, so long as said discussions or work do not violate this Agreement.

(i) This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PROGRAM MANAGER:

\_\_\_\_\_

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

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

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



**EXHIBIT D**

**RESOLUTION IN SUPPORT OF CONTRACT**

RESOLVED, that \_\_\_\_\_ is authorized, empowered, and directed, as the authorized representative of \_\_\_\_\_, to take all actions and to execute, deliver, and perform for or on behalf of \_\_\_\_\_, all instruments, documents, agreements, certificates, or writings, and any amendments thereof, as such authorized representative deems advisable in connection with the formation of that one Program Management Services Agreement for the Service Center Facilities Program, dated \_\_\_\_\_ (“the Contract”), by and between the San Antonio Water System (“Owner”) and \_\_\_\_\_

FURTHER RESOLVED, that the president and each vice president of \_\_\_\_\_ is authorized, empowered, and directed, as an authorized representative of the \_\_\_\_\_ to take all actions and to execute, deliver, perform and consummate for or on behalf of \_\_\_\_\_ the transactions contemplated by these resolutions and all instruments, documents, agreements, certificates, or writings, and any amendments thereof, as such authorized representative deems advisable in connection with the Contract.

FURTHER RESOLVED, that each officer of \_\_\_\_\_ is authorized, directed, and empowered to deliver to Owner the Parent Guaranty duly executed by \_\_\_\_\_, as required by the Contract in the form attached thereto as **Exhibit K**.

FURTHER RESOLVED, that all actions by or on behalf of the officers, employees, members, agents or other representatives of \_\_\_\_\_ taken and performed up to the date hereof with respect to the formation of, and the preparation, execution, and delivery of the Contract, and all other actions taken directly or indirectly in connection with the transactions contemplated by the Contract, and any other related transactions or occurrences be, and they hereby are, approved, ratified and confirmed in all respects.

FURTHER RESOLVED, that the Assistant Secretary of \_\_\_\_\_ is authorized, empowered, and directed and shall certify and attest to and deliver to Owner, the attached Certificate of Formation, Certificate of Fact, Certificate of Filing, and Certificate of Good Standing as being true and correct copies of such documents as are currently on file with the Texas Secretary of State and the Texas Comptroller, as applicable, to consummate the transactions contemplated pursuant to these Resolutions.

_____	_____
_____	_____
Name: _____	Name: _____
Title: _____	Title: _____

\_\_\_\_\_

\_\_\_\_\_

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

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

**ATTACH SECRETARIAL CERTIFICATE WITH COPIES OF PUBLICLY FILED  
DOCUMENTS DESCRIBED IN LAST PARAGRAPH ABOVE**

**EXHIBIT E**

**SCHEDULE OF PROGRAM MANAGER'S HOURLY FEE RATES FOR  
ADDITIONAL SERVICES**

[THIS EXHIBIT IS INCLUDED FOR REFERENCE ONLY.  
RESPONDENT SHALL **NOT** SUBMIT FEE RATES UNTIL  
AFTER SELECTION OF A PROGRAM MANAGER BY OWNER  
HAS BEEN MADE FOR CONTRACT NEGOTIATION PURPOSES.]

## EXHIBIT F

### OWNER'S SECURITY PROCEDURES

Capitalized terms used in this exhibit shall have the meaning assigned to such terms in the Contract, unless expressly provided otherwise herein.

Program Manager shall ensure a Prime Contractor Data Form (PCDF) and a Background Screening Letter (provided by Owner's Security) is properly completed for all employees performing Services under this Agreement and on file with the Owner's Security Office prior to commencement of Services. Program Manager Personnel performing Services must be listed on the PCDF. Program Manager shall be responsible for the accuracy of information on the PCDF and for obtaining any and all required items (badges and parking tags) necessary to fulfilling the Services under this Agreement. The PCDF must be sent electronically to <mailto:securitygroup@Owner.org>. Program Manager shall advise the Owner's Project Manager of any employee terminations or changes to personnel performing Services under this Agreement and Program Manager shall immediately turn in any and all badges and/or parking tags of employees who are terminated or no longer performing Services under this Agreement. If there are any changes in the information contained in the PCDF or the Background Screening Letters, Program Manager shall immediately notify the Owner's Project Manager and provide updated PCDF and Background Screening Letters, with copies to [securitygroup@Owner.org](mailto:securitygroup@Owner.org).

Program Manager and its employees and agents shall obtain a photo identification badge (Contractor's Badge) from Owner and parking tag, if necessary, prior to performing any Services on Owner's property, which shall be used only for purposes necessary to perform the Services under this Agreement. Owner's Badge Office hours are Monday and Friday 1:00 pm to 5:00 pm (hours are subject to change). Owner's Security Staff can be contacted at (210) 233-3760 or (210) 233-3619. A replacement fee shall be charged to replace any lost or damaged badges or parking tags. As a condition of final payment, Program Manager shall return all badges and parking tags to the Security Office. In the event Program Manager fails to return all security badges and parking tags, in addition to any other rights or remedies to which Owner may be entitled at law or in equity, Owner may withhold from payment to the Program Manager the sum of \$500.00 dollars per badge or parking tag as liquidated damages. Program Manager 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 Owner for failure to return the badges or parking tags.

Certain designated Owner facilities (list with Owner Security) require an Owner's employee to physically escort Program Manager at all times. Owner may, in its sole discretion, waive the escort requirements if the PCDF and a "clean" Background Screening Letter, signed by an authorized representative of Program Manager are approved by Owner Security.

Program Manager Personnel must always be under escort of the Program Manager while performing Services on any Owner designated primary facility (list with Owner's Security.) Program Manager Personnel must display either a company photo badge with name or a valid

drivers license at all times while working on any Owner property. Program Manager is solely responsible for the actions of its employees, agents, contractors and Program Manager Personnel.

Due to changing security environments, Program Manager MUST be prepared for additional security requirements at its expense, including background checks. Any person found to have an unacceptable background check (as determined by Owner's review of submitted paperwork or other information provided to or obtained by Owner) will not be allowed to perform Services under this Agreement or on Owner's facilities. Notwithstanding anything herein to the contrary, any provisions in these Security Procedures that may appear to give Owner the right to direct Program Manager as to details of doing any Services under this Agreement or to exercise a measure of control over any security measures or such Services shall be deemed to mean that Program Manager shall follow the desires of Owner in the results of the Services or security measures only.

Advance coordination by Program Manager with Owner's Security office for these security requirements is necessary to ensure no delays with timely performance of the Services. In the event Program Manager fails to comply with Owner's Security requirements, Owner may, with no penalty or claim against Owner, issue a Work Stoppage Order until the security violation (s) are remedied.

## **EXHIBIT G**

### **SCHEDULE OF PROGRAM MANAGER'S REIMBURSABLE COSTS AND EXPENSES**

[THIS EXHIBIT IS INCLUDED FOR REFERENCE ONLY.  
RESPONDENT SHALL **NOT** SUBMIT REQUIRED  
INFORMATION FOR THIS EXHIBIT UNTIL AFTER SELECTION  
OF A PROGRAM MANAGER BY OWNER HAS BEEN MADE  
FOR CONTRACT NEGOTIATION PURPOSES.]

All reimbursable expenses are covered by Program Manager's Fee with respect to Program Manager's Services. Reimbursable Expenses shown in this Exhibit are only for expenses that may be associated with a Task Order for Additional Services, which will be subject to Owner's review and approval at the time Owner approves a Task Order.

## **EXHIBIT H**

### **OWNER'S REQUIREMENTS OF INSURANCE**

Program Manager shall, at its sole expense, maintain in effect at all times during the term of this Contract insurance coverage with limits not less than those set forth below with insurers and under forms of policies satisfactory to Owner. Prior to the Effective Date and in strict accordance with the insurance requirements set forth in the Request for Qualifications for Program Management Services dated \_\_\_\_\_\*\_\_\_\_\_, Program Manager shall have delivered to Owner certificates of insurance evidencing that policies providing such coverage and limits of insurance are in full force and effect, together with true and correct copies of the additional insured provisions or endorsements, which shall be ISO GC 20 10 11 85, or equivalent. Certificates shall provide that not less than thirty (30) calendar days advance written notice will be given to Owner prior to cancellation, termination or material alteration of said policies of insurance. Certificates shall identify the Projects on their face.

1. As used throughout these requirements, the term Owner Group means Owner and its directors, officers and employees. Any references to Program Manager or obligations of Program Manager hereunder shall include and be applicable to Program Manager Personnel.

2. The following apply to all policies:

(a) Owner Group shall be included as additional insureds without limitation on all policies (except Workers' Compensation and Professional Liability policies), under the form of additional insured endorsement specified above.

(b) All policies shall contain a waiver of subrogation in favor of OWNER Group and all of their insurers, to the extent required to provide coverage for the indemnity obligations assumed by Program Manager under this Contract, and all policies shall be maintained in the standard form published for such policies of insurance by Insurance Service Office, Inc. (ISO) or their equivalent as of the date of the Contract, and contain no other exclusions or exceptions to coverage without Owner's prior approval.

(c) Thirty (30) days advance written notice must be given to Owner and OWNER Group of cancellation, or any reduction in coverage or limits in Program Manager's policies.

(d) Within five (5) calendar days of a suspension or lapse of any required line of insurance coverage, the Program Manager shall submit to Owner a replacement certificate of insurance in strict accordance with the insurance requirements set forth in the Request for Qualifications for Program Management Services dated \_\_\_\_\_\*\_\_\_\_\_, with all applicable endorsements included therewith. Owner shall have the option to suspend or terminate the Program Manager's performance under the Agreement should there be a lapse in required insurance coverage at any time during, or, if applicable, after the Term of the

Agreement.

(e) Coverage under all insurance required to be carried by Program Manager shall be primary insurance and underlying to any other existing valid and collectible insurance available to OWNER Group.

(f) All policies of insurance shall be placed with insurance companies with minimum rating by A.M. Best Company of A-, VII or better.

(g) Whenever requested, Program Manager shall furnish evidence satisfactory to Owner that such insurances are in effect. Acceptance of any evidence of insurance shall not constitute acceptance of the adequacy of coverage or imply Program Manager is in compliance with the requirements of the Contract or an amendment to the Contract.

(h) If it is judicially determined that any of the insurance obligations under this contract are unenforceable in any respect under applicable law, said obligations shall automatically be amended to conform to the maximum limits and other provisions in the applicable law for so long as the law is in effect. The requirements contained herein as to types and limits, as well as Owner's approval of insurance coverage to be maintained by Program Manager, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Owner under this contract.

(i) Program Manager shall be held accountable for all insurance coverages, including those of Program Manager Personnel. Owner shall not be under any duty to advise Program Manager in the event that Program Manager's insurance is not in compliance with the Contract. Program Manager shall cause all Program Manager Personnel to comply with all the insurance coverage required herein, and any deficiency thereof shall not relieve Program Manager of its responsibility to satisfy Owner's requirements.

(j) If Program Manager elects to self-insure or to maintain insurance required herein subject to deductibles exceeding \$25,000.00, Owner and Program Manager shall maintain all rights and obligations between themselves as if Program Manager maintained the insurance with a commercial insurer, including any additional insured status, primary and non-contributory liability, waivers of rights of recovery, and any other extensions of coverage required herein. Program Manager shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Program Manager had maintained the insurance pursuant to this Exhibit. All deductibles and/or self-insured amounts shall be paid by, assumed by, for the account of, and at Program Manager's sole risk. Owner shall not be responsible for payment of any deductible or self-insured amount.

3. Program Manager shall maintain the following policies, terms, amendments and endorsements:



(a) Workers' Compensation and Employer's Liability, to include but not be limited to:

- (i) Statutory Workers' Compensation for State of Hire/Operation
- (ii) Employer's Liability
- (iii) Borrowed Servant or Alternate Employer Endorsement (if applicable)
- (iv) Voluntary Compensation

(b) Commercial General Liability written on an occurrence form to include but not be limited to:

- (i) Premises/Operations
- (ii) Independent Contractors
- (iii) Separation of insureds
- (iv) Personal Injury
- (v) Products/Completed Operations
- (vi) Blanket Contractual Liability
- (vii) Explosion, Collapse and Underground Property Damage
- (viii) Sudden and Accidental Pollution Endorsement
- (ix) Broad Form Property Damage Endorsement

(c) Professional Liability Insurance

(d) Automobile Liability, to include but not limited to:

- (i) Owned Vehicles
- (ii) Non-Owned Vehicles
- (iii) Hired Vehicles
- (iv) Deletion of Any Language in Any Policy of Insurance Which Limits Coverage for Owner Group in the Event the Limitation of Liability Statute Applies

(e) Third Party Bodily Injury and Property Damage Pollution Liability

4. Each of the policies, which Program Manager shall maintain for the duration of the Contract and for a period of not less than three (3) years following completion of the Contract, policies shall be issued on Insurance Service Office, Inc. (ISO) standard form policies (with only standard published exclusions and exceptions to coverage), or their equivalent, for the following coverages, and shall contain the following limits:

	REQUIRED INSURANCE COVERAGE:	Minimum limits
A.	Workers' Compensation	Statutory
B.	Employer's Liability	\$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
C.	Commercial General Liability, Bodily Injury & Property Damage	\$1,000,000 per occurrence and aggregate
D.	Automobile Liability	\$1,000,000 per occurrence and aggregate
E.	Professional Liability	\$3,000,000 per claim and aggregate
F.	Umbrella policy (following form for B, C and D, above)	\$2,000,000

5. Special Operations Coverage:

Should any of the Services:

(a) Involve aircraft (fixed wing or helicopter) owned, operated or chartered by the Program Manager, liability arising out of such aircraft shall be insured for a combined single limit not less than \$10,000,000 each occurrence and such limit shall apply to bodily injury (including passengers) and property damage liability. Such insurance shall name Owner and Owner Group and their subsidiaries and affiliates as Additional Insureds, include an Insurer's waiver of subrogation in favor of the Additional Insureds, state that it is primary insurance as regards the Additional Insureds and contain a cross-liability or severability of interest clause. If the aircraft hull is insured such insurance shall provide for an Insurer's waiver of subrogation rights in favor of Owner and Owner Group and their subsidiaries and affiliates. In the event Program Manager charters aircraft, the foregoing insurance and evidence of insurance may be furnished by the owner of the chartered aircraft, provided the above requirements are met.

(b) Involve transportation, investigation, removal or remedial action concerning the actual or threatened escape of hazardous substances, Program Manager shall also carry Pollution Liability Insurance covering such activities in an amount not less than \$5,000,000 per occurrence/annual aggregate. Such insurance shall provide coverage for both sudden and gradual occurrences arising from the work performed under this Contract. Commercial/Business Automobile Liability policy of Program Manager shall either be endorsed to provide coverage under the ISO CA9948 endorsement (Broadened Pollution Liability Coverage) and Motor Carrier Endorsement MCS-90, or Program Manager's Pollution Liability Insurance policy shall be endorsed to provide transportation coverage beyond the boundaries of the job site, if Program Manager's activities involve hauling excavated spoil. If Completed Operations is limited in the policy, such Completed Operation Coverage shall be for a period of not less than five (5) years. Such insurance shall include a three (3) year extended discovery period and shall

name Owner and Owner Group and their subsidiaries and affiliates as Additional Insureds.

(c) Involve inspection, handling or removal of asbestos, Program Manager shall also carry Asbestos Liability Insurance in an amount not less than \$5,000,000 per occurrence/annual aggregate. The policy shall be written on an "Occurrence Basis" with no sunset clause. Such insurance shall name Owner and Owner Group and their subsidiaries and affiliates as Additional Insureds.

(d) Involve treatment, storage or disposal of hazardous wastes, Program Manager shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current Environmental Liability Insurance in the amount of not less than \$5,000,000 per occurrence/annual aggregate.

6. Related Obligations:

All certificates of insurance must provide clear evidence that Program Manager's Insurance Policies contain the limits of coverage and the special provisions prescribed herein. Program Manager shall be responsible for obtaining certificates of insurance from Program Manager Personnel, and upon request, furnish copies of such certificates of insurance to Owner.

7. Other Insurance:

If requested by Owner, Program Manager shall procure additional insurance coverage, and the cost of such coverage shall be reimbursed by Owner.

Exhibit 'I' : SAWS' Service Center Data							
Legend							
	Comprehensive Facility Assessment, Realignment strategy of assets & staff						
	Preliminary Facility Assessment, Realignment strategy of assets & staff						
	No Facility Assessment, Realignment strategy of assets & staff						
	Preliminary Facility Assessment, Realignment strategy of assets & staff						
Facility Name	Eastside	Mission Road	Northeast	Northwest	Dos Rios Fleet	Malone	Carlisle
<b>Physical Address</b>	3930 E. Houston Street 78220	515 Mission Rd 78210	13655 O'Connor Rd 78233	6003 Wurzbach Rd 78238	3225 Valley Road	2047 W. Malone Street 78225	431 Carlisle Street 78225
<b>Site Acreage</b>	48.1474 useable (59.2 total)	7.644	9.356	9.46	519	8.28 (approx)	3.38 (approx)
<b>Bldg 01 Sq Ft</b>	61,600	16,950	9,580	5,820	14,092	48,957	7,500 (approx)
<b>Bldg 01 Date of Const</b>	1982	~ 1982	1982	1973	1992	unknown	unknown
<b>Bldg 01 Use</b>	3-Level - Admin/Training: 26,400; Fleet: 24,700; Supply: 10,500, Veh/EquipWash Bay	Admin: 9,950 Sample Prep Area: 7,000	Admin/Training: 4,790; Shops: 4,790	Admin/Training: 2,910; Shops: 2,910	Fleet building	Admin offices: 10,717; Support: 38,140	Open shop/ storage- 2 admin offices
<b>Bldg 02 Sq Ft</b>	8,360	16,665	1,170	1,378	n/a	39,413	unknown
<b>Bldg 02 Date of Const</b>	1990	~1982	1994 addition	1994 addition		unknown	unknown
<b>Bldg 02 Use</b>	Welding Shop 2,360; Meter shop 6,000	Admin: 11,165; Supply: 3,250; Welding/Prod: 2,250	Admin: 1,170	Admin: 1,378		Fleet	unused building - not occupied
<b>Bldg 03 Sq Ft</b>	3,600				n/a	22,275	
<b>Bldg 03 Date of Const</b>	1990	Unknown				unknown	unknown
<b>Bldg 03 Use</b>	Supply 3,600	Veh/Equip Pwr Wash, Supply				supply warehouse	unused building - not occupied
<b>Bldg 04 Sq Ft</b>					n/a		
<b>Bldg 04 Date of Const</b>						Unknown	
<b>Bldg 04 Use</b>						car wash and lockerroom	
<b>CURRENT Facility Use</b>	Full size Service Center	Medium size Service	Medium size Service	Medium size Service	Fleet and Supply support	Full size Service Center	Small Warehouse/ supply

Approximately 948 field and customer service employees operate from these Service Centers throughout the city. Fleet management support for over 500 vehicles and additional construction equipment, as well as supply functions are also conducted at the Service Centers. An additional smaller fleet facility (Dos Rios) serves as support of fleet at the Dos Rios treatment plant but does not directly support system operations.

Service Center complexes vary in size. The largest, Eastside Service Center, contains several buildings totaling approximately 74,000 square feet. A typical complex includes administrative offices, repair shops, vehicle repair facilities, parts warehouses and fleet fueling stations. Outside storage may include pipe yards and stockpiled construction materials such as roadbase or fill dirt. Crew vehicles and a variety of construction equipment types are based at these service centers as well.

## EXHIBIT J

### AGREEMENT TO ADOPT DISPUTE RESOLUTION PROCEDURES

This AGREEMENT TO ADOPT DISPUTE RESOLUTION PROCEDURES (“**Agreement**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, (the “**Effective Date**”) by and between the San Antonio Water System (“**Owner**”) and \_\_\_\_\_ (“**Project Participant**”). Owner and the Project Participant may be referred to individually herein as a “**Party**” and collectively as the “**Parties.**”

The Parties enter into this Agreement pursuant to their contract, entitled Program Management Services Agreement (the “**Contract**”), dated \_\_\_\_\_, for the Service Center Facilities Program relating to the planning, development, engineering and design, procurement, demolition, renovation and/or construction of facilities and improvements related to the expansion of Owner’s Service Centers (referred to herein as “the Projects”).

In consideration of the terms, conditions, covenants and agreements contained both herein and in their Contract, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

#### **Section 1. Definitions.**

- 1.1 “Agreement” means this Agreement to Adopt Dispute Resolution Procedures executed by the Parties.
- 1.2 “Application” means a written request by a Party to the Disputes Board and the other Party or Parties involved in a Dispute, to take action in accordance with these Procedures.
- 1.3 “Chair” means the Member of a Disputes Board selected to serve as the chairperson of the Disputes Board.
- 1.4 “Commercial DRB Rules” shall mean the International Chamber of Commerce Dispute Review Board Rules.
- 1.5 “Conflict of Interest” means any interest held by an individual that would, from a reasonable third person’s point of view, cause such individual to have any doubts as to his or her ability to be impartial or independent or that otherwise may be regarded as a conflict of interest based on the International Bar Association’s Guidelines on Conflicts of Interest in International Arbitration, as approved by the Council of the International Bar Association, on May 22, 2004, a copy of which can be accessed at [http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx). These Guidelines, although developed for arbitrators, shall serve as a basis for disclosure of Conflicts of Interest by a candidate seeking qualification to serve as a Dispute Board Member. A Conflict of Interest shall be deemed to exist with respect to any interest or circumstance that a candidate for service as a Disputes Board Member has failed to disclose in his/her Disclosure Statement, the disclosure of which is encouraged by such Guidelines.
- 1.6 “Contract” means the Contract between the Parties, to which this Agreement is made an Exhibit.
- 1.7 “Dispute Resolution Demand” means a party’s letter or other written statement identified on its face as a demand, issued and delivered to the other Party to invoke these Procedures as to any Dispute.
- 1.8 “Determination” means a non-binding written statement, signed by a majority of the Disputes Review Board Members, setting forth all of the Disputes Board’s findings and conclusions with respect to the Dispute.
- 1.9 “Disclosure Statement” means a statement stating the qualifications of a Disputes Board Member, which statement shall also disclose any Conflict of Interest.

- 1.10 “Dispute” means any contested claim or demand for damages, specific performance, or any other legal or equitable remedy that (i) arises out of or is in anyway related to the Contract, and (ii) is disputed as between the Parties, other than a disputed claim or demand that the Contract expressly excludes from the application of this Agreement, unless Owner specifically consents in writing to waive its right to exclude such claims or demands from the application hereof.
- 1.11 “Disputes Board” means, with respect to any Dispute, the three Disputes Board Members constituted to render a Determination concerning the Dispute, in accordance with the Contract and this Agreement.
- 1.12 “Disputes Board Member” means each person selected to serve on the Disputes Board.
- 1.13 “Disputes Board Member Candidates List” means the list of individuals who are approved by Owner as candidates who are also qualified to serve as a Disputes Board Member on the Disputes Board in the event of a vacancy on the Board.
- 1.14 “Disputes Board Procedures” means that portion of these DRP Procedures regulating the proceedings of a Disputes Board, as set forth in Section 6 of this Agreement.
- 1.15 “DRP Governed Agreement” means any subcontract, purchase order, supply agreement, consulting agreement, or other contractual agreement that the Project Participant, in accordance with its Contract, executes with a third party for the purpose of performing the Project Participant’s obligations and duties under the Contract with respect to a Projects.
- 1.16 “Dispute Resolution Procedures” or “DRP Procedures” shall mean the dispute resolution procedures set forth in this Agreement, subject to the Contract.
- 1.17 “Effective Date” means the Effective Date of this Agreement, which shall be the same as the Effective Date of the Contract (or other DRP Governed Agreement to which this Agreement relates, as applicable).
- 1.18 “Initial Determination” means a non-binding written statement, signed by the Chair of the Disputes Board, setting forth the Chair’s findings and conclusions with respect to the Dispute, subject to the right of a Party to appeal the Initial Determination to the full Disputes Board.
- 1.19 “Invocation Date” shall mean the date that a Party has delivered to the other Party a written request to invoke these Dispute Resolution Procedures.
- 1.20 “Mediator” means a mediator selected to mediate a Dispute not resolved by the Parties’ agreement after a final Determination of a Disputes Board.
- 1.21 “Mediation Request” means a written request, made in accordance with these Procedures, to submit a Dispute to non-binding mediation.
- 1.22 “Misconduct” means fraud, willful or criminal misconduct of a Disputes Board Member or a candidate for service as a Disputes Board Member.
- 1.23 “Notice of Appeal” means a written request of a Party, issued in accordance with these Procedures, notifying the Disputes Board that it wishes to appeal an Initial Determination by the Chair to the full Disputes Board.
- 1.24 “Request for Clarification” means, as to the Chair’s Initial Determination, a written request by a Party, issued in accordance with these Procedures, seeking clarification of such Initial Determination, or, as to a Determination by the Disputes Board, a written request by a Party, issued in accordance with these Procedures, seeking clarification of such Determination.

- 1.25 “Qualifications” with respect to a candidate for service as a Disputes Board Member shall mean the qualifications required of an individual to serve as a Disputes Board Member in the event of a vacancy.

**Section 2. Term of Agreement.** This Agreement shall remain in full force and effect from the Effective Date of the Contract, or DRP Governed Agreement, as applicable, and thereafter until the applicable statute of limitations or repose has expired with respect to all claims that may be arise in a Dispute thereunder.

**Section 3. Dispute Resolution Procedures, Generally.** These Procedures shall be the sole and exclusive procedures for the resolution of Disputes. Either Party may at any time submit to the other Party, by Certified U. S. Mail, Return Receipt Requested, a Dispute Resolution Demand invoking these Procedures as to any Dispute. The Party’s Dispute Resolution Demand shall only be directed to the other Party or Parties involved in the Dispute, and it shall set forth a brief statement of the nature of the Dispute.

- (A) **Other Parties to DRP Governed Agreements Required to Use These Procedures.** Project Participant shall require each other party to a DRP Governed Agreement to also be subject to and follow these Procedures with respect to any Dispute arising under such DRP Governed Agreement. Commensurate with, and as a part of any such DRP Governed Agreement, Project Participant shall (i) execute with the other party to such DRP Governed Agreement an Agreement To Adopt Disputes Resolution Procedures on identical terms to this Agreement, (ii) provide a copy of such DRP Governed Agreement (which may be redacted as to any confidential and proprietary terms), including the related Agreement To Adopt Disputes Resolution Procedures, to Owner to confirm that the parties to such DRP Governed Agreement are also bound to comply with these Procedures, and to likewise support the establishment and operation of a Disputes Board to consider any Dispute arising out or related to such DRP Governed Agreement. The foregoing notwithstanding, if a Dispute arises under a DRP Governed Agreement between a Project Participant and the third party to such DRP Governed Agreement, the two parties shall have the option of resolving the Dispute without following the Dispute Resolution Procedures described herein, if and only to the extent the Dispute does not involve the Owner or another Project Participant and is not reasonably foreseen by such parties, at the time alternative dispute resolution procedures are selected, to involve the Owner or another Project Participant. Provided, however, if at any time during resolution of such Dispute, the Owner or another Project Participant become involved in the Dispute, the Dispute Resolution Procedures described herein shall be followed by all parties involved in the Dispute.
- (B) **Disputes Board Members Appointed.** The Disputes Board Members are \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. The Disputes Board designated to serve as the Chair of the Disputes Board is \_\_\_\_\_.
- (C) **Dispute Resolution Steps.** The date that the Dispute Resolution Demand has been delivered from one Party to the other Party shall be the Invocation Date for the commencement of these Procedures. Thereafter, the Parties shall follow the following processes to resolve a Dispute:
- (i) **First Step: Direct Negotiation of Senior Executives.** The Parties shall cause their senior executives to convene within five (5) days after the Invocation Date to attempt to resolve the Dispute by direct negotiation. Each senior executive who participates in the negotiation shall be deemed to have unlimited authority to bind his/her Party.
- (ii) **Second Step: Disputes Board Proceeding.** If the Parties’ senior executives fail to convene such negotiations within such five (5) day period, or if the Parties’ senior executives fail to resolve the Dispute within fifteen (15) calendar days from the Invocation Date, the Dispute shall be deemed resolved unless one Party delivers to the other Party an Application Requesting Services of Disputes Board and Dispute Board’s Confirmation of Receipt of Application, in the form of Attachment 2 to this Agreement, requesting submission of the Dispute to the Disputes Board in accordance with this Agreement. Delivery of the Application to the other Party and to Disputes Board Members within such fifteen (15) day period shall be a condition precedent to any further dispute resolution steps or proceedings. Upon receipt of an Application, the Chair of the Disputes Board shall, if the Parties’ so

consent, promptly schedule an informal discussion about the nature of the Dispute among the Parties and the Board (or only the Chair of the Board, if the Parties so prefer), which informal discussion may occur by telephone conference call or in person, in order to obtain the initial reactions and informal advice of the Disputes Board (or Chair, as applicable) to possibly achieve early resolution of the Dispute without need for further formal action or proceedings.

- (iii) **Third Step: Non-Binding Mediation.** If the Parties do not resolve a Dispute within ten (10) days after a Determination of the Disputes Board has become final, the Dispute shall be deemed resolved unless one Party delivers to the other Party within such ten (10) day period a Mediation Request. Submission of a Mediation Request within such ten (10) day period shall be a condition precedent to any further proceedings on the Dispute. A copy of the final Determination of the Disputes Board, and any clarification thereof that the Disputes Board may have issued, shall be provided to the Mediator with the Mediation Request. Mediation shall be conducted in accordance with the Ground Rules of Proceeding for Mediation, as published by the International Institute for Conflict Prevention and Resolution, which rules are available at [www.cpradr.org](http://www.cpradr.org). Mediation shall take place in San Antonio, Texas, with a Mediator approved by the Parties, who shall equally share the costs of mediation. The mediation of the Dispute must be completed within thirty (30) days from the date a Mediation Request has been delivered to the other Party, unless the Parties and the Mediator agree in writing to extend the period to be allowed for the mediation. The parties may select the Mediator from the list of candidates qualified to serve as a Disputes Board Member on the Disputes Board Member Candidates List, but in such case the Mediator shall not thereafter serve as a Disputes Board Member unless the Parties unanimously agree in writing to have the Mediator so serve. Any Party may, at any time after delivery of a Mediation Request, elect to terminate the mediation process by delivering to the other Party a written notice of such election, whereupon the mediation step of these Procedures shall be deemed to have been completed, and either party may proceed to binding resolution of the Dispute as provided in Subparagraph (iv), below. In the event of a termination of the mediation without settlement, the Mediator shall issue a Mediator's recommendation to the Parties.
- (iv) **Fourth Step: Dispute Subject to Binding Resolution by Litigation or Arbitration.** If the Parties follow these Procedures but still fail to resolve a Dispute, the Parties may thereafter proceed to litigation (or arbitration if so provided under a DRP Governed Agreement) for final and binding resolution, subject to requirements of the Contract or the DRP Governed Agreement, as applicable. A Dispute under a DRP Governed Agreement shall not be submitted to arbitration unless arbitration is required by the DRP Governed Agreement, or by express written agreement of the Parties. The Parties acknowledge and agree that Owner is not and shall not be required to enter into any arbitration proceeding as a result of any DRP Governed Agreement, unless Owner expressly and voluntarily agrees to enter into such arbitration proceeding. A copy of the Demand, the Parties' Position Statements, the Initial Determination (if any), the Chair's clarification thereof (if any), the final Determination of the Disputes Board, and the Disputes Board's clarification thereof (if any), shall be admissible in evidence in any litigation or arbitration concerning the Dispute.

- (D) **Each Party to Bear its Own Costs.** Each Party shall bear its own costs arising out of or in connection with these Dispute Resolution Procedures. The Parties acknowledge that Owner has established in the Contract a fixed allowance for dispute resolution costs as a part of the Contract sum, to ensure that funding is available to pay for Owner's portion of the costs of resolution of a dispute.

**Section 4. Function of a Disputes Board.** Other than to provide the Parties with the initial reactions and informal advice of the Disputes Board (or Chair, as applicable) in accordance with Section 3(C)(ii), above, the sole function of a Disputes Board is to (i) fairly and impartially consider each submitted Dispute, and (ii) render a non-binding determination as to the merits of the Dispute to assist the Parties to resolve the Dispute as early as possible. Otherwise, the Disputes Board is not a supervisory, advisory, or governing body and has no role other than as expressly described herein.



Section 5. **Filling of Disputes Board Vacancies.** Vacancies on the Disputes Board a result of death, incapacity or resignation may be filled by one or more qualified individuals selected by the Parties from the Disputes Board Member Candidates List in Attachment 1 to this Agreement. The Chair of the Disputes Board shall be an attorney on the Disputes Board Member Candidates List selected and approved by the Parties. As of the Effective Date, the Parties accept and consent to the Disputes Board Member Candidates List, which may be updated by Owner from time to time in accordance with this Agreement. If the parties are unable to reach agreement on their selection of a candidate to fill a vacancy on the Disputes Board within ten (10) days after such vacancy arises, then either Party or both shall request that the County Judge of the Bexar County Commissioners Court to appoint the Disputes Board Chair from among the remaining candidates that appear on the Disputes Board Member Candidate List. Both Parties waive all rights to challenge the appointment of the Chair by the County Judge, except that such appointment may be challenged in a legal proceeding, if the individual appointed by the County Judge is not among the qualified and approved attorney candidates remaining on the Parties' Disputes Board Member Candidate List and the individual fails to meet the qualifications required of a Disputes Board Member, as set forth below.

- (A) **Requisite Experience and Qualifications of Disputes Board Members.** Unless otherwise agreed to by all parties involved in a Dispute, an individual must be a duly licensed attorney who is an active member of the State Bar of Texas or other state bar of one of the United States or a Registered Professional Engineer or Architect who has not been subject to disciplinary action within the past ten years, and who has at least fifteen (15) years prior experience acting as a mediator, arbitrator and/or dispute review board member for construction contract disputes and the negotiation, interpretation and/or adjudication of contract rights and claims involving the design and construction of commercial construction Projects valued at \$10,000,000 or more. Except for payment for his/her service on a Disputes Board, no candidate shall be qualified to serve as a Disputes Board Member if he/she possesses, or is a member of a business entity possessing, any financial interest in the Contract or any DRP Governed Agreement or the Projects or in the outcome of any Dispute. To be qualified, each candidate shall also confirm his/her receipt and review of a copy of this Agreement, and agree in writing to follow by these Procedures, and disclose any Conflict of Interest that may disqualify a candidate from service.
- (B) **Selection, Replacement, Removal, and Supplementation of List of Disputes Board Members.** The Parties shall endeavor to maintain at least ten (10) qualified candidates on the Disputes Board Member Candidates List, at least half of whom are qualified attorneys, who are available to serve on a Disputes Board if and when appropriate. Each candidate on the Disputes Board Member Candidates List must have been approved or deemed approved by the Owner to serve on a Disputes Board. Upon request of any Party, a candidate shall resubmit his/her qualifications for review by the Parties. Any party to a DRP Governed Agreement may nominate an individual to be added to the Disputes Board Member Candidates List by submitting to the Owner such individual's complete Disclosure Statement. A Disclosure Statement shall consist of the nominated candidate's resume of experience and a narrative statement of the nominated candidate's qualifications to serve. No individual shall be added to the Disputes Board Member Candidates List without the Owner's prior written approval, which approval may be withheld if the Disclosure Statement for a nominated candidate is incomplete and not supplemented to resolve any questions or concerns about the nominated candidate's qualifications to serve. If the nominated candidate is approved in writing by the Owner for addition to the Disputes Board Member Candidates List, the Owner shall submit such candidate's Disclosure Statement to all Project Participants for approval. Within 30 days after receipt of a nominated candidate's Disclosure Statements, each Project Participant shall notify the Owner whether such candidate is approved for addition to the Disputes Board Member Candidates List. A nominated candidate shall be approved, or shall be deemed approved if not disapproved, within such 30 day period. A candidate nominated by a Project Participant shall only be disapproved by another Project Participant based on the nominated candidate's failure to satisfy the Disputes Board Member Qualifications (which failure shall be stated in a Project Participant's notice of disapproval). The Owner's disapproval of a nominated candidate shall be final. Once approved, a candidate shall not be subject to removal except for Misconduct, Conflict of Interest (except where such Conflict of Interest has been expressly waived by both Parties), death, incapacity, or resignation. A list of Disputes Board Member Candidates and their Disclosure

Statements is available to all Project Participants by accessing the following website:  
\_\_\_\_\_\*

(C) **Removal of a Disputes Board Member for Misconduct or Conflict of Interest.** A Disputes Board Member may be removed as a result of Misconduct or Conflict of Interest. A Party (or the other Disputes Board Members jointly) may in good faith at any time cause the immediate removal of a Disputes Board Member for Misconduct or Conflict of Interest not previously waived by serving notice thereof on the affected Disputes Board Member and the other Party. A Disputes Board Member who is removed for Misconduct of Conflict of Interest shall have no claim for damages or any other legal remedy against a Party who in good faith causes his/her removal. Until a replacement for a removed Disputes Board Member has been appointed, a Disputes Board shall wait to proceed with the issuance of a Determination (or an Initial Determination). In the event that one or more Disputes Board Members must be replaced, replacement Disputes Board Members shall be appointed in the same manner as the predecessor Disputes Board Members(s) until the Disputes Board is reconstituted as a three person board. The appointment of each replacement Disputes Board Member will begin as soon as notice of removal, death or resignation is given or received and shall be completed as soon as possible, but in no event more than 30 days thereafter.

(C) **Compensation of Disputes Board Members.** Unless otherwise approved by the Parties to a Dispute, each Disputes Board Member shall be compensated at a rate of no more than \_\_\_\_\_\*\_\_\_\_\_ and No/100 (\$\_\_\*\_.00) per hour for each hour of service in such capacity. Each Disputes Board Member shall, in agreeing to be listed on the Disputes Board Member Candidates List, be deemed to have agreed to accept such compensation as full payment for all such services, and to render such services as are reasonable and necessary to the fulfillment of the Disputes Board Member's professional duties hereunder. Each Disputes Board Member shall submit concurrently to each of the Parties to the Dispute an invoice for the services rendered on a monthly basis. Such invoices shall be in a customary format that includes itemization of days and hours billed along with a description of activities performed for each billing entry and any out-of-pocket costs reasonably and necessarily incurred, supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data.

(D) **Nature of Relationship and Responsibilities of Disputes Board Members; Liability of Disputes Board Members.** Disputes Board Members, in the performance of their duties as such, shall act in the capacity of an independent contractor and not as an employee or agent of any Party to the Dispute. Disputes Board Members shall not assign or delegate any of the work or services to be rendered in connection with the Disputes Board Procedures without the prior written consent of both Owner and the Project Participants who are signatory to all DRB Governed Agreements. Each Party to a Dispute agrees that it shall not hold any Disputes Board Member responsible for claims, damages, losses and expenses, including, but not limited to attorneys' fees and expenses, arising out of or resulting from the actions and recommendations of the Disputes Board, and the Parties expressly waive any right to the foregoing, except as to a Disputes Board Member in the case of such Disputes Board Member's Misconduct.

**Section 6. Disputes Board Procedures.** A Disputes Board shall conduct its proceedings in accordance with these Disputes Board Procedures, and otherwise in accordance with the Commercial DRB Rules. These Procedures shall govern over the Commercial DRB Rules.

(A) **Positions of Parties Presented to Disputes Board.** Within ten (10) days after delivery of an Application, each Party shall deliver to the Disputes Board and the other Party or Parties to the Dispute a written statement of its position in regard to the Dispute, and either recite therein or attach thereto the relevant portion of all non-privileged documents and all contract provisions that relate to or support of its position. The statement of a Party's position shall also indicate whether it contends that the other Party has waived any right or remedy under the Contract for lack of notice or compliance with any other condition of the Contract. Each Party shall be entitled to request and obtain from the other Party a copy of any relevant and non-privileged documents and any reports of experts, to the extent that such documents and reports are referenced in the other Party's position statement. Within ten (10) days after

receipt of a Party's position statement, the other Party may submit a written response to the Party and the Disputes Board. The Disputes Board may, through the Chair, request additional information from the Parties to assist the deliberations of the Disputes Board, and a Party shall, as a condition of proceeding hereunder, provide such information as requested. If a Party fails to provide such information as requested, the Disputes Board shall be may presume that the information would have been unfavorable to the Party failing to provide it. A Party shall not send any information to the Disputes Board unless, commensurate therewith, a duplicate copy is also simultaneously sent to the other Party or Parties to the Dispute. No discovery will be allowed. Any statements of the Parties not received within the time required hereunder shall not be reviewed or taken into consideration by the Disputes Board.

- (B) **Joinder of Two or More Disputes.** Either Party may request a Disputes Board to join the consideration of multiple Disputes for resolution by a single Disputes Board where common questions of fact, law and contract interpretation and the efficiencies to be gained in conducting a single proceeding to resolve all such Disputes merit the joint consideration of all such Disputes. Upon receipt of such a request, the Dispute Board Members appointed to consider such Disputes shall jointly consider the request and render a decision thereon to the Parties. The Disputes shall not be joined for consideration if a Disputes Board decides (after considering any evidence presented by the Parties in support of, or in opposition to, the proposed joint consideration of such Disputes for resolution in a single proceeding) that there are insufficient common questions of fact, law and contract interpretation among the proposed aggregated Disputes and/or the efficiencies to be gained by conducting a single proceeding to resolve such Disputes are outweighed by the need for separate and independent resolution of some or all of the Disputes proposed to be aggregated (as specified in the Determination on this matter) by separately empanelled Disputes Boards in separate proceedings. A decision by a Disputes Board whether to join Disputes is not subject to challenge.
- (C) **Proceedings of Disputes Board.** A Disputes Board may require the Parties to attend a hearing on the Dispute if the Chair of the Board finds that a hearing is necessary and appropriate to understand the Parties' positions. Such a hearing, if required by the Disputes Board, shall be scheduled by the Chair within thirty (30) calendar days after a written demand to submit a dispute to a Disputes Board. The parties understand and agree the Disputes Board shall have a great deal of flexibility to its proceedings, which shall be informal and conducted pursuant to the direction and control of the Chair, subject only to standards of fairness and reason.
- (D) **Modification of Disputes Board Procedures.** The Parties to a Dispute may jointly modify these Procedures as to a Dispute effective upon the Disputes Board Chair's receipt of a written notice from the Parties to the Dispute of their mutual agreement to modify the Procedures, describing such modification in detail. A Disputes Board may also recommend modification of these Procedures so as to be more responsive to the needs of the Parties, which modification shall only become effective with the Parties' written consent. In addition to the foregoing, the Parties are encouraged to seek the informal advice and recommendation of the Disputes Board's Chair and/or the entire Board, which may be sought without filing an Application as long as both Parties agree to jointly approach the Disputes Board for such informal advice and recommendation. The Chair, or the entire Board may give informal advice and recommendations without committing the same to writing, and such informal advice and recommendations shall remain confidential.
- (E) **The Chair Shall Issue an Initial Determination.** The Disputes Board Chair shall render an Initial Determination without involvement of the other Disputes Board Members within twenty (20) days after the Chair's receipt of the Parties' position statements, and the other Disputes Board Members shall discontinue their consideration of the Dispute until such time as their further consideration of the Dispute is required under these Procedures. The Chair shall cause an original signed copy of the Initial Determination to be issued to the Parties by U. S. Mail, and he/she shall simultaneously issue by electronic mail to each Party's designated representatives an electronic copy of the Initial Determination. The date the Initial Determination is issued as described above shall be deemed the date of the Initial Determination, for purposes of determining the time for filing of a statement

contesting the Determination, and the time for the Board to elect to revise its Determination, as further provided below.

- (i) **Requests for Clarification of Initial Determination.** A Party may deliver a Request for Clarification of an Initial Determination to the Chair within five (5) days after the date thereof. Regardless of whether a Party submits a Request for Clarification of an Initial Determination within such time, it shall be subject to the right of a Party to appeal it to the full Disputes Board in accordance with Subparagraph (iii), below.
  - (ii) **Chair Not Required to Clarify Initial Determination.** If the Chair timely receives a Party's Request for Clarification of the Initial Determination, the Chair may, but shall not be required to, clarify the Initial Determination. If the Chair elects to clarify the Initial Determination, he/she shall do so, and issue his/her written clarification of the Initial Determination to the Parties by the 10th day following the date of the Initial Determination. Regardless of whether the Chair clarifies the Initial Determination within such time, the Initial Determination shall be subject to appeal to the full Disputes Board, in accordance with Subparagraph (iii), below.
  - (iii) **Appeal of Chair's Initial Determination.** Either Party who does not wish to accept the Chair's Initial Determination may, in writing, give Notice of Appeal of the Initial Determination by no later than the **10<sup>th</sup> day** after the Date of the Initial Determination, or the date of issuance of any clarification by the Chair, whereupon the Chair shall provide to the other members of the Disputes Board a copy of the Chair's Initial Determination, any Request for Clarification timely received thereon, and any clarification of the Initial Determination that the Chair may have issued as a result of any such Request for Clarification. If neither Party issues a Notice of Appeal of the Initial Determination within such ten (10) day period, the Initial Determination, and any clarification, if applicable, shall be deemed the final Determination of the Disputes Board.
  - (iv) **Hearing on Appeal of the Chair's Initial Determination.** If Notice of Appeal has been timely received by the Chair, the Chair shall schedule a hearing of the Parties before the full Disputes Board, which hearing shall be convened within thirty (30) days after the Chair receives the Notice of Appeal. Parties may attend the hearing telephonically with the Board's permission.
- (F) **Determination by Full Disputes Board.** A Disputes Board shall issue its Determination on a Dispute within thirty (30) days after receipt of a Notice of Appeal of the Chair's Initial Determination. The Disputes Board's Determination shall be supported by at least a majority of the Disputes Board Members. The Determination shall be in writing, state the Disputes Board's conclusion on the merits of the Dispute, identify the Prevailing Party (as defined in Section XIII.3 of the Contract) as to each claim involved in the Dispute and the relief to which the Prevailing Party should be entitled as to each such claim. The Determination shall include findings of fact and conclusions of law in support thereof. Disputes Board Members shall strive to reach a unanimous decision in rendering a Determination of the full Disputes Board, failing in which the dissenting Disputes Board Member may prepare a written statement taking exception to the Determination, which dissenting statement shall be attached to and a part of the Determination. The Chair of the Disputes Board shall cause an original signed copy of the Determination to be issued to the Parties by U. S. Mail, and he/she shall simultaneously issue by electronic mail to each Party's designated representatives an electronic copy of the Determination. The date the Determination is issued as described above shall be deemed the date of the Determination, for purposes of determining the time for filing of a Request for Clarification of the Determination, and the time for the Board to elect to revise its Determination, as provided further below.
- (i) **Request for Clarification of Determination.** A Party may issue a Request for Clarification of a Determination within five (5) days after the date thereof. If neither Party submits Request for Clarification within such time, it shall be deemed final.
  - (ii) **Disputes Board Not Required to Clarify Determination.** If the Disputes Board timely

receives a Party's statement Request for Clarification of the Determination, the Disputes Board may, but shall not be required to, clarify the Determination. If the Disputes Board elects to clarify the Determination, it shall issue its clarification of the Determination to the Parties by the 10th day following the date of the Initial Determination, and the Determination, as clarified by the Disputes Board, shall be deemed final. If the Disputes Board does not clarify its Determination within such time, the Determination shall be deemed final.

- (G) **Applicable Law for Proceedings of Disputes Boards.** Disputes Board proceedings shall be governed by and apply the laws of the State of Texas, without regard to conflicts of law principles that would otherwise refer one to the laws of another State.
- (H) **Limitations Tolerated.** The Parties agree that the running of any period of limitations or repose shall be deemed tolled as to a Dispute during the period of time that the Dispute is subject to these Procedures.
- (I) **Parties' Responsibilities.** Each Party shall diligently cooperate with the Disputes Board and the other Party or Parties and shall perform such acts as may be necessary to obtain an efficient and expeditious resolution of the Dispute submitted to the Disputes Board. If either Party fails to diligently cooperate with the Disputes Board or the other Party (upon evidence of such failure presented to and evaluated by the Disputes Board) and the Disputes Board determines that such failure is egregious, the Disputes Board shall take into account such egregious failure to cooperate in making its Determination.
- (J) **Payment for Services of Disputes Board.** Each Party involved in a Dispute shall pay an equal portion of all fees, support services costs, facilities costs and other expenses of the Disputes Board's proceedings within 30 days after receipt of invoices for such costs and expenses. The Owner's portion of such costs and expenses shall be paid out of the allowance established therefore in the Contract. If a Party fails to pay its share of the amount owing under any invoice for such costs and expenses at the time required for payment, the other Party may make elect to pay the non-paying Party's share of the amount owing and will be entitled to recover (or offset) the amount paid on behalf of the refusing Party, with interest at the maximum rate permitted by law, no matter which Party is the prevailing Party.
- (K) **Dissolution of Disputes Board.** The Disputes Board shall be dissolved and the Disputes Board Members serving on such Disputes Board shall be released from further service upon expiration of four (4) years after the date of Owner's written acceptance of the completion of the Contract.
- (L) **Retention of Cost Records and Accounts.** Disputes Board Members shall keep available for inspection by representatives of the Parties to a Dispute, for a period of five (5) years after the final payment for their services, the cost records and accounts pertaining to this Agreement and the performance of their services. If any claim is initiated before the expiration of such five (5) year period that involves such records and accounts, they shall be retained until such claim is resolved.
- (M) **Confidential Materials.** Each Disputes Board Member shall maintain the privacy of any confidential information of a Party and cause the Parties to enter into appropriate agreements to preserve the confidentiality thereof to the extent such information must be submitted into evidence in subsequent proceedings of the Disputes Board.

#### **Section 7. Miscellaneous Provisions.**

Nothing in this Agreement shall alter the liability of either Party as provided under the Contract (or DRP Governed Agreements, as applicable), or by law.

This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party. No verbal agreement or implied covenant or agreement shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the Effective Date.

**Owner: San Antonio Water System**

**Project Participant:** \_\_\_\_\_

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

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

Attachment 1  
To  
Agreement to Adopt Dispute Resolution Procedures  
Disputes Board Member Candidates List  
(Issued: July 10, 2009)

The following candidates are approved by Owner for service as a Disputes Board Member in connection with the Projects as qualified to serve as a Disputes Board Member on the Disputes Board in the event of a vacancy on the Board:

Name and Contact Information: (This List is to be developed during contract negotiations with the selected Respondent.)





ATTACHMENT 2 TO  
AGREEMENT TO ADOPT DISPUTE RESOLUTION PROCEDURES (EXHIBIT J)

APPLICATION REQUESTING SERVICES OF DISPUTES BOARD  
AND DISPUTE BOARD'S CONFIRMATION OF RECEIPT OF APPLICATION

**APPLICATION DATE:** \_\_\_\_\_ 20\_\_ . *[The date Disputes Board Member(s) receive(s) the Application.]*

The undersigned Parties hereby submit this Application requesting the Disputes Board to take action in accordance with §3B(ii) of the Parties' Agreement to Adopt Dispute Resolution Procedures, dated \_\_\_\_\_, 20\_\_ ("Procedures"), and the Disputes Board Members hereby confirm acceptance of this Application.

**BRIEF CAPTION DESCRIBING THE DISPUTE:** \_\_\_\_\_.

**DISPUTES BOARD MEMBERS:**

Board Member: \_\_\_\_\_

Board Member: \_\_\_\_\_

Chair: \_\_\_\_\_

*[The Parties are encouraged to jointly contact and confirm availability of the first two appointed Disputes Board Members by telephone prior to submission of their Application, without disclosing which Party selected which Disputes Board Member.]*

**PARTIES INVOLVED IN THE DISPUTE:**

DEMANDING PARTY: \_\_\_\_\_

DEMANDING PARTY'S REPRESENTATIVE: \_\_\_\_\_

DEMANDING PARTY'S ATTORNEY: \_\_\_\_\_

RESPONDING PARTY: \_\_\_\_\_

RESPONDING PARTY'S REPRESENTATIVE: \_\_\_\_\_

RESPONDING PARTY'S ATTORNEY: \_\_\_\_\_

**OTHER RELATED PARTIES (IF ANY):**

	(1)	(2)	(3)
Name:	_____	_____	_____
Relation:	_____	_____	_____
Representative:	_____	_____	_____
Attorney:	_____	_____	_____

**KEY DATES FOR DISPUTE RESOLUTION:** *[to be promptly completed by the Board and returned to Parties]*

\_\_\_\_\_, 20\_\_ is the ten (10) day deadline after the date of this Application to submit Position Statements. *[Procedures, §6D]*

\_\_\_\_\_, 20\_\_ is the date tentatively scheduled within thirty (30) days after the date of this Application for a hearing on the Dispute before the Disputes Board, the exact time and location for which hearing shall confirmed following submission of the Parties' Position Statements. *[Procedures, §6F]*

**COPIES OF THE FOLLOWING DOCUMENTS SHALL BE ATTACHED BY THE PARTIES UPON SUBMISSION OF THIS APPLICATION TO THE DISPUTES BOARD:**

Dispute Resolution Demand (Demanding Party's letter or other writing invoking the Procedures)

Response (if any) to Dispute Resolution Demand

Each Board Member's Disclosure Statements (Board Members shall review and update)

Pro Forma copy of Parties' Agreement to Adopt Dispute Resolution Procedures, with any modifications by the Parties

**EACH PARTY AND EACH MEMBER OF THE DISPUTES BOARD, AS APPLICABLE, ACKNOWLEDGES AND CONFIRMS THE FOLLOWING:**

- a. Each has received and reviewed a copy of and will proceed in accordance with the Procedures.
- b. The Parties' negotiations have ended (or did not occur timely). *[Procedures, §3B(i)(ii)]*
- c. Each Party will timely provide the Dispute Board Members and other Party or Parties copies of its Position Statement and all attachments thereto, including the relevant portion of all non-privileged documents and all contract provisions that relate to or support its position. *[Procedures, §6D]*
- d. Each Disputes Board Member, has furnished to each of the Parties their updated Disclosure Statements. *[Procedures, §5A]*
- e. The Disputes Board Members' service rates, which have been approved by the Parties, are as shown below:

Disputes Board Member's Name	HOURLY RATE
	\$_____.00
	\$_____.00
	\$_____.00

- f. Each Party will pay its share of costs of the Disputes Board proceedings. *[Procedures, §3C, §6N]*
- g. Each Party will diligently cooperate with the Disputes Board and the other Party or Parties as necessary to obtain an efficient and expeditious resolution of the Dispute. *[Procedures, §6M]*
- h. Unless otherwise agreed by the Parties and the Disputes Board Members shall treat the proceedings as confidential. *[Procedures, §6Q]*

- i. Except for Misconduct (fraud, willful or criminal misconduct), Disputes Board Members shall have no liability to the Parties. *[Procedures, §5D]*
- j. There are no other pending disputes that should be joined with this Dispute. *[Procedures, 6E]*
- k. The Parties understand that a copy of the Demand, the Parties' Position Statements, the Initial Determination (if any), the Chair's clarification thereof (if any), the final Determination of the Disputes Board, and the Disputes Board's clarification thereof (if any), shall be admissible in evidence in any litigation or arbitration concerning the Dispute. *[Procedures, 3C]*
- l. The Parties [ **DO**] [ **DO NOT**] agree to request Chair's Initial Determination. *[Procedures, §6H]*  
*[PARTIES TO CHECK ONLY ONE]*

**PARTIES**

*[Indicate for each the Party's Name, its Representative, and Attorney, if any.]*


**DISPUTES BOARD MEMBERS**

**[The three Disputes Board Members shall promptly sign, complete, and return this Application to the Parties' Representatives identified above.]**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Please Print Name)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Please Print Name)*

\_\_\_\_\_  
*(Chair's Signature)*

\_\_\_\_\_  
*(Please Print Name)*

**EXHIBIT K**

**PARENT GUARANTY**

This Parent Guaranty (“**Guaranty**”), is made effective as of \_\_\_\_\_, 20\_\_\_\_, and is made by \_\_\_\_\_, a \_\_\_\_\_ Corporation, having its principal headquarters located at \_\_\_\_\_ (“**Guarantor**”), in favor of the following:

San Antonio Water System (“**Owner**”), having its principal headquarters located at \_\_\_\_\_.

**RECITALS:**

**WHEREAS**, \_\_\_\_\_, commensurate with the delivery of this Parent Guaranty to Owner, will enter into and perform the services for Owner as described in the Program Management Services Agreement for the Service Center Facilities Program (“**Contract**”) of even date herewith and relating to the services of \_\_\_\_\_, as described therein; and

**WHEREAS**, Owner has agreed to act in reliance upon and to enter into the Contract in consideration of receiving this Parent Guaranty from the Guarantor, guaranteeing the obligations of \_\_\_\_\_; and

**WHEREAS**, \_\_\_\_\_ has agreed to enter into such Contract, and to cause Guarantor to deliver this Parent Guaranty to Owner.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. Guarantor warrants, undertakes, and unconditionally guarantees to Owner that \_\_\_\_\_ shall faithfully and timely perform all of its obligations, duties, and responsibilities, whether monetary or otherwise, according to the terms and conditions of the Contract.
2. This Parent Guaranty is an absolute, unlimited, and unconditional guaranty of \_\_\_\_\_’s performance of its obligations under the Contract, which obligations may be enforced immediately on any default by \_\_\_\_\_ thereunder, without the necessity of initiating any prior action or proceeding against \_\_\_\_\_, or any other party and without regard to any security or bond held or posted. This undertaking and guaranty shall in no way be impaired or affected by any modification, amendment, or change to, or any notice obligation with respect to the obligations of \_\_\_\_\_, as set forth in or pursuant to such Contract. Except as otherwise provided in Paragraph 3, below, Guarantor does hereby waive notice of

default, notice of any and all such extensions, modifications, omissions, amendments, additions, changes, payments, waivers, assignments, subcontracts and transfers thereof.

3. The liability of Guarantor to Owner hereunder shall be no greater than the extent to which \_\_\_\_\_ is liable to Owner under the Contract. The Guarantor's obligation hereunder shall be subject to Owner having provided a copy of any notice of default by \_\_\_\_\_ under the Contract to Guarantor to the following address:

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

The failure of Guarantor to provide such notice of default shall, however, be a defense to Guarantor's liability hereunder only to the extent Guarantor shows it has been prejudiced by such failure.

4. Guarantor agrees that its obligations under this Parent Guaranty are performable in San Antonio, Bexar County, Texas; that this Parent Guaranty shall be governed and construed in all respects in accordance with the laws of the State of Texas, without regard to conflicts of law; and further agrees that any dispute, claim or controversy arising out of or relating to the enforcement of this Parent Guaranty shall be resolved in accordance with the Dispute Resolution Procedures specified in Section XIII of the Contract, which procedures shall be applicable to the resolution of any such disputes, claims or controversies. Venue for any legal action or proceedings arising under or pertaining to this Contract shall be in Bexar County, Texas.
5. Guarantor agrees that, except as otherwise provided in Paragraph 3 above (with respect to providing Guarantor a copy of a notice of default by \_\_\_\_\_), service of any other written notice, written demand, and/or service of process shall be deemed effective if served upon Guarantor through any officer or representative of \_\_\_\_\_ identified as a person designated to receive Notice under the Contract, who Guarantor agrees shall be deemed its authorized agent to receive such other written notice, written demand, and/or service of process from Owner for the limited purpose of enforcing this Parent Guaranty.

**IN WITNESS WHEREOF**, the undersigned Guarantor has caused its authorized representative to execute and deliver this instrument on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**GUARANTOR:**

\_\_\_\_\_

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

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

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

## **EXHIBIT L**

### **BUILDING INFORMATION MODELING (BIM) PROTOCOLS**

#### **I. General Principles**

- 1.1 This Exhibit does not effectuate or require a restructuring of contractual relationships or shifting of risks between or among the Project Participants, except as otherwise set forth in the Governing Contract and this Exhibit.
- 1.2 This Exhibit is not intended to create privity of contract among any Project Participants beyond that which otherwise exists at law or by the terms of the Governing Contract.
- 1.3 Each Party to the Governing Contract shall append or incorporate, and shall cause each Project Participant with which it is in privity to append or incorporate, this identical Exhibit in all contracts for which any other Project Participants are to perform obligations to be modeled. All such contracts shall contain flow-down provisions requiring that the provisions of this Exhibit be passed downstream to subconsultants and subcontractors, as applicable.
- 1.4 Nothing in this Exhibit shall relieve the Architect/Engineer from its obligation, nor diminish the role of the Architect/Engineer, as the person responsible for and in charge of the design of the Project.
- 1.5 Participation of the Program Manager, Construction Manager, or any contractors or subcontractors and suppliers in Contributions to a Model shall not constitute the performance of design services.
- 1.6 Unless otherwise agreed in the BIM Execution Plan, a Design Model is not intended to provide the level of detail needed in order to extract precise material or object quantities.
- 1.7 In the event of a conflict between the contents of a Design Model and any other Model, the Design Model shall take precedence.
- 1.8 If any Project Participant becomes aware of a discrepancy between a Model and either another Model or another Contract Document, such Project Participant shall promptly notify the other Party or Parties to that Project Participant's Governing Contract and the Information Manager (IM).
- 1.9 Unless otherwise agreed in the BIM Execution Plan, the dimensional tolerances provided by the Construction Contract Documents in the Governing Contract shall apply to dimensions in a Model.
- 1.10 In the event of an inconsistency between this Exhibit and the Governing Contract, the Governing Contract shall take precedence.

## II. Definitions

- 2.1 Affiliated Contract means any contract relating to the Project to which an identical Exhibit is attached and in which that identical Exhibit is incorporated, other than the Governing Contract.
- 2.2 Construction Model means a Model that (a) consists of those aspects of the Project that are to be modeled as specified in the BIM Execution Plan prepared pursuant to this Exhibit; (b) utilizes data imported from a Design Model or, if none, from a designer's Construction Documents; and (c) contains the equivalent of shop drawings and other information useful for construction.
- 2.3 Construction Contract Documents, as defined in the Governing Contract, is modified to include all Design Models, unless otherwise specified in the BIM Execution Plan.
- 2.4 Contribution means the expression, design, data or information that a Project Participant (a) creates or prepares, and (b) incorporates, distributes, transmits, communicates or otherwise shares with other Project Participant(s) for use in or in connection with a Model for the Project.
- 2.5 Contributor means a Project Participant who makes a Contribution.
- 2.6 Design Model means a Model of those aspects of the Project that (a) are to be modeled as specified in the BIM Execution Plan prepared pursuant to this Exhibit and (b) have reached the state of completion that would customarily be expressed by an Architect/Engineer in two-dimensional Construction Documents. This shall not include Models such as analytical evaluations, preliminary designs, studies, or renderings. A Model prepared by an Architect/Engineer that has not reached the stage of completion specified in this definition is referred to as a Model.
- 2.7 Drawings means (a) those two-dimensional plans, sketches or other drawings that are Construction Contract Documents under the Governing Contract and are created separately from, and are not derived from, a Model and (b) those two-dimensional projections derived from a Model supplemented with independent graphics and annotations specified by the Parties to be Construction Contract Documents.
- 2.8 Federated Model means a Model consisting of linked but distinct component Models, drawings derived from the Models, texts, and other data sources that do not lose their identity or integrity by being so linked, so that a change to one component Model in a Federated Model does not create a change in another component Model in the Federated Model.
- 2.9 Full Design Model means a Model consisting of coordinated structural, architectural, MEP and other Design Models designated in the BIM Execution Plan to be produced by the design team.



- 2.10 Governing Contract means the agreement to which this Exhibit is attached and in which it is incorporated, but excludes an Affiliated Contract.
- 2.11 Information Management means measures that protect and defend information and information systems with respect to their availability, integrity, authentication, confidentiality, and non-repudiation. These measures include providing for restoration of information systems by incorporating protection, detection, and reaction capabilities.
- 2.12 Information Manager or IM means one or more individuals responsible for the BIM's Information Management program.
- 2.13 MEP means mechanical, electrical and plumbing.
- 2.14 Model means a three-dimensional representation in electronic format of building elements representing solid objects with true-to-scale spatial relationships and dimensions. A Model may include additional information or data.
- 2.15 Project Model means a Model consisting of the federation of a Full Design Model and one or more Construction Models designated in the BIM Execution Plan, or the Governing Contract, to be produced by Project Participants.
- 2.16 Project Participant shall be, and Project Participants shall include, each Party to the Governing Contract and each Party to an Affiliated Contract.

### **III. Information Management**

- 3.1 The Owner, in consultation with its Program Manager, shall appoint one or more Information Manager(s) for the Project. Unless otherwise determined by Owner and Program Manager, the Architect/Engineer shall serve as IM.
- 3.2 The role and responsibility of the IM with respect to a Federated Model of the Project, including the Project Model, shall be to perform the following functions:
  - 3.2.1 Create, delete, modify and maintain user accounts;
  - 3.2.2 Assign, delete and modify access rights to users;
  - 3.2.3 Apply access controls to users so that only authorized users of the Model can access only the data they are authorized to access;
  - 3.2.4 If appropriate, establish and maintain encryption-at-rest measures and encryption-during-transmissions measures;
  - 3.2.5 Record, at a minimum, the following information about each data entry by Model users in the Federated Model (including downloading of Models to the Federated Model):

- (a) User name;
- (b) User role;
- (c) Contact information;
- (d) Date/time entered
- (e) Any additional information required to be recorded for each data entry as set forth in the BIM Execution Plan;

3.2.6 Backup and restore data;

3.2.7 Routinely run information system scans to maintain Model security;

3.2.8 Maintain and monitor information system logs so that only authorized users are accessing the Model and to ensure that there are no functional problems associated with the Model;

3.2.9 Install patches to close documented vulnerabilities in the Model;

3.2.10 Document and report any incident relating to the Model (including but not limited to an incident originating outside the Model that results in the Model being the victim of an attack) and take action to protect the Model;

3.2.11 Transfer unconditionally to a successor IM, at such times as directed by the Owner, all tangible and intangible property and information that came into its possession, custody or control in its capacity as IM;

3.2.12 Provide authorized users with access instructions and system requirements;

3.2.13 Respond to requests by authorized users for assistance in maintaining access; and

3.2.14 Perform any and all other responsibilities or functions as required of the IM in the BIM Execution Plan.

#### **IV. BIM Execution Plan**

4.1 As soon as is practicable, but in no event later than thirty (30) days after the execution of the contract between the Owner and the Construction Manager, all Project Participants shall meet, confer and use their best efforts to agree upon the terms of or modifications to a BIM Execution Plan. When agreed upon, the BIM Execution Plan and any modifications shall become an amendment to this Exhibit.

4.2 Unless otherwise agreed, the IM shall schedule and chair all such meetings.

4.3 The BIM Execution Plan shall address the following elements, but may include additional elements:

4.3.1 Contact information for each Project Participant

4.3.2 Identification of what Models are to be created, the purpose(s) each Model is intended to serve, and which Project Participant(s) is (are) responsible for creating each Model;

4.3.3 A definition of what Design Model or Models, if any, shall not constitute Construction Contract Documents;

4.3.4 The spatial portions or areas of the Project to be modeled in each Model and the spatial portions or areas of the Project not to be modeled;

4.3.5 The expected content of each Model and the required level of detail at various Project milestones, which content includes:

- a. geometric and spatial data;
- b. object property data;
- c. object constitution data;
- d. provision for object parameters as place holders for cost and schedule data; or
- e. authoritative source information;

4.3.6 A schedule for initial delivery of each Model to the IM;

4.3.7 A schedule for updating of each Model and preservation of versions of each Model and its constituent Models;

4.3.8 A definition of what Model or Models shall constitute part of the record documents for the Project;

4.3.9 Procedures and protocols for submission, for approval of Models including electronic stamping for designating a Model as a Design Model, and for notification of action on a request for approval;

4.3.10 Procedures and protocols for designating two-dimensional projections derived from a Model as Construction Contract Documents;

4.3.11 Establishment of a common coordinate system;

4.3.12 Establishment of conventions as to units;

4.3.13 Conventions for defining critical dimensions and critical Model content;

4.3.14 File format to be used;

4.3.15 File-naming and object-naming conventions to be used;

- 4.3.16 File structure to be used;
- 4.3.17 Software to be utilized;
- 4.3.18 Measures needed to achieve interoperability of applications;
- 4.3.19 Two-dimensional reference Drawings;
- 4.3.20 Utilization of BIM for the RFI process, response protocol and timing, incorporation of responses into any Model;
- 4.3.21 Utilization of BIM for the Change Order process, response protocol and timing, incorporation of responses into any Model;
- 4.3.22 A schedule for BIM development, coordination and clash detection meetings among the Project Participants;
- 4.3.23 Engagement of the IM in these processes;
- 4.3.24 Utilization of a Project BIM website;
- 4.3.25 Procedures and protocols for confirmation of field changes through an as-built Project Model; and
- 4.3.26 Specification of Project close-out and final deliverables.

## **V. Risk Allocation**

- 5.1 Each Party shall be responsible for any Contribution that it makes to a Model or that arises from that Party's access to that Model, and shall fully defend, indemnify and save harmless the Owner and its affiliates for all damages or claims that arise out of or are connected in any way to that Party's contribution or access to a Model, in accordance with the indemnification provisions of the Governing Contract. Such responsibility includes any Contribution or access to a Model by a Project Participant in privity with that Party and of a lower tier than that Party.
- 5.2 Contributor's Dimensional Accuracy Representation
  - (a) The following representation is applicable to the dimensional accuracy of any Contribution of or to a Model. This representation is: (1) made, but not limited to, the Owner and Program Manager, (2) in accordance with the standard of care stipulated in the Governing Contract, and (3) is effective at the time the Model has been developed to the same stage of completion as two-dimensional Construction Documents:

EACH CONTRIBUTOR REPRESENTS AND WARRANTS THAT THE DIMENSIONS IN ITS CONTRIBUTION TO A MODEL ARE ACCURATE AND TAKE PRECEDENCE OVER THE DIMENSIONS CALLED OUT IN THE DRAWINGS OR INFERRED FROM THE DRAWINGS. DETAILS AND COMPONENTS THAT ARE NOT REPRESENTED IN THE CONTRIBUTION TO A MODEL MUST BE RETRIEVED FROM THE DRAWINGS.

- 5.3 The Governing Contract shall govern the issue of any waiver of consequential damages arising from a Contribution.
- 5.4 To the extent that any or all Design Models are included as Construction Contract Documents, Project Participants may rely upon the accuracy of information in those Design Models.
- 5.5 The standard of care applicable to each Party regarding that Party's Contributions to or use of a Model shall be in accordance with that Party's Governing Contract.
- 5.6 Each Party shall use its best efforts to minimize the risk of claims and liability arising from the use of or access to its Model or the Project Model. Such efforts shall include promptly reporting to the relevant Project Participants any errors, inconsistencies, or omissions it discovers in its Model or the Project Model; however, nothing in this paragraph shall relieve any Party of liability it would otherwise bear under Section 5.1.
- 5.7 No Party involved in creating a Model shall be responsible for costs, expenses, liabilities, or damages which may result from use of its Model beyond the uses set forth in this Exhibit.
- 5.8 Each Party shall (i) procure and maintain valuable papers and records insurance coverage, with limits no less than that required under Exhibit H, Owner's Requirements of Insurance, covering all of the Party's Contributions or intended Contributions; (ii) and shall include this requirement in its contract with any other Project Participant; and (iii) provide the Owner with a certificate of insurance demonstrating compliance with this requirement.
- 5.9 A defect in the software used in the creation, modification, federation or other use of a Model, including the Project Model, may, at the Owner's discretion, entitle a Party to a time extension or other excuse from performance, but only to the extent that the Party could not have avoided any delay or loss by the exercise of reasonable care. In addition, a Party has the duty to mitigate any such delay or loss.

## **VI. Intellectual Property Rights In Models**

- 6.1 Each Party represents and warrants to the Owner that, at the time the Governing Contract was executed, the Party was the owner of all copyrights in all of that Party's Contributions. Subject to waiver of subrogation clauses, if any, contained in the Governing Contract, each Party agrees to indemnify and hold the Owner harmless for

claims of third parties arising out of, or relating to, claims or demands relating to infringement or alleged infringement of expression contained in that Party's Contribution as set forth in the Governing Contract.

- 6.2 Each Project Participant, including the Party to the Governing Contract, assign to the Owner without limitation the entire right, title and interest in and to the exclusive use or reuse of all of that Project Participant's Contributions in a Model, Design Model, Project Model, Federated Model, and the Full Design Model, which all aforementioned models shall be and remain the exclusive property of Owner as set forth in the Governing Contract.
- 6.3 Subject to the Governing Contract and the provisions of Section 6.1, the Owner grants to the other Party or Parties to the Governing Contract (a) a limited, non-exclusive license to reproduce, distribute, display, or otherwise use that Party's contribution for purposes of this Project only; (b) a limited, non-exclusive sublicense to reproduce, distribute, display, or otherwise use, for purposes of this Project only, the Contributions of the other Project Participants; and (c) a limited, non-exclusive license to reproduce, distribute, display, or otherwise use any Model containing such Contributions, or any other Model with which the Model containing such Contributions is federated or otherwise related, in each case for the sole purpose of carrying out the Project Participants' respective duties and obligations relating to this Project. This limited license shall include any archival purposes permitted hereunder or in the Governing Contract, but does not allow the licensee to reproduce, distribute, display, or otherwise reuse all or part of that Party's Contributions or any other Party's Contributions except as permitted herein or in the Governing Contract.
- 6.4 Unless otherwise limited herein or by express license-limiting terms in the Governing Contract, the non-exclusive license granted in this BIM Exhibit shall remain in effect as permitted by law. In addition, after final completion of the Project, the non-exclusive license shall be solely limited to keeping an archival copy of the Project-related Contributions.
- 6.5 Each Party in privity with the Owner shall require all other parties with whom that Party is in privity, that may be a Contributor to any model, to agree to all Provisions of Section VI.

**EXHIBIT M**

**OWNER'S CONFIRMATION OF FUNDING TO PAY FOR  
PROGRAM MANAGEMENT SERVICES  
(Public Project)**

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

OWNER: San Antonio Water System

PROGRAM MANAGER: \_\_\_\_\_

PROJECTS: All Projects included in the San Antonio Water System Service Center Facilities Program

CONTRACT: Program Management Services Agreement Number \_\_\_\_\_, dated \_\_\_\_\_

- 
1. Owner's contracting officer, full legal name, physical and mailing address, and business telephone number:

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

2. Owner has authorized and approved payment to Program Manager in the amount of \$\_\_\_\_\_ to pay for all Services performed by or on behalf of Program Manager under and in accordance with the above referenced Contract.

**San Antonio Water System:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*[NAME OF PROGRAM MANAGER'S SUBCONSULTANT/SUBCONTRACTOR]*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT N**

**PROGRAM MANAGER'S DETAILED SCOPE OF SERVICES**

[THIS EXHIBIT IS INCLUDED FOR REFERENCE ONLY.  
RESPONDENT SHALL **NOT** SUBMIT INFORMATION REQUIRED  
FOR THIS EXHIBIT UNTIL AFTER SELECTION OF A  
PROGRAM MANAGER BY OWNER HAS BEEN  
MADE FOR CONTRACT NEGOTIATION PURPOSES.]