AGENDA

SPECIAL MEETING OF THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES
May 18, 2016, 9:00 A.M.
6th Floor Board Room #609
Administrative Offices
2800 U. S. Hwy 281 North, San Antonio, Texas

1. MEETING CALLED TO ORDER.

2. ANNOUNCEMENTS. The San Antonio Water System Board of Trustees may, at any time during the Meeting, close the Meeting and hold an Executive Session for consultation with its attorneys concerning any of the matters to be considered during the Meeting pursuant to Chapter 551 of the Texas Open Meetings Act.

3. PUBLIC COMMENT.

4. EXECUTIVE SESSION. The Regular Session of the May 18, 2016 Special Board Meeting is hereby recessed to hold an Executive Session and discuss the matters listed below pursuant to Section 551.071 of the Texas Open Meetings Act.

   A. Consultation with attorneys regarding legal issues involving the Water Transmission and Purchase Agreement between the City of San Antonio, Texas, acting by and through the San Antonio Water System Board of Trustees and Abengoa Vista Ridge, LLC.

5. RECONVENE REGULAR SESSION. The Regular Session of the Special Board Meeting of May 18, 2016, is hereby reconvened.

6. A Resolution of the San Antonio Water System Board of Trustees consenting to a Change In Control of Abengoa Vista Ridge, LLC, and approving Amendments to the Water Transmission and Purchase Agreement between the City of San Antonio, Texas, acting by and through San Antonio Water System, and Abengoa Vista Ridge, LLC, effectuating a Change In Control in the Project Company and making other conforming changes in connection therewith; addressing other matters relating to the foregoing, including approval of execution of related agreements to which SAWS is a party.

   (ROBERT R. PUENTE – DONOVAN BURTON)

SPECIAL BOARD MEETING 1  05-18-16
7. **A Resolution approving a contract with Bexar County Master Gardeners in an amount not to exceed $237,500.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the Water Conservation Programs. Total expenditures: $237,500.00.**

(DONOVAN BURTON – KAREN GUZ)

8. **A Resolution approving a contract with Build San Antonio Green in an amount not to exceed $175,000.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the Water Conservation Programs. Total expenditures: $175,000.00.** (DONOVAN BURTON – KAREN GUZ)

9. **A Resolution approving a contract with Garden Volunteers of South Texas in an amount not to exceed $237,500.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the existing Water Conservation Programs. Total expenditures: $237,500.00.**

(DONOVAN BURTON – KAREN GUZ)

10. **A Resolution approving a contract with Green Space Alliance in an amount not to exceed $100,000.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the Water Conservation Programs. Total expenditures: $100,000.00.** (DONOVAN BURTON – KAREN GUZ)

11. **A Resolution approving a contract with National Audubon Society, Inc. Mitchell Lake Audubon Center in an amount not to exceed $150,000.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the Water Conservation Programs. Total expenditures: $150,000.00.**

(DONOVAN BURTON – KAREN GUZ)

12. **A Resolution approving a contract with San Antonio Botanical Society in an amount not to exceed $212,500.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the Water Conservation Programs. Total expenditures: $212,500.00.**

(DONOVAN BURTON – KAREN GUZ)

13. **A Resolution approving a contract with William R. Sinkin Eco Central in an amount not to exceed $137,500.00 for the initial contract term ending December 31, 2018 with two one-year options to extend to provide conservation outreach to landscape professionals and the community, and special projects associated with the Water Conservation Programs. Total expenditures: $137,500.00.**

(DONOVAN BURTON – KAREN GUZ)
14. **ADJOURNMENT.** The San Antonio Water System Board of Trustees Special Board Meeting of May 18, 2016, is hereby adjourned.

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**SAN ANTONIO WATER SYSTEM**

**HANDICAPPED ACCESSIBILITY STATEMENT**

The San Antonio Water System Buildings and Meeting Rooms are accessible to individuals with disabilities. Accessible visitor parking spaces as well as the accessible entrance and ramp are located at the west side main entrance of the SAWS Headquarters Building, Tower I, 2800 U.S. Highway 281 North. Individuals with disabilities in need of auxiliary aids and services, including Deaf interpreters, must request such aids and services forty-eight (48) hours prior to the meeting. For assistance, contact the Board Administrator at 210-233-3690 or 711 (Texas Relay Service for the Deaf).
TO: San Antonio Water System Board of Trustees
FROM: Donovan S. Burton, Vice President, Water Resources and Governmental Relations
THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: Consenting to a Change In Control of Abengoa Vista Ridge, LLC, and approving Amendments to the Water Transmission and Purchase Agreement between the City of San Antonio, Texas, acting by and through San Antonio Water System (SAWS), and Abengoa Vista Ridge, LLC, effectuating a Change In Control in the Project Company and making other conforming changes in connection therewith; addressing other matters relating to the foregoing, including approval of execution of related agreements to which SAWS is a party.

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution effectuates a number of changes with regard to the Vista Ridge Regional Water Project. The resolution allows for a Change in Control of the Project Company, Abengoa Vista Ridge LLC, approves various conforming amendments to the original Water Transmission and Purchase Agreement (the WTPA), approves the execution of other related documents, and delegates to the SAWS President/CEO the authority to execute each of the foregoing upon receipt of satisfactory evidence that all conditions to such execution have been satisfied.

In November 2014, the City of San Antonio, acting through the San Antonio Water System, approved an agreement with Abengoa Vista Ridge, LLC (AVR or the Project Company) to develop a water supply project from Burleson County to bring an additional source of water to San Antonio. The WTPA, which is the contract that memorializes that agreement, allows for a Change in Control of the Project Company’s interest with consent by SAWS Board of Trustees (reserved under the WTPA to be delivered by SAWS in its absolute discretion). In November 2015, Abengoa, S.A., the parent company of AVR, began a pre-insolvency process which led to a resulting decision by Abengoa to sell an 80% interest in the Vista Ridge project. As Abengoa sought an equity partner for the 80% interest, several companies were considered by Abengoa, with input from SAWS, with Abengoa ultimately selecting Garney Companies Inc., through its wholly-owned subsidiary Garney P3 LLC. In March 2016, Abengoa SA entered into a Membership Interest Purchase Agreement (MIPA) with Garney agreeing to sell 80% interest in AVR, including 100% of the decision-making relating to the Project in exchange for consideration, including Garney’s agreement to accept all construction, operational, and other Project risks.
Since the MIPA was signed, SAWS staff has conducted due diligence to determine whether its financial, operational and legal concerns were addressed, and that the requested Change in Control would progress the Project in a positive manner. Included as part of the diligence, SAWS staff has reviewed a new financial model which is required to be updated at Financial Close. Based on the conclusions derived from this diligence, SAWS staff now believes that the requested Change in Control in AVR to Garney P3 LLC is in the best interest of the Vista Ridge Project and for SAWS’ customers.

Through its acquisition of an 80% controlling interest in AVR, Garney P3 LLC, through AVR, agrees to accept the existing risk profile within the WTPA, including an obligation to deliver water to San Antonio and the risk of non-payment for water not made available. Garney P3 LLC also has agreed to substantial technical design and construction improvements, including foreclosure of the prospect of using fiberglass pipe in Project construction, impressed cathodic protection, increased well standards and a general, overall agreement to design and construct a higher quality pipeline than might have otherwise been designed. Garney P3 LLC has requested some change with regards to easement width and acquisition timing (noted below), which are recommended to be accepted (as they have been determined to not harm the Project or the existing position of SAWS).

Garney has expressed that there is a future possibility of bringing on additional or new equity partner(s), as well as a new operating service provider to operate the Project during the Commercial Operation Phase. If they materialize, these options will be presented for consideration at a later date, as each requires consent by the SAWS Board of Trustees before execution.

As part of the amendment to the WTPA and its related Appendices, you will find the following notable changes:

- Conforming language throughout recognizing Garney P3 LLC’s controlling interest and Abengoa’s change to a 20% silent equity partner, including references to the MIPA
- Appendices 1 & 3 incorporates a Technical Memorandum outlining some increasing technical standards to which the Project will be constructed
- Easement width of the Project altered from 100 feet to 85 feet (Article 26 and Appendix 1)
- Requiring various key properties and Rights of Way in the amount of 184,000 linear feet by Financial Close, and all Rights of Way to be acquired within one year from the date of the conveyance under the MIPA (Articles 4 & 26)
- A new Plan of Development and Finance in Appendix 16
Elimination of Appendix 10, and instead, substitution of a fixed price for water, to be computed upon SAWS execution on May 17, 2016 of the adjustment to the Capital and Raw Water Groundwater Unit Price to adjust for interest rates, as described in the current WTPA Article 17 and Appendix 10 (the results of this exercise, including the final Capital and Raw Groundwater Unit Price, will be presented to the SAWS Board of Trustees in conjunction with its consideration of this resolution).

Requirement for full resolution and dismissal of the Met Water v. Blue Water Systems lawsuit, including final unappealable judgment dismissing such litigation with prejudice, by Financial Close (Article 4)

Process by which a new Operating Service Provider will be selected at least 18 months prior to commencement of Commercial Operation, subject to SAWS approval (Article 13)

Various conforming updates to the Project status, including the Project Company’s election to use a Water Supply Corporation, and the delivery of the Project Real Property Conveyance Agreement, which memorializes the method by which Project assets are to be conveyed to SAWS (Article 13)

SAWS staff recommends approval of the attached resolution allowing for Consent of Change in Control, execution of an amendment to the WTPA, execution of various associated documents, and delegating to the SAWS President/CEO the authority to execute each of the foregoing upon receipt of satisfactory evidence that all conditions to such execution have been satisfied.

Attached you will find, in addition to the resolution, a number of documents to be executed by the SAWS President/CEO pursuant to the approval of the SAWS Board of Trustees:

- Consent to the Garney Change in Control and Conforming Amendments to the WTPA
- Release of Abengoa Parent Guaranty Agreement
- Garney Guaranty Agreement
- Project Real Property Conveyance Agreement
FINANCIAL IMPACT:

This specific proposed action does not change the financial impacts to SAWS that were described in the approval of the original WTPA, however, other actions have, or will have occurred that impact the financial status generally. The principal changes that impact the financial condition of the Project include:

San Antonio City Council approved a Water Supply Fee Plan through 2020, including establishing a ‘not-to-exceed’ Water Supply Fee which will ensure sufficient revenues are in place to cover the necessary envisioned expenses associated with the project.

Pursuant to SAWS Board of Trustees authority, and the WTPA, SAWS staff plans to lock in the Capital and Raw Groundwater Unit Price based on certain benchmark interest rates in place on May 17, 2016. Given the current historically low interest rates, this separate action will likely significantly decrease the previously-anticipated cost of the project and will lock this Unit Price in place for the term of the WTPA.

Dorovan S. Burton  
Vice President  
Water Resources and Governmental Relations

APPROVED:

Robert R. Puente  
President/Chief Executive Officer
RESOLUTION NO. ____________

A RESOLUTION OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES CONSENTING TO A CHANGE IN CONTROL OF ABENGOA VISTA RIDGE, LLC, AND APPROVING AMENDMENTS TO THE WATER TRANSMISSION AND PURCHASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS, ACTING BY AND THROUGH SAN ANTONIO WATER SYSTEM, AND ABENGOA VISTA RIDGE, LLC, EFFECTUATING A CHANGE IN CONTROL IN THE PROJECT COMPANY AND MAKING OTHER CONFORMING CHANGES IN CONNECTION THEREWITH; ADDRESSING OTHER MATTERS RELATING TO THE FOREGOING, INCLUDING APPROVAL OF EXECUTION OF RELATED AGREEMENTS TO WHICH SAWS IS A PARTY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council (the City Council) of the City of San Antonio, Texas (the City) previously established a component unit of the City known as the San Antonio Water System (SAWS or the System) for the purpose of operating and maintaining the City’s water and wastewater utility system, which component unit is under the management and control of the Board of Trustees (the Board) established and created pursuant to the provisions of Ordinance No. 75686 adopted by the City Council on April 30, 1992; and

WHEREAS, the City and the Board have long been aligned in the belief that diversification of the City’s water supply is essential for the continued preservation of the health, safety, and welfare of the residents of the City; and

WHEREAS, in an effort to achieve significant diversification of the City’s water supply, the Board, on January 14, 2011, solicited requests for competitive sealed proposals for the provision and delivery of alternative water supplies for the purpose of meeting the System’s water supply needs (the Solicitation); and

WHEREAS, in response to the Solicitation, the Board received nine responses, from which three finalists were selected and reviewed prior to determining that the proposal of the Vista Ridge Consortium presented the most advantageous possibility for the City obtaining an alternative water source; and

WHEREAS, by Resolution No. 14-184, the Board, on July 1, 2014, formally selected the water supply proposal of the Vista Ridge Consortium as the most advantageous to the System, subject to negotiation of an acceptable contract and receipt of City Council support; and

WHEREAS, at the conclusion of a series of publically-held negotiation meetings of a committee of the Board, a final Water Transmission and Purchase Agreement (the WTPA), between Abengoa Vista Ridge, LLC (Abengoa Vista Ridge) and the City, acting by and through the Board, was approved by the Board by Resolution No. 14-269 and No. 14-274 adopted on September 29, 2014 and October 15, 2014, respectively (together, the Board Resolution); and

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WHEREAS, the WTPA authorized commencement of the exploration, design, and development of a wellfield and pipeline from the Carrizo and Simsboro Aquifers located in Burleson County to Bexar County (the Project), to transport and deliver up to 50,000 acre-feet of water per year to City residents and, thereby, decreasing the region’s reliance on the Edwards Aquifer and providing an additional source of water for System customers generally over a 30-year time span; and

WHEREAS, in the Board Resolution, the Board requested the City Council’s approval of the WTPA; and

WHEREAS, at the Board’s request, the City Council, by Ordinance No. 2014-10-30-0818 adopted on October 30, 2014 (the Ordinance), approved the WTPA and the terms contained therein; and

WHEREAS, the City Council, in the Ordinance, delegated to the Board the ability to enact, approve, and effectuate amendments to the WTPA without further action or approval by the City Council, provided that such amendments do not involve an increase in the amount of water to be delivered under the WTPA or the manner in which the System’s payment for delivered water is calculated (such reserved WTPA amendments, the Reserved Amendments); and

WHEREAS, Abengoa SA (Abengoa Parent) is the parent company of and affiliated with multiple entities, including Abengoa Water USA, LLC (Abengoa Water), the 100% owner of Abengoa Vista Ridge (Abengoa Parent, Abengoa Water, and other Abengoa Parent affiliates, exclusive of Abengoa Vista Ridge, are collectively known as the Abengoa Parties); and

WHEREAS, on November 25, 2015, Abengoa Parent filed pre-insolvency proceedings in the Kingdom of Spain (the Spanish Insolvency Proceedings), commencing a four-month period of negotiations with Abengoa Parent’s creditors in an effort to create a financial viability plan and avoid formal insolvency proceedings in Spain; and

WHEREAS, Abengoa Parent and certain of its affiliates (but not Abengoa Water or Abengoa Vista Ridge) have since commenced commensurate bankruptcy proceedings in the United States and though such proceedings are currently in a state of “standstill” by agreement among Abengoa Parent and certain Abengoa Parties and their creditors, the Spanish Insolvency Proceedings are ongoing; and

WHEREAS, in response to Abengoa Parent’s financial difficulties, and in agreement with its creditors as part of the Spanish Insolvency Proceedings, Abengoa Parent solicited parties interested in acquiring a controlling interest in Abengoa Vista Ridge; and

WHEREAS, as a result of this process, Abengoa Parent selected Garney Companies, Inc., a Project subcontractor identified in the WTPA (Garney and, together with its affiliates having a prospective interest in the transactions described in the WTPA, the Garney Parties), to acquire a controlling interest in Abengoa Vista Ridge; and
WHEREAS, on March 21, 2016, applicable Abengoa Parties and Garney Parties entered into the Membership Interest and Purchase Agreement (the *Purchase Agreement*), pursuant to which Abengoa Water agreed to convey 80% of its membership interest and all control rights in Abengoa Vista Ridge, along with all right, title, and interests in associated agreements entered into under the WTPA, to Garney affiliate, Garney P3 LLC (collectively, the *Conveyance*); and

WHEREAS, the Conveyance constitutes a Change in Control of the type defined and described in Article 24 of the WTPA and, because it occurs prior to the Transfer Restriction Date, requires the consent of SAWS (to be given or withheld in its sole discretion) as a prerequisite to its effectiveness; and

WHEREAS, after conducting its own diligence concerning the proposed Conveyance to thoroughly evaluate the substance of the Conveyance and its impact on the Project’s continued opportunity for success, as well as confirmation by the parties thereto of their expectation to satisfy the prerequisites to the consummation of the Conveyance under the Purchase Agreement, the Board has determined that its approval of the Change in Control resultant from the Conveyance is in the best interest of the System and its customers; and

WHEREAS, SAWS and Abengoa Vista Ridge desire that SAWS' consent to the Change in Control resultant from the Conveyance, as well as related and conforming changes to the WTPA reflecting the results of the Conveyance and other changed facts and circumstances occurring since the WTPA’s execution, be evidenced in Consent to the Garney Change in Control and Conforming Amendment to the WTPA, dated as of the effective date of the Conveyance and attached hereto as Exhibit A (the *2016 WTPA Amendment*); and

WHEREAS, no WTPA amendments effectuated pursuant to the 2016 WTPA Amendment constitute a Reserved Amendment, meaning that, as provided in the Ordinance, the Board is authorized to approve and enter into the 2016 WTPA Amendment without approval of the City Council; and

WHEREAS, in connection with the Conveyance and the execution of the 2016 WTPA Amendment, SAWS has determined that it is necessary and desirable to approve and execute certain Project-related documentation, as further described herein; and

WHEREAS, the Board hereby finds and determines that the adoption of this Resolution is in the best interests of the residents of the City and the System’s customers; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE SAN ANTONIO WATER SYSTEM THAT:

SECTION 1. Approval of 2016 WTPA Amendment; Consent to Change in Control. Pursuant to, in accordance with, and under authority provided by the WTPA and the Ordinance, the 2016 WTPA Amendment, a substantially final version of which is attached hereto as Exhibit A and which includes SAWS approval of the Change in Control resultant from the Conveyance, related and conforming changes to the WTPA resultant from such Conveyance, and necessary changes to the WTPA reflecting changed facts and circumstances that have occurred since the WTPA’s execution, is hereby approved by the Board.
SECTION 2. Approval of Related Agreements. (a) The Change of Control resultant from the Conveyance requires that the City, acting by and through the Board, execute that certain Release of Abengoa Parent Guaranty Agreement, dated as of the effective date of the Conveyance and in substantially the form attached hereto as Exhibit B (the Release of Guaranty), for the benefit of Abengoa Parent, pursuant to which the City, acting by and through the Board, releases Abengoa Parent from its duties and obligations arising under that certain Guaranty Agreement, dated as November 4, 2014 (the Abengoa Guaranty), from Abengoa Parent to the City, acting by and through the Board. The Board hereby approves the Release of Guaranty.

(b) As a result of its approval and execution of the Release of Guaranty, and to provide for a substitute guarantor for those duties and obligations of Abengoa Parent under the Abengoa Guaranty, the City, acting by and through the Board, now desires and deems it advisable to enter into that certain Guaranty Agreement, dated as of the effective date of the Conveyance and in substantially the form attached hereto as Exhibit C (the Garney Guaranty), from Garney Holding Company to the City, acting by and through the Board. The Board hereby approves the Garney Guaranty and, in connection therewith, finds and determines that, upon its execution by all parties thereto, the Garney Guaranty shall constitute the "Guaranty Agreement" under the WTPA, as amended by the 2016 WTPA Amendment.

(c) That certain Project Real Property Conveyance Agreement, dated as of May 18, 2016 and in substantially the form attached hereto as Exhibit D (the RPC Agreement), between the City, acting by and through the Board, and the Central Texas Regional Water Supply Corporation, is a contract identified by the WTPA, as amended by the 2016 WTPA Amendment, and is essential to the continuation of the Project. The Board hereby approves the RPC Agreement.

(d) That certain Creditors’ Remedies Agreement to be entered into by the City, acting by and through the Board, Abengoa Vista Ridge, and the creditors to be named therein, is essential to the continuation of the Project and must be executed by Financial Close. Each Authorized Official (defined herein) is authorized to negotiate and complete all terms, provisions, and conditions thereof and, upon its completion, such completed Creditors’ Remedies Agreement shall be determined to be the final Creditors’ Remedies Agreement hereby approved by this Board for all purposes.

SECTION 3. Delegation Authority. The Board hereby delegates to the President and Chief Executive Officer of the System or his duly authorized designee (each, an Authorized Official) the authority to take such action, including the authority to execute any necessary documentation (including the agreements specifically identified in Sections 1 and 2 above), to effectuate the authorizations and directives of the Board made in Sections 1 and 2 above. Any action taken by an Authorized Official to effectuate such provisions, including (without limitation) execution of agreements and other documentation on behalf of the Board, shall serve as the act and deed of the Board for any and all purposes.
SECTION 4. **Time of the Essence.** Because of the necessity to achieve finality of the matters that are the subject of this Resolution, the Board hereby directs that the actions hereunder approved be undertaken by any Authorized Official on the earliest permissible date and time subsequent to the Board’s approval hereof, subject to the acting Authorized Official’s determination that necessary prerequisites to any such action have theretofore occurred. Notwithstanding the foregoing, the Authorized Official undertaking the actions hereunder authorized shall execute the 2016 WTPA Amendment, if at all, not later than June 10, 2016.

SECTION 5. **Essentiality of Water Resources.** The Board hereby affirms its position that the Project water to be made available pursuant to the WTPA is necessary and essential to the present and future operation and planning of the System in order to produce water resources to meet the current and projected needs of the System’s customers.

SECTION 6. **Inconsistent Provisions.** All resolutions and ordinances, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters ordained herein.

SECTION 7. **Governing Law.** This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 8. **Severability.** If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 9. **Definition of Terms.** Capitalized terms used herein without definition shall have the meaning ascribed thereto in the WTPA.

SECTION 10. **Incorporation of Preamble Recitals.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals and other statements therein are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board.

SECTION 11. **Public Meeting.** It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 12. **Effective Date.** This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

* * *
PASSED AND APPROVED this 18th day of May, 2016.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano Jr., Secretary
SCHEDULE I

SCHEDULE OF EXHIBITS

Exhibit A – Consent to the Garney Change in Control and Conforming Amendments to the WTPA
Exhibit B – Release of Abengoa Parent Guaranty Agreement
Exhibit C – Garney Guaranty Agreement
Exhibit D – Project Real Property Conveyance Agreement
EXHIBIT A

CONSENT TO THE GARNEY CHANGE IN CONTROL AND CONFORMING AMENDMENTS TO THE WTPA
CONSENT TO THE GARNEY CHANGE
IN CONTROL AND CONFORMING AMENDMENTS TO THE
WATER TRANSMISSION AND PURCHASE AGREEMENT
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| ATTACHMENT C | PLAN OF DEVELOPMENT AND FINANCING AND GARNEY HOLDING COMPANY LETTER OF SUPPORT |
| ATTACHMENT D | NEW APPENDIX 21 – CERTAIN LITIGATION MATTERS |
| ATTACHMENT E | NEW APPENDIX 22 – PROJECT COMPANY-RELATED LOANS |
CONSENT TO THE GARNEY CHANGE IN CONTROL AND CONFORMING AMENDMENTS TO THE WATER TRANSMISSION AND PURCHASE AGREEMENT

THIS AMENDMENT ONE TO THE VISTA RIDGE REGIONAL SUPPLY PROJECT WATER TRANSMISSION AND PURCHASE AGREEMENT (this “Conforming Contract Amendment”), is made and dated as of May __, 2016, between the City of San Antonio, Texas (the “City”), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), and Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”).

RECITALS

WHEREAS, SAWS and the Project Company executed the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated November 4, 2014 (the “Water Transmission and Purchase Agreement”); and

WHEREAS, Article 24 of the Water Transmission and Purchase Agreement grants SAWS the discretion, as described in Section 1.2(BB) thereof, to grant or withhold its consent to any Change in Control (as defined therein) prior to the Transfer Restriction Date (as defined therein); and

WHEREAS, Abengoa S.A., a company organized and existing under the laws of the Kingdom of Spain (“Abengoa”), Abengoa Water USA LLC, a limited liability company organized and existing under the laws of the State of Texas and a wholly owned subsidiary of Abengoa (“Abengoa Water USA”), Garney P3 LLC, a limited liability company organized and existing under the laws of the State of Missouri (“Garney P3 LLC”), Garney Companies, Inc., a corporation organized and existing under the laws of the State of Missouri (“Garney Companies, Inc.”), and Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri (“Garney Holding Company”) have entered into that certain Membership Interest and Purchase Agreement dated as of March 21, 2016 (the “Membership Interest and Purchase Agreement”), pursuant to which Abengoa Water USA will sell 80% of its interest in the Project Company to Garney P3 LLC upon the satisfaction of certain conditions; and

WHEREAS, the sale contemplated by the Membership Interest and Purchase Agreement would constitute a Change in Control under the Water Transmission and Purchase Agreement and one of the conditions precedent to such sale under the Membership Interest and Purchase Agreement is that SAWS consent to such Change in Control; and

WHEREAS, SAWS desires to consent to such Change in Control, subject to the execution and delivery by SAWS and the Project Company of this Conforming Contract Amendment; and

WHEREAS, both SAWS and the Project Company agree that it is in their mutual interests to amend the Water Transmission and Purchase Agreement in accordance with this Conforming Contract Amendment;

NOW THEREFORE, in consideration of the mutual covenants terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:
SECTION 1. CONSENT. Subject to SAWS’ rights under Section 24.2 of the Water Transmission and Purchase Agreement and as further described in Section 4(62) of this Conforming Contract Amendment, SAWS consents to the Garney Change-in-Control contemplated by the Membership Interest and Purchase Agreement. This consent shall not become effective until this Conforming Contract Amendment has been fully approved and executed by the parties hereto.

SECTION 2. CONFORMED WATER TRANSMISSION AND PURCHASE AGREEMENT. On or promptly following the Conforming Contract Amendment Date, the parties shall execute a Contract Administration Memorandum which contains a conforming Water Transmission and Purchase Agreement reflecting the changes contained herein.

SECTION 3. DEFINITIONS. All capitalized terms used and not otherwise defined herein have the meanings set forth in the Water Transmission and Purchase Agreement.

SECTION 4. MODIFIED WATER TRANSMISSION AND PURCHASE AGREEMENT PROVISIONS.

(1) Table of Contents – Delete Transaction Form A from the list of Transaction Forms in the Table of Contents of the Water Transmission and Purchase Agreement and replace such Transaction Form in the Table of Contents, as follows:

TRANSACTION FORM A GARNEY GUARANTY AGREEMENT

(2) Table of Contents – Add new Transaction Forms F and G to the Table of Contents of the Water Transmission and Purchase Agreement, as follows:

TRANSACTION FORM F OPINION OF COUNSEL TO THE WATER SUPPLY CORPORATION
TRANSACTION FORM G CERTIFICATE AS TO TERMINATION OF GREENBRIDGE TRANSACTION

(3) Table of Contents – Delete Appendix 10 from the list of Appendices in the Table of Contents of the Water Transmission and Purchase Agreement and replace such Appendix in the Table of Contents, as follows:

APPENDIX 10 RESERVED

(4) Table of Contents – Delete Appendix 16 from the list of Appendices in the Table of Contents of the Water Transmission and Purchase Agreement and replace such Appendix in the Table of Contents, as follows:

APPENDIX 16 PLAN OF DEVELOPMENT AND FINANCING AND GARNEY HOLDING COMPANY LETTER OF SUPPORT

(5) Table of Contents – Add new Appendices 21 through 22 to the Table of Contents of the Water Transmission and Purchase Agreement, as follows:

APPENDIX 20 RESERVED
APPENDIX 21 CERTAIN LITIGATION MATTERS
APPENDIX 22 PROJECT COMPANY-RELATED LOANS

(6) Table of Contents – Delete Reference Documents 2 through 4 from the list of Reference Documents in the Table of Contents of the Water Transmission and Purchase Agreement.
Agreement and replace such Reference Documents in, and add a new Reference Document 5 to, the Table of Contents, as follows:

REFERENCE DOCUMENT 2  GROUNDWATER LEASE CONVEYANCE AGREEMENT
REFERENCE DOCUMENT 3  RESERVED
REFERENCE DOCUMENT 4  PROJECT REAL PROPERTY CONVEYANCE AGREEMENT
REFERENCE DOCUMENT 5  MEMBERSHIP INTEREST AND PURCHASE AGREEMENT

(7) Recitals – Add the following as a new last Recital on page 2 of the Water Transmission and Purchase Agreement:

WHEREAS, this Water Transmission and Purchase Agreement was amended on May __, 2016, in connection with the acquisition by Garney P3 LLC of a majority interest in the Project Company and SAWS consent thereto.

(8) Eliminate all references to “Abengoa” and replace each such reference with “Garney Holding Company” in (a) the definition of Plan of Development and Financing in Section 1.1, and (b) Sections 4.1(A) and 4.4(C).

(9) Eliminate all references to “Daily Baseline Volume” and replace each such reference with “Baseline Daily Volume” in Sections 6.2(C)(2) and 10.3(A)(10).

(10) Eliminate all references to “Contract Date” and replace each such reference with “Conforming Contract Amendment Date” in (a) the definition of Compensation Adjustment Event in Section 1.1, and (b) Sections 2.1, 2.2, 4.1(A) (including the Section heading thereof), 4.5, 4.6(B), 5.2(C), 5.10, 6.2(A), 11.7(B), 11.14, 17.8 (including the Section heading thereof), 17.13, and 17.14(A).

(11) Eliminate all references to “Financial Model” and “Financial Model as of the Contract Date” and replace each such reference with “Contract Date Financial Model” or “Financial Close Financial Model”, as applicable and as set forth herein.

(12) The term “Change in Control” and the term “Change-in-Control” shall have the same meaning and may be used interchangeably.

(13) The term “Garney Change-in-Control” and the term “Garney Change in Control” shall have the same meaning and may be used interchangeably.

(14) Change references in Section 23.1(B), 23.3(A), 23.3(B), 23.3(F), and 23.4(A) from the “Project Assets Transfer Date” to the “Project Assets Purchase Date.”

(15) Section 1.1 – Delete the terms “Financial Model” (to the extent not replaced pursuant to Section 4(11) of this Conforming Contract Amendment) and “Project Company Fault”, including each associated definition, from the Water Transmission and Purchase Agreement in their entirety. The parties agree that all references to these terms in the provisions of the Water Transmission and Purchase Agreement that are not otherwise specifically amended herein are hereby deleted and that each such provision shall be modified accordingly.

(16) Section 1.1 – Add the following new definitions to Section 1.1 of the Water Transmission and Purchase Agreement:

“Bridge Loan” has the meaning set forth in Appendix 22 (Project Company-Related Loans).

“Conforming Contract Amendment” means the amendment of this Water Transmission and Purchase Agreement to make conforming changes in connection with SAWS consent to the Change-in-Control effectuated by the Membership Interest and Purchase Agreement.

“Conforming Contract Amendment Date” means May __, 2016, the date on which this Water Transmission and Purchase Agreement was amended by the Conforming Contract Amendment.

“Contract Date Financial Model” means the financial model that was delivered on or about the Contract Date.

“Conveyance Litigation” means litigation relating to the conveyance of the Project Assets, including any failure to convey the Project Assets to SAWS.

“Financial Close Financial Model” means the financial model delivered on or before the Financial Closing Date which meets the requirements set forth in Section 4.1(B)(25) (Financial Close).

“Garney Change-in-Control” has the meaning set forth in subsection 24.6(A) (Garney Change-in-Control Defined).

“Garney Companies, Inc.” means Garney Companies, Inc., a corporation organized and existing under the laws of the State of Missouri.

“Garney Holding Company” means Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri.


“Garney P3 LLC” means Garney P3 LLC, a limited liability company organized and existing under the laws of the State of Missouri.


“Project Assets Purchase Date” has the meaning set forth in Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option).

“Project Company-Related Loans” means the loans entered into or debt incurred by the Project Company as of the Conforming Contract Amendment Date, as further described in Appendix 22 (Project Company-Related Loans).

“Senior Secured Credit Facility” means the approximately $799,000,000 credit facility further described in Appendix 16 (Plan of Development and Financing and Garney Holding Company Letter of Support).

“Standby Deed of Trust” has the meaning set forth in Section 19.7 (Standby Deed of Trust), as further described in Reference Document 4 (Project Real Property Conveyance Agreement).

(17) Section 1.1 – Delete the existing following defined terms in Section 1.1 of the Water Transmission and Purchase Agreement in their entirety and replace such definitions with the following:

“Construction Management Agreement” means the Construction Management Agreement, dated April 10, 2015, between the Project Company and the Water Supply Corporation.

“EPC Contractor” means Garney Companies, Inc., or another design and construction company that is an Affiliate of Garney Holding Company and that is reasonably acceptable to SAWS.

“Groundwater Lease Conveyance Agreement” means the Groundwater Lease Conveyance Agreement, dated January 31, 2015, between the Project Company; Blue Water Vista Ridge, LLC; Blue Water Regional Supply Project LP; and the Master Lease Trust, attached hereto as Reference Document 2 (Groundwater Lease Conveyance Agreement).

“Groundwater Leases” means the leases listed in Exhibit A to Reference Document 2 (Groundwater Lease Conveyance Agreement).

“Guaranty Agreement” means the Guaranty Agreement, dated the Conforming Contract Amendment Date, between Garney Holding Company and SAWS, executed in the form set forth as Transaction Form A (Garney Guaranty Agreement).

“Operating Service Provider” means the person designated by the Project Company and approved by SAWS as the Operating Service Provider in the manner provided in subsection 13.1(F) (Operating Service Provider), or any assignee or replacement entity permitted under this Water Transmission and Purchase Agreement.

“Project Assets Transfer Date” means the earlier of the Project Assets Purchase Date and the Expiration Date.

“Project Real Property Conveyance Agreement” means the Project Real Property Conveyance Agreement, dated May __, 2016, between SAWS and the Water Supply Corporation, attached hereto as Reference Document 4 (Project Real Property Conveyance Agreement).
“Water Transportation Agreement” means the Water Transportation Agreement, dated March 9, 2015, between the Project Company and the Water Supply Corporation.

“Wells” means wells, casings, related pumping equipment and appurtenant facilities to be constructed on the Well Field Facilities Site for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project).

(18) Section 1.1 – Add the following underlined language to the existing following defined terms in Section 1.1 of the Water Transmission and Purchase Agreement:

“Initial Senior Debt” means the Senior Debt issued at Financial Close, subject to Section 7.1(J) (Execution of the Senior Secured Credit Facility).

“Product Water Delivery Point” means the flange in the pipe between the Project Company Storage Tank and SAWS Storage Tanks on the Project Company Portion of the Transmission Pipeline Terminus Site designated by the parties for determining the transfer of ownership of Product Water from the Project Company to SAWS and, in the event SAWS exercises its right to sell Product Water to any person pursuant to Section 26.5 (Opportunities), the delivery points established pursuant to such subsection.

“Senior Debt” means debt or other obligations issued or incurred by the Project Company under the Senior Debt Financing Agreements secured by a first lien on all or substantially all of the revenues and assets of the Project Company, including the Initial Senior Debt.

“Senior Debt Financing Agreements” means the following as and to the extent that the same may be in effect to document the issuance or incurrence of Senior Debt that may be outstanding from time to time: (1) any loan or credit agreement and any notes issued pursuant thereto; (2) any bond indenture and the bonds issued pursuant thereto; (3) any security agreement relating to collateral pledged to secure Senior Debt, which may include all assets and contract rights of the Project Company and the Water Supply Corporation with respect to the Project; (4) any trust or collateral agency agreement relating to the administration of such collateral on behalf of the Senior Debt Creditors; (5) any interest rate hedge agreement entered into by the Project Company for the purpose of fixing or capping interest rates that might otherwise be floating rates; (6) the Creditors’ Remedies Agreement and other consents to assignment or direct agreements between the Senior Debt Creditors and SAWS relating to the assignment of this Water Transmission and Purchase Agreement by the Project Company and the rights of the Senior Debt Creditors thereunder; and (7) any guaranties, letters of credit and other third party assurances provided to the Senior Debt Creditors by third parties as additional security.

“Transmission Pipeline Pumping Stations” means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project), which include the High Service Pump Station, Intermediate Pump Station #1 and Intermediate Pump Station #2.

“Wastewater” means (1) any process wastewater produced at the Project, and (2) any Product Water produced at the Well Field Facilities that requires discharge from the Transmission Pipeline before reaching the Product Water Delivery Point for any reason, including flushing requirements or any failure to meet disinfection standards under the Product Water Quality Guarantee.
“Water Transmission and Purchase Agreement” means this Water Transmission and Purchase Agreement, and includes the Conforming Contract Amendment and the Transaction Forms and Appendices.

(19) Section 1.1 – Delete clause (1) in the existing definition of “Project Company Person” in Section 1.1 of the Water Transmission and Purchase Agreement in its entirety and replace such clause (1) of the definition with the following:

(1) Any owner, shareholder, or member holding 5% or more of the equity ownership interests of Garney Holding Company, Abengoa or the Project Company, or a director, officer, employee or agent of Garney Holding Company, Abengoa or the Project Company in each case acting as such; or

(20) Section 2.2(A) – Delete the following struckthrough language from the existing Section 2.2(A) of the Water Transmission and Purchase Agreement:

(A) Existence and Powers and Ownership. The Project Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Water Transmission and Purchase Agreement. Abengoa owns indirectly 100% of the Shares of the Project Company.

(21) Section 2.2(E) – Add the following underlined language to the existing Section 2.2(E) of the Water Transmission and Purchase Agreement:

(E) No Litigation Affecting the Project Company. Except as provided in Appendix 21 [Certain Litigation Matters], to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company’s knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by the Project Company or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(22) Section 2.2(J) – Delete existing Section 2.2(J) of the Water Transmission and Purchase Agreement in its entirety and replace such Section with the following:

(J) Plan of Development and Financing and Garney Holding Company Letter of Support. The statements made by Garney Holding Company in the Plan of Development and Financing and the Garney Holding Company Letter of Support, are an expression of Garney Holding Company’s good faith intention as to the manner in which Garney Holding Company intends to proceed to develop and finance the Project in order to reach the Financial Closing Date.

(23) Section 2.2 – Add the following new subsections (N), (O), (P) and (Q) to Section 2.2 of the Water Transmission and Purchase Agreement:
(N) **No Restricted Persons.** Neither Abengoa, Garney Holding Company, nor any of their Affiliates is a Restricted Person.

(O) **Project Company-Related Loans.** The Project Company-Related Loans constitute the only loans entered into or debt incurred by the Project Company as of the Conforming Contract Amendment Date.

(P) **No Events of Default.** No Project Company Event of Default exists under this Water Transmission and Purchase Agreement nor has any event occurred which, with the giving of notice or passage of time, would constitute a Project Company Event of Default under this Water Transmission and Purchase Agreement, except that no representation is made with respect to the use of funds under the Bridge Loan Agreement.

(Q) **Project Company Ownership.** Abengoa owns indirectly 20% of the Shares of the Project Company and Garney P3 LLC owns 80% of the Shares of the Project Company. Garney P3 LLC is wholly owned by Garney Holding Company.

(24) **Section 4.1(B)(1)** – Delete the existing Section 4.1(B)(1) of the Water Transmission and Purchase Agreement in its entirety and replace such Section with the following:

(1) **Transmission Pipeline System Real Property Interests.** The Water Supply Corporation shall have acquired (i) at a minimum, 184,000 linear feet of the Transmission Pipeline Easements, and (ii) all of the other Transmission Pipeline System Real Property Interests. In acquiring easements, the Project Company shall comply with Section 26.1(A) (Right-of-Way Easements).

(25) **Section 4.1(B)(18)** – Add the following underlined language to the existing Section 4.1(B)(18) of the Water Transmission and Purchase Agreement:

(18) **Legal Proceedings.** There shall be no Legal Proceeding, at law or in equity, pending before or by any court or Governmental Body, which seeks to enjoin or restrict the construction or operation of the Project in the manner or for the purpose contemplated by this Water Transmission and Purchase Agreement that would substantially impair the Project Company’s ability to perform the Contract Obligations. In addition, without limiting any of the foregoing, the Project Company shall have provided confirmation satisfactory to SAWS in its discretion that the litigation involving Blue Water Systems, LP, as described in Appendix 21 (Certain Litigation Matters), shall have been resolved to the satisfaction of SAWS in its discretion, including, at a minimum, a copy of the final unappealable judgment dismissing such litigation with prejudice.

(26) **Section 4.1(B)(19)** – In addition to the revisions required pursuant to Section 4(8) of this Conforming Contract Amendment, add the following underlined language to and delete the following struckthrough language from the existing Section 4.1(B)(19) of the Water Transmission and Purchase Agreement:

(19) **Financial Condition.** The Project Company shall provide financial statements of the Project Company and Garney Holding Company, audited if available, for the most recently completed fiscal year and quarterly period. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the Project Company since the Contract Date, or in the condition of Garney Holding Company since the Conforming Contract Date.
Amendment Date, that would materially and adversely affect the ability of the Project Company or Garney Holding Company to perform their respective obligations under this Water Transmission and Purchase Agreement, the Guaranty Agreement, the Groundwater Lease Conveyance Agreement or any other Transaction Agreement.

(27) Section 4.1(B)(22) – Delete the existing Section 4.1(B)(22) of the Water Transmission and Purchase Agreement in its entirety and replace such Section with the following:

(22) Water Supply Corporation Counsel Opinion. The Project Company shall deliver to SAWS a letter from counsel for the Water Supply Corporation substantially in the form attached as Transaction Form F (Opinion of Counsel to the Water Supply Corporation).

(28) Section 4.1(B)(25)(a) – In addition to the revisions required pursuant to Section 4(8) of this Conforming Contract Amendment, add the following underlined language to the existing Section 4.1(B)(25)(a) of the Water Transmission and Purchase Agreement:

(a) Financial Close Defined. Financial Close shall be deemed to have occurred when (1) Initial Senior Debt has been issued under the definitive Senior Debt Financing Agreements on a permanent basis, and equity has been definitively committed under the Equity Contribution Agreement for the financing in full of amounts sufficient to pay the costs of achieving Acceptance as projected in the Financial Close Financial Model, and (2) the other requirements of this Section 4.1(B) (Financial Closing Date Conditions Defined) have been met. If the Senior Secured Credit Facility is executed, Financial Close shall not be deemed to have occurred except as described in Section 4.1(B)(25)(b) (Initial Senior Debt Requirements). Financial Close shall not include (1) elective payments by or on behalf of Garney Holding Company or its Affiliates for early construction costs (or financing arrangements made to pay such costs), (2) any transaction in which the Initial Senior Debt is issued to or purchased by Garney Holding Company or any Affiliate of Garney Holding Company, or (3) any transaction in which any such Project Costs are not financed on a permanent basis in a bona fide third-party transaction. Financing on a permanent basis includes construction financing in which the lender does not require committed take-out financing as a condition to making the construction loan.

(29) Section 4.1(B)(25)(b) – In addition to the revisions required pursuant to Section 4(8) of this Conforming Contract Amendment, add the following underlined language to and delete the following struckthrough language from the existing Section 4.1(B)(25)(b) of the Water Transmission and Purchase Agreement:

(b) Initial Senior Debt Requirements. The Initial Senior Debt shall comply with Section 7.1 (Project Financing) and the Project shall be financed substantially in compliance with Appendix 16 (Plan of Development and Financing and Garney Holding Company Letter of Support), subject to such exceptions as SAWS, acting reasonably, may approve. If the Senior Secured Credit Facility is executed, Financial Close shall not be deemed to have occurred until all of the Financial Closing Date Conditions hereunder have been satisfied and all conditions to the initial disbursement of loan proceeds under the Senior Secured Credit Facility have been satisfied or waived by the parties thereto (provided that any such waiver shall be subject to SAWS’ consent in its discretion). Alternatively, in the event that the Senior Secured Credit Facility is
not executed, the Project Company shall use commercially reasonable efforts to issue Initial Senior Debt using a method of permissible financing in accordance with the requirements of this Water Transmission and Purchase Agreement, including tax-exempt private activity bonds that (which, if issued, are assigned an investment grade rating by at least two Rating Services) to the extent private activity bond volume cap is reasonably available for such purposes and taking into account the overall impact on the Project and the costs and equity returns associated with such a financing in relation to alternative financing methods. Any Initial Senior Debt not issued by the Project Company as tax-exempt private activity bonds is not required to be rated by any Rating Service and, if rated, is not required to carry an investment grade credit rating by any Rating Service. To the extent required by State law, any Initial Senior Debt issued by or on behalf of the State or any local government shall be approved by the Texas Attorney General and registered with the Texas Comptroller of Public Accounts and issued under and pursuant to Chapter 1371, as amended, Texas Government Code and other Applicable Law providing a legal basis for such issuance of debt.

(30) Section 4.1(B)(25)(d) – Add the following underlined language to and delete the following struckthrough language from the existing Section 4.1(B)(25)(d) of the Water Transmission and Purchase Agreement:

(d) Financial Model. The Project Company shall have submitted to SAWS a financial model (the “Financial Close Financial Model”) meeting the requirements of this Section 4.1(B)(25)(d) (Financial Model). The Financial Close Financial Model:

(1) Shall be prepared by or on behalf of the Project Company in good faith and in accordance with generally accepted standards prevailing for the preparation of similar models in connection with the project financing of major public works projects of a similar size;

(2) Shall be audited and verified by an independent recognized model auditor;

(3) Shall fairly disclose all material cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Water Transmission and Purchase Agreement and by shareholders in purchasing Shares;

(4) Shall be the financial model that was used as the basis for the decision by the Senior Debt Creditors to enter into the Senior Debt Financing Agreements (either directly or indirectly in the preparation of the disclosure documents that were provided in a bond or securities offering or placement) and, if applicable, by the Rating Services in rating or shadow rating the Initial Senior Debt; and

(5) Shall be prepared in a format and using a methodology consistent with the Contract Date Financial Model delivered to SAWS in connection with the authorization of the execution of this Water Transmission and Purchase Agreement so as to enable the proper determination of the Target Equity Return Amount.

SAWS shall have the right to review and comment on the Financial Close Financial Model to ensure that it was prepared in a manner consistent with the
Contract Date Financial Model. This Financial Closing Date Condition shall not be deemed to have been satisfied until the parties execute a Contract Administration Memorandum which reflects the discount rate and the pre-tax internal rate of return generated by the Financial Close Financial Model and refers to the appropriate Financial Close Financial Model tabs and rows, as further described in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) and Section 23.1(B) (Project Assets Purchase Price). Upon the execution of the Contract Administration Memorandum, this Water Transmission and Purchase Agreement shall be deemed to be amended to reflect such references, rate of return and discount rate. The Project Company shall bear the entire risk of any errors in or omissions from the Financial Close Financial Model, and shall not be entitled to any compensation from or other redress against SAWS in relation to any loss or damage that it suffers in consequence of such error or omission. In no event shall the agreement of the parties to establish the Financial Close Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

(31) Section 4.1(B)(25)(e) – Add the following underlined language to and delete the following struckthrough language from the existing Section 4.1(B)(25)(e) of the Water Transmission and Purchase Agreement:

(e) Creditors’ Remedies Agreement. The Senior Debt Creditors and the Project Company shall have negotiated and executed the definitive Creditors’ Remedies Agreement with SAWS, which shall have been approved by SAWS in its discretion. The Creditors’ Remedies Agreement shall provide for step-in and cure rights by the Senior Debt Creditors and be in a form consistent with the form of similar agreements customarily executed in project financings similar to the Initial Senior Debt financing.

(32) Section 4.1(B)(25)(g) – Add the following as a new subsection (g) to Section 4.1(B)(25) of the Water Transmission and Purchase Agreement:

(g) Financial Close Contract Administration Memorandum. On or promptly following the Financial Closing Date, the parties shall execute a Contract Administration Memorandum which confirms that all of the Financial Closing Date Conditions were satisfied, specifies the Financial Closing Date and reflects the parties’ acknowledgement and agreement that Financial Close has been deemed to have occurred.

(33) Section 4.3(A) – Add the following underlined language to Section 4.3(A) of the Water Transmission and Purchase Agreement:

(A) Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date. The Project Company shall provide SAWS with periodic reports regarding the satisfaction of the Financial Closing Date Conditions, and shall give SAWS prompt written notice when all of the Financial Closing Date Conditions have been achieved. Upon the satisfaction or waiver by SAWS of the Financial Closing Date Conditions, the parties shall hold a formal closing at a location reasonably determined by SAWS acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Financial Closing Date has occurred. The Construction Period shall thereupon commence. The date of such closing shall be the “Financial Closing Date” hereunder. On or promptly following the Financial Closing Date, the Project Company shall deliver to SAWS copies of the executed Senior Debt Financing Agreements (in the case of the Senior Secured Credit Facility, to the extent
not already delivered to SAWS in final form as of the Financial Closing Date in accordance with Section 7.1(J) (Execution of the Senior Secured Credit Facility) and all related closing documents provided in connection with Financial Close.

(34) Section 4.4(A) – The following sentence shall be added at the end of Section 4.4(A) of the Water Transmission and Purchase Agreement:

The execution of the Senior Secured Credit Facility shall not limit the rights of SAWS under this Section 4.4 in any manner.

(35) Section 5.2(F) – Delete the last paragraph of existing Section 5.2(F) of the Water Transmission and Purchase Agreement in its entirety and replace such paragraph with the following:

Nothing in this Section 5.2(F) (Other Circumstances) shall be construed to limit the Project Company’s right to compensation for operating, maintenance, repair and replacement costs as and to the extent provided in Section 17.3 (Operating and Maintenance Costs) and Appendix 19 (Compensable Costs and O & M Budget Panel).

(36) Section 5.2 – Add the following as a new subsection (H) to Section 5.2 of the Water Transmission and Purchase Agreement:

(H) Additional Risks Expressly Assumed by Project Company. The Project Company expressly assumes the risk of any now pending or hereafter filed Legal Proceeding, at law or in equity, before or by any court or Governmental Body, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the Project or the Project Company, including, without limitation, those matters set forth in Appendix 21 (Certain Litigation Matters). Accordingly, the Project Company acknowledges and agrees that notwithstanding the fact that the Project Company may incur any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, charge or expense resulting from or relating to any such matter, any adverse effect resulting from or relating to any such matter shall not constitute an Uncontrollable Circumstance, and there shall be no extension of Term or adjustment to the Unit Price or any other compensation obligation of SAWS hereunder.

(37) Section 7.1(A) – Add the following underlined language to and delete the following struckthrough language from the existing Section 7.1(A) of the Water Transmission and Purchase Agreement:

(A) Project Company Financing. The Project Company is solely responsible, subject to SAWS obligations under Article 4 (Development and Financing Period), for obtaining and repaying all financing necessary for the design, permitting and construction of the Project at its own cost and risk and without recourse to SAWS, both initially, as may be required to complete the Project and for any Project purpose during the Term. SAWS shall have the right to review and comment on any Senior Debt Financing Agreements, including all agreements pertaining to the Senior Secured Credit Facility. The Project Company, subject to SAWS obligations under Article 4 (Development and Financing Period), exclusively bears the risk of (1) the availability or unavailability at any time and for any reason of tax-exempt private activity bond financing for the Project, and (2) any changes in the interest rate, payment provisions or the other terms and conditions of any of its financings (except as
provided in Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), pertaining to interest rate changes occurring between the Contract Date and the Financial Closing Date. SAWS shall have no obligation to provide financing for the Project or for any Project Company-Requested Capital Modifications (other than Project Company-Requested Capital Modifications pursuant to Section 12.3(B) (Inability of Project Company to Obtain Financing), or for any other purpose; provided, however, that this provision is not intended to relieve SAWS of its obligations related to SAWS Fault, including under Section 16.3 (Project Company Relief Due to a SAWS Fault).

(38) Section 7.1(D) – Delete the following struckthrough language from the existing Section 7.1(D) of the Water Transmission and Purchase Agreement:

(D) Permitted Debt Other than Senior Debt. SAWS, notwithstanding any other provision of this Water Transmission and Purchase Agreement, shall have no obligation under this Water Transmission and Purchase Agreement for making any payment measured or calculated by or with reference to Permitted Debt, nor shall the issuance of any Permitted Debt result in an adjustment of the Unit Price except as provided in Section 17.2(B) (Adjustment at Financial Closing Date) and Section 7.6 (Refinancing Gain).

(39) Section 7.1(H) – Add the following underlined language to and delete the following struckthrough language from the existing Section 7.1(H) of the Water Transmission and Purchase Agreement:

(H) SAWS’ Option to Purchase Senior Debt at Issuance. As an option reserved exclusively thereto, and in no way to be determined or deemed an obligation to do the same, SAWS hereby reserves to itself, and the Project Company hereby grants to SAWS, the right (but not the duty or obligation) to purchase, in whole or in part and prior to all other potential initial purchasers, the Initial Senior Debt and any additional Senior Debt (including any additional Senior Debt issued as provided in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) from time to time thereafter issued, upon the terms and conditions at such time determined by such parties. Not later than 90 days prior to the anticipated date of sale of the Initial Senior Debt, as well as and not later than 90 days prior to the anticipated date of sale with respect to any subsequent issuance of Senior Debt (or, with respect to any subsequent issuance of Senior Debt that must be issued on an expedited basis in extraordinary circumstances, no less than 30 days prior to such anticipated date of sale), the Project Company shall provide written notice of its intention to issue such Initial Senior Debt or Senior Debt, from which date SAWS shall, within 30 days for issuances of the Initial Senior Debt and within 30 days for issuances of all subsequent Senior Debt, deliver to the Project Company written notice of its intention to exercise or not exercise its right to purchase any such indebtedness. SAWS intends that any purchased debt, if issued on a tax-exempt private activity bond basis, will have and maintain any and all commercially-reasonable features inherent in a publicly marketed and sold, project-finance debt offering (including, but not limited to, an investment-grade credit rating, qualification for tax-exempt treatment under federal income tax law (except as such tax-exemption may be affected by SAWS’ purchase), receipt of any and all necessary approval from governmental authorities whose approval serves as a prerequisite to delivery of such indebtedness, and ability to negotiate the Senior Debt Financing Agreement, along with evidence of the foregoing and delivery of usual and
customary legal opinions). SAWS has reserved this right to purchase the Initial Senior Debt and any additional Senior Debt for the purpose of lowering the Capital and Raw Groundwater Unit Price through its ability to deliver costs of capital at levels lower than may be attainable by the Project Company in a given financial market. The adjustment to the Capital and Raw Groundwater Unit Price resulting from any such purchase shall be made in the manner provided in Section 17.2(B) (Adjustment at Financial Closing Date).

(40) Section 7.1 – Add the following as a new subsection (I) to Section 7.1 of the Water Transmission and Purchase Agreement:

(I) Other Project Company-Related Loans. The Project Company acknowledges and agrees that no Project Company-Related Loan constitutes Senior Debt for any purpose hereunder, including particularly the determination of Senior Debt on the basis of which such termination payments are required to be calculated pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default), except to the extent that consideration of the Bridge Loan has been taken into account in establishing the amount of the Senior Secured Credit Facility.

(41) Section 7.1 – Add the following as a new subsection (J) to Section 7.1 of the Water Transmission and Purchase Agreement:

(J) Execution of the Senior Secured Credit Facility. The Project Company reasonably expects that the Senior Secured Credit Facility will be executed on or about July 1, 2016 and that the initial disbursement thereunder will occur on or about September 30, 2016 based on satisfaction or waiver of all conditions precedent specified therein by such date. Upon execution, the Senior Secured Credit Facility will have the status of Senior Debt hereunder such that the Project Company’s obligations thereunder will be secured by a first lien on all or substantially all of the revenues and assets of the Project Company, notwithstanding the fact that Financial Close hereunder will not occur until satisfaction of all conditions specified in Section 4.1(B)(25)(b); provided, however, that such lien shall remain subject to all rights reserved to SAWS hereunder prior to Financial Close without limitation, including those arising under Section 4.4 hereof. On or promptly following the execution of the Senior Secured Credit Facility, the Project Company shall deliver to SAWS copies of all executed agreements pertaining to the Senior Secured Credit Facility, which shall constitute Senior Debt Financing Agreements hereunder. In no event shall the Senior Secured Credit Facility permit disbursements of loan proceeds prior to Financial Close hereunder.

(42) Section 7.4(B) – Add the following underlined language to and delete the following struckthrough language from the existing Section 7.4(B) of the Water Transmission and Purchase Agreement:

(B) Delivery of Financing-Related Reports to SAWS. The Project Company shall deliver to SAWS subsequent to the period beginning on the Financial Closing Date and (or, if executed, the effective date of the Senior Secured Credit Facility) and continuing throughout the Term copies of all material reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to the Senior Debt Creditors under or in connection with the Senior Debt Financing Agreements, including reports prepared by the consulting engineer in connection with the Senior Debt and any continuing disclosure reports required under applicable securities laws, in each case to the extent that such items are in the Project Company’s possession.
Section 10.7(B)(1)(c) – Add the following underlined language to and delete the following struckthrough language from the existing Section 10.7(B)(1)(c) of the Water Transmission and Purchase Agreement:

(c) the Contract Date Financial Model as of the Contract Date (which targets a pre-tax internal rate of return of 13.741% (as referenced on the “Quarterly Calculations” tab, row 2256)); and

Section 10.7(B)(1)(d) – Add the following underlined language to and delete the following struckthrough language from the existing Section 10.7(B)(1)(d) of the Water Transmission and Purchase Agreement:

(d) a pro-forma post-Proposed Financing Financial Model, which modifies the Contract Date Financial Model as of the Contract Date by making the following adjustments to take into account the Proposed Financing:

(i) Entry of the proposed equity contribution, if any, into the Contract Date Financial Model as of the proposed Permitted Debt Issuance Date. This incremental equity contribution will be assumed to earn a pre-tax internal rate of return of 13.741%;

(ii) Entry of the proposed Permitted Debt issuance amount into the Contract Date Financial Model as of the Permitted Debt Issuance Date. This debt issuance will be assumed to bear interest at the rate set forth in subsection (1)(b) above;

(iii) Holding the amount of Capital and Raw Groundwater Unit Price as established at the Financial Closing Date constant, extend the Term for the necessary number of years to amortize the proposed Permitted Debt issuance to maturity (assuming level debt service payments which begin at the date that is 30 years following the Commercial Operation Date or such later date as may be necessary assuming principal balances of Initial Senior Debt or previously issued Permitted Debt remain outstanding beyond the date that is 30 years following the Commercial Operation Date); and

(iv) To the extent that the cash flows associated with the extension of Term in subsection (1)(d)(iii) above have not been sufficient to generate a pre-tax internal rate of return of 13.741% in accordance with the review of the Contract Date Financial Model’s “Quarterly Calculations” tab, row 2256, further extend the Term (beyond the extension described in subsection (1)(d)(iii) above) for the additional necessary number of quarters to achieve this target level of return. For purposes of this computation, it is assumed that all cash flows previously being utilized to service Permitted Debt will now be available to provide additional equity returns.

Section 10.7(B)(4) – Add the following underlined language to the existing Section 10.7(B)(4):

(4) Upon completion of the Proposed Financing, the steps outlined in subsection (1)(d) above will be completed using the actual interest rates achieved in order to determine the ultimate extension of the Term. A copy of the Contract Date Financial Model taking into account the actual results of the financing will be forwarded to SAWS within 10 days of the Financial Close, with the actual extension of the Term being as determined in this Contract Date Financial Model. The parties shall document any extension of the Term by executing a Contract Administration Memorandum.
(46) Section 13.1(C) – Add the following underlined language to and delete the following struckthrough language from the existing Section 13.1(C) of the Water Transmission and Purchase Agreement:

(C) Use of Project Contractors, Subcontractors and Key Individuals. The Project Company shall use the Project Contractors, Subcontractors and Key Individuals listed in Appendix 14 (Project Company and Project Contractors Information) or such others as SAWS in its discretion may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Obligations in the roles indicated in Appendix 14 (Project Company and Project Contractors Information). The Operating Service Provider shall be designated as provided in subsection (F) of this Section.

(47) Section 13.1 – Add the following as a new subsection (F) to Section 13.1 of the Water Transmission and Purchase Agreement:

(F) Operating Service Provider. As of the Conforming Contract Amendment Date, the Operating Service Provider has not been designated. The Operating Service Provider shall be designated no later than 18 months prior to the Commercial Operation Date. The Project Company shall give notice to SAWS of a proposed Operating Service Provider, together with the proposed form of Operating Service Agreement, at least 90 days prior to the date on which the Project Company intends to execute the Operating Service Agreement. The parties understand that the Project Company may propose an Operating Service Provider seeking to also serve as an equity investor in the Project. In such event, the Operating Service Provider shall execute both the Operating Service Agreement and an Equity Contribution Agreement, and will also be subject to Section 24.2 (Limitations on Change in Control). SAWS shall have the right, in its discretion, to approve the Operating Service Provider and the terms and conditions of the Operating Service Agreement. Notice of SAWS approval or disapproval shall be given to the Project Company not later than 60 days thereafter. At any time prior to the execution of the Operating Service Agreement, SAWS may request the Project Company to consider contracting with SAWS to serve as the Operating Service Provider upon terms and conditions proposed by SAWS. In the event SAWS makes such a request, the Project Company shall consider the request in good faith. Neither party shall be obligated, however, to enter into an Operating Service Agreement except in its discretion. The Operating Service Provider shall be a highly qualified and experienced operator of water production, treatment and distribution facilities with substantial experience in projects of a similar scale or nature, nationally or internationally, to the Project.

(48) Section 13.2(A) – Delete the existing Section 13.2(A) of the Water Transmission and Purchase Agreement in its entirety and replace such Section with the following:

(A) Formation and Intended Use. The parties acknowledge that the Project Company has caused the Water Supply Corporation to be formed with the intent of having the Water Supply Corporation facilitate and serve the public purpose of the Project in the manner described herein; that the Project Company has executed the Construction Management Agreement, the Project Construction Loan Agreement, the Water Transportation Agreement and the Public-Private Partnership Framework Agreement with the Water Supply Corporation; and that the Project Company expects to request the Water Supply Corporation to execute the Operating Service Agreement with the Operating Service Provider and to execute the EPC Agreement with the EPC Contractor.
The Project Company shall have the right to contract and conduct business with the Water Supply Corporation as contemplated hereby.

(49) Section 13.2 – Delete existing Sections 13.2(B), 13.2(C), 13.2(E), 13.2(F), 13.2(G), and 13.2(H) of the Water Transmission and Purchase Agreement in their entirety, renumber existing Section 13.2(D) to 13.2(B) and existing Section 13.2(I) to 13.2(C), and correct all associated cross-references.

(50) Section 13.2(D) – In addition to the revisions required pursuant to Section 4(8) of this Conforming Contract Amendment, add the following underlined language to and delete the following struckthrough language from the existing Section 13.2(D) of the Water Transmission and Purchase Agreement (renumbered as Section 13.2(B) pursuant to Section 4(49) of this Conforming Contract Amendment):

(B) Election to Contract With the Water Supply Corporation Related Covenants. If the Project Company elects to contract and conduct business with the Water Supply Corporation in the manner contemplated hereby, The Project Company:

(1) Covenants that neither the Project Company, nor Garney Holding Company or any of their Affiliates shall (a) take or cause to be taken, or (b) to the extent they have legal authority, permit or suffer to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, or entering into or performing their obligations under any agreement with the Water Supply Corporation) the effect of which, individually or as a whole, would cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, the Real Property Conveyance Agreement, or this Water Transmission and Purchase Agreement;

(2) Shall obtain from the Water Supply Corporation a mortgage on the Project Real Property securing the Water Supply Corporation’s payment obligations under the Project Construction Loan Agreement and performance obligations with respect to the conveyance of the Project Real Property upon dissolution, which mortgage shall be subordinate to the mortgage securing the Senior Debt and the Standby Deed of Trust;

(3) Shall cause the Water Supply Corporation to perform all of the obligations to be performed by the Water Supply Corporation under any agreement entered into by the Water Supply Corporation with any party; and

(4) Unconditionally and absolutely guarantees to SAWS the performance of all of the obligations of the Water Supply Corporation under its formation documents or under any agreement entered into by the Water Supply Corporation with any party that are material to the Project, the Project Real Property Conveyance Agreement or this Water Transmission and Purchase Agreement.

(51) Section 13.2(I) – Delete existing Section 13.2(I) of the Water Transmission and Purchase Agreement (renumbered as Section 13.2(C) pursuant to Section 4(49) of this Conforming Contract Amendment) in its entirety and replace such Section with the following:

(C) Severance and Continued Effect. The Project Company acknowledges and agrees that the use of the Water Supply Corporation is not
essential to the ability of the Project Company to perform the Contract
Obligations, and that the Project can be accomplished and the Contract
Obligations can be performed without the use of the Water Supply Corporation.
If, at any time during the Term, the Water Supply Corporation for any reason
(including reasons related to its status or powers as a not-for-profit corporation
or a water supply corporation) is determined in any Legal Proceeding not to have
the authority under Applicable Law to enter into or perform its obligations or
exercise its intended powers under any agreement related to the Project:

(1) No such determination shall affect the Project Company’s sole
and complete responsibility for the performance of all of the obligations that the
Project Company intended to be performed by the Water Supply Corporation,
including specifically the Project Company’s ownership of all of the Project Real
Property and obligation to acquire and hold Project Real Property and to assign
and convey such Project Real Property to SAWS upon the expiration hereof or
upon the termination of this Water Transmission and Purchase Agreement
following SAWS exercise of its right to purchase the Project Assets hereunder, all
as provided in Articles 3 and 4 and otherwise in the Project Real Property
Conveyance Agreement; and

(2) In accordance with Section 1.2(S) (Severability), the parties
acknowledge and agree that:

(a) Any term, condition or provision of this Water Transmission and
Purchase Agreement relating to the Water Supply Corporation that is
determined in any such Legal Proceeding to be invalid, unenforceable or illegal
shall be severed from this Water Transmission and Purchase Agreement;

(b) Such invalidity, unenforceability or illegality shall not prejudice or
affect the validity, enforceability or legality of the remaining provisions of this
Water Transmission and Purchase Agreement, which shall continue in effect;
and

(c) The continued effectiveness of this Water Transmission and
Purchase Agreement as modified is not contrary to the basic understandings
and intentions of the parties, and there is no need to negotiate any new
provisions to restore this Water Transmission and Purchase Agreement to its
original intent and effect.

(52) Section 17.2 – Delete existing Section 17.2 of the Water Transmission and
Purchase Agreement in its entirety and replace such Section with the following, which,
pursuant to the Notice of Calculation of Capital and Raw Groundwater Unit Price, shall be
calculated on May 17, 2016 and written into this Conforming Contract Amendment prior to its
execution:

SECTION 17.2. CAPITAL AND RAW GROUNDWATER UNIT PRICE.

The “Capital and Raw Groundwater Unit Price” for each Contract Year
shall be $____ per Acre Foot, and shall remain fixed for the Term.

(53) Section 17.8(B) – Delete the following struckthrough language from the existing
Section 17.8(B) of the Water Transmission and Purchase Agreement:
(E) **Adjustments to the Unit Price.** Compensation to the Project Company shall be payable as an adjustment to the appropriate Charge component of the Unit Price ("Unit Price Adjustments"), and other adjustments to the appropriate Charge component of the applicable Unit Price shall be made, in accordance with and subject to the terms and conditions of this Water Transmission and Purchase Agreement, upon the occurrence of the events described in the following Sections and Sections:

1. Section 5.10 (Good Management Practice and Good Engineering and Construction Practice);
2. Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs);
3. Section 7.6 (Refinancing Gain);
4. Section 12.3 (Capital Modifications at SAWS Request);
5. Section 16.3 (Project Company Relief Due to a SAWS Fault).

The adjustment to one or more of the Charge components of the Unit Price to be made under this Section shall be established at the time the appropriate compensation relief is agreed upon, and such compensation shall be payable solely to the extent that SAWS is obligated to make Monthly Water Purchase Payments based on the Unit Price with respect to Product Water delivered or available for delivery hereunder. The Project Company acknowledges, accordingly, that any failure by the Project Company to deliver or make available for delivery Product Water for which it would have been entitled to payment based on the Unit Price, including the adjustment to one or more Charge components thereof reflecting such compensation relief, will result in a reduction in the compensation relief to which it would have been entitled upon the occurrence of the compensation relief circumstance had the Project Company delivered or made available for delivery such Product Water.

(54) **Section 17.8(C) — Add the following underlined language to and delete the following struckthrough language from the existing Section 17.8(C) of the Water Transmission and Purchase Agreement:**

(C) **Direct Payments by the Parties.** SAWS shall pay the Project Company as a direct payment (and not as part of an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price)), and the Project Company shall pay SAWS as a direct payment, any amounts due under or referred to in the following Sections. The net amount shall constitute the "Direct Payment" and, except to the extent payable following any termination of this Water Transmission and Purchase Agreement, applied as a credit or debit in calculating the Monthly Water Purchase Payment:

1. Section 4.4(C) (Project Assumption Fee);
2. Section 6.2 (SAWS Interconnection Improvements);
3. Section 8.5(C) (Achievement of Acceptance);
4. Section 8.8(C) (Achievement of Final Completion);
Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period);

Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water);

Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water);

Section 10.14 (Administrative Obligations);

Section 12.4(D) (Preparation Costs);

Section 17.3(F) (Payment of Major Repair and Replacement Compensable Costs);

Section 14.1(E) (Failure to Provide Insurance Coverage);

Section 17.6 (Deductions Credit);

Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law);

Article 19 (Remedies of the Parties);

Section 23.8 (Project Company to Cooperate);

Section 25.1 (Project Company’s Obligation to Indemnify), and any other term or condition hereof, under which indemnification payments are owed by the Project Company (provided that the Project Company shall promptly pay SAWS any such payment which is owed prior to the Commercial Operation Date or which exceeds the amount of the Monthly Water Purchase Payment);

Appendix 7 (Insurance Requirements) (Section 7.2.10), with respect to any additional insurance coverage requested by SAWS;

Any term or condition hereof, under which non-compliance results in actual or liquidated damages payable by either party; and

Any other term or condition hereof, under which payment is owed by one party to the other that has not been accounted for by an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price).

Section 17.14(A) – In addition to the revisions required pursuant to Section 4(10) of this Conforming Contract Amendment, delete the following strickthrough language from the existing Section 17.14(A) of the Water Transmission and Purchase Agreement:

(A) General. The Project Company shall substantiate all costs for which it claims compensation hereunder other than costs that are part of the Unit Price, including compensation (1) on account of Project Company Reimbursable Costs, (2) on account of Compensable Costs, or (3) for costs related to a SAWS-Requested Design-Requirements Change, a SAWS-Requested Capital Modification or a SAWS Fault ("Cost Substantiation"), whether compensation is to be paid as part of adjustment to the Unit Price or as a lump
sum, as provided in Section 17.8 (Form of Compensation Adjustments for Events Occurring After the Conforming Contract Amendment Date). Cost Substantiation shall be provided in advance of incurring or paying the cost, except when emergencies or other immediate needs make advance cost substantiation impracticable. The requirement in this Section for Cost Substantiation for costs that are not related to the Capital and Raw Groundwater Unit Price shall not be construed to mean that the Capital and Raw Groundwater Unit Price is subject to change for any reason other than the adjustment provided in Section 17.2(B) (Adjustment at Financial Closing Date).

(56) Section 19.7 – Add the following as a Section 19.7 of the Water Transmission and Purchase Agreement:

SECTION 19.7. STANDBY DEED OF TRUST.

(A) Delivery of Deed of Trust. The parties acknowledge that pursuant to Section 3.12 of the Project Real Property Conveyance Agreement, the Water Supply Corporation will be delivering the Standby Deed of Trust to SAWS (or, if required under the Creditors’ Remedies Agreement, to the Project Company with a collateral assignment to SAWS) as further security for SAWS’ right to timely acquire the Project Assets.

(B) Conveyance of Project Assets. In the event that SAWS shall have commenced Conveyance Litigation and the Project Company disputes that the Project Assets were required to be conveyed to SAWS under the terms of this Water Transmission and Purchase Agreement, the Project Company shall have the right, as its sole remedy for such dispute, to litigate such claims in the Conveyance Litigation. In the event the Project Company obtains a final unappealable judgment determining that the Project Assets were not required to be conveyed to SAWS at the time of the foreclosure, then SAWS’ foreclosure of the Standby Deed of Trust shall be deemed to have been a purchase by SAWS pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) and, as its sole and exclusive remedy and damages, the Project Company shall be entitled to the payment of (a) the difference between (i) the amount payable to the Project Company pursuant to Section 23.1(B) (Project Assets Purchase Price) (with the Project Asset Purchase Price computed as of the date of the foreclosure) and (ii) any amounts previously paid by SAWS to the Project Company in respect of the foreclosure (including any amounts paid on the Project Company’s behalf in respect of the Senior Debt) plus (b) interest on the amount in clause (a) calculated from the date of the foreclosure to the date of payment at the then-applicable statutory rate for pre-judgment interest.

(C) Remedy for Failure to Convey. Notwithstanding anything to the contrary in this Article 19 (Remedies of the Parties), in the event SAWS shall have foreclosed upon the Project Assets pursuant to the Standby Deed of Trust, such remedy shall be SAWS’ sole remedy for a failure to timely convey, or cause the conveyance of, the Project Assets, as required under this Water Transmission and Purchase Agreement, and no further recovery or damages shall be obtainable against the Project Company for such failure to convey, provided, however, that nothing in this Section 19.7 (Standby Deed of Trust) shall limit or impair SAWS’ rights or remedies in respect of any breach of this Water Transmission and Purchase Agreement other than a failure to convey the Project Assets and SAWS shall be entitled to assert any such other claims in the
Conveyance Litigation or otherwise in its discretion without any such limitation on its remedies or its recourse for the recovery of damages.

(D) Monetary Nature of Disputes. The parties agree that SAWS is entitled at any time to conveyance of the Project Assets subject only to compliance with the procedural requirements of this Water Transmission and Purchase Agreement and payment of the amounts provided for hereunder, which amounts are to be determined solely as provided herein. Accordingly, the parties further agree that any disputes relating to any conveyance of the Project Assets are ultimately disputes over the proper amount to be paid by SAWS and that the purpose of any Conveyance Litigation is to afford to the Project Company and the Water Supply Corporation (as their respective interests may appear) the right to litigate any such monetary dispute while affording to SAWS the ability to expeditiously obtain ownership and possession of the Project Assets in accordance with the terms of this Water Transmission and Purchase Agreement by foreclosing the Standby Deed of Trust notwithstanding any such ongoing dispute. In the event the Project Company seeks an injunction or other judicial action to prevent SAWS' foreclosure of the Standby Deed of Trust or opposes any application for a lifting of any stay in a Project Company Bankruptcy-Related Event then the limitation on recourse in Section 19.7(C) (Remedy for Failure to Convey) shall be deemed to have been waived to the extent of additional damages, costs and expenses incurred by SAWS and resulting from such actions by the Project Company or the Water Supply Corporation, including but not limited to costs and expenses incurred in exercising any step-in rights or other interim remedies.

(57) Section 23.1(B) – Delete existing Section 23.1(B)(3) of the Water Transmission and Purchase Agreement and replace such Section with the following:

(3) the present value sum, calculated using quarterly compounding, as of the Project Assets Purchase Date using a discount rate of 8.93165%, of the Target Equity Return Amount in the Contract Date Financial Model (“Quarterly Calculations” tab, row 2256) for each of the remaining Contract Years from the Project Assets Purchase Date through the final Contract Year. The Target Equity Return Amount shall mean the quarterly amount shown for each Contract Year as “Pure Equity, Nominal, Pre-SPV-Tax Cash Flows” on the “Quarterly Calculations” tab, row 2256 of the Contract Date Financial Model until expiration of the Water Transmission and Purchase Agreement. In order to satisfy the Financial Closing Date Condition set forth in Section 4.1(B)(25)(d), the parties shall execute a Contract Administration Memorandum which provides an updated discount rate, such discount rate to be determined by multiplying the Target Equity Return Amount generated by the Financial Close Financial Model and 0.65, and row references based on the Financial Close Financial Model, and which sets forth in table or chart form the final Target Equity Return Amount payable for each Contract Year calculated using the methodology set forth in this paragraph (3).

(58) Section 23.2 – Add the following underlined language to and delete the following struckthrough language from the existing Section 23.2 of the Water Transmission and Purchase Agreement:

SECTION 23.2. PROJECT ASSETS PURCHASE OPTION UPON A PROJECT COMPANY EVENT OF DEFAULT.
SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets upon a Project Company Event of Default for a Project Assets Purchase Price equal to (1) the aggregate principal amount of Senior Debt outstanding as of the Termination Date, together with any accrued interest thereon, minus (2) an amount equal to all amounts on deposit in the funds and accounts held under the Senior Debt Financing Agreements for the benefit of the Senior Debt Creditors on the Project Assets Transfer Purchase Date; provided, however, that no Senior Debt shall be deemed to be outstanding for this purpose prior to Financial Close, notwithstanding execution of the Senior Secured Credit Facility. The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.

(59) Section 23.3(A) – Delete the last sentence of the existing Section 23.3(A) of the Water Transmission and Purchase Agreement in its entirety and replace such sentence with the following:

The written notice shall specify the closing date for the purchase and sale of the Project Assets, and such closing date shall be the “Project Assets Purchase Date”.

(60) Section 24.2(B)(3) – Add the following underlined language to Section 24.2(B)(3) of the Water Transmission and Purchase Agreement:

(3) Any assignment, sale or transfer of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company (or of any person who directly or indirectly owns shares or equity in the Project Company) to Abengoa or any of its Affiliates (to the extent such interest was held by Abengoa Water USA as of the Conforming Contract Amendment Date), or Garney Holding Company or any of its Affiliates.

(61) Section 24.5 – Delete existing Section 24.5 of the Water Transmission and Purchase Agreement in its entirety and replace such Section with the following:

SECTION 24.5. COSTS OF REQUEST FOR CONSENT.

(A) General. If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 24.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 24.2 (Limitations on Change in Control), the Project Company shall pay SAWS’ reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of $50,000 (Index Linked). After the decision of SAWS is rendered, SAWS will either refund any over payment or invoice the Project Company for any additional amounts due under this Section.

(B) Multiple Requests. The obligations of the Project Company under subsection (A) of this Section shall apply to the requested Garney Change-in-Control, and to any subsequent Change-in-Control.

(62) Section 24.6 – Add the following as a Section 24.6 of the Water Transmission and Purchase Agreement:

SECTION 24.6. GARNEY CHANGE IN CONTROL.
(A) **Garney Change-in-Control Defined.** For purposes of this Water Transmission and Purchase Agreement, "**Garney Change-in-Control**" means the purchase by Garney P3 LLC from Abengoa Water USA LLC of 80% of the membership interests in the Project Company pursuant to Section 1.1 of the Membership Interest and Purchase Agreement.

(B) **Delivery of Related Documents.** In addition to the documents set forth in Section 4.1(A) (Documents Delivered Prior to the Conforming Contract Amendment Date), the parties acknowledge that the following documents were delivered to SAWS on or before the Conforming Contract Amendment Date:

1. The executed Project Real Property Conveyance Agreement;

2. Delivery of mutual certification between Abengoa Water USA and Garney P3 LLC that the conditions to the closing of the Garney Change-in-Control, as described in the Membership Interest and Purchase Agreement, have been fully satisfied; and

3. Opinions of qualified Spanish or United States legal counsel, as applicable, concerning the validity and enforceability regarding entry and performance of their applicable duties and obligations hereunder of the respective parties to the transaction documents executed in connection with the Membership Interest and Purchase Agreement.

(C) **SAWS Consent to Garney Change-in-Control.** SAWS hereby consents, pursuant to its rights under Section 24.2 (Limitations in Change-in-Control), to the Garney Change-in-Control. Nothing in the Membership Interest and Purchase Agreement shall be construed to amend, modify or change any term or condition of this Water Transmission and Purchase Agreement, affect SAWS' right hereunder, or create any SAWS obligation thereunder or hereunder, nor shall SAWS review or comment on the Membership Interest and Purchase Agreement or consent to the Garney Change-in-Control be construed to constitute an approval of or consent by SAWS to any of transactions related to the Garney Change-in-Control that are described in or anticipated by the Membership Interest and Purchase Agreement.

(D) **Further Change-in-Control Requirements following the Conforming Contract Amendment Date.** On and after the Conforming Contract Amendment Date, Section 24.2 (Limitations on Change-in-Control) shall continue to apply to any subsequent Change-in-Control. In addition, any assignment, sale or transfer that results in Garney Holding Company owning less than a majority of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company shall be deemed to constitute a Change-in-Control for all purposes hereof.

(63) Section 26.1(A) – Add the following underlined language to and delete the following struckthrough language from the existing Section 26.1(A) of the Water Transmission and Purchase Agreement:

(A) **Right-of-Way Easements.** In acquiring the Transmission Pipeline Easements (other than the Transmission Pipeline Easements acquired by partial assignment of existing easements from Cross County Water Supply Corporation), the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right of Way Easement Form). Except for such Cross
County Water Supply Corporation easement assignments, all such right-of-way easements shall permit the construction of two water pipelines in the right-of-way, shall provide for an easement width of at least 100 feet, for which there shall be no more than a 15 feet overlap into an adjoining electrical easement (both of which may be lessened on a case-by-case basis as reasonably approved by SAWS), and shall not contain any indemnity provisions that would according to their terms apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements. In the case of a Transmission Pipeline Easement acquired by way of a judgment in a condemnation proceeding, such instrument shall be in the form as prescribed for such proceedings, but shall in substance conform to the requirements set forth hereinabove. In acquiring right-of-way easements for the Collection Pipelines Rights-Of-Way, the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right-of-Way Easement Form). The Project Company shall acquire all Transmission Pipeline Easements no later than one year following the Conforming Contract Amendment Date.

(64) Section 26.5(B) – Add the following underlined language to the existing Section 26.5(B) of the Water Transmission and Purchase Agreement:

(B) Opportunities Expressly Reserved. Without limiting the generality of Section 26.5(A) (General), SAWS reserves, and subject to the Project Company’s rights under Section 5.9 (Restrictions on SAWS-Requested Design Requirements and SAWS-Requested Capital Modifications), the right to arrange for and exclusively benefit from the conveyance and sale of Product Water to any person, and to direct the Project Company to make a SAWS-Directed Design Requirements Change or a SAWS-Directed Capital Modification to the Transmission Pipeline System to allow for the interconnection of pipelines necessary to convey Product Water to any person. The Product Water Delivery Point for any Product Water sold to any such person shall be the interconnection point on the Transmission Pipeline System designated by SAWS, and title to and ownership of all such Product Water shall pass to SAWS or the purchaser at such Product Water Delivery Point. In any such arrangement, the Project Company shall coordinate the granting of any easement rights and permitting use of the Transmission Pipeline System Real Property Interests as may be required for such interconnection, and SAWS shall remain solely responsible to the Project Company for the purchase of all Product Water in accordance herewith.

(65) Section 26.13(B)(10) – Add the following underlined language to the existing Section 26.13(B)(10) of the Water Transmission and Purchase Agreement:

(10) any output of the Contract Date Financial Model or Financial Close Financial Model; and

(66) Section 26.13(C)(1) – Add the following underlined language to the existing Section 26.13(C)(1) of the Water Transmission and Purchase Agreement:

(1) the computer program(s) that generated the Contract Date Financial Model and the Financial Close Financial Model;

(67) Section 26.17(C) – Delete existing Section 26.17(C) of the Water Transmission and Purchase Agreement in its entirety and replace such Section with the following:
(C) Project Company Notice Address. Notices required to be given to the Project Company shall be addressed as follows:

Garney P3 LLC  
1333 NW Vivion Road  
Kansas City, MO 64118  
Attention: President  
Fax No.: (816) 278-5945  
Email: mheitmann@garney.com

with a copy to:

Husch Blackwell LLP  
4801 Main Street, Suite 1000  
Kansas City, MO 64112  
Attention: Charles G. Renner  
Fax No.: (816) 983-8080  
Email: Charles.renner@huschblackwell.com

SECTION 5. MODIFICATIONS TO APPENDIX 1 – DESCRIPTION OF THE PROJECT.

(1) Section 1.1 – The following shall be added as a new sentence at the end of Section 1.1 of Appendix 1:

To the extent any provision of this Appendix is addressed differently or more specifically by the Technical Memorandum in Attachment 3A of Appendix 3, the higher standard will govern.

(2) Section 2.2 - The number “100” occurring in the fourth sentence of the subsection of Section 2.2 of Appendix 1 titled “Pipe Section 2: IPS #1 to IPS #2” is deleted and replaced with the number “85”.

(3) Section 2.2 - The number “100” occurring in the fourth sentence of the subsection of Section 2.2 of Appendix 1 titled “Pipe Section 3: IPS #2 to Transmission Pipeline Terminus Site” is deleted and replaced with the number “85”.

(4) Section 3.1 – The following shall be added as a new sentence immediately following the sixth sentence of the subsection of Section 3.1 of Appendix 1 titled “Transmission Pipeline Easements”:

Notwithstanding the foregoing, fee simple sites shall be obtained for the Well Sites and the High Service Pump Station Site, and permanent easements shall be acquired for the Transmission Pipeline and gathering lines within those properties.

(5) Section 3.1 - The number “100” occurring in the sixth paragraph of the subsection of Section 3.1 of Appendix 1 titled “Transmission Pipeline Easements” is deleted and replaced with the number “85”.

(6) Section 3.1 – The eighteenth sentence of the subsection of Section 3.1 of Appendix 1 titled “Soil Corrosion Control and Cathodic Protection” is deleted and replaced with the following sentence:
Fiberglass pipe will not be used or considered as a suitable material for the pipeline.

SECTION 6. MODIFICATIONS TO APPENDIX 3 – TECHNICAL SPECIFICATIONS.

(1) Section 3.4 – Item 15070 of Division 15 (Mechanical) of Section 3.4 of Appendix 3 is deleted.

(2) Section 3.5 – Item 15070 of Division 15 (Mechanical) of Section 3.5 of Appendix 3 is deleted.

(3) Section 3.6 – Item 15070 of Division 15 (Mechanical) of Section 3.6 of Appendix 3 is deleted.

(4) Section 3.7 – The following shall be added as a new Section 3.7 to Appendix 3:

3.7 TECHNICAL MEMORANDUM ON STANDARDS OF CONSTRUCTION

Notwithstanding anything in Appendix 1 or this Appendix 3 to the contrary, the Project Company agrees to construct the Project Infrastructure in accordance with the supplemental standards identified in the Technical Memorandum attached as Attachment 3A to this Appendix. To the extent any provision of this Appendix is addressed differently or more specifically by the Technical Memorandum, the higher standard will govern.

(5) Attachment 3A – The Technical Memorandum attached as Attachment A hereto is added as Attachment 3A to Appendix 3.

SECTION 7. APPENDIX 10 – ADJUSTMENT OF THE CAPITAL AND RAW GROUNDWATER UNIT PRICE ON THE FINANCIAL CLOSING DATE.

(1) Appendix 10 is deleted in its entirety.

SECTION 8. MODIFICATIONS TO APPENDIX 14 – PROJECT COMPANY AND PROJECT CONTRACTORS INFORMATION.

(1) Section 14.2.1 – The table in Section 14.2.1 of Appendix 14 is deleted and replaced with the following table:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Name: Abengoa Vista Ridge, LLC</td>
</tr>
<tr>
<td>2.</td>
<td>Date of Formation: September 15, 2014</td>
</tr>
<tr>
<td>3.</td>
<td>State of Formation: Delaware</td>
</tr>
<tr>
<td>4.</td>
<td>Registration/File Number: 5603609</td>
</tr>
<tr>
<td>5.</td>
<td>Managers:</td>
</tr>
<tr>
<td></td>
<td>Name</td>
</tr>
<tr>
<td></td>
<td>Scott Parrish</td>
</tr>
<tr>
<td></td>
<td>Matt Foster</td>
</tr>
</tbody>
</table>
6. Subsidiaries at the Conforming Contract Amendment Date: None

(2) Section 14.3.2 – The table in Section 14.3.2 of Appendix 14 is deleted and replaced with the following table:

<table>
<thead>
<tr>
<th>Project Contractor</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Garney Companies, Inc.</td>
<td>EPC Contractor</td>
</tr>
<tr>
<td>2. The Operating Service Provider will be identified in the manner set forth in subsection 13.1(F) of the WTPA.</td>
<td>Operating Service Provider</td>
</tr>
<tr>
<td>3. Central Texas Regional Water Supply Corporation</td>
<td>Water Supply Corporation</td>
</tr>
</tbody>
</table>

(3) Section 14.4.2 – The two tables in Section 14.4.2 of Appendix 14 are deleted and replaced with the following two tables:

**Project Company**

<table>
<thead>
<tr>
<th>Project Company Party</th>
<th>Position</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Project Company</td>
<td>Project Company Representative/Principal In Charge</td>
<td>Scott Parrish</td>
</tr>
<tr>
<td>2. Operations Manager</td>
<td></td>
<td>Bill Williams</td>
</tr>
<tr>
<td>3. Vice President of Pipe</td>
<td></td>
<td>Matt Foster</td>
</tr>
<tr>
<td>4. Vice President of Plant</td>
<td></td>
<td>Mike Gardner</td>
</tr>
<tr>
<td>5. Commissioning Manager</td>
<td></td>
<td>Scott Setter</td>
</tr>
</tbody>
</table>

(4) Attachment 14A – The resumes set forth in Attachment B hereto are added to Attachment 14A of Appendix 14.

SECTION 9. NEW APPENDIX 16 – PLAN OF DEVELOPMENT AND FINANCING AND GARNEY HOLDING COMPANY LETTER OF SUPPORT.

(1) The existing Appendix 16 containing the Abengoa Plan of Development and Financing and Abengoa Letter of Support is removed and replaced with the Garney Plan of
Development and Financing and Garney Holding Company Letter of Support, attached hereto as Attachment C.

SECTION 10. MODIFICATIONS TO APPENDIX 18 – REIMBURSABLE COSTS PAYABLE ON CONVENIENCE TERMINATION DURING THE DEVELOPMENT AND FINANCING PERIOD.

(1) Section 18.1.1 – Subsections 18.1.1(a)(i) and 18.1.1(a)(ii) of Appendix 18 are deleted and replaced with the following two subsections:

(i) Wages or salaries of employees of Garney Holding Company’s Affiliates, including the Project Company, performing the Development and Financing Work; but only for that portion of their time required for the Development and Financing Work.


SECTION 11. MODIFICATIONS TO APPENDIX 19 – COMPENSABLE COSTS AND O&M BUDGET PANEL.

(1) Section 19.5 – Subsection 19.5(3) of Appendix 19 is deleted and replaced with the following subsection:

(3) Any costs paid or incurred by Garney Holding Company or any Affiliate other than the Project Company and an Operating Service Provider;

(2) Section 19.9.2 – The second sentence of subsection 19.9.2 of Appendix 19 is deleted and replaced with the following sentence:

The selected panelists shall not be a past or present employee of SAWS or Garney Holding Company or its Affiliates.

SECTION 12. NEW APPENDIX 21 – CERTAIN LITIGATION MATTERS.

(1) Appendix 21 – A new Appendix 21 titled “Certain Litigation Matters” is hereby added. This new Appendix 21 is attached hereto as Attachment D.

SECTION 13. NEW APPENDIX 22 – PROJECT COMPANY-RELATED LOANS.

(1) The Appendix 22 – A new Appendix 22 titled “Project Company-Related Loans” is hereby added. This new Appendix 22 is attached hereto as Attachment E.

SECTION 14. OTHER TERMS OF WATER TRANSMISSION AND PURCHASE AGREEMENT REMAIN IN EFFECT. All terms and conditions of the Water Transmission and Purchase Agreement which are not expressly modified or deleted by the terms of this Conforming Contract Amendment shall remain in effect.

SECTION 15. INTERPRETATION. The interpretation provisions set forth in Section 1.2 of the Water Transmission and Purchase Agreement will apply, mutatis mutandis, to any interpretation of this Conforming Contract Amendment.
SECTION 16. BINDING EFFECT. This Conforming Contract Amendment shall inure to
the benefit of, and shall be binding upon, the respective successors and assigns of the parties.

SECTION 17. NO REFERENCE REQUIRED. All notices, communications, agreements,
certificates, documents or other instruments executed and delivered after the execution and
delivery of this Conforming Contract Amendment may refer to the Water Transmission and
Purchase Agreement without making specific reference to this Conforming Contract
Amendment, but nevertheless all such references shall include this Conforming Contract
Amendment unless the context requires otherwise.

SECTION 18. COUNTERPARTS. This Conforming Contract Amendment may be
executed in counterparts, which together shall constitute one and the same instrument.

[SIGNATURE PAGE FollowS]
The parties have further caused the Conforming Contract Amendment to be executed and delivered by their duly authorized representatives as of May __, 2016

THE CITY OF SAN ANTONIO, TEXAS
ACTING BY AND THROUGH THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES

By:_______________________
Name:  Heriberto “Berto” Guerra, Jr.
Title:  Chairman
Date: May __, 2016

By: _______________________
Name:  Robert R. Puente
Title:  President/Chief Executive Officer
Date: May __, 2016

ABENGOA VISTA RIDGE, LLC

By: __________________________
Name: _______________________
Title: Manager and President
Date: May __, 2016
ATTACHMENT A

TECHNICAL MEMORANDUM TO BE ADDED AS ATTACHMENT 3A TO APPENDIX 3
ATTACHMENT 3A

TECHNICAL MEMORANDUM

MEMORANDUM

TO: San Antonio Water System

DATE: May 10, 2016

FROM: Kim S. Keefer, PE

COPY: Scott Parrish, Gene Dawson, Pete Patel, Marisa Vergara

Subject: Vista Ridge Regional Supply Project

EPC’s Memorandum of Intent

The Water Transmission and Purchase Agreement (WTPA) by and between the City of San Antonio (acting by and through the San Antonio Water Systems (SAWS) Board of Trustees) and Abengoa Vista Ridge, LLC, dated November 4, 2014, includes an Appendix 3- Technical Specifications. Section 3.1 of the Appendix states:

The purpose of this Appendix is to specify certain Design Requirements and minimum procedures and requirements to be followed by the Project Company in performing the Construction Work, which together with Appendix 1 (Description of the Project), shall collectively constitute the “Technical Specifications” hereunder.

As part of the due diligence process, several minimum design and construction procedures and requirements have been discussed and agreed to by representatives of the Central Texas Regional Water Supply Corporation (in the form of their Engineering, Procurement and Construction (EPC) representation) and members of SAWS’ staff. These minimum design and construction requirements are enumerated and memorialized below:

Piping

• The EPC contractor will design and install a piping system in compliance with AWWA standards.

• The EPC contractor intends on utilizing C303 concrete pressure pipe, bar-wrapped, steel-cylinder mortar-lined mortar-coated pipe on all well collection and transmission piping 30-inches and greater in diameter having a pressure class of less than 225 PSI.

• The restraint system for the C303 pipe installation will be designed in accordance with AWWA Section M9 and accomplished by employing full-fillet welds at the joints within the limits of the restrained sections (no skip-welding will be utilized).

• The EPC contractor intends on utilizing C200 mortar-lined polyurethane coated steel pipe (Maximum D/t of 240) with full-fillet welds (weld after backfill) at the joints for all piping 60-inches and greater in diameter having a pressure class of 225 PSI and higher.

• The well collection piping with a diameter less than 30-inches will be C900 PVC for pipe size 12-inch and smaller and C905 for pipe sizes greater than 12-inch in diameter.

• The EPC contractor will warrant and pay for the repair costs on any leaks at O-ring joints caused by installation issues for a period of 5-years.
Concrete Piping Encasements:

- Concrete piping encasements will be reinforced with fiber mesh if required, no reinforcing steel will be used.

Embedment and Backfill:

- Imported bedding material will begin 6” below the pipe invert and extend up-to the pipe spring line.
- Bedding material will be locally available imported material which provides adequate pipe support as determined by the design engineers.
- The EPC contractor will warrant and pay for the repair costs on any leaks caused by pipe deflection for a period of 5 years.
- Initial backfill material will be select, job excavated material that generally complies with a 2” minus gradation.
- Initial backfill will be mechanically compacted to 90% in non-pavement areas and 95% in roadways.

Quality Control during Pipeline Installation:

- Extensive density testing will be performed during the startup of each segment to establish means and methods achieving project required results. Once established, additional testing will be performed daily for quality assurance.

Air Valves:

- The EPC contractor will not be utilizing the Vent-o-mat air and vacuum valves.

Butterfly Valves:

- The butterfly valves will be AWWA direct bury service valves and may be used for testing purposes where the test pressure of the piping system will be less than the pressure rating of the valve. Test plugs and/or differential pressure will be used where the test pressure exceeds the pressure rating of the valve.

Cathodic Protection:

- Provide impressed current system for cathodic protection for 100% of all metal pipelines. Solar-powered systems may be considered subject to verification and agreement on reliability.

Tunnel and Bore:

- Liner plate and casing are both acceptable and the usage of material types will be determined by the Tunneling subcontractor and permitting requirements.
- Casing spacers will be in accordance with AWWA standards as designated in WTPA Appendix 3.
- Painted steel casing pipe spacers will be used in tunnels with steel carrier pipe.
- Tunnels with C303 carrier pipe will utilize mortar bands.
• Cellular Grout will be installed in the annular space of tunnels containing steel carrier pipe, see 2.02 C.1.

• Tunnels containing C303 carrier pipe will not receive annular space grout if acceptable to permitting agency.

• Cellular grout will have a compressive strength between 200 and 300 psi.

Ground Storage Tank:
• The EPC Contractor will provide AWWA D110, Type III precast, prestressed, concrete circular tank with steel diaphragm for ground storage.

• Appurtenances to be industry standard.

Groundwater Wells:
• Groundwater wells will be similar to the test well specifications provided as discussed in the May 4, 2016 meeting

• Well open hole diameter will exceed casing diameter by 6 inches, and annulus to be cemented via interior tremie method.

• Casing will be minimum 0.5-inch thick carbon steel.

• Screen will be pipe-based construction. Screen, underbar, and wire wrap material will be 304 stainless steel.

• All wells will be geophysically logged and CTV inspected.

• Select wells spatially distributed throughout the well field will be logged with a sonic tool.

Pump Stations:
• Pump Station to consist of an open layout with horizontal split case or vertical turbines with a can configuration.

• The pumps will be placed on a slab on grade for support of the pumps and discharge valves/piping.

• Electrical gear for pump station to be housed in a separate enclosed building to protect against environment.

• Chemical feed facilities to be located nearby the electrical enclosure for access to injection points and chemical truck deliveries.

• Cooling tower will be located on the high service pump station site and utilize existing topography to gravity feed storage tank.

• Underground piping will be cement mortar lined fabricated steel pipe with an option for ductile iron piping for smaller lines.

• Above ground piping to be epoxy coated and lined fabricated steel pipe.
ATTACHMENT B

RESUMES TO BE ADDED TO ATTACHMENT 14A OF APPENDIX 14
ATTACHMENT 14A

RESUMES

AVR

SCOTT PARRISH
PRINCIPAL-IN-CHARGE

Contact Information
Phone: (816) 746-7224
Email: sparrish@garney.com

Career Summary
Employed by AVR since: 1988
Employed in industry since: 1988

Education
Art Institute of Dallas
Applied Science
May 1986

Affiliations & Certifications
- OSHA Competent Person
- OSHA 10-Hour Trained
- Confined Space Safety Trained
- First Aid and CPR Trained

PROFESSIONAL SUMMARY
Scott oversees AVR's Central and Western Region pipe operations. He is responsible for strategic direction, coordination of resources, work procurement, profits and collaboration between all AVR Profit Centers. Scott started with Garney in 1988 as a laborer. In 1989, he served in a management support role on water and sewer pipeline projects in Virginia, Missouri, Alabama, and Texas. In 2000, he became a Senior Project Manager, was promoted to Vice President in 2009, and was appointed COO in 2012.

References
Ridge Kaiser
Rusty Gibson
R.W. Harden & Associates
Crisco & Nichols Engineering
Ph: (512) 345-2379
Ph: (817) 735-7300

Ross M. Curious
William E. Nabak
BlueWater Systems
City of Green Bay, WI
Ph: (512) 459-1500
Ph: (920) 448-5460

RELEVANT EXPERIENCE

NORTH TEXAS MUNICIPAL WATER DISTRICT – Wylie, Texas

Lake Texoma Outfall to Wylie Water Treatment Plant

CMAR project for the installation of 20,600 LF of 96” and 84” steel waterline, 240 MG balancing reservoir, 200 MG blending facility, large tank farms, metering, blending, and chemical feed systems.

Lake Texoma Water Supply – East Pipeline

Installation of 80,000 LF of 60” AWWA C303 bar wrapped concrete cylinder pipe. Also included three 84” tunnels and an impressed current cathodic protection system.

$281.4 M

$17.4 M

MIDLAND COUNTY FREE WATER SUPPLY DISTRICT NO. 1 – Midland, Texas

T-Bar Well Field Development & Delivery Project (Design-Build)

Installation of 60 miles of 48” steel and C303 water transmission main, and 25 miles of PVC well field piping. The pipe sections consist of 205,500 LF of 48” steel waterline, 105,250 LF of 48” C303 waterline, and 150,000 LF of 6” to 30” PVC pipe. The project includes rock excavation, auger bores and several manholes.

$97.1 M

TARRANT REGIONAL WATER DISTRICT / CITY OF DALLAS – Fort Worth, Texas

Section 1S-1 of the Integrated Pipeline Project

Installation of 82,010 LF of 108” waterline via open cut and tunneling, valves, connections, construction of the Richland Chamber Interconnection facility, various roadway improvements and site improvements.

$92.9 M

CITY OF CORPUS CHRISTI – Corpus Christi, Texas

Mary Rhodes Pipeline Phase II

Section A includes 73,000 LF of 54” Class 150 bar wrapped pipe and 1,900 LF of HDD 48” Class 200 steel pipe. Section B includes 75,000 LF of 54” Class 150 bar wrapped pipe. Section C included 67,000 LF of 54” Class 150 bar wrapped pipe, 1,700 LF of HDD 48” Class 200 steel pipeline and 6 MG ground storage tank.

$86.2 M
AVR

Southside Water Transmission Main – Phases 2, 2A & 3
Installation of 30,400 LF of 54" C303 pipe, 36,910 LF of 48" DIP, and 5,930 LF of 42" DIP. Included 1,020 LF of 72" tunnels installed by hand and machine tunneling, extensive dewatering, and a creek crossing.

CALIFORNIA AMERICAN WATER – Pacific Grove, California
Monterey Peninsula Water Supply Project
Installation of 85,000 LF of 36" mortar-lined steel water pipe and 13,000 LF of 42" PVC pressure water pipe.

TARRANT REGIONAL WATER DISTRICT – Fort Worth, Texas
Eagle Mountain Connection Pipeline, Contract B
Installation of 47,400 LF of 72" and 84" mortar-lined, polyurethane-coated steel pipe and construction of several large underground cast-in-place concrete structures and two above-ground electrical buildings.

CROSS COUNTY WATER SUPPLY CORPORATION – Austin, Texas
30" Transmission Line and High Service Pump Station (Design & Field)
Installation of 283,000 LF of 30" C303 pipe, a pre-stressed concrete ground storage tank, high service pump station, electrical building, chemical steel arch structure, suction hydrant line system, and electrical.

SAN ANTONIO WATER SYSTEM – San Antonio, Texas
Water Resources Integration Program Pipeline Stages 1, 2, 2B, and 2A
Included installation of 72,000 LF of 60" pipeline, multiple casing boxes, and multiple tunnel liner plate bores.

Carrizo ASR Wellhead and Wellfield Replacement Phases I and II
Installation of 87,000 LF of 12" to 60" steel and PVC pipe and 17 vertical line shaft pump installations in existing wells. Included 969 LF of 36" auger bores.

Market Street Pump Station (CM&O)
Refurbishing of an existing pump station with new piping and valves, refurbishing three deep wells, adding new pumps and new filters, and updating the electrical controls.

CITY OF ABILENE – Abilene, Texas
O.H. Ivey Water Supply Pipeline
Installation of 51 miles of 36" C303 prestressed concrete pipeline from O.H. Ivey Lake to the City of Abilene to meet water demands during a severe drought. Included 1,041 LF of 48" jack and bores.

CITY OF GREEN BAY – Green Bay, Wisconsin
54" Parallel Raw Water Transmission Main
Installation of 76,455 LF of 54" mortar-lined, tape-wraped steel pipeline, included a swamp crossing.

CITY OF LUBBOCK – Lubbock, Texas
Lake Alan Henry Water Supply Transmission Pipeline, Contract C
Installation of 80,500 LF of 48" bar wrapped concrete cylinder waterline, fiber optic conduit and fiber pull boxes for future SCADA, five 66" hand tunnels totaling 500 LF, and several appurtenances.

Bailey County Well Field Supply Pipeline – Contract B
Installation of 36,645 LF of 30" and 7,923 LF of 36" C303 bar wrapped pipe and 990 LF of 54" tunnel boxes.
AVR

BILL WILLIAMS
OPERATIONS MANAGER

Career Summary
Employed by AVR since: 2010
Employed in industry since: 1990

Education
University of Southern Colorado
B.S. in Civil Engineering
Technology, Cum Laude
May 1991

Affiliations & Certifications
- OSHA 10-Hour Trained
- FMI Project Manager Skills College
- SII Construction Schedules

PROFESSIONAL SUMMARY
Bill brings over two decades of experience in the municipal water industry managing large complicated and unique projects that include open cut bored, CIPP lining, and pump stations throughout the western United States. As Operations Manager, Bill is responsible for the complete oversight of AVR’s Western Region including project acquisition, staffing, safety, scheduling, procurement, subcontractor management, and client satisfaction.

References
Jackie Chambers
Colorado Springs Utilities
Ph: (719) 668-2890

Randie Parks, PE
Colorado Springs Utilities
Ph: (719) 668-8677

Dennis Auge
Keith Riley
MWH (Formerly with Colorado Springs Utilities)
Ph: (719) 668-8677

RELEVANT EXPERIENCE
COLORADO SPRINGS UTILITIES — Colorado Springs, Colorado

Southern Delivery System Program
$111.5 M

The $841 million Southern Delivery System Program was one of the biggest water projects in Colorado consisting of 50 miles of pipeline, three pump stations and a water treatment plant. It delivers water from the Pueblo Reservoir to Colorado Springs, Fountain, Security and Pueblo West. Installed 22 miles of pipeline ranging in size from 24” to 66” over a five year period starting in 2010. The majority of the project was throughout busy streets and highways of Colorado Springs requiring extensive traffic control and multiple bores.

Homestake Surface Pipeline Replacement (SDC)
$10.0 M

Installation of 1,200 LF of slip lining and 3,200 LF of open cut replacement of 66” carbon steel pipeline.

Pikeview to Mesa Road Water Pipeline (Design-Build)
$8.8 M

Installation of 12,500 LF of 30” steel waterline to deliver 10 MGD, and 2,000 LF of 12” PVC potable waterline.

South Catamount Reservoir Transfer Pipeline Replacement
$2.4 M

Installation of 2,650 LF of 36” HDPE pipe across the reservoir using the float and sink method. Two ARVs were installed, as well as one air break manhole, 800 LF of 30” PVC into reservoir via open cut, and 1,000 LF of 32” steel waterline via open cut.

Pine Valley Pipeline Improvements
$1.1 M

Included the rehabilitation of three PRV vaults and replacement of distressed portions of the pipeline, reconditioning the 70 MGD PRVs, design of a new 2 MGD bypass PRV system capable of reducing head from 350 psi to atmospheric, replacement of vault piping, design of new concrete pipe supports for the 30” PRVs to withstand vibration, and design and installation of a removable covers to facilitate equipment maintenance.

Post-Fire Mitigation for Stanley Canyon Road and Pipeline (Design-Build)
$6.8 M

Repairs to the Pine Valley and Northfield Pipelines, restoration of Forest Road 303 access road, modifications to drainage conveyance crossings, construction of flood control and conveyance along West Monument Creek, and mitigation and defensive measures to protect roadway and pipeline infrastructure.
Little Mesa Tank Replacement Project (Design-Build) $5.0 M
Includes the design and replacement of the existing Little Mesa Tank with a 5 MG wire-wound prestressed aboveground concrete D110 Type III tank.

Tesla EDS Structure Phase 2 & Stanley Canyon Tunnel Inspection & Repairs (Design-Build) $3.5 M
Inspect and make minor repairs to Stanley Canyon Tunnel, installing operational pressure control valves in the EDS facility, and develop 60% design documents for any necessary major tunnel repairs.

Twin Rock 68 MGD Pump Station, Phases I and II $552 K
Installation of 72" steel exterior intake piping, 67" steel discharge piping, 6" fire line, and associated appurtenances for the pump station. This project included four 2,000 HP pumps with VFD's.

CITY OF GREELEY, CO – Greeley, Colorado
Bellvue Transmission Pipeline Northern Segment - Phase 1 $22.1 M
Installation of 28,677 LF of 60" treated steel water pipeline, as well as installation of flow meter, appropriate air vacs and blow-offs, and extensive dewatering due to very heavy ground water.

CLIMAX MOLYBDENUM COMPANY – Climax, Colorado
Mill Water Return and PWTP Pipeline Project $10.9 M
Included the installation of 3,468 LF of 30" welded steel pipe, 7,269 LF of 36" welded steel pipe, and 8,072 LF of 24" welded steel pipe and was located in the mountains of Colorado at an elevation of 10,000 feet.

CITY OF EL PASO, TX – El Paso, Texas
Aircraft Tanks No. 2 and 3 $10.5 M
Installation of 11,000 LF of 20" to 30" water line, two 2 MG storage tanks, 20,000 SY of drainage channel and rip-rap, tie-in connections, pavement installation and all associated appurtenances.

NORTHERN COLORADO WATER CONSERVATION DISTRICT – Fort Collins, Colorado
Pleasant Valley Pipeline Project $10.3 M
Furnish & Install 19.6 miles of 30" welded steel pipe which included one crossing of the Poudre River, a complete turnout structure, BVV, buried valves, connections, and all associated appurtenances.

BASIN ELECTRIC – Bismarck, North Dakota
AVS Raw Water Pipeline Replacement $10.0 M
Installation of 47,000 LF of 30" steel pipe, 810 LF of 54" bored casing, manholes, connections, and all associated appurtenances.

PUBLIC SERVICE COMPANY OF NEW MEXICO – Waterflow, New Mexico
42" Ductile Iron Waterline – River Pump Station to SKG's like $6.4 M
Installation of 25,027 LF of 42" ductile iron waterline running from the River Pump Station to the San Juan Generating Station's Lake and connects to an existing pipeline at the pump station. There were two jack and bore operations, including bores underneath Hwy 64 and CR 6700, and an open cut crossing of CR 6800.

CITY OF CAÑON CITY, CO – Cañon City, Colorado
Cañon City Tank and Pipeline $4.8 M
Installation of a 5.0 MGD pre-stressed tank, pump station, and yard piping.
AVR

MATT FOSTER
VICE PRESIDENT OF PIPE

Contact Information
Phone: (816) 746-7219
Email: m foster@gamey.com

Career Summary
Employed by AVR since: 1993
Employed in industry since: 1993

Education
Kansas State University
B.S. in Construction Science and Management
May 1993

Affiliations & Certifications
- NUCA Member
- OSHA Competent Person
- OSHA 10-Hour Trained
- Confined Space Safety Trained
- First Aid and CPR Trained

PROFESSIONAL SUMMARY
Matt has responsibility for the organization and management of AVR’s pipe operations in the Western United States. He estimates, negotiates, and manages operations for multiple projects throughout this area. These projects include large diameter water and sewer pipelines in varying ground conditions and levels of difficulty. He is also responsible for material approval and procurement, scheduling and tracking performance, and coordination and communication between his project team members. Matt is a tremendous team builder and pays close attention to safety, quality, and customer satisfaction. He was appointed Senior Project Manager in 2000 and Vice President in 2009.

References
- Tom Roode
  Denver Water
  Ph: (303) 628-7033
  Ph: (303) 951-6750
- Randy Paull
  Dewberry
- Daniel Rice, P.E.
  Providence Infrastructure
  Ph: (303) 969-7205
  Ph: (432) 697-1447

RELEVANT EXPERIENCE

NORTH TEXAS MUNICIPAL WATER DISTRICT – Wylie, Texas
Lake Texoma Outfall to Wylie WTP Pipeline (CMAR) $281.4 M
CMAR project for the installation of 253,500 ft of 36" and 44" steel waterline, 240 MG balancing reservoir, 200 MG blending facility, ground storage tanks, mixing, blending, and chemical feed systems.

MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT NO. 1 – Midland, Texas
T-Bar Well Field Development & Delivery Project (Design-Build) $97.1 M
Installation of 60" diameter of 48" steel and 12" C303 water transmission main, and 25 miles of PVC well field piping. The pipe sections consist of 201,500 ft of 48" steel waterline, 105,250 LF of 48" C303 waterline, and 130,000 LF of 6" to 36" PVC pipe. The project includes rock excavation, auger bores, and several manholes.

T-Extension Project (Design-Bid) $22.9 M
Installation of 24,000 LF of 48" C303 and L301 water transmission main, 57,000 LF of 12" C900 and 16" C905 PVC water distribution line, three hand tunnels, two auger bores, five horizontal directional drills, 5 MG elevated water storage tank, chlorination injection facility, flow control valve structure, and two hot taps.

TARRANT REGIONAL WATER DISTRICT / CITY OF DALLAS – Fort Worth, Texas
Section 15-1 of the Integrated Pipeline Project $92.9 M
Installation of 82,010 LF of 108" waterline via open cut and tunneling, valves, connections, construction of the Richland Chamber Interconnection Facility, various roadway improvements and site improvements.

Section 14-1 of the Integrated Pipeline Project $48.1 M
Installation of 78,641 LF of 108" mortared-lined steel waterline, manholes, air release valves, blow-off valves, and 1,981 LF of 180" to 168" hand tunneling for a tunnel crossing of Interstate 35E, a railroad, and existing high pressure gas lines.
CITY OF AURORA – Aurora, Colorado

Prairie Waters Project North Campus BPII

Installation of 56,745 LF of 60" mortar-lined steel pipe with more than 6,000 LF located in a right-of-way. Challenges included creek, railroad, and highway crossings, dewatering, and two 72" hand mined tunnels.

Pecosilly Road 24" Waterline

Installation of 21,027 LF of 24" PVC and 4,843 LF of 12" PVC sanitary force main.

Gun Club 42" Waterline

Installation of 8,000 LF of 42" steel waterline completely within a busy roadway right-of-way.

CITY OF ABILENE – Abilene, Texas

PK Second Stage Drought Strategy – Transmission System (CMAR)

Installation of 143,000 LF of 12" SDR-21 PVC RO concentrate pipeline, 82,000 LF of 36" polyethylene pipe, 75 each 14" HDDs totaling 13,720 and a 3,374 LF 36" HDD under Hubbard Creek Reservoir, 16 auger bores totaling 1,870 LF, rock trenching, outfall structure, tie-ins, pressure sustaining valve vault structure, flow meter vault structure, replacing 6,000 LF RCCP, and surge modifications to existing RCCP lines.

COLORADO SPRINGS UTILITIES – Colorado Springs, Colorado

Southern Delivery System Raw Water Pipeline Segment 2A East-West

Installation of 33,665 LF of 66" steel pipe with 355 LF of canal crossings by tunneling.

Southern Delivery System Raw Water Pipeline Segment 2A East-West

Installation of 40,000 LF of 66" concrete mortar-lined and polyurethane-coated spiral weld steel pipe.

Southern Delivery System Raw Water Pipeline Segment 2A Central (Design-Build)

Installation of 5,207 LF of tunnel and 66" raw water pipeline in a river under a major state highway, two railroad tracks, a creek, and nearby environmentally sensitive areas, and 2,106 LF of open cut 66" steel pipe.

Southern Delivery System Raw Water Pipeline Segment N2B

Installation of 3,147 LF of 66" welded steel raw waterline, 150 LF of trenchless crossing of Hwy 94, 170 LF of open trenched crossing, 160 LF of fiber optic conduit, surface grading and restoration, connections to other segments, and cathodic protection system.

Pueblo Dam Connection & Pueblo West Connection & RPSSI

Extension of 1,500 LF of 90" welded steel pipeline to the Bureau of Reclamation future interconnection point, 55 LF of 36" welded steel pipeline that goes off the PDC1B pipeline, two 24" reducers, 50 LF of 24" pipeline, meter vault, and 24" meter. The River Pump Station Suction Side Improvements (RPSSI) includes 200 LF of 36" pipeline, two flow balancing valves and valves, connection to existing 24" line, and new manifold.

Southern Delivery System Finished Water Pipelines Segment FW1

Installation of 3,700 LF of parallel 42" and 54" steel waterlines, extensive traffic control, and dewatering.

South Catamount Reservoir Transfer Pipeline Replacement (Design-Build)

Installation of 36" HDPE pipe across reservoir (float/sink), two ARVs, air break manhole, and 30" PVC outlet.

CHEYENNE BOARD OF PUBLIC UTILITIES – Cheyenne, Wyoming

Southern Water Transmission Main, Phase II

Installation of 38,000 LF of 42" steel waterline, 23,075 LF of 12" to 18" PVC waterline, connections to existing pipeline, hand tunneling, bored steel casing, and pavement removal and replacement.
AVR

MIKE GARDNER
VICE PRESIDENT OF PLANT

Career Summary
Employed by AVR since: 2004
Employed in industry since: 1988

Education
Kansas State University
B.S. in Construction Science

Affiliations & Certifications
• First Aid & CPR
• NCCER Master Trainer
• Certified Erosion & Sediment Control Inspector
• ACP Member
• Texas WEA/WEAT Member

PROFESSIONAL SUMMARY
Mike has served as Field Engineer, Project Engineer, Mechanical Superintendent, General Superintendent, Construction Manager, Estimator, Project Manager, and Area Manager. Mike has more than 25 years of experience in constructing water and wastewater treatment facilities, including projects with various types of delivery methods, including CMAR and design-build. His major responsibilities include contract negotiations and personnel management. Mike is responsible for overseeing all plant projects in Texas and the central region.

References
Michael Orth
Black & Veatch
Ph: (913) 458-3473

Hanley Barker
Water District No. 1
Ph: (913) 895-8826

Bill Hagenburger
Beaver Water District
Ph: (470) 756-3651

RELEVANT EXPERIENCE

NORTH TEXAS MUNICIPAL WATER DISTRICT – Ft. Worth, Texas

Lake Texoma Outfall to Weir WTP Pipeline (CMAR) $281.4 M
Installation of 206,000 LF of 96" and 75,000 LF of 84" steel pipeline, 240 MG balancing reservoir, ground storage tanks, metering, blending, and chemical feed system.

Trinity River Main Stem Raw Water Pump Station Pipeline (CMAR) $98.0 M
Installation of a 120 MGD raw water pump station upgrades to diversion pump station, hydraulics and conveyance pump station, and associated raw water pipeline.

High Service Pump Station 2 & 3 Mechanical Improvements $4.9 M
Improvements to mechanical and structural components with two high service pump stations at a potable water treatment plant, new construction related to electrical advancements, and cathodic protection in the plant yard. Construction includes carbon fiber repairs on sections of 24" to 36" steel piping, replacement of check valves, new butterfly valves, steel pipe couplings, internal joint seals on 30" and 36" steel pump discharge piping, and paint removal and recoating of piping and ferrous surfaces with the pump stations.

CITY OF CORPUS CHRISTI – Edna, Texas

Mary Rhodes Pipeline Phase II $84.7 M
Installation of 215,000 LF of open cut 54" Class 150 bar-wrapped pipeline, 3,600 LF of horizontal directional drilled 48" Class 200 steel pipeline, and a 6 MG D110 Type III pre-stressed concrete buried storage tank.

WATER DISTRICT NO. 1 OF JOHNSON COUNTY – Kansas City, Kansas
Facility 3 (Phase V) Water Treatment Plant $74.1 M
This new 10 MGD (expandable to 30 MGD) plant included two aerators, basin flow splitter, primary basin, final basin, residuals control building, operations building with membrane filters, below ground cast-in-place treated water storage reservoir, chlorine contact basin, high service pumping station, surge control facilities, chemical storage and feed facilities, electrical, instrumentation and controls, mechanical work, and site work.
Avr

Refurbishment of Filter Gallery Piping and Valves $268 K
Demolition of influent, effluent, backwash, drain piping and valves at six filters, and replacement with new piping. After installation, all existing and new piping was coated.

CITY OF ST. JOSEPH – St. Joseph, Missouri
Ammonia Removal Improvements and Biosolids Dryer $80.3 M
Industrial aeration basin, DAF feed pump wet well, filtrate equalization basin, grit removal and screening building, meter vault, biosolids dryer building, industrial final clarifier, aeration basins, primary effluent diversion splitter box and meter vault, and intermediate pump station.

Disinfection Facilities and Effluent Pump Station $16.2 M
Addition of new UV disinfection facility and effluent pump station to an existing 54 MGD wastewater treatment plant. Included excavations reaching 30’ deep, extensive sheet piling, dewatering, 260 H-pile beams driven into bedrock, concrete foundation with 3,000 CY of concrete, treatment equipment including submerged bulb racks, concrete wet well, and three new 36” discharge pumps.

Eastside Sewer Phase 4 – Candy Creek Gravity Sewer, Pump Station & Force Main $8.7 M
Construction of new 3 MGD pump station with five 300 HP influent lift, progressive cavity pumps, equalization basin, HVAC, electrical, yard piping, 12,350 LF OF 48” to 20” Arobas sanitary sewer, 13,460 LF of 16” PVC sanitary force main, directional drilling, sheet piling, bypass pumping and auger boring.

Digester No. 1 Cover Replacement $963 K
Removal and replacement of 83’ diameter fixed cover. Removal of three covers, installation of four new external draft tube mixers along with piping, electrical, instrumentation, and controls, and rehabilitation and repair of concrete digester wall and brick façade.

CITY OF MIDWEST CITY – Midwest City, Oklahoma
Pollution Control Facility Improvements $47.7 M
This 10.2 MGD facility uses the new moving bed bio-reactor (MBBR) approved for wastewater treatment in Oklahoma. The work to be performed under this contract consists of constructing a new headworks building, MBBR basins, process control building, UV building, biosolids pumping complex, and concrete flow diversion structures. The project includes the renovation of several process structures such as primary and secondary clarifiers, primary sludge pump station, four digesters, de-chlorination basin, main control building, chlorine building, and secondary digester pumping complex.

CITY OF LAWRENCE – Lawrence, Kansas
Wakarusa Wastewater Treatment & Plant & Conveyance Corridor $45.2 M
New 14 MGD wastewater treatment facility with headworks facility, BNR flow splitter box, two BNR basins, final clarifier flow splitter box, two 98’ clarifiers, final sludge pumping station, chemical storage and feed building, UV flow meter structure, UV disinfection building, 5 MG peak flow storage basin, solids thickening facility, liquid sludge application, combined pumping station, plant-wide control system, electrical service, and interceptor sewer lines.

TARRANT REGIONAL WATER DISTRICT – Fort Worth, Texas
Eagle Mountain Connection Pipeline, Contract B $43.5 M
Installation of 47,400 LF of 78” and 84” mortar-lined, polyurethane-coated steel pipe and construction of several large underground cast-in-place concrete structures and two above ground electrical buildings.
AVR

SCOTT SETTER
COMMISSIONING MANAGER

Career Summary
Employed by AVR since: 2011
Employed in industry since: 1988

Affiliations & Certifications
• OSHA 10-Hour Trained
• Confined Space Safety Trained
• First Aid and CPR Trained
• OSHA Excavation Competent Person Training
• Journeyman Electrician License
• Master Electrician License

PROFESSIONAL SUMMARY
Scott has extensive experience in the construction industry with a strong background in industrial facilities. He has held many positions within the electrical field from journeyman, foreman, superintendent, estimator, and project manager. Scott’s roles have included developing and maintaining field installation crews, complete project management duties, close coordination with electrical and instrumentation contractors, owners and engineers. Scott has been thoroughly trained in estimating by Accubid and BHS Estimating Systems and has completed multiple construction management projects. He has taught 8-10 week classes covering electrical control systems ranging from basic electric control equipment, to motor controls, soft wiring, RVSS and VFDs, and PLC based control systems.

References
Tom Crowley
Carollo Engineers
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Hanley Barker
Water District No. 1 of Johnson County
Ph: (913) 898-9826

RELEVANT EXPERIENCE
NORTH TEXAS MUNICIPAL WATER DISTRICT – Dallas, Texas
Lake Texoma Outfall to Wylie WTP Pipeline (CMAR) $281.4 M
CMAR project for the installation of 35,300 LF of 96", 84", and 48" steel waterline, 240 MG balancing reservoir, 200 MG blending facility, ground storage tank, metering, blending, and chemical feed systems.

Trinity River Main Stem Pump Station & Gravity UPL $29.3 M
CMAR project that included an intake pump station with horizontal split case pumps, 87,000 LF of 72" raw water pipeline, upgrades to existing pumping facilities with vertical turbine pumps, micro-tunnel to the Trinity River with Trenchless intake access, bank stabilization, weir box structure, electrical, SCADA, and communications infrastructure.

WATER DISTRICT NO. 1 OF JOHNSON COUNTY – Kansas City, Kansas
Wolcott Water Treatment Plant $74.1 M
10 MGD (ultimate capacity 35 MGD) plant included two aeration, basin flow splitter, primary basin, final basin, residuals control building, operations building with membrane filters, below ground cast-in-place treated water storage reservoir, chlorine contact basin, high service pumping station, surge control facilities, chemical storage and feed facilities, electrical, instrumentation and controls, mechanical work, and site work.

CITY OF ST. JOSEPH – St. Joseph, Missouri
Ammonia Removal Improvements and Biosolids Dryer $51.3 M
Industrial aeration basin, DAF feed pump wet well, filtrate equalization basin, grit removal and screening building, meter vault, biosolids dryer building, industrial final clarifier, aeration basins, primary effluent diversion splitter box and meter vault, and intermediate pump station.
COLORADO RIVER MUNICIPAL WATER DISTRICT – Big Spring, Texas
Ward County Water Supply Expansion Project Pump Stations (CMAE) $26.0 M
Development and construction of pump station and ground storage tank project that included construction of a 30 MGD pump station with a 2 MG concrete storage tank, 25 MGD well field transfer pump station between the well fields and the proposed pump station with a 2 MG concrete storage tank, 25 MGD booster pump station with site piping, and installation of a 4 MGD skid mounted pump station enclosed in a metal building, placement of a concrete slab, tying into existing piping, and electrical work.

CITY OF MIDLOTHIAN – Midlothian, Texas
Water Treatment Plant No. 2 Phase II (CMAR) $18.1 M
Construction of a new 9 MGD plant, including a sedimentation basin, chemical building, recycle pump station, three sludge lagoons, raw water control building, administration building, with membrane process equipment, admin offices, laboratory, meeting space and shop, electrical, instrumentation and controls, mechanical work, site work, and a raw water pipeline that will tap at 30" and 90" TGD raw water line.

SAN ANTONIO WATER SYSTEM – Elmendorf, Texas
Water Resources Integration Program Twin Caves Pump Station Phase $13.4 M
Construction of a high service pump station with three 15 MGD single turbine pumps at 1,250 HP each, 2,110 LF of 78" to 48" steel mortar-lined waterline, 180 LF of 6" sanitary PVC gravity pipe, 340 LF of small diameter process stainless steel pipe, 500 LF of 48" process steel pipe, concrete foundations and pads, underground and above ground suction and discharge piping, electrical, equipment building, and electrical and controls systems.

GULF COAST WATER AUTHORITY – Beaumont, Texas
Industrial Reservoir Improvement Project $10.8 M
Demolition of two existing reservoir intake control structures, Bleeder Structure on the intake channel, existing reservoir outlet structures, and associated electrical demolition.

ENABLE MIDSTREAM PARTNERS – Caddo, Oklahoma
Bradley Gas Plant $5.2 M
This project included 134 various sized foundations requiring 14,500 CY of excavation and backfill complicated by the close proximity of the structures. These structures included the forming of 58,231 SF and the placement of 4,200 CY of structural concrete. To facilitate future equipment and piping packages, 2,400 various sized anchor bolts (with the largest being 3" x 62" long) were cast-in-place. These structures will support equipment and piping for processing raw material to a finished propane product.

RURAL WATER DISTRICT NO. 3 OF DOUGLAS COUNTY – Berryton, Kansas
Big Springs Water Treatment Facility Expansion $2.4 M
Demolition of the existing floor, installation of all structural footings, pipe, and other underground equipment, installation of treatment equipment including pressure filter system by Pureflow Filtration and softening membrane system by Harm R/O Systems, interior and exterior piping, chemical feed systems and equipment, control vaults, and site grading.

CITY OF LAWRENCE – Lawrence, Kansas
WTP Electrical/Mechanical Modifications Project $1.2 M
Electrical gear modifications and mechanical modifications to the low service pump station at the Kaw WTP. Electrical gear modifications and mechanical piping replacements are also being done at Clinton WTP.
SAN ANTONIO WATER SYSTEM – Elmendorf, Texas
Water Resources Integration: Program Pipeline Segment 2B
Installation of 27,000 LF of 60” mortar-lined steel waterline pipe, two 72” micro-tunnels measuring 725 LF and 543 LF underneath the Medina River and Medio Creek respectively, and 319 LF of 78” bored tunnel underneath I-35 and railroad tunnels.

Water Resources Integration: Program Pipeline Segment 1A
Installation of 42,000 LF of 60” steel pipe, six butterfly valves, seven ARV valves with vaults, and 1,925 LF of 72” tunnels.

Water Resources Integration: Program Pipeline Segment 2A
Installation of 27,000 LF of 60” mortar-lined steel waterline pipe, two 72” micro-tunnels measuring 725 LF and 543 LF underneath the Medina River and Medio Creek respectively, and 319 LF of 78” bored tunnel underneath I-35 and railroad tunnels.

PALM BEACH COUNTY – West Palm Beach, Florida
Northern Region Utility Improvements (Phase II – Part B)
Installation of 33 miles of 10” to 30” DIP and PVC pipe, four canal crossings, and 3,550 LF of 30” HDPE directional drills. Due in part to new commercial developments and improvements, this project had a very aggressive schedule requiring substantial completion of the entire project in 18 calendar days.

PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY – Punta Gorda, Florida
Regional Integrated Loop System: Phase 2A Intermediate Pressure
Installation of 47,500 LF of 24” DIP water line, a new pump station, and 0.5 MG water storage tank.

COLORADO SPRINGS UTILITIES – Colorado Springs, Colorado
Fikeview to Mesa Raw Water Pipeline (Design-Build)
Installation of 12,500 LF of 24” and 20” steel pipe, 30 MGD, 2,000 LF of 12” PVC potable water main.

CITY OF ORLANDO – Orlando, Florida
Eastern Regional Reclaimed Water Transmission Main – Phase II
Installation of 26,100 LF of 12” to 60” DIP reclaimed water main, two large micro-tunnels including 1,620 LF of 66” casing under the Little Econo River and 330 LF of 66” casing adjacent to an apartment complex.

PASCO COUNTY UTILITIES – Pasco County, Florida
North Central Transmission Valves
Installation of 39,500 LF of 24” and 36” ductile iron reclaimed piping, 44,000 LF of ductile iron and PVC wastewater force main, multiple trenchless installations including six directional drills totaling 8,390 LF.

JACKSONVILLE ELECTRIC AUTHORITY – Jacksonville, Florida
South Grid Water Main
Installation 44,500 LF of 20” and 24” ductile iron water and reclaimed water mains and 13,500 LF of 24” and 30” HDPE water and reclaimed water mains installed using horizontal directional drilling. One third of the project was located within a power line corridor, the remainder paralleled a state highway. The project required directionally drilling in fourteen wetlands.
# MARCUS GRACE
## PROJECT MANAGER - PLANT

### Career Summary
Employed by Garney since: 2008
Employed in industry since: 1985

### Education
Colorado State University
B.S. in Civil Engineering Technology

### Affiliations & Certifications
- OSHA 30-Hour Trained
- Certified Erosion & Sediment Control Supervisor
- Surveyor in Training State of New Hampshire No. 281
- Oklahoma Class D Waterworks Operator
- Associate DBIA Professional
- Nebraska WEF Member

### Professional Summary
Marcus has served as Field Engineer, Project Engineer, Estimator, Assistant Project Manager, and Project Manager, and now Senior Project Manager. Marcus has extensive experience in constructing water and wastewater treatment facilities. His industry expertise includes various project delivery methods, including CMAR and design-build, contract negotiations, personnel management, and managing Primavera scheduling software.

### References
- **Jade Dundas**
  City of Sioux City, IA
  Ph: (712) 279-6997
  Ph: (605) 328-2702
- **Nick Leslie**
  Freese & Nichols
  City of Grand Island, NE
  Ph: (308) 385-5430
- **Graves**
  Garver

### Relevant Experience

#### CROSS COUNTY WATER SUPPLY CORPORATION – Gouldwell, Texas
**Cross County 30” Transmission Line High Service Pump Station (Design-Build)**

- Installation of 283,000 LF of 30” OD pipe, a 1 MG prestressed concrete ground storage tank, high service pump station with two 150 HP pumps, two 75 HP vertical turbine pumps with variable frequency drives, an electrical building, chemical steel and structure, and a sodium hypochlorite system.
- **$42.5 M**

**Cross County High Service Pump Station**

- Included a 1 MG DUS, Type III prestressed concrete aboveground storage tank, high service pump station, electrical building, chemical steel and structure, sodium hypochlorite system, electrical, instrumentation, SCADA control, control tower, and site work including site clearing, site paving and grading, yard piping, site electrical, fencing, and erosion control. Pump station included two 150 HP vertical turbine pumps with VFDs and two 75 HP vertical turbine pumps.
- **$6.2 M**

#### COLORADO RIVER MUNICIPAL WATER DISTRICT – Big Spring, Texas
**Ward County Water Supply Expansion Project Pump Stations**

- Construction of a 30 MGD pump station with a 2 MG concrete storage tank, 25 MGD well field transfer pump station with 2 MG concrete storage tank, 25 MGD booster pump station with site piping, and installation of a 4 MGD skid mounted pump station enclosed in a metal building, placing a concrete slab, tying into existing piping, and electrical work.
- **$25.6 M**

#### CITY OF WICHITA – Wichita, Kansas
**Mid-Continent Water Quality Reclamation Facility**

- Installation of owner-procured Zerodat submerged membrane filtration equipment, fine screening, activated sludge basins with aeration and mixing, chemical feed systems, UV disinfection, and various pumping systems.
- **$23.3 M**
Cowskin Creek Pump Station & Force Main Modifications $4.1 M

New ductile iron piping headers, flow meter vaults, moving existing pumps, and new electrical controls and HVAC at the existing Cowskin Creek Pump Station. Installation of 10,000 LF of 18" and 24" C-905 PVC, eight air relief assemblies, 880 LF directional drill under an airport runway, two auger bores under Cowskin Creek, 5,600 LF of electrical duct bank, and associated manholes.

CITY OF GRAND ISLAND – Grand Island, Nebraska
Wastewater Treatment Plant Headworks Improvements $16.9 M

New 13 MGD raw wastewater pump station facility with six submersible pumps, new masonry building to house the screening equipment, influent meter vault to house valves and magnets, flow meters for two 30" force mains, grit facility, grit dewatering, electrical room, meter vault, magnetic flow meter, flow distribution structure to distribute effluent from the new grit basins to the primary clarifier, and bypass to the mixed liquor pump station/aerations basins, odor control systems, engine generator, demolition of existing Parshall flume, sampler building and aerated grit basins, abandoning plant interceptors and aged piping, site work, piping, electrical, plant control system, and utility improvements.

CLAREMORE PUBLIC WORKS AUTHORITY – Claremore, Oklahoma
Claremore Wastewater Treatment Plant $15.9 M

Construction of new facilities including a 750 aerobic digester, 35' secondary sludge gravity thickener, 20' thickened sludge blend tank, 16' primary sludge gravity thickener, six 18' x 98' aerations basins, 95' secondary clarifier, final clarifier splitter box, re-lift and RAS/PPS pumps station, recirculation pump station, blowers and solids facility with a new belt filter press, polymer system and control systems, headworks with screens, vortex grit removal units, grit pumping and washing, and new 350 kW standby generator system.

SAN ANTONIO WATER SYSTEMS – San Antonio, Texas
Water Resources Integration Program: Twin Peaks Pump Station Phase 1 $13.4 M

Construction of three high service, three-phase pump stations at 2,250 HP, 15 MGD each, 2,110 LF of 78", 69" and 48" steel mortar-lined waterline, 880 LF of 6" sanitary PVC gravity pipe, 340 LF of small diameter process stainless steel line, 100 LF of 48" process steel pipe, concrete foundations and pads, underground and above ground structures and discharge structures, electrical equipment building, installation of equipment including pumps and fabricated surge tanks, electrical, and controls systems.

DSP Southeast Tank & Pump Station Project $10.7 M

Installation of four 2,335 HP pumps and three 1.67 MGD pumps, including motors, yard piping, piping connections to existing pipeline valves, flow meters, concrete slabs, and appurtenances, as well as a 3.5 MG D110 Type III pre-stressed concrete aboveground storage tank.

CITY OF LINCOLN – Ashland, Nebraska
Lincoln Water System Horizontal Collector Well house 14-1 $1.9 M

Includes the construction of a horizontal collector well pump house (HCW 14-1), which is located in the Island and East Well fields on a caisson constructed by others. The pump house contains three vertical diffusion vane pumping units – one unit in each is equipped with an adjustable frequency drive, associated piping, valves, motor control center, instrumentation and HVAC. HCW 14-1 is a stand-alone structure with a stair tower and suspended walkway.

Ozone Chemical Feed Systems Modifications $136 K

Modifications to the ozone system for safe purging of the ozone feed trains while the rest of the system remained in use, with installation of stainless steel pipe and valves and oxygen cleaning of the system.
JASON JANSEN
CONSTRUCTION MANAGER

CAREER SUMMARY
Employed by Garney since: 2004
Employed in industry since: 1999

EDUCATION
Central Missouri State University
B.S. in Construction Management
May 2004

AFFILIATIONS & CERTIFICATIONS
- OSHA 10-Hour Trained
- OSHA Competent Person
  Confined Space
- ACI Certification
- Plastic Pipe Welder
  Qualification (Butt Fusion)
- NPDES Certified Construction
  and Erosion Inspector

PROFESSIONAL SUMMARY
Prior to joining Garney, Jason worked extensively in the field focusing on utility infrastructure including water, storm, and sanitary sewer
mains. Jason currently works alongside the traveling pipe crews. His
daily activities include coordinating with owners and engineers,
procuring contract costs, procuring materials, ascertaining quotes,
scheduling subcontractors, monitoring progress of work, maintaining
strong lines of communication with the project superintendent to
ensure quality, and serving as a liaison between Garney and property
owners.

REFERENCES
Don Rundell
City of Round Rock
Ph: (512) 218-5554
Caryon Municipal Water Authority
Ph: (830) 664-843

Lance Webb, P.E.
City of Mesa
Ph: (480) 644-2999
Grafix Nichols, Inc.
Ph: (214) 288-2255

RELEVANT EXPERIENCE

NORTH TEXAS MUNICIPAL WATER DISTRICT – Lake Tawakoni, Texas

Lake Tawakoni Outfall to Wylie WTP Project (CMAR)
CMAR project for the installation of 36" and 48" steel waterline, 240 MG balancing reservoir
with HDPE membrane liner insulated, 200 MG blending facility, ground storage tanks, metering, blending,
and chemical feed systems.

Lake Tawakoni Water Supply East Line (Contract 7)
Installation of 50,690 feet of 60" AWWA C-150, pre-wrapped concrete cylinder pipe, three 84" diameter tunnels
totaling over 5000 feet and an impressed current cathodic protection system. This pipeline also contains
multiple air relieving blow-offs, and access manholes consistently seen on this type of work. Additional
challenges included several creek crossings requiring rip-rap and gabion stabilization as well as
approximately 10,000 cubic yard fill backfill.

Lake Tawakoni Outfall to Wylie WTP Pipeline – Segment 12
This project includes the construction of 206,000 of 96" steel pipe, 47,500 miles of 84" steel pipe, 240 MG
balancing reservoir, and a multitude of ground storage tanks, metering, blending, and chemical feed systems
to allow the treatment plant to accept and blend the water directly from the source.

Trinity River Main Stem Pump Station & Raw Water Pipeline
CMAR project that includes an intake, pump station with horizontal split case pumps, 87,000 LF of 72" raw
water pipeline, upgrades to existing pumping facilities with vertical turbine pumps, micro-tunnel to the
Trinity River with T-screen intake, access road, bank stabilization, weir box structure, electrical, SCADA, and
communications infrastructure.


2000 NW Loop 410 San Antonio, Texas 78213

B-14

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CROSS COUNTY WATER SUPPLY CORPORATION – Caldwell, Texas
Cross County, 30" Transmission Line & High Service Pump Station (Design-Build)  $422.5 M
Installation of 283,000 LF of 30" C-303 pipe, a pre-stressed concrete ground storage tank, high service pump station, electrical building, chemical steel arch structure, sodium hypochlorite system, and electrical.

CITY OF LUBBOCK – Lubbock, Texas
Lake Alan Henry Water Supply Transmission Pipeline, Contract C  $16.6 M
Installation of 80,514 LF of 48" bar wrapped concrete cylinder waterline, six 8" blowoff assemblies, 20 combination air release assemblies, one 48" gate valve, 50 LF of concrete encasement, and other miscellaneous appurtenances. There were five hand tunnels totaling 506 LF of 66" ID steel casing and another 91 LF of open cut 66" ID casing.

CITY OF MESA – Mesa, Arizona
Val Vista Water Transmission Main – Phase 3 (CMAR)  $15.7 M
Garney will self-perform the 48" water transmission main and the surge tank installations.
Val Vista Water Transmission Main – Phase 2 (CMAR)  $15.7 M
Installation of 2.9 miles of mainline C303 piping, including 756 LF of 60", 75 LF of 48", and 452 LF of 42" pipe; three tunnels totaling 325 LF, as well as associated appurtenances consisting of access manways, air releases, dewatering structures, and cathodic protection test stations.
Val Vista Water Transmission Main – Phase 1 (CMAR)  $14.0 M
Installation of 530 LF of 72" C303 through liner plates; tunnels of 753 LF of 72" and 60" C303 open cut.

CANYON REGIONAL WATER AUTHORITY – New Braunfels, Texas
Wells Ranch, 30" Water Transmission Line  $12.6 M
Installation of 85,000 LF of 24" and 30" C303 pipe, including several bores totaling 2,486 LF.

JACKSONVILLE ELECTRIC AUTHORITY – Jacksonville, Florida
Kernan Boulevard Improvements  $9.3 M
Installation of 13,500 LF of 24" and 8,700 LF of 30" ductile iron waterline and HDPE directional drills.
Nocatee Force Main  $4.1 M
Installation of 10,000 LF of 36" HDPE and 6,500 LF of 36" PVC pipe with 6,000 LF installed through wetlands, which involved restrictions on right-of-way access and disturbance due to condition/sensitivity of the area.

CITY OF ROUND ROCK – Round Rock, Texas
Raw Water Delivery System  $8.3 M
Installation of 17,424 LF of 48" and 54" tape-coated, mortar-lined welded steel raw water line.

CITY OF BARTLESVILLE – Bartlesville, Oklahoma
Raw Water Transmission Line / Finished Water Transmission Line  $5.0 M
This project consisted of the installation of approximately 19,600 LF of 42" prestressed concrete cylinder pipe (PCCP), 10,000 LF of 36" PCCP, and 4,800 LF of 30" PCCP through heavily wooded regions and included many vertical deflections due to varying elevations, as well as all necessary valves and appurtenances. It also entailed the installation of approximately 2,000 LF of 4" sanitary force main, two separate open cut road crossings, six separate creek crossings, and 50 LF of 54" hard tunnel.
DAN STANTON
SAFETY MANAGER - PIPE

Career Summary
Employed by Garney since: 2007
Employed in industry since: 1996

Education
NW Missouri State University
B.S. in Education

Affiliations & Certifications
- First Aid/CPR/AED Certified
- First Aid/CPR/AED Instructor’s card
- Confined Space Competent
- Excavation Training
- OSHA 10-Hour Trained
- OSHA 30-Hour Trained
- OSHA 10 Trainer
- ASSE Construction Safety
  - Level I
  - Level II

PROFESSIONAL SUMMARY
Dan has 20 years of experience in the construction industry ranging from laborer to site safety coordinator. He has experience operating heavy equipment and has past experience in the geotechnical field for materials testing. He started his Garney career as a Site Quality Control representative and has since moved onto becoming a site safety coordinator as well as an OSHA 10 trainer. He is currently studying to take his CHST Certification in Construction Safety.

References
Mark Semonick
Lockton Companies
Ph: (303) 414-6182

Soro Buzeck
Xaver
Ph: (713) 473-9380

Louis Bristow
Veolia Water Solutions
Technologies
Ph: (303) 414-6182

Carlos Dominguez
Lockton Companies
Ph: (412) 370-9930

RELEVANT EXPERIENCE

METRO WASTEWATER RECLAMATION DISTRICT – Brighton, Colorado
PAR 1388 Northern Treatment Plant (Design/Build) $98.9 M
Construction of a 24 MGD WWTP, including two odor control facilities with biofilters, chemical storage facility, headworks building, primary clarifier structure, two primary clarifiers with 1.8 MG capacity, a primary pump station, settling basins with four basins at 2.85 MG each, aeration blowers building, four secondary clarifiers with 1.52 MG capacity, RAS/WAS pump station, tertiary pump station, four tertiary flocculation sedimentation basins at 1.48 MG each, tertiary filters, UV disinfection building, PRW/CFS pump station, effluent makeup tank, two gravity thickening basins at 0.42 MG each, gravity thickening pump station, WAS thickening, one 0.64 MG digester and two 1.96 MG digesters, dewatering building, centrifuge handling, cogeneration facility, and outfall structure.

CITY OF AURORA – Aurora, Colorado
Prairie Waters North Campus Facilities, BP7 $52.2 M
Installation of 18 recovery wells and five miles of 60” steel pipeline to deliver the pretreated raw water to Pumping Station No. 1. The project required the installation of more than 100,000 LF of pipeline ranging in size from 8” to 60”, a three-mile-long by 50’ deep slurry wall that is 6,632,256 SF, and the excavation and off-site disposal of more than 600,000 CY of granular soils.

TARRANT REGIONAL WATER DISTRICT / CITY OF DALLAS – Fort Worth, Texas
Section 14 of the Integrated Pipeline Project $48.1 M
Installation of 78,641 LF of 20” mortar-lined steel waterline, manholes, air release valves, blow-off valves, and 1,961 LF of 130” to 168” hand tunneling for a tunnelled crossing of Interstate 35E, a railroad, and existing high pressure gas lines.
LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT – Fountain, Colorado
Harold D. Thompson Water Reclamation Facility $23.1 M
Included construction of a headworks building, aeration and digester structures, two clarifiers, blowers, building structure, pumping and disinfection structure, administration building, and maintenance facility. The project also included the installation of all treatment equipment, site utility piping to convey process waters, process pipe, valves, pumps and ancillary process materials.

CLIMAX MOLYBDENUM COMPANY – Climax, Colorado
Mill Water Return and PDWTP Pipeline Project $10.9 M
Included the installation of 3,400 LF of 30” welded steel pipe, 7,250 LF of 36” welded steel pipe, and 8,072 LF of 24” welded steel pipe and was located in the mountains of Colorado at an elevation of 10,000 feet.

FREEPORT-MCMORAN – Empire, Colorado
Urad Mine Flood Bypass Project at Lower Woods Creek $6.0 M
Included the rebuilding of existing disposal cells and addition of new geomembrane liner, installation of bypass piping consisting of 1,416 LF of 54” HDPE, 1,186 LF of 18” HDPE, open channels for wetlands creation, and a spillway to carry the water down the face of existing dam into the Lower Urad Reservoir.

NEWFIELD EXPLORATION COMPANY – Myton, Utah
Newfield – Beluga Injection $5.1 M
Installation of a ROSS treatment facility for a 201,000 BPD water system. The major equipment scope of supply includes Multilfo chemical softening, osmose membranes for filtration, de-aeration, hazardous solids dewatering and waste disposal, physical cleaning, and storage tanks. New 12,000 square foot building, electrical, and all supporting systems. The concrete and metal building were constructed in extreme winter conditions.

UNION PACIFIC RAILROAD – Santa Fe, New Mexico
East and West Industrial Water Treatment Plant Facilities $5.0 M
This project included the construction of a new 0.25 MGD industrial wastewater (stormwater) treatment facilities including headworks screening, oil/water separation, and dissolved air flotation separation (DAF) solids removal treatment systems for Union Pacific Railroad Company’s Strauss Fueling Facility, Block Swap Yard and Intermodal Facility Project.

CITY OF LOVELAND – Loveland, Colorado
Loveland 4 MG Water Storage Tank $4.3 M
This project included the construction of a 4 MG potable water concrete DI15 internal post-tensioned buried storage tank and related facilities including excavation and backfill, site civil improvements, overflow and drain piping, water mains, site restoration, and all appurtenances associated with the mains and tank.

CITY OF HOBBS – Hobbs, New Mexico
Effluent Reuse Phase II Booster Pump Station Improvements $3.7 M
This project included the construction of an effluent reuse booster pump station, effluent reuse pipelines, electrical and other improvements, including miscellaneous demolition and clearing, a concrete wet well, vertical turbine pump installation, mechanical and stationary screening equipment, site grading, and the removal and replacement of asphalt.
JAMIE BLYSTONE, CSP, CHST
SAFETY MANAGER - PLANT

Career Summary
Employed by Garney since: 2007
Employed in industry since: 2001

Education
University of Central Missouri
B.S. in Occupational Safety/Health

Affiliations & Certifications
- BCSF – Certified Safety Professional #22806
- CHC - Construction Health and Safety Technician
- OSHA 500 Trainer
- Scaffolding Competent Person Instructor
- Respiratory Protection Competent Person
- ASSE Member
- NUCA Member

PROFESSIONAL SUMMARY
Jamie has several years of experience in the construction industry, and all positions have been within the safety field. He has experience in water, wastewater and commercial construction in addition to experience in environmental remediation and hazardous materials handling. Jamie has received training in excavation, fall protection, scaffolding, confined space, hazardous materials, and cranes. In addition, he is responsible for developing and teaching company safety-related courses and is a vital member of the company safety committee. Jamie’s role is 100% devoted to overseeing safety on Garney’s job sites. Jamie reports to Steven McCandless, Vice President.

References
Dave Redlin
Progressive Environmental
Ph: (913) 406-2825

Don Sanders
Demers Constructors
Ph: (573) 89-8542

Rob Kellogg
Safety Consulting & Training Services
Ph: (815) 76-8099

RELEVANT EXPERIENCE

MIDLAND COUNTY FRESH WATER DISTRICT NO. 1—Midland, Texas
T-Bar Well Field Development & Delivery Project (Design-Build) $97.1 M
Installation of 60 miles of 48” steel and 30” cast iron transmission main, and 25 miles of PVC well field piping. The pipe sections consist of 1025 LF of welded waterline, 105,250 LF of 48” C303 waterline, and 130,000 LF of 6” to 30” PVC pipe. The project includes rock excavation, auger bores and several manholes.

T-Bar Water Supply Treatment Facility $6.2 M
Construction of a 40MG composite coated tank, along with the construction of a disinfection facility. The disinfection facility contains a chlorination scrubber, ammonia scrubber, electrical room, chlorinator room, ammoniator room, two ammonia storage tanks, emergency generator with the capacity of 500 kW, and a chlorine container storage tank.

WATER DISTRICT NO. 1 OF JOHNSON COUNTY — Kansas City, Kansas
Wolcott Water Treatment Plant $74.1 M
10 MGD (ultimate capacity 30 MGD) plant included two aerators, basin flow splitter, primary basin, final basin, residuals control building, operations building with membrane filters, below ground cast-in-place treated water storage reservoir, chloride contact basin, high service pumping station, surge control facilities, chemical storage and feed facilities, electrical, instrumentation and controls, mechanical work, and site work.

KENTUCKY AMERICAN WATER – Lexington, Kentucky
High Service Mains for WTP on Pool 3 – Contracts A & B $56.7 M
Installation of 66,000 LF of 42” ductile iron pipe with polyethylene encasement, four 42” flex ring gate valves, 10 air valve assemblies, and 970 LF of 66” bore with casing pipe with one bore descending a 120’ bluff to a creek bottom.
CITY OF MIDWEST CITY – Midwest City, Oklahoma

Pollution Control Facility Improvements $47.7 M
This 10.2 MGD facility uses the first moving bed biotm reactor (MBBR) approved for wastewater treatment in Oklahoma. The work to be performed under this contract consists of constructing a new headworks building, MBBR basins, process air blower building, UV building, biosolids pumping complex, and concrete flow diversion structures. The project also includes the renovation of several process structures such as primary and secondary clarifiers, primary sludge pump station, four digesters, de-chlorination basin, main control building, chlorine building, and secondary digester pumping complex.

CITY OF OLATHE – Olathe, Kansas

Cedar Creek Wastewater Treatment Plant $35.0 M
Expansion of an existing wastewater treatment plant from 14.25 MGD to 31.75 MGD that included new influent sewer, 65' deep influent pumping station in solid rock, 6 MG extraneous flow basins, headworks building with screening and grit removal, two five-stage BNR basins, blower building to house single-stage Siemens centrifugal blowers, two 130' diameter final clarifiers, RAS/WAS, sludge pumping station, replacement of UV equipment in existing UV building, modifications to existing control building, and new chemical feed systems.

COLORADO RIVER MUNICIPAL WATER DISTRICT – Big Spring, Texas

Ward County Water Supply Expansion Project Pump Stations (Continued) $28.6 M
Construction of a 30 MGD pump station with a 2 MG concrete storage tank, 25 MGD well field transfer pump station with a 2 MG concrete storage tank, 25 MGD booster pump station with site piping, and installation of a 4 MGD skid mounted pump station enclosed in a metal building, pouring a concrete slab, tying into existing piping, and electrical work.

CITY OF SIOUX CITY – Sioux City, Iowa

Secondary Treatment Facilities Improvements Phase 2 $27.0 M
Construction included a 125' final clarifier, two 126x 127 aerations basins, a lime system, and two final clarifier splitter structures, removal and replacement of four existing blowers with four new 900 HP blowers, three rebuilt 400 HP blowers upgrade to the majority of air piping feeding the existing and new aeration basins, replacement of the RAS/WAS pumps, replacement of four direct drive motors and shafts with four new VFD driven motors and shafts on the influent wastewater pumps, and new motors on the drain lift pumps.

CITY OF WICHITA – Wichita, Kansas

Mid-Continent Water Quality Reclamation Facility $23.3 M
Installation of owner-procured, iron submersed membrane filtration equipment, fine screening, activated sludge basins with aeration and mixing, chemical feed systems, UV disinfection, and pumping systems.

Covisken Creek Pump Station & Force Main Modifications $4.1 M
New ductile iron piping headers, flow meter vaults, moving existing pumps, and new electrical controls and HVAC at the existing Cowisken Creek Pump Station. Installation of 10,000 LF of 18" and 24" C-905 PVC, eight air relief assemblies, 980 LF directional drill under an airport runway, two auger bores under Cowisken Creek, 5,600 LF of electrical duct bank, and associated manholes.

CITY OF MIDLOTHIAN – Midlothian, Texas

Water Treatment Plant No. 2 Phase II (CMAR) $18.0 M
Construction of a sedimentation basin, chemical building, recycle pump station, three sludge lagoons, raw water control building, administration building with Biwater reverse osmosis system and Touray membrane process equipment, laboratory, meeting space and shop, electrical, instrumentation and controls, mechanical and site work, and raw water pipeline that taps a 72" and 90" raw water line.
ATTACHMENT

NEW APPENDIX 16

PLAN OF DEVELOPMENT AND FINANCING AND GARNEY HOLDING COMPANY LETTER OF SUPPORT
APPENDIX 16

PLAN OF DEVELOPMENT AND FINANCING
AND GARNEY HOLDING COMPANY LETTER OF SUPPORT

Part A: Plan of Development and Financing

1. Parent Company

Garney Construction was founded in 1961 and has thrived to become one of the nation’s leading environmental contractors. Garney is owned by its approximately 1,100 employee owners. Garney’s breadth of experience and financial strength is unmatched amongst contractors in the water and wastewater sector in the United States. Garney is the #1 ranked contractor in the Water Transmission sector and #3 ranked contractor in the Water Supply category according to 2015 ENR rankings. In 2015, Garney recorded over $600 million in revenues with aggregate bonding capacity in excess of $1.5 billion.

Garney has more than three decades of experience serving as a water and wastewater contractor for SAWS, successfully delivering critical projects for its consumers, including the Water Resources Integration Program Pipelines and Twin Oaks Pump Station, SAWS Carrizo Aquifer Storage and Recovery (ASR) Project, and SAWS Water Recycling Program. Last year, as part of the Water Resources Integration Program, Garney installed 140,000 linear feet of 60-inch pipe, similar to the pipe that will be used for the Vista Ridge pipeline.

Garney Construction was originally intended to be Abengoa’s construction partner for the Vista Ridge project.

2. Plan of Development

Subject to SAWS consent, Garney intends to purchase a controlling interest in the Project Company, through a new subsidiary, Garney P3 LLC. Garney Construction will serve as the EPC contractor.

The Central Texas Regional Water Supply Corporation (the “Water Supply Corporation”), a not-for-profit water supply corporation authorized to exercise the power of eminent domain, will continue to acquire easements, rights of way and other interests necessary for the Project. The Water Supply Corporation will provide for the management of the construction of the Project Improvements and transportation of treated water to the Project Company Water Storage Tank through the Transmission Pipeline. A loan will be provided from the Project Company to the Water Supply Corporation to finance the design and construction of the Project.

The Project Company, through this Water Transmission and Purchase Agreement (WTPA), intends to develop a water treatment and transmission system to extract underground water from the Carrizo-Wilcox Aquifer and Simsboro Aquifer, located in Burleson County and convey it to San Antonio Water System through a 142-mile pipeline.

Prior to hard construction, the Project Company will perform the early construction needed to obtain limited-recourse project financing. During the Development and Financing Period, this work shall include:

(a) Preliminary Studies: These studies address topography, geotechnical issues, aquifer field surveys and studies that will be needed for development and construction of the Project, including permitting applications and detailed final engineering plans for the period prior to construction. The aquifer surveys include test holes and pilot production wells.
(b) Permitting: Before construction, appropriate federal and state permits need to be applied for and obtained. These early phase permits include among others, the USFWS endangered species permit, the USACE 404 section permit, the Texas Historical Commission permit, and environmental assessment permits necessary to avoid the modification of the Transmission Pipeline Alignment. This task also includes permits and authorizations from the Texas Department of Transportation related to road and railroad crossings and local county construction permits.

(c) Rights of way acquisition: This task will be a negotiated process by which the Project Company’s right of way agent will negotiate the easements and rights of way needed with each land owner along the Transmission Pipeline Alignment (142 miles) and for the Well Field Facilities. This task includes project management, appraisals, land payments and condemnation of eminent domain procedures.

(d) Water rights maintenance fee: In order to maintain the leases and permits needed for the Project, the Project Company will pay a water rights maintenance fee.

(e) Due diligence: Banks and financial entities will require their independent experts, including independent engineers and lawyers to review Project details and verify the Project’s capacity to maintain its financial obligations.

3. Plan of Financing

Overview

The Project Company has the capacity to finance the Project from design and construction through the full operating period to the end of the Term. Since the signature of the Membership Interests Purchase Agreement (MIPA), the Project Company has developed a Plan of Finance that is based upon extensive dialogue with a group of four international project finance banking institutions. The Project Costs, which are estimated to be approximately $911 million, will be met by a combination of taxable bank debt and Sponsors’ equity.

The Plan of Finance has been developed to respond to the circumstances that the Vista Ridge project has experienced and also provide the ability for the Project Company to execute the financing on an expedited timeline that will allow construction to commence once customary conditions precedent have been met (described below).

Equity Availability

The shareholders in the Project Company at financial close will be as follows:

• Garney P3 LLC – 80%
• Abengoa Vista Ridge LLC – 20%

Approximately $22 million of Project costs have already been financed through equity contributions. In consideration for its stake in the Project Company, the MIPA provides that Garney will contribute the remaining equity funds (totaling approximately $50 million) to complete the Project development with approximately 2/3 of this amount being contributed to the Project either before or at Financial Close and the remainder contributed at the end of the Construction Period. In the period between the Conforming Contract Amendment Date and the Financial Closing Date, 100% of Project costs will be met with shareholder equity.

During the Construction Period, Garney P3 LLC will provide a letter of credit from an “A” rated financial institution to support the scheduled injection of shareholder capital into the Project Company.
Senior Debt Facility

The balance of the Project capital structure not funded via shareholder equity will be provided by a taxable debt financing facility totaling approximately $838 million (the “Senior Secured Credit Facility” or the “Loan”).

Due Diligence Process

Upon effectiveness of the MIPA, the Project Company will work toward closing the Senior Secured Credit Facility on an expedited basis. This process will include three main phases:

1. **Preliminary steps to achieve the bank mini-perm financing**: The Project Company has engaged with a group of global project finance bank lenders led by SMBC as “Structuring Bank”, who are familiar with the Project to form a “Bank Club” with the intention to finance the Project costs not covered by Project Company equity upon the completion and satisfaction of due diligence and necessary conditions precedent to funding. The Bank Club engaged lenders counsel who undertook a review of all existing documentation and has prepared certain Project financing documents including the Credit Agreement, the Equity Contribution Agreement as well as a Closing Checklist outlining the full package of documentation for the Senior Secured Credit Facility.

2. **Permitting and due diligence process**: The Project Company will continue the permitting and Bank Club due diligence process following the execution of the MIPA. The due diligence process will include the review of all permits, leases, engineering plans, hydrology studies, the proposed construction schedule and contract documents by a Lender’s Technical Advisor (LTA). The permitting process is well underway and expected to be complete by late July. In an effort to expedite the due diligence process, in consultation with the Bank Club and the Project Company’s Financial Advisor, Societe Generale, Garney undertook a Request for Proposal process and has selected and recently engaged E3 Consulting as LTA E3 Consulting has begun their due diligence efforts and is expected to deliver a preliminary report on or about May 20, 2016 and meet with the Bank Club to discuss its findings. The preliminary LTA report, along with the final report of the hydrology engineer (RW Harden), will be important components of the Bank Club’s credit analysis.

3. **Closing Process**: The loan closing process includes completion of final due diligence and credit analysis by each member of the Bank Club. Other due diligence undertaken by the Bank Club will include:
   - a) Review of Garney Construction (including financial performance, meetings with senior management, company history, back-log)
   - b) Review of Design Build Contractual Approach (including construction security package, in conjunction with the LTA)
   - c) Review of SAWS (financials, project essentiality, Ratepayer and Water Price Methodology, Capital Investment to Integrate Pipeline)
   - d) Review of Financial Model
   - e) Review of Water Supply Chain
   - f) Bank Club’s Counsel (review of project company documents, due diligence on property conveyance, rights of way, permitting etc.)
g) Other third party due diligence including an Independent Insurance Consultant Report and an independent financial Model Auditor report. The final drafting and negotiation of bank loan and security documents, a final LTA report, and the obtaining of internal bank credit committee approvals will proceed on a parallel basis in order to close on the Senior Secured Credit Facility in an expedited manner.

Loan Closing and Financial Close

Once the Bank Club has received the final LTA report (expected on or around June 8, 2016, delivery of loan commitments and the closing of the Loan ("Loan Closing") are currently anticipated to be achieved between June 15, 2016 and July 15, 2016 (and date of Loan Closing the “Loan Closing Date”). Loan Closing shall not constitute Financial Close under the WTPA, rather, Financial Close will occur once the requirements as defined under the WTPA (Financial Closing Date Conditions) are satisfied including obtaining all Governmental Approvals, Transmission Pipeline System and Well Field Facilities Site Real Property Interests, per the terms of Section 4.1 (B) of the WTPA and satisfactory to Bank Club based on advice from the LTA. Assuming a timely Loan Closing, Financial Close under the WTPA (which requires satisfaction of additional conditions) is expected to be achieved on or about September 30, 2016.

It is believed that this approach involving underwritten commitments from the Bank Club, whose members are already familiar with the Project is cost effective, reduces any uncertainty surrounding an offering to new investors and provides the most certain and expedited path to Loan Closing and achieving Financial Close.

Interest Rate Hedging Strategy

The Loan will be structured as a traditional variable rate bank loan. In order to hedge long-term fixed rates, the Bank Club will also extend long-term variable to fixed rate interest rate swaps. It is anticipated that 100% of the Senior Secured Credit Facility will be swapped from variable rate to fixed rate at Loan Close through a date approximately 29 years following the Commercial Operations Date.

The interest rate swaps will be structured so that the Project Company can break the swaps at the point that the Loan is refinanced. The long-term hedge will be structured so that changes in generic interest rates (either way) would not materially affect the Project’s cash flows. Should general interest rates at refinancing or maturity be higher than those in place at origination, the Project Company can collect swap breakage amounts which can serve to reduce the amount of (higher rate) debt that needs to be issued. Should rates be lower at refinancing or maturity, the Project Company will owe a breakage amount to the swap counterparty which can be financed with a larger amount of (lower rate) debt upon refinancing. The interest rate swaps will effectively hedge generic interest rates but are not intended to hedge credit spreads which might be expected to tighten once the risk profile of the Project is reduced at completion and commissioning. The risk of higher credit spreads or benefit of lower spreads will lie with the Project Company.

Long Term Financing Strategy

The Loan is expected to be refinanced with either bonds or another loan prior to its maturity, The Loan also features no loan prepayment penalties after the first year which provides a great deal of flexibility to take advantage of tighter credit markets or a more favorable Project risk profile as the Project nears or achieves the Commercial Operations Date. Once the Project Company has fully achieved the necessary rights of way, permits and other entitlements, and has largely completed construction of the Project it expects to explore more permanent financing including long term fixed rate bonds from the tax exempt municipal market or the taxable private placement market. The Project financing terms and risk allocation have been structured to achieve an investment grade bond rating when refinanced. A potential fixed rate bond takeout could occur anytime, but would generally be expected to occur at or beyond Substantial Completion of the Project. The 21-month
period between Substantial Completion and the maturity of the Loan is intended to provide ample flexibility to access the bond market at advantageous terms. Should a bond takeout prove infeasible for any reason, the lenders would also consider an extension or rollover of the Loan and the related interest rate hedge.
Part B: Garney Holding Company Letter of Support

Robert Puentte and Doug Evanson  
San Antonio Water System Board of Trustees  
2500 U.S. Hwy. 281 North  
San Antonio, TX 78212

RE: Letter of Support, Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement

May 14, 2016

Dear Mr. Puentte and Mr. Evanson,

Reference is made to that certain Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (the “WTPA”) to be entered into by and between the City of San Antonio (the “City”), acting by and through the San Antonio Water System Board of Trustees, an agency of the City (“SAWS”) and Algonquin Vista Ridge, LLC, a Delaware limited liability company (the “Project Company”).

Garney Holding Company, a Missouri limited liability company (“Garney”), is the parent company of Garney P3 I.L.C., a Missouri limited liability company (“Garney P3”), the holder of an 80% membership interest in the Project Company, hereby provides this Letter of Support to evidence as follows:

1. Garney has received and reviewed a substantially complete draft of the WTPA as of the date hereof and hereby acknowledges and agrees that Garney is familiar with the terms and conditions of the WTPA and the transactions associated therewith. Notwithstanding, without limitation, the Project Company’s obligations thereunder.

2. It is the general policy of Garney and its subsidiaries that Garney, including the Garney P3 and Project Company, will meet its respective payment obligations under their contractual agreements in full as and when they become due.

3. Garney, through Mr. Jeffrey Lacy, acknowledges and warrants to SAWS that, as of the date hereof, the Plan of Development and Financing attached to this Letter of Support has been prepared in good faith and in accordance with generally accepted standards prevailing in the project finance industry for major public works projects of a similar size.

4. By acceptance of this Letter of Support, SAWS acknowledges and agrees that, except as set forth in Paragraph 3, this Letter of Support does not evidence or create an enforceable contract or binding obligation on the part of Garney.

Sincerely,

GARNET HOLDING COMPANY

Jeffrey R. Lacy  
Chief Financial Officer  
PH: 816.746.7277  FAX: 816.746.7296  CELL: 816.686.6327

Garney Holding Company
3333 HWY 63, 1211, Kansas City, MO 64114
Phone 816.741.6829
Fax 816.741.4468
www.garnet.com
APPENDIX 21

CERTAIN LITIGATION MATTERS

Part A: Blue Water Litigation


Part B: Abengoa Insolvency Proceedings

Proceedings now or hereafter occurring as a result of an insolvency, bankruptcy, receivership, assignment for the benefit of creditors or similar proceedings, whether foreign or domestic (an “Insolvency Proceeding”), of Abengoa S.A. or an affiliate of Abengoa S.A., whether directly or indirectly, including, but limited to, Abengoa Greenbridge S.A.U. (“Greenbridge”), Abiensa Abiema Teyma GP (“Abiensa”), and Abengoa Water USA LLC. Without limiting the general nature of the foregoing, the following are expressly excepted from the representation contained in Section 2.2(E) of the WTPA:

(1) Any proceeding or litigation to recover the $62,500,000 (and any accrued interest) loaned to Abengoa Vista Ridge, LLC (“AVR”) under a certain Contrato de Crédito Recíproco (Reciprocal Credit Agreement) dated December 17, 2014, between AVR and Greenbridge, arising out of or related to the assignment by AVR of that certain Letter of Intent dated December 12, 2014, between AVR and Abiensa, to Greenbridge, and a release by Abiensa of AVR from any further obligations owed by AVR to Abiensa thereunder.

(2) Any proceeding or litigation to recover the $120,000,000 (and any accrued interest) loaned to AVR under that certain Bridge Loan Agreement (“Bridge Loan”) entered into as of July 20, 2015, between AVR, as “Borrower”, and Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, and Société Générale, as “Lenders”, arising out of or related to the release by Central Texas Regional Water Supply Corporation (“CTRWSC”) of Abiensa from its obligations under that certain Early Works Services Agreement, dated as of July 23, 2015, between CTRWSC and Abeinsa.
ATTACHMENT 21A
ENTITIES INVOLVED IN THE BLUE WATER LITIGATION

Litigation

Metropolitan Water Company, LP

Acquires ground water leases in Central Texas counties

Save Our Springs Alliance, Inc.

Charitable organization dedicated to the preservation of the Edwards Aquifer

Central Texas Regional Water Supply Corp.

Pursuing right of entry and right of way agreements with landowners in counties where the project is planned

Blue Water Systems LP

Exclusive right to market & sell groundwater to various entities

Blue Water Regional Supply Project LP

Market & sell groundwater to certain territories

Abengoa Vista Ridge LLC

Manage construction & operation of the water transmission pipeline & the acquisition of rights for groundwater to be transmitted

Blue Water Vista Ridge LLC

Administers contracts concerning the transmission of groundwater from Burleson County to SAWS

Blue Water Project LP

Purifies water to 4 Travis County MUDs under a contract

Wilmington Trust

Holds lease rights and acquired possession of Met Water’s personal property
ATTACHMENT 21B
INFORMATION RELATING TO MET WATER'S PETITION
IN THE 201ST JUDICIAL DISTRICT

CAUSE NO. D-1-GN-15-005774

METROPOLITAN WATER COMPANY, LP,

Plaintiff,

vs.

BLUE WATER SYSTEMS, LP; BLUE WATER REGIONAL SUPPLY PROJECT, LP; BLUE WATER VISTA RIDGE LLC; ABENGOA VISTA RIDGE LLC; and WILMINGTON TRUST, NATIONAL ASSOCIATION, as Trustee of the Burleson/Milam Master Lease Trust,

Defendants.

IN THE DISTRICT COURT

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

Plaintiff Metropolitan Water Company, LP, (Met Water) complains of Defendants Blue Water Systems, LP (Blue Water), Blue Water Regional Supply Project, LP (BW RSP), Blue Water Vista Ridge, LLC (BW Vista Ridge), Abenigoa Vista Ridge LLC (Abenigoa Vista Ridge), and Wilmington Trust, National Association, as Trustee of the Burleson/Milam Master Lease Trust (Trust), and for cause of action would respectfully show as follows:

I. INTRODUCTION

1. This case is about deceitful and impermissible efforts to cut Met Water out of a deal worth up to $700 million over the next 30 years.

2. Blue Water, BW RSP, and BW Vista Ridge (together, the Blue Water Defendants) are attempting to exclude Met Water from a water supply deal with San Antonio Water System (SAWS), the City of San Antonio’s public water utility company. The deal will deliver up to 16.3

- 1 -
ATTACHMENT 21C
INFORMATION RELATING TO MET WATER'S PETITION
IN THE 53RD JUDICIAL DISTRICT

CAUSE NO. D-1-GN-15-001738

METROPOLITAN WATER COMPANY, L.P., Plaintiff,

vs.

BLUE WATER SYSTEMS, LP and BLUE WATER 130 PROJECT, LP,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

Plaintiff Metropolitan Water Company, L.P., alias Met Water, complains of Defendants Blue Water Systems, LP (Blue Water), and Blue Water 130 Project, LP (BW 130), and for cause of action would respectfully show as follows:

INTRODUCTION

What's in a name? That which we call a rose by any other name would smell as sweet. WILLIAM SHAKESPEARE, ROMEO & JULIET, act 2, sc. 2.

In this case, it's about contract manipulation. Met Water had worked harmoniously with Blue Water and BW 130 (together, the Blue Water Defendants) for years in the business of gathering, marketing, and selling groundwater across Central Texas. Met Water was paid for finding and selling the groundwater, Blue Water was paid for developing, marketing, and selling the groundwater, and the two sides split any water reservation fees¹ the Blue Water Defendants promised to negotiate with its buyers.

¹ As explained in detail below, a "reservation fee" is compensation a buyer (like a municipality or a private water reseller) pays a water supply company to make a certain amount of water available for purchase, regardless of the amount of water actually purchased. This procedure "reserves" water for a buyer's potential use.
TO: THE CITY OF SAN ANTONIO, TEXAS ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, an agency of the City of San Antonio (“SAWS”); GARNEY HOLDING COMPANY, a corporation organized and existing under the laws of the State of Missouri (“GHC”); GARNEY COMPANIES, INC., a corporation organized and existing under the laws of the State of Missouri (“GCI”); GARNEY P3 LLC, a limited liability company organized and existing under the laws of the State of Missouri (“GP3”) (GHC, GCI, and GP3, together hereafter being the “Garney Parties”); and ABENGOA VISTA RIDGE, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Project Company”) (together with SAWS and the Garney Parties, being the “Recipients”).

RE: Cause No. D-1-GN-15-001738 in the 53rd Judicial District Court of Travis County, Texas, styled Metropolitan Water Company, L.P. v. Blue Water Systems, LP and Blue Water 130 Project, LP (the “130 Primary Action”); Cause No. D-1-GN-15-002697 in the 53rd Judicial District Court of Travis County, Texas, styled Metropolitan Water Company v. SWWC Utilities, Inc. and Metro-H2O Ltd. v. Blue Water Systems LP and Blue Water 130 Project, LP (the “130 Garnishment Action”) (together with the 130 Primary Action, being the “130 Actions”); and Cause No. D-1-GN-15-005774 in the 201st Judicial District Court of Travis County, Texas, styled Metropolitan Water Company, L.P. v. Blue Water Systems, LP, Blue Water Regional Supply Project, LP, Blue Water Vista Ridge LLC, Abengoa Vista Ridge LLC and Wilmington Trust, National Association, as Trustee of the Burleson/Milam Master Lease Trust, National Association, as Trustee of the Burleson/Milam Master Lease Trust (the “Vista Ridge Action”) (together with the 130 Actions, being the “Met Water Actions”).

We, the undersigned, do hereby state, declare, represent, warrant and certify to Recipients as of May 13, 2016 as follows:

In July 2015, Metropolitan Water Company, L.P., a Texas limited partnership (“Met Water”), initiated the 130 Actions, in which Met Water claimed, among other things, that the certain Groundwater Resources Marketing Agreement dated September 11, 2006, as subsequently amended, (the “GRMA”) was breached by Blue Water Systems LP, a Texas limited partnership (“BWS”), and Blue Water 130 Project, LP, a Texas limited partnership (“BW130P”), and should be terminated.

In December 2015, Met Water initiated the Vista Ridge Action, in which Met Water claimed, among other things, that the GRMA, that certain Groundwater Lease Assignment Agreement effective October 14, 2014 (“GLAA”), and that certain Assignment of Met Water Lease Rights effective October 14, 2014 (“AMWLR”) (together with the GRMA, the GLAA, and the AMWLR, being the “Existing Agreements”), should be terminated or rescinded.

Met Water’s claims in the Met Water Actions, especially those for termination and/or rescission of the Existing Agreements, threatened to terminate or rescind certain rights under such agreements which were subsequently assigned to Blue Water Vista Ridge, LLC, a Texas limited liability company (“BWVR”) and thereafter assigned to the Burleson/Milam Master Lease Trust, a Texas trust formed under the Texas Trust Act (the “Master Lease Trust”) and subleased to the Project Company under that certain Groundwater Lease Conveyance Agreement, dated
January 31, 2015, and thus threatened an unfavorable decision, ruling or finding could which reasonably be expected to have a material and adverse effect the execution and delivery of the Water Transmission and Purchase Agreement (“WTPA”) by the Project Company or the validity, legality or enforceability of the WTPA against the Project Company, or the other agreements or instrument entered into by the Project Company in connection with the transactions contemplated in the WTPA, or on the ability of the Project Company to perform its obligations under the WTPA or under any such other agreement or instrument.

On May 11, 2016, Met Water, Met Water Vista Ridge, L.P. a Texas limited partnership (“MWVR”) (together with Met Water, being the “Met Water Parties”), BWVR, BWS, BW13, and Blue Water Regional Supply Project, LP, a Texas limited partnership (“BWRSP”) (together with BWVR, BWS, and BW130 being the “Blue Water Parties”) agreed-to and executed that certain Post-Closing Agreement (“PCA”) dated May 12, 2016 (all parties thereof being the “Parties”).

Effective May 11, 2016, by the PCA, the Parties agreed, among other things, that:

1. The Met Water Parties released and waived any right to assert against anyone, including Blue Water Parties, the Garney Parties, and the Project Company, any asserted or unasserted claims for rescission, termination, or the like of the Existing Agreements and to dismiss those claims with prejudice;

2. The Met Water Parties released and waived any asserted or unasserted claims for conversion against the Project Company or the Trust and to dismiss those claims with prejudice;

3. If “Financial Close” (as defined by the WTPA) does not occur on or before the “Financial Closing Longstop Date” (as defined by the WTPA), then, as a condition subsequent to the release and dismissal provided for the Vista Ridge Action, such release and dismissal shall, as to Blue Water Parties only, be void and of no further effect, and such claims shall be as though they had never been released and shall exist to the extent permitted as though all applicable statutes of limitations and doctrines of delay or laches were tolled and of no effect during the period of time between May 12, 2016 and the Financial Closing Longstop Date;

4. Met Water’s only remaining claims not dismissed with prejudice or released are monetary and will not result in avoidance, cancellation, invalidation, nullification, rescission, revocation, termination or the like of any Existing Agreements and would be decided, if at all, only by mandatory binding arbitration to conclude, with an award issued, not later than November 12, 2016;

5. The Met Water Parties acknowledge, consent, ratify and confirm (i) their release of any and all rights as to any “Groundwater Leases” for the “Term” as defined by the WTPA, (ii) their waiver of any right to claim rescission or other equitable reform to the Existing Agreements with respect to the “Groundwater Leases” and/or any other transaction documents relating to the “Project,” each as defined by the WTPA, (iii) their affirmation and support of (and agreement not to disturb)
the Existing Agreements with respect to the Groundwater Leases and/or any other transaction documents relating to the Project; and

6. The Met Water Parties and the Blue Water Parties will enter into Non-Disturbance Agreements (the “Non-Disturbance Agreements”) with the Garney Parties and the Project Company, which shall provide, among other terms and conditions, that Met Water Parties and Blue Water Parties each agree that they (i) waive any rights or remedies they have or might obtain or to which they might otherwise be entitled which could materially or adversely affect, (ii) that they shall undertake all acts necessary or expedient for, and (iii) shall refrain from any act or omission which could reasonably be expected to materially or adversely affect: (a) the execution and delivery of the Water Transmission and Purchase Agreement (“WTPA”) by the Project Company; (b) preservation of the validity, legality or enforceability of the WTPA against the Project Company or the other agreements or instrument entered into by the Project Company in connection with the transactions contemplated in the WTPA; (c) the ability of the Project Company to perform its obligations under the WTPA or under any such other agreement or instrument. And Met Water Parties and Blue Water Parties each agree, if ever in dispute, to bear the burden of proving by clear and convincing evidence that any such action, omission, right or remedy they commit or permit is not capable of so threatening.
## APPENDIX 22

### PROJECT COMPANY-RELATED LOANS

The loans listed in this Appendix 22 are those Project Company-Related Loans in excess of $5,000,000.

#### Trade Payables – BAML PPB Line

<table>
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<th>Description</th>
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<tr>
<td>Total Central Texas Regional WSC – PPB</td>
<td>$7,692,509.06</td>
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<td>Total AVR – PPB</td>
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#### Loans - Credit Entities

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<thead>
<tr>
<th>Credit Entity</th>
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<tbody>
<tr>
<td>Sumitomo Mitsui Banking Corp</td>
<td>$50,000,000.00</td>
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<tr>
<td>Banco Santander SA</td>
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<tr>
<td>Royal Bank of Canada</td>
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<tr>
<td>Societe Generale</td>
<td>$20,000,000.00</td>
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The $120,000,000 set forth herein (the “Bridge Loan”) was borrowed under the Bridge Loan Agreement, dated July 20, 2015, between the Project Company and Sumitomo Mitsui Banking Corporation, Banco Santander, S.A., Royal Bank of Canada, and Société Générale.

#### Interests - Credit Entities

<table>
<thead>
<tr>
<th>Credit Entity</th>
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<tbody>
<tr>
<td>Sumitomo Mitsui Banking Corp</td>
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</tr>
<tr>
<td>Banco Santander SA</td>
<td>$443,468.30</td>
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<td>Royal Bank of Canada</td>
<td>$443,468.30</td>
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<td>Societe Generale</td>
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#### Loans - Intercompany

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<tr>
<td>Abengoa Greenbridge</td>
<td>$67,178,684.95</td>
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<tr>
<td>Abengoa Water USA</td>
<td>$17,040,626.29</td>
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*The 67,178,684.95 set forth herein (the “Greenbridge Transaction”) was borrowed under the Reciprocal Credit Agreement, dated December 17, 2014, between the Project Company and Abengoa Greenbridge S.A. Unipersonal.

#### Interests - Intercompany

<table>
<thead>
<tr>
<th>Credit Entity</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Abengoa Greenbridge</td>
<td>$1,188,689.51</td>
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<tr>
<td>Abengoa Water USA</td>
<td>$278,838.05</td>
</tr>
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</table>
EXHIBIT B

RELEASE OF ABENGOA PARENT GUARANTY AGREEMENT
RELEASE OF ABENGOA GUARANTY AGREEMENT

THIS RELEASE AND TERMINATION of the ABENGOA GUARANTY AGREEMENT is made and dated as of May __, 2016, between Abengoa, S.A., a company organized and existing under the laws of the Kingdom of Spain (together with any permitted successors and assigns hereunder, the “Guarantor”), and the City of San Antonio, Texas (the “City”) acting by and through the San Antonio System Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”).

RECITALS

WHEREAS, the City, acting by and through SAWS, and Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”), entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 4, 2014 (the “Water Transmission and Purchase Agreement”);

WHEREAS, the Project Company is an indirect subsidiary of the Guarantor;

WHEREAS, the Water Transmission and Purchase Agreement required that the Guarantor provide a Guaranty Agreement, dated as of November 4, 2014, by which the Guarantor guarantees the performance by the Project Company of the Project Company’s Obligations under the Water Transmission and Purchase Agreement as set forth in this Guaranty Agreement;

WHEREAS, the Guarantor and Abengoa Water USA LLC, a limited liability company organized and existing under the laws of the State of Texas (“Seller”), a wholly owned subsidiary of the Guarantor, and Garney P3 LLC (“Purchaser”), Garney Companies, Inc., a Missouri corporation with a notice address of 1333 NW Vivion Road, Kansas City, MO 64118 (“Garney”), and Garney Holding Company, a Missouri corporation with a notice address of 1333 NW Vivion Road, Kansas City, MO 64118 (“Garney Parent”) entered into the Membership Interest and Purchase Agreement (“Membership Interest and Purchase Agreement”), dated as of March 21, 2016, pursuant to which the Seller will sell 80% of its interest in the Project Company to the Purchaser upon the satisfaction of certain conditions;

WHEREAS, one of those conditions to the closing of the sale of interests described in the Membership Interest and Purchase Agreement is the release by SAWS of Abengoa from the Guaranty Agreement; and

WHEREAS, Garney Parent and SAWS intend to execute a guaranty agreement by which Garney Parent guarantees the performance by the Project Company of the Project Company’s Obligations under the Water Transmission and Purchase Agreement (the “Garney Guaranty”).

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

SECTION 1. Termination and Release. SAWS irrevocably agrees that the Guaranty is hereby terminated, the Guarantor shall have no further obligations, duties or liabilities thereunder, and SAWS hereby releases, waives and forever discharges the Guarantor from its obligations, duties or liabilities of whatever nature arising under or in connection with
the Guaranty Agreement, and from all manner of actions, causes of action, suits, debts, damages, expenses, judgments, claims and demands whatsoever that SAWS has or may have against any of the foregoing entities or persons, arising out of or in any way connected to performance under the Guaranty Agreement.

SECTION 2. Effective Date. This Release Agreement shall take effect upon the delivery to SAWS of the executed Garney Guaranty.

SECTION 3. Counterparts. This Release Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each complete set of which, when so executed and delivered by all parties, shall be an original, but all such counterparts shall together constitute one and the same instrument.

SECTION 4. Headings. The headings in this Release Agreement are for reference only and do not affect the interpretation of this Release Agreement.

SECTION 5. Entire Agreement. This Release Agreement constitutes the sole and entire agreement of the parties to this Release Agreement with respect to the release of and termination of the Guaranty Agreement, and supersedes all prior and contemporaneous understandings, agreements, negotiations, representations and warranties, both written and oral, with respect to such subject matter. This Release Agreement may not be amended or modified except in writing executed by both parties.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the Guarantor has caused this Release Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

Abengoa, as Guarantor

By: ________________________________

Name: ______________________________

Title: ______________________________

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN ANTONIO ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

By: ________________________________

Name: Robert R. Puente

Title: President/CEO
GUARANTY AGREEMENT

from

GARNEY HOLDING COMPANY

to

THE CITY OF SAN ANTONIO, TEXAS
ACTING BY AND THROUGH
THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

Dated as of

May __, 2016
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<td>SEPARATE OBLIGATIONS; REINSTATEMENT</td>
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<td>3.9</td>
<td>TERM</td>
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## ARTICLE IV
GENERAL COVENANTS

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<td>A-9</td>
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<td>4.4</td>
<td>CONSENT TO JURISDICTION</td>
<td>A-9</td>
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<td>NOTICES</td>
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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of May __, 2016, between Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri (together with any permitted successors and assigns hereunder, the “Guarantor”), and the City of San Antonio, Texas (the “City”) acting by and through the San Antonio Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”).

RECITALS

The City acting by and through SAWS and Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”), have entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 4, 2014, as amended the date hereof and from time to time hereafter (the “Water Transmission and Purchase Agreement”), whereby the Project Company has agreed to produce, treat, make available and sell to SAWS potable water on a long term basis, all as more particularly described therein.

The Project Company is an indirect subsidiary of the Guarantor.

Performance by SAWS and the Project Company of their obligations under the Water Transmission and Purchase Agreement will result in a direct and substantial benefit to the Guarantor.

The City acting by and through SAWS will enter into an amendment to the Water Transmission and Purchase Agreement only if, concurrently with its execution and delivery by the Project Company, the Guarantor guarantees the performance by the Project Company of certain of the Project Company’s Obligations under the Water Transmission and Purchase Agreement as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the amendment to the Water Transmission and Purchase Agreement by the City acting by and through SAWS and in consideration thereof, the Guarantor agrees as follows:
ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Water Transmission and Purchase Agreement.

“Obligations” means the obligation of the Project Company to pay SAWS Reimbursable Costs, as set forth in Sections 4.5 (Project Company Convenience Termination Option During the Development and Financing Period) and 4.7 (SAWS Reimbursable Costs) of the Water Transmission and Purchase Agreement. No other payment or performance obligations of the Project Company under or in any manner related to the Water Transmission and Purchase Agreement are guaranteed hereby.

“Transaction Agreement” means any agreement entered into by the Project Company in connection with the transactions contemplated by the Water Transmission and Purchase Agreement, including the Water Transmission and Purchase Agreement, and any supplements thereto.

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

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

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

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

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

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, SAWS and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

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

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

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any
such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor’s liability beyond that expressly set forth herein.

(I) **Approvals.** All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) **Payments.** All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.
ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.
The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

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

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to SAWS, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Water Transmission and Purchase Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.
ARTICLE III
GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO SAWS. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to SAWS for the benefit of SAWS the full and prompt payment of the Obligations when due from the Project Company under the Water Transmission and Purchase Agreement (including all amendments and supplements thereto) to, or for the account of, SAWS, when the same shall become due and payable pursuant to this Guaranty. Notwithstanding the unconditional nature of the Guarantor’s obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.3 and Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF SAWS TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Project Company to pay or perform any Obligation guaranteed hereunder, SAWS shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Project Company or exhausting any other remedies against the Project Company which SAWS may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that SAWS: (1) file suit or proceed to obtain a personal judgment against the Project Company or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Project Company other than providing the Project Company with any notice of such payment or performance as may be required by the terms of the Water Transmission and Purchase Agreement or required to be given to the Project Company under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which SAWS is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Project Company or to the enforcement of remedies under the Water Transmission and Purchase Agreement. Upon any unexcused failure by the Project Company in the payment of any Obligation and the giving of such notice or demand, if any, to the Project Company and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding SAWS’ right to proceed directly against the Guarantor, SAWS (or any successor) shall not be entitled to more than a single full payment in respect of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. Subject to Section 3.9, the obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Project Company shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in this Section 3.3 or Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Project Company, SAWS or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent of the Guarantor):

(1) the extension or renewal of this Guaranty or the Water Transmission and Purchase Agreement up to the specified Terms of each agreement;
(2) any exercise or failure, omission or delay by SAWS in the exercise of any right, power or remedy conferred on SAWS with respect to this Guaranty or the Water Transmission and Purchase Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim; provided, however, no such exercise or failure, omission or delay shall result in an increase in the Obligations;

(3) any permitted transfer or assignment of rights or obligations under the Water Transmission and Purchase Agreement or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Project or in, to or under any of the Transaction Agreements;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of SAWS or any other person in any Transaction Agreement or in the Project;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement in accordance therewith;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Project Sites or the Project;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Project Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Section 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Project Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Project Company;

(9) any failure on the part of the Project Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of SAWS to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Project Company as a condition to the enforcement of Obligations pursuant to the Water Transmission and Purchase Agreement;
(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Project Company or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Project Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Project Company pursuant to the terms of the Water Transmission and Purchase Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Project Company’s rights, benefits, duties or obligations under the Water Transmission and Purchase Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Project Company’s Obligations, the Guarantor’s obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Project Company may have under the Water Transmission and Purchase Agreement or under Applicable Law (other than bankruptcy or insolvency of the Project Company and other than any defense which the Project Company has expressly waived in the Water Transmission and Purchase Agreement or the Guarantor has expressly waived in Section 3.5 hereof), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Project Company is permitted to assert pursuant to the Water Transmission and Purchase Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

(1) notice from SAWS of its acceptance of this Guaranty;

(2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given pursuant to the Water Transmission and Purchase Agreement or Applicable Law as a condition to the enforcement of the Obligations;

(3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Project Company required pursuant to the Water Transmission and Purchase Agreement or Applicable Law as a condition to the payment of any Obligation;

(4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in
similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(5) any right to require a proceeding first against the Project Company;

(6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Project Company) or security;

(7) any requirement that the Project Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by SAWS in the event of the receivership or bankruptcy of the Project Company; and

(9) all demands upon the Project Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5 and not in limitation of Section 3.3 or Section 3.4, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay SAWS on demand all Fees and Costs, incurred by or on behalf of SAWS in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that SAWS incurs in performing any of its obligations under the Water Transmission and Purchase Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Project Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Project Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of SAWS hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Project Company until the Project Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by SAWS. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Project Company is rescinded or must be otherwise restored by SAWS, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Water Transmission and Purchase Agreement, or any applicable Transaction Agreement or the Project Company’s enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until the earlier to occur of (1) the Financial Closing Date and (2) the date that all of the Obligations of the Project Company have been fully paid and performed and the Water Transmission and Purchase Agreement has otherwise terminated in
accordance with its terms, and upon the earlier to occur of (1) and (2), this Guaranty shall terminate and be of no further force or effect.
ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE. (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the Obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Texas, and (b) delivers to SAWS an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (2) any such transaction does not result in a change in the Guarantor’s financial condition that would materially and adversely affect the ability of the Guarantor to perform its obligations under this Guaranty Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT. Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of SAWS.

SECTION 4.3. QUALIFICATION IN TEXAS. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of Texas.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court, including without limitation any objection to the assertion by such court of personal jurisdiction over the Guarantor.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of SAWS and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of SAWS and the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by SAWS that nothing contained herein shall create any obligation of, or right to look to, any director, officer, employee
or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. (A) Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received, or delivery is refused, at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

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

San Antonio Water System
2800 US Highway 281 North
San Antonio, TX 78212
Attention: President/CEO
Fax No.: (210) 233-5268

with a copy to:

San Antonio Water System
2800 US Hwy 281 North
San Antonio, TX 78212
Attention: Vice President/General Counsel
Fax No.: (210) 233-4587
Email: nbelinsky@saws.org

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

Garney Holding Company
133 NW Vivion Road
Kansas City, MO 64118
Attention: Michael Heitmann/Chief Executive Officer
Telephone No.: (816) 746-7250
Fax No.: [FAX NUMBER]

with a copy to:

Husch Blackwell
4801 Main Street, Suite 1000
Kansas City, MO 64112
Attention: Charles Renner/Partner
Telephone No.: (816) 329-4702
Fax No.: (816) 983-8080

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

Garney Holding Company, as Guarantor

By: _________________________________

Name: ______________________________

Title: ______________________________

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN ANTONIO ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

By: __________________________________

Name: Robert R. Puente

Title: President/CEO
EXHIBIT D

PROJECT REAL PROPERTY CONVEYANCE AGREEMENT
VISTA RIDGE
PROJECT REAL PROPERTY CONVEYANCE AGREEMENT

This PROJECT REAL PROPERTY CONVEYANCE AGREEMENT (this “Project Real Property Conveyance Agreement”) is entered into on the __________ day of ______________, 2016 (the “Effective Date”), between the City of San Antonio, Texas, acting by and through the San Antonio Water System Board of Trustees, an agency of the City established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), and Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation (the “Water Supply Corporation”), and acknowledged, consented to and joined by Project Company.

RECATALS

WHEREAS, SAWS and the Project Company have entered into the WTPA (as hereinafter defined) for the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis, which WTPA provides, in part, that the Project Assets will be assigned and conveyed to SAWS (subject to certain exclusions as provided in Appendix 12 to the WTPA) upon the Termination Date or Expiration Date (as hereinafter defined);

WHEREAS, the Water Supply Corporation has been duly formed to participate with the Project Company in the development and operation of a regional water supply system, and has contracted with the Project Company to transport groundwater from certain groundwater wells to SAWS for use by SAWS as a portion of its water supply for the public;

WHEREAS, the Water Supply Corporation and the Project Company entered into a Water Transportation Agreement pursuant to Section 67.001 of the Texas Water Code (the “Transportation Agreement”) that requires the Water Supply Corporation, in part, to acquire certain easements and real property, and to construct infrastructure and other facilities necessary to enable the Water Supply Corporation to transport water supplied by the Project Company for use by SAWS in accordance with the provisions of the WTPA;

WHEREAS, as part of the consideration received by the Water Supply Corporation from the Project Company under the Transportation Agreement and as further inducement for SAWS to enter into the WTPA with Project Company, the Water Supply Corporation has agreed with the Project Company to convey to SAWS the Project Assets owned by the Water Supply Corporation on the earlier of the Expiration Date or Termination Date when the Project Company is required to assign and convey the Project Assets to SAWS under the WTPA; and

WHEREAS, SAWS has requested confirmation from the Water Supply Corporation that it has agreed with the Project Company in the Transportation Agreement to perform the acquisition, construction, transportation obligations under the WTPA and further assurances pursuant to Section 13.2 of the WTPA that the Water Supply Corporation will perform the conveyance obligations under the WTPA, and in further elaboration of such conveyance obligations, and the Water Supply Corporation has agreed to enter into this Project Real Property Conveyance Agreement with SAWS pursuant to Section 67.010 of the Texas Water Code.

NOW THEREFORE, in consideration of the mutual covenants herein, the sum of $100.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:
ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Recitals. The Recitals set forth above are fully incorporated into this Project Real Property Conveyance Agreement as if fully set forth herein.

1.2 Definitions. As used in this Project Real Property Conveyance Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are also defined within the body of this Project Real Property Conveyance Agreement. Defined terms not otherwise defined in this Project Real Property Conveyance Agreement shall have the meanings ascribed to them in the WTPA.

“Business Day” means a day other than a Saturday, Sunday or an official SAWS holiday.

“City” means the City of San Antonio, Texas, a body corporate, home rule municipality, and political subdivision of the State.

“Collection Pipelines” means the pipelines in the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells as further described in Appendix 1 (Description of the Project) of the WTPA.

“Collection Pipeline Rights-of-Way” means the 50 feet-wide rights-of-way in the Well Field Facilities Site within which the Collection Pipelines and roads to the Well Field Facilities are to be constructed.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment, or encumbrance of any kind with respect to the Project.

“Expiration Date” means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 50 years following the Commercial Operation Date as may be established pursuant to Section 10.7 (Extension of Term) of the WTPA.

“Financial Closing Date” has the meaning set forth in Section 4.3(A) (Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date) of the WTPA.

“High Service Pump Station” means the high service pump station, cooling tower, water treatment facilities, tanks and related and appurtenant facilities to be constructed on the High Service Pump Station Site for the collection, treatment and storage of Raw Groundwater prior to its conveyance as Product Water to the Transmission Pipeline System, as further described in Appendix 1 (Description of the Project) of the WTPA.

“High Service Pump Station Site” means the site of approximately 18 acres upon which the High Service Pump Station is to be constructed.

“Other Project Assets” has the meaning set forth in Section 12.4 of Appendix 12 (Project Assets and Liabilities) of the WTPA.
“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation and against which the Project Company or the Water Supply Corporation has established appropriate reserves in accordance with GAAP;

(2) Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company or the Water Supply Corporation to construct the Project or operate the Project;

(3) Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialman’s, mechanics’, workmen’s, repairmen’s, surveyor’s, housemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company or the Water Supply Corporation and against which the Project Company or the Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(4) Those items which (i) are set forth by lease, license, leases, easements, restrictions, rights-of-way, rights in the nature of easements or; (ii) any other Encumbrance arising (a) in the ordinary course of business during construction, or (b) in connection with worker’s compensation or unemployment insurance or social security or pension obligations, (iii) the Groundwater Leases, (iv) the Groundwater Lease Conveyance Agreement, (v) any liens or other encumbrances subordinate to the Water Transmittal and Purchase Agreement, (vi) any statutory landlord’s liens for the payment of rent under the terms of the Groundwater Leases, (vii) the sublease of the Groundwater Leases to the Project Company, or (viii) similar items which shall not individually or in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company or the Water Supply Corporation;

(5) Applicable zoning and building bylaws and ordinances, and municipal bylaws and regulations, and restrictive covenants which individually or in the aggregate do not materially and adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(6) Any Encumbrance (a) that does not materially interfere with the use or operation of the Project, with respect to which SAWS has given its consent, not to be unreasonably withheld, or (b) existing as of the Financial Closing Date on the land upon which the Groundwater Leases are situated arising by, through or under the respective Groundwater Lessor, save and except any unsubordinated liens;

(7) Undetermined Encumbrances and charges incidental to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company or the Water Supply Corporation has established appropriate reserves or bonded
against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(8) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company or the Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(9) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent are payable without penalty or are being contested in good faith; provided that, with respect to any taxes, assessments or other governmental charges which are being contested the Project Company or the Water Supply Corporation established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

(10) Exceptions to title, of record, listed on a Title Insurance Policy being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

(11) Encumbrances granted under any Senior Debt Financing Agreements, including the rights of the Senior Debt Creditors to secure obligations owed by the Water Supply Corporation to the Project Company;

(12) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder, of such indebtedness; and

(13) Encumbrances created as a result of a Change-in-Law.

“Project” means the Vista Ridge Regional Supply Project, consisting of (1) the acquisition by the Project Company of Raw Groundwater under the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, Project Improvements, and Other Project Assets, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System or the SAWS Interconnection Improvements.

“Project Assets” means the Project Real Property, Project Improvements and the Other Project Assets.

“Project Assets Purchase Price” means the applicable price payable by SAWS to the Project Company for the purchase of the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options) of the WTPA.

“Project Company” means Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.
“Project Company Portion of the Transmission Pipeline Terminus Site” has the meaning set forth in Section 4.1(B)(10)(conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site) of the WTPA.

“Project Company Storage Tank” means the Product Water holding structure, to be designed, constructed, tested and maintained by the Project Company on the Transmission Pipeline Terminus Site for the storage of Product Water prior to SAWS taking delivery, as more particularly described in the Design Requirements. The Project Company Storage Tank includes the pipe between the Project Company Storage Tank and the SAWS Storage Tanks up to the Product Water Delivery Point; the portion of such pipe between the Product Water Delivery Point and the SAWS Storage Tanks shall constitute part of the SAWS Storage Tanks. The Project Flow Meter and related totalizer shall be located on the Project Company Storage Tank side of the Product Water Delivery Point and constitute part of the Project Company Storage Tank.

“Project Improvements” means the Well Field Facilities and the Transmission Pipeline System.

“Project Real Property” means: (1) the Well Field Facilities, (2) the Well Field Facilities Site Real Property Interests, (3) the Project Company Portion of the Transmission Pipeline Terminus Site, (4) the Transmission Pipeline System, and (5) the Transmission Pipeline System Real Property Interests. Project Real Property also includes any other interest in real property acquired by the Project Company or the Water Supply Corporation that is necessary to the Project Real Property. Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater transportation Permit.

“Project Real Property Conveyance Agreement” means this Project Real Property Conveyance Agreement entered into by and between SAWS and the Water Supply Corporation.

“Project Site Conveyance Instruments” means the Groundwater Leases, the Transmission Pipeline Easements, and the instruments conveying the Well Field Facilities Site Real Property Interests to the Project Company or Water Supply Corporation.

“Project Sites” means the Well Field Facilities Site, the Transmission Pipeline Alignment and the Transmission Pipeline Terminus Site.

“Right-Of-Way Easement Form” means the form set forth in Transaction Form D (Right-Of-Way Easement Form) in the WTPA.

“SAWS” means the San Antonio Water System, an agency of the City established and created pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code.

“SAWS Distribution System” means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project.

“State” means the State of Texas.
“TCEQ” means the Texas Commission on Environmental Quality, or any predecessor or successor agency.

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term) of the WTPA.

“Termination Date” means the date of termination of the WTPA provided in Sections 21.3, 22.1(D), 23.1, or 23.2 (Termination Date) of that agreement.

“Transaction Form” means any of the Transaction Forms appended to the WTPA or to this Project Real Property Conveyance Agreement and identified as such in the Table of Contents.

“Transmission Pipeline” means the pipeline, constituting part of the Project, for the conveyance of Product Water from the Well Field Facilities to the Project Company Storage Tank, as more particularly described in Appendix 1 (Description of the Project) and Appendix 3 (Technical Specifications) of the WTPA. The Transmission Pipeline includes Transmission Pipeline Pumping Stations.

“Transmission Pipeline Alignment” means the real property over or within which the Transmission Pipeline is to be constructed.

“Transmission Pipeline Easements” means the perpetual rights-of-way, easements, leases or other instruments necessary to construct, operate, maintain, repair and replace the Transmission Pipeline System in the Transmission Pipeline Alignment.

“Transmission Pipeline Pumping Station” means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project) of the WTPA, including, but not limited to, the High Service Pump Station.

“Transmission Pipeline System” means the Transmission Pipeline and the Project Company Storage Tank.

“Transmission Pipeline System Real Property Interests” means (1) a fee simple absolute in the Project Company Porion of the Transmission Pipeline Terminus Site, (2) permanent easements for the Transmission Pipeline Alignment, (3) a fee simple absolute interest in the sites for the Transmission Pipeline Pumping Stations, and (4) a fee simple absolute interest in the High Service Pump Station Site.

“Transmission Pipeline Terminus Site” means the parcel of approximately 20 acres located in the City at the terminus of the Transmission Pipeline on which the Project Company Storage Tank is to be constructed as part of the Project and SAWS Storage Tanks are to be constructed as part of the SAWS Interconnection Improvements, as described in Appendix 1 (Description of the Project) of the WTPA.

“Water Supply Corporation” means the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized pursuant to Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code, and its permitted successors and assigns.

“Water Supply Corporation Other Project Assets” means the Other Project Assets owned by the Water Supply Corporation.
“Water Supply Corporation Project Improvements” means the Project Improvements owned by the Water Supply Corporation, including without limitation, Water Supply Corporation Well Field Facilities and the Transmission Pipeline System.


“Water Supply Corporation Project Real Property” means the Project Real Property owned by the Water Supply Corporation, including without limitation, (1) the Water Supply Corporation Well Field Facilities Site Real Property Interests, and (2) the Transmission Pipeline System Real Property Interests. Water Supply Corporation Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

“Water Supply Corporation Well Field Facilities” means the facilities and roads on the Well Field Facilities Site owned by the Water Supply Corporation for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Collection Pipelines and the High Service Pump Station.

“Water Supply Corporation Well Field Facilities Sites” means the real property owned by the Water Supply Corporation upon which the Water Supply Corporation Well Field Facilities are to be constructed, within the area of approximately 50,000 acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project) of the WTPA.

“Water Supply Corporation Well Field Facilities Site Real Property Interests” means (1) a fee simple absolute interest in the Well Sites owned by the Water Supply Corporation (if any), (2) permanent easements for the Collection Pipelines Right-of-Way, and (3) a fee simple absolute interest in the High Service Pump Station Site.

“Wells” means wells, casings, related pumping equipment and appurtenant facilities to be constructed in the Well Field for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project) of the WTPA.

“Well Sites” means each of the sites of approximately two-acres upon which the Wells are to be constructed, owned by the Water Supply Corporation (if any).

“WTPA” means the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement executed on November 4, 2014 (as amended effective on May ___, 2016), by and between SAWWS and Abengoa Vista Ridge, LLC and includes all attached Transaction Forms and Appendices as it exists on the Effective Date hereof.

1.3 **Interpretation.** This Project Real Property Conveyance Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Real Property Conveyance Agreement otherwise require.
(1.) **Plurality.** Words importing the singular number mean and include the plural number and vice versa.

(2.) **Persons.** Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited liability companies, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3.) **Headings.** The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Project Real Property Conveyance Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4.) **References Hereto.** The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Project Real Property Conveyance Agreement.

(5.) **References to Days and Time of Day.** All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard Time or Central Daylight Saving time, as the case may be.

(6.) **References to Including.** The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(7.) **References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(8.) **References to Business Days.** If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(9.) **References to All Reasonable Efforts.** The expression “commercially reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(10.) **Entire Agreement.** This Project Real Property Conveyance Agreement contains the entire agreement, as between SAWS and the Water Supply Corporation, with respect to the transactions contemplated hereby and thereby. There are no other agreements, oral or written, prior or contemporaneous, as between the Water Supply Corporation and SAWS.
(11.) Assignment. This Project Real Property Conveyance Agreement shall not be assigned, hypothecated or transferred in any manner whatsoever, directly or indirectly, by the Water Supply Corporation without the prior written consent of SAWS, except to secure any Permitted Debt or indebtedness owed by the Water Supply Corporation to the Project Company.

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

(13.) Governing Law. This Project Real Property Conveyance Agreement shall be governed by and construed in accordance with the applicable laws of the State of Texas ("Applicable Law").

(14.) Severability. Each provision of this Project Real Property Conveyance Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Real Property Conveyance Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Real Property Conveyance Agreement, unless such continued effectiveness, as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Project Real Property Conveyance Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this as nearly as possible to its original intent and effect.

(15.) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Real Property Conveyance Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(16.) Delivery of Documents in Digital Format. In this Project Real Property Conveyance Agreement, the Water Supply Corporation may be obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Water Supply Corporation agrees that all such documents shall be submitted to SAWS both in printed form (in the number of copies indicated) and, at SAWS’ request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Project Real Property Conveyance Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(17.) Acting Reasonably and in Good Faith: Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its “discretion” by the express terms hereof. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Project Real Property Conveyance Agreement. When a party does not have “discretion” it means that the party shall act reasonably.
ARTICLE 2

REPRESENTATIONS AND WARRANTIES.

2.1   **Representations and Warranties:** The Water Supply Corporation hereby represents and warrants to the City and SAWS, as follows:

   (1.)   The Water Supply Corporation is a Texas non-profit water supply corporation and was duly formed on September 25, 2014, pursuant to Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code ("BOC") and is a validly existing Texas non-profit water supply corporation in good standing under the laws of the State of Texas. The Water Supply Corporation has the authority to do business in the State of Texas, with the full legal right, power and authority to undertake, carry out and perform all of the obligations anticipated to be undertaken, carried out and performed by the Water Supply Corporation as described in and provided under this Project Real Property Conveyance Agreement and under the applicable provisions of the WTPA.

   (2.)   The Restated Certificate of Formation with Amendments of the Water Supply Corporation in the form attached hereto as Schedule A, and the bylaws of the Water Supply Corporation, in the form attached hereto as Schedule B, all in the form thereof approved by SAWS, constitute the "Governing Documents" of the Water Supply Corporation as of the Effective Date of this Project Real Property Conveyance Agreement, and there are no other documents governing the formation, organization, operation, and dissolution of the Water Supply Corporation.

   (3.)   The Water Supply Corporation is governed by a board of directors duly designated or elected in accordance with its Governing Documents.

   (4.)   The Water Supply Corporation, acting by and through its board of directors, has the authority to enter into this Project Real Property Conveyance Agreement.

   (5.)   This Project Real Property Conveyance Agreement has been duly authorized, executed and delivered in all necessary action of the Board of Directors of the Water Supply Corporation and constitutes a legal, valid and binding obligation of the Water Supply Corporation, enforceable against the Water Supply Corporation in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors’ rights from time to time in effect and equitable principles of general application.

   (6.)   The Water Supply Corporation may encumber any project or improvement, and encumber any income, fees, rents and other charges derived from the operation of the Project or, as well as issue bonds, notes or warrants to secure payment of funds received in accordance with the provisions of Section 67.010 of the Texas Water Code.

   (7.)   The Water Supply Corporation is authorized and has full power and authority, under Texas law, to acquire, by purchase or other lawful means, and to own the Water Supply Corporation Project Real Property, and to acquire property by eminent domain in accordance with the provisions of Section 49.222 of the Texas Water Code and Chapter 21 of the Texas Property Code.

   (8.)   The Water Supply Corporation has the full power and authority to mortgage and pledge the Water Supply Corporation Project Real Property and Water Supply Corporation Other Project Assets as security for the Senior Debt, Water Transportation Agreement and Project Construction Loan


(9.) The Water Supply Corporation has the full power and authority to assign and convey the Water Supply Corporation Project Assets to SAWS upon the Expiration Date or upon the Termination Date of the WTPA, as applicable.

(10.) Based on the Water Supply Corporation’s status as a not-for-profit water supply corporation and owner of the Water Supply Corporation Project Real Property, no ad valorem property tax will be payable on the Water Supply Corporation Project Real Property and Water Supply Corporation Project Improvements thereon because conforming dissolution provisions are included in the Water Supply Corporation’s Governing Documents in accordance with the provisions of Texas Tax Code Section 11.30.

(11.) Subject to (i) obtaining a certification from the TCEQ or SAWS pursuant to Texas Tax Code Section 151.355(5) or 151.355(6), respectively, or (ii) to obtaining a private letter ruling from the Texas Comptroller regarding qualification for exemption under Texas Tax Code Section 151.311, no Texas state sales tax will be payable by or on behalf of the Water Supply Corporation on the cost of constructing the Water Supply Corporation Project Improvements. Nothing in this paragraph shall be construed to obligate SAWS to make such tax certifications.

(12.) Neither the execution nor delivery by the Water Supply Corporation of this Project Real Property Conveyance Agreement nor the performance by the Water Supply Corporation of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Water Supply Corporation of the terms or conditions hereof:

(a) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of formation applicable to the Water Supply Corporation; or

(b) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Water Supply Corporation is a party or by which the Water Supply Corporation or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(13.) No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Real Property Conveyance Agreement by the Water Supply Corporation except as such have been duly obtained or made.

2.2 Breach of Representation or Warranty. If, during the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation becomes aware of any material change or inaccuracy in any of the matters referred to in the representations and warranties of the Water Supply Corporation under this Project Real Property Conveyance Agreement, then the Water Supply Corporation will have the same obligation to notify SAWS of the event, as the Project Company has to notify SAWS under the WTPA with regard to the Project Company’s representations and warranties. In the event that (a) the Water Supply Corporation notifies SAWS of such a change or inaccuracy or (b) SAWS discovers that any representation or warranty of Water Supply Corporation made in this Project Real Property Conveyance Agreement has changed or is inaccurate and notifies Water Supply Corporation of the same, and such change or inaccuracy would constitute a remediable breach under Section 20.1 (b)(5) of the WTPA, then the Water Supply Corporation shall have all of the rights to notice and cure, and SAWS shall have all of the remedies as are provided in Section 20.3 of the WTPA.
ARTICLE 3

PROJECT REAL PROPERTY OBLIGATIONS DURING THE TERM.

3.1 Acquisition of Transmission Pipeline System Real Property Interests. The Project Company has made an election under the WTPA that the Water Supply Corporation (rather than Project Company) shall acquire the Project Real Property Interests, including the Transmission Pipeline System Real Property Interests, in accordance with the terms of the WTPA. On or before the Financial Closing Date, and as a Financial Closing Date Condition, the Water Supply Corporation shall acquire the Transmission Pipeline System Real Property Interests (or binding and enforceable options to acquire such Transmission Pipeline System Real Property Interests) sufficient to commence construction of substantially all of the Transmission Pipeline System. In acquiring easements, the Water Supply Corporation shall comply with Section 26.1(A) (Right-of-Way Easements). For any other parcels, the Water Supply Corporation shall (except as SAWS may otherwise approve, acting reasonably) have acquired a valid right-of-way entry to construct, shall have initiated an eminent domain proceeding, or shall have obtained a right of entry if the acquisition of such parcel is not material to the completion of the Transmission Pipeline System within the Project Schedule. As between the Project Company and the Water Supply Corporation, the Water Supply Corporation shall be the sole entity responsible for acquiring the Transmission Pipeline Easements. The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire, indefeasibly, fee simple absolute title in the Project Company Portion of the Transmission Pipeline Terminal Site, and Transmission Pipeline Pumping Stations pursuant to and in accordance with the provisions of the WTPA. Nothing contained herein shall be construed to relieve the Project Company from its obligations to SAWS under the WTPA to cause the acquisition of the Project Real Property to occur under the time frames, terms and conditions set forth in the WTPA nor shall any provision of this Agreement be construed to relieve the Project Company from any other obligations under the WTPA, except to the extent such obligations have been modified, clarified or extrapolated in more detail in this Agreement (but not to the extent any obligations have been delegated to the Water Supply Corporation pursuant to the Project Company’s election under the WTPA).

3.2 Terms of Transmission Pipeline Easements. The Water Supply Corporation has agreed under the terms of the Transportation Agreement, and hereby agrees to SAWS, to acquire Transmission Pipeline Easements pursuant to and in accordance with the provisions of the WTPA.

3.3 Acquisition of Well Field Facilities Site Real Property Interests. Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation shall acquire the Well Field Facilities Site Real Property Interests pursuant to and in accordance terms of the WTPA. Under the terms of the Transportation Agreement, the Water Supply Corporation has agreed that on or before the Financial Closing Date, and as a Financial Closing Date Condition, the Water Supply Corporation shall acquire the Water Supply Corporation Well Field Facilities Site Real Property Interests, including, but not limited to: (i) fee simple absolute title to all Well Sites acquired by the Water Supply Corporation, if any, (ii) fee simple absolute title to the High Service Pump Station Site; and (iii) permanent easements for the Collection Pipeline Rights-of-Way from Collection Pipeline Rights-of-Way grantors conforming to Section 3.4 below.

The Water Supply Corporation has agreed under the Transportation Agreement, and hereby agrees to SAWS, to acquire indefeasible, fee simple absolute title in all Well Sites that it acquires and in
the High Service Pump Station Site pursuant to and in accordance with the terms of the WTPA.

3.4 Terms of Easements for Collection Pipelines. Under the terms of the Transportation Agreement, and as further hereby agreed to by the Water Supply Corporation to SAWS, the Water Supply Corporation has agreed, and hereby agrees to SAWS, to acquire easements for the Collection Pipeline Rights of Way, pursuant to and in accordance with the WTPA. Without limiting the foregoing, all easements for the Collection Pipeline Rights-of-Way shall be fully-assignable to SAWS, without the further consent or joinder of the grantor thereof as more particularly set forth in Article 4 below, and shall not contain any indemnity provisions that would apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements.

3.5 Acquisition of Other Project Real Property. Under the Transportation Agreement, the Water Supply Corporation has agreed, and hereby agrees to SAWS, to acquire any other Project Real Property Interests required to be acquired pursuant to and in accordance with the WTPA. The vesting instruments for such other Project Real Property Interests shall not contain any indemnity provisions that would apply to SAWS, if acquired in fee simple shall be acquired in fee simple absolute, and shall be fully-assignable to SAWS, without the further consent or joinder of the grantor thereof.

3.6 SAWS' Rights to Tie-In to Transmission Pipeline. The Water Supply Corporation shall grant and convey to SAWS from time to time during the Term of the WTPA, such permanent easement, temporary construction easements and other rights as necessary to allow for the interconnection of pipelines into the Transmission Pipeline as necessary to allow SAWS to convey Product Water to any other person, in accordance with and as necessary to effectuate the intent of and purposes of Section 26.5 (Opportunities Expressly Reserved) of the WTPA, all of the rights of SAWS to interconnect with the pipelines into the Transmission Pipeline, as set out in this Section shall be subject to all of the obligations and limitations relating to SAWS undertaking on the Project Company or Water Supply Corporation undertaking any such interconnection activities, set out in the WTPA, including but not limited to those set out in Section 12.3 in the WTPA or a SAWS-Requested Capital Modification.

3.7 Covenant Against Sale, Encumbrance of the Water Supply Corporation Project Assets. During the Term of the WTPA, the Water Supply Corporation shall not (i) sell, assign, convey, move or otherwise transfer its ownership or other interests in the Water Supply Corporation Project Assets without the consent of SAWS given in its sole discretion (except in the event of a final, non-appealable judgment of condemnation by an unrelated third-party entity with the power of eminent domain; provided, however, that Water Supply Corporation shall use good faith and diligent efforts to contest such condemnation and/or harmonize the interests of the Water Supply Corporation Project Assets with the condemned interest such that both interests may co-exist), or (ii) lease, sublease or license any interest in the Water Supply Corporation Project Assets in a manner which would materially and adversely affect the operations of the Project or SAWS' rights to obtain a conveyance of the Water Supply Corporation Project Assets in the manner set out in Article 4 below. During the term of this Project Real Property Conveyance Agreement, there shall be no Encumbrances registered or recorded on the Water Supply Corporation Project Assets which are in violation of the terms of the WTPA. Notwithstanding the above, the Water Supply Corporation shall have the right to mortgage or pledge any Water Supply Corporation Project Assets, provided that such mortgage or pledge is allowed (as to the Water Supply Corporation or the Project Assets) under the terms of the WTPA, or under Section 3.12 of this Project Real Property Conveyance Agreement.

3.8 Single-Purpose Entity Covenant. During the Term of the WTPA, the Water Supply Corporation shall not engage in any other business or activity other than the businesses or activities conducted for the purposes of the Project without the consent of SAWS, given (or withheld) in its sole discretion.
3.9 Independence of Water Supply Corporation. During the Term of the WTPA, the Water Supply Corporation shall not take or cause to be taken, or omit to take or omit to cause to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, the execution by the Water Supply Corporation (of the Construction Management Agreement, the Water Transportation Agreement, the Project Construction Loan Agreement, the EPC Agreement, or the Operating Service Agreement), or the exercise or failure to exercise of any of its rights or powers under any such agreement), the effect of which, individually or as a whole, is or would be to cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, this Project Real Property Conveyance Agreement, or the WTPA.

3.10 Governing Documents. During the Term of the WTPA, the Water Supply Corporation (i) shall provide to SAWS advanced written notice of all modifications to its Governing Documents (sufficient for SAWS to make a determination of whether or not SAWS’ consent pursuant to subclause (ii) below is required), and (ii) shall not modify its Governing Documents, without the prior written consent of SAWS, given (or withheld) in its sole discretion, in a manner that will change its purpose, or adversely affect SAWS’ rights under the terms of this Project Real Property Conveyance Agreement, the WTPA or any Governing Documents. The above notwithstanding, to the extent SAWS determines that any such modification to the Governing Documents does not change the purpose of the Water Supply Corporation or adversely affect SAWS’ rights under the terms of this Project Real Property Conveyance Agreement, the WTPA or any Governing Documents, SAWS will not unreasonably withhold its consent. If the Water Supply Corporation makes a written request for consent from SAWS hereunder and SAWS does not raise an objection to the matter for which the consent is requested within twenty (20) days after receipt of the written request for the consent by SAWS, the consent shall be deemed given by SAWS.

3.11 Performance of Contract Obligations. Under the terms of the Transportation Agreement, the Water Supply Corporation has agreed to: (i) operate and maintain all of the Water Supply Corporation Project Assets, (ii) transport the Product Water, and (iii) maintain Required Insurance, all in compliance with the provisions of the WTPA. The foregoing responsibilities may be further delegated by the Water Supply Corporation to the Project Company or other entity pursuant to the terms of the Transportation Agreement and the WTPA; provided, however, that the Water Supply Corporation shall remain responsible for the performance of such responsibilities. In addition, the Water Supply Corporation shall indemnify SAWS with respect to the Water Supply Corporation Project Assets owned by it in the same manner and upon the same terms, provisions and conditions as the Project Company is obligated to indemnify SAWS as set forth in Article 25 (Indemnification) of the WTPA. Notwithstanding anything contained in this Project Real Property Conveyance Agreement to the contrary, SAWS’ remedies with respect to the Water Supply Corporation’s indemnity shall be limited to those afforded to it under the terms of Article 25 of the WTPA, and shall be exercisable against the Water Supply Corporation only if the Project Company has also failed to respond to the applicable claim or otherwise cause the Contract Obligations to have been met.

3.12 Obligation to Mortgage.

(1) During the Term of the WTPA, the Water Supply Corporation shall provide to Project Company a deed of trust mortgage establishing a lien on the Water Supply Corporation Project Assets, securing the Water Supply Corporation’s payment obligations under the Water Transportation Agreement (as defined in the WTPA) and the Water Supply Corporation’s performance obligations with respect to the conveyance of the Water Supply Corporation Project Assets, upon dissolution, which such deed of
trust mortgage shall be subordinate to the mortgage securing the Senior Debt, and subordinate to the Standby Deed of Trust (hereinafter defined).

(2) In addition, on or before the Financial Closing Date, the Water Supply Corporation shall provide a deed of trust mortgage to SAWS (or, if required by the Creditors Remedies Agreement, to the Project Company with a collateral assignment to SAWS), establishing a lien on the Water Supply Corporation Project Assets, as an accommodating pledge of the Water Supply Corporation Project Assets (the "Standby Deed of Trust") to further assure the Water Supply Corporation's obligations to convey the Water Supply Corporation Project Assets to SAWS as required in this Real Property Conveyance Agreement. The Standby Deed of Trust shall also provide that in the event the Project Company and the Water Supply Corporation fail to timely convey the Water Supply Corporation Project Assets in accordance with the WTPA and this Agreement then SAWS shall have such step-in rights, cure rights and other interim rights as are reasonably necessary to allow SAWS to protect the Water Supply Corporation Project Assets and SAWS' interests under the WTPA prior to any conveyance of the Water Supply Corporation Project Assets. The Standby Deed of Trust shall provide that the beneficiary's right to exercise its non-judicial right to foreclose on the Water Supply Corporation Project Assets under the terms of the Standby Deed of Trust would arise only at such time as:

(a) the Water Supply Corporation Project Assets are required to be conveyed to SAWS under the terms of the WTPA, and SAWS shall have tendered to, or on behalf of, the Project Company all sums payable to the Project Company (if any) and the Senior Debt Creditors under the WTPA in connection with such conveyance;

(b) SAWS has filed a suit against the Water Supply Corporation and the Project Company for breach of the provisions of this Agreement and the WTPA, respectively, requiring such conveyance in which suit the Project Company and Water Supply Corporation have each been properly served at least thirty (30) days prior to any exercise of its non-judicial right to foreclose (the "Conveyance Litigation"), provided, however, that if a Project Company Bankruptcy-Related Event shall have occurred then upon SAWS' submission to the jurisdiction of the applicable court and admission of a breach as described above in a manner sufficient to preserve the court's jurisdiction over a Project Company claim pursuant to subsection 6 below, the Conveyance Litigation shall be deemed to have been filed; and

(c) the Project Company or Water Supply Company have failed to timely convey (or cause the conveyance of) the Water Supply Corporation Project Assets to SAWS in accordance with the WTPA.

(3) The Stand-By Deed of Trust shall:

(a) secure liquidated damages for failure to convey the Water Supply Corporation Project Assets in an amount equal to (i) if such foreclosure occurs prior to the earlier of the Commercial Operations Date (as defined in the WTPA) or the end of thirty six (36) months from the Effective Date, a sum equal to the following: $225,000,000 if such foreclosure occurs between the Effective Date and twelve (12) months thereafter; $450,000,000 if such foreclosure occurs following twelve (12) months from the Effective Date through twenty four (24) months from the Effective Date; and $675,000,000 is such foreclosure occurs following twenty four (24) months from the Effective Date through thirty six (36) months from the Effective Date, or (ii) if such foreclosure occurs after the earlier of the Commercial Operations Date or thirty six (36) months from the Effective Date, the amount of $900,000,000, which amount shall be increased by the increase in CPI from the earlier of such two dates to the date of foreclosure; and
(b) provide that recourse to the Water Supply Company and the Project Company for payment of the amount secured and any damages for a failure to convey shall be limited to the recovery of the Water Supply Corporation Project Assets obtained pursuant to such foreclosure and no further recovery or damages shall be obtainable from the Water Supply Company or the Project Company for the failure to so convey, provided, however, that such limitation shall not apply to or affect such other claims as SAWS may have under the WTPA or this Agreement relating to alleged breaches or defaults thereunder other than a failure to convey Water Supply Corporation Project Assets and SAWS shall be entitled to assert any such claims in the Conveyance Litigation or otherwise in its sole discretion without any such limitation on its remedies or its recourse for the recovery of damages.

(4) The parties agree that the liquidated damage amounts to be secured by the Standby Deed of Trust are a reasonable estimate, solely for purposes of the Standby Deed of Trust, of SAWS' actual damages for failure to timely the convey the Water Supply Corporation Project Assets as required under the WTPA and this Agreement, given the difficulty, inconvenience and uncertainty of ascertaining actual damages, and such liquidated damage amounts are not and shall not be construed as a penalty.

(5) In the event the Water Supply Corporation or the Project Company disputes that the Water Supply Corporation Project Assets were required to be conveyed to SAWS as asserted in the Conveyance Litigation then the Water Supply Corporation and the Project Company reserve their rights in respect of such dispute and assert a claim under the terms of this Agreement or the WTPA, as the case may be, against SAWS in the Conveyance Litigation and which does hereby preserve their claims in respect of such dispute and to litigate such claims.

(6) In the event the Water Supply Corporation or the Project Company obtains a final unappealable judgment determining that the Water Supply Corporation Project Assets were not required to be conveyed to SAWS under the terms of the WTPA at the time of the foreclosure, then such foreclosure shall be deemed to have been a purchase by SAWS pursuant to Section 23.1 of the WTPA, and the Project Company shall be entitled to its sole and exclusive remedy and damages to (i) the payment of the difference between (a) the amount payable to the Project Company pursuant to Section 23.1(B) of the WTPA (with the Project Asset Purchase Price computed as of the date of the foreclosure) and (B) any amounts previously payable by SAWS to the Project Company in respect of the foreclosure (including any amounts paid on the Project Company's behalf in respect of the Senior Debt) plus (ii) interest on the amount in clause (i) calculated from the date of the foreclosure to the date of payment at the then-applicable statutory rate or pre-judgment interest. In no event shall the Water Supply Corporation be entitled to any further or additional claim in connection with its conveyance of the Water Supply Corporation Project Assets and upon payment of the amount set forth above to the Project Company all liability of SAWS to the Project Company and the Water Supply Corporation in respect of the conveyance shall be discharged.

(7) The Standby Deed of Trust shall survive foreclosure of any lien securing the Senior Debt but shall remain subject to payment of the Senior Debt. The applicable provisions of the Standby Deed of Trust and the priority of the lien created thereunder and of the exercise of the parties' respective step-in rights and other interim remedies will be more specifically addressed in that certain Creditors' Remedies Agreement to be executed by and between the Project Company, SAWS and the Senior Debt Creditors.

(8) The parties agree that under the WTPA SAWS is entitled at any time to conveyance of the Project Assets subject only to compliance with the procedural requirements of the WTPA and payment of the amounts provided for thereunder, which amounts are to be determined solely as provided in the WTPA. Accordingly, the parties further agree that any disputes relating to any conveyance are ultimately disputes over the proper amount to be paid by SAWS and that the purpose of any Conveyance
Litigation is to afford to the Project Company and the Water Supply Corporation (as their respective interests may appear) the right to litigate any such monetary dispute while affording to SAWS the ability to expeditiously obtain ownership and possession of the Project Assets in accordance with the terms of this Agreement by foreclosing the Standby Deed of Trust notwithstanding any such ongoing dispute. In the event the Project Company or the Water Supply Corporation seeks an injunction or other judicial action to prevent foreclosure of the Standby Deed of Trust or opposes any application for a lifting of any stay in a Project Company Bankruptcy-Related Event then the limitation on recourse in Subsection 3(b) above against the party taking such action shall be deemed to have been waived to the extent of additional damages, costs and expenses incurred by SAWS and resulting from such actions by the Project Company or the Water Supply Corporation, including but not limited to costs and expenses incurred in exercising any step-in rights or other interim remedies.

3.13 Reporting Requirements. On or before the Financial Closing Date, the Water Supply Corporation shall provide to SAWS (i) a report of all Project Assets acquired or held by the Water Supply Corporation and copies of the contracts, agreements, and modifications or amendments thereto entered into by the Water Supply Corporation with respect to the Project and (ii) copies of all documents in the Water Supply Corporation’s possession which are of a material nature to the use and operation of that tract of land for the Project, including but not limited to title policies, surveys, soils reports; feasibility studies; environmental reports, studies, assessment; engineering studies, all of which shall be delivered without representation or warranty as to the content set out therein. After the financial Closing Date, the Water Supply Corporation shall provide SAWS with a report on all of the Project Assets acquired by the Water Supply Company for which acquisition was pending but not completed on the Financial Closing Date. Thereafter, during the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation will report to SAWS the acquisition of any Project Assets, which report shall be due to SAWS within 90 days after acquisition of such Project Assets. At the request of the SAWS, the Water Supply Corporation shall provide copies of any contracts or agreements, and modifications and amendments thereto, with respect to the Project and copies of all documents described in (ii) above to the extent not previously provided to SAWS. Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall provide SAWS with not less than seventy-two (72) hours’ advanced written notice of the time and location of the meetings of its Board of Directors, and, promptly following any such meetings, shall provide to SAWS copies of all resolutions or other indicia of Board action or consent (and upon request, all contracts, agreements or other documents approved or authorized at such Board meetings). Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall annually provide to SAWS an audited financial statement for the Water Supply Corporation. Beginning with the financial audit for 2015. Additionally, throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall promptly provide written notice to SAWS of all events which, in Water Supply Corporation’s reasonable determination, have a materially adverse effect on Water Supply Corporation’s ability to perform its obligations under this Agreement, or which, through the passage of time, would have such materially adverse effect, to the same extent that the Project Company is required to do so under the WTPA. Throughout the term of this Project Real Property Conveyance Agreement, the Water Supply Corporation shall also provide to SAWS copies of such additional information as reasonably requested by SAWS to enable SAWS to monitor the Water Supply Corporation’s compliance with the terms, provisions and conditions of this Real Property Conveyance Agreement. Except as may be required by Applicable Law, SAWS agrees not to disclose information provided to SAWS by the Water Supply Corporation and specifically identified by written notation as “Confidential and Proprietary” at the time provided to SAWS. If a request is received by SAWS for such Water Supply Corporation information, SAWS shall request an opinion from the Texas Attorney General and promptly provide the Water Supply Corporation with notice pursuant to Texas Government Code Section 552.305 so that the Water Supply Corporation at its own expense may present its legal position regarding confidentiality of its information to the Texas Attorney General. If a decision of the Attorney General is received indicating that the requested
information is required by law to be released, SAWS will refrain from releasing the information for seven (7) calendar days to afford the Water Supply Corporation the opportunity to file suit pursuant to Section 552.325 of the Texas Government Code, and will not release the requested information during the pendency of such litigation, provided however, that SAWS, by this Real Property Conveyance Agreement, will not be precluded from complying with any order of the court of competent jurisdiction.

3.14 Notice of Defaults. In the event of a material default by any party under the Construction Management Agreement, the Water Transportation Agreement, the Project Construction Loan Agreement, or any other agreement between Water Supply Corporation and Project Company, including, without limitation, the EPC Agreement and/or the Operating Service Agreement, or any other agreement to which the Water Supply Corporation is a party, the Water Supply Corporation shall notify SAWS of the occurrence, and details, of any such default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a material default, in either case promptly on the Water Supply Corporation becoming aware of its occurrence, to the same extent that the Project Company is required to provide this information under the terms of the WTPA. It shall not be a violation of this Section if the Water Supply Corporation fails to provide this notice, however, if SAWS has received notice of the default from the Project Company or another person.

3.15 Uncontrollable Circumstances. In the event that the Water Supply Corporation is unable to fulfill its obligations, in whole or in part, as described in this Real Property Conveyance Agreement, including those described in Sections 3.1 through 3.6 and/or 3.1, but expressly excluding, except as otherwise expressly provided in Section 4.8 hereinbelow, all obligations under Article 4 of this Real Property Conveyance Agreement, due to Uncontrollable Circumstances (as defined in the WTPA, but as if written to apply to the Water Supply Corporation rather than the Project Company), then the Water Supply Corporation shall have the same rights and defenses are provided to the Project Company in the WTPA under Article 16 (Uncontrollable Circumstances of the WTPA, as if written to apply to the Water Supply Corporation rather than the Project Company).

CHAPTER 4

ASSIGNMENT AND CONVEYANCE OF THE WATER SUPPLY CORPORATION PROJECT ASSETS

4.1 Obligation to Assign and Convey. The Water Supply Corporation shall assign and convey to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in the Water Supply Corporation Project Assets when, and to the same extent, that the Project Company is obligated to convey or cause to be conveyed the Project Assets to SAWS under the WTPA upon either (i) the termination date as provided in Section 22.1(A) of the WTPA resulting from the exercise by SAWS of its rights under Article 23 (SAWS Project Assets Purchase Options) of the WTPA, (ii) the termination date as provided in Section 22.1(B) in the event that the Project Company terminates the WTPA for cause prior to the Expiration Date, and requires purchase of the Project Assets by SAWS as provided in Article 21 of the WTPA, or (iii) the Expiration Date of the WTPA. Such assignment and conveyance shall assign and convey to SAWS the Water Supply Corporation Project Real Property and the Water Supply Corporation Other Project Assets, free and clear of all Encumbrances, other than (a) the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances and (b) such additional exceptions to title, of record, listed in a Title Insurance Policy or Title Commitment, being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used (collectively, the “Permitted Encumbrances on Conveyance”). Notwithstanding the foregoing or the other provisions of this Article 4, the Water Supply Corporation
shall also convey to SAWS the Water Supply Corporation Project Assets as required by and pursuant to the terms of Section 4.4(B) of the WTPA.

4.2 Notice of Exercise of Project Asset Purchase Option. In the event that SAWS exercises its option to terminate the WTPA pursuant to either (i) Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, or (ii) Section 23.2 (Project Asset Purchase Option Upon a Project Company Event of Default) of the WTPA, then, SAWS shall concurrently provide the Water Supply Corporation with the same notice required to be provided to the Project Company under the terms of the WTPA.

4.3 Project Asset Conveyance on Expiration Date. SAWS shall concurrently provide the Water Supply Corporation with the same notice required to be provided to the Project Company under the WTPA.

4.4 Due Diligence by SAWS prior to Assignment and Conveyance. Promptly following the Water Supply Corporation’s receipt of a written notice from SAWS to exercise its option to terminate the WTPA pursuant to either (i) Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, or (ii) Section 23.2 (Project Asset Purchase Option Upon a Project Company Event of Default) of the WTPA, as provided in Section 4.2 above, or, at least 180 days prior to the Expiration Date, as applicable, the Water Supply Corporation shall, at its expense, provide to SAWS, with respect to each tract of land comprising a portion of the Water Supply Corporation Project Real Property the following items (collectively, the “Due Diligence Materials”):

1. the Water Supply Corporation’s existing surveys of each tract of land comprising a portion of the Water Supply Corporation Project Real Property, which shall have been prepared by a registered professional land surveyor licensed in the State of Texas, and certified to SAWS when such surveys are obtained by the Water Supply Corporation (or, if and to the extent such surveys were previously obtained by the Water Supply Corporation prior to the Effective Date, such previously obtained surveys shall be accompanied by a certificate from the surveyor certifying to SAWS those matters which were certified to the Water Supply Corporation in such surveys) (collectively, the "Surveys");

2. all environmental reports in the possession of the Water Supply Corporation for the Water Supply Corporation Project Real Property;

3. a title commitment for each tract of land comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, all Well Sites, the High Service Pump Station Site, the sites for the Transmission Pipeline Pumping Stations and the Project Company Portion of the Transmission Pipeline Terminus Site, from Chicago Title Insurance Company or such other reputable title company selected by SAWS (the “Title Company”) to issue an owner policy of title insurance to SAWS, based on a value which is the allocable cost of such tract based on the Water Supply Corporation’s purchase price (on a per square foot allocation), free and clear of all Encumbrances other than the Permitted Encumbrances on Conveyance, provided that SAWS shall be solely responsible for paying for all policies of title insurance that it obtains; and

4. copies of all documents in the Water Supply Corporation’s possession pertaining to the development, ownership, or operation of each tract of land comprising a portion of the Water Supply Corporation Project Real Property, including but not limited to soils reports; feasibility studies; environmental reports, studies, assessments, and notices; any documentation regarding water, sanitary sewer, gas and other utilities serving each such tract of land; utility information pertaining to each such tract of land; engineering studies; and ad valorem tax notices and receipts for the prior three calendar quarters.
years.

(5) The Water Supply Corporation shall, prior to the assignment and conveyance described in Section 4.6 below, cure and cause to be removed from the title commitment those title defects which would be deemed to be Encumbrances, other than those which are the standard printed exceptions for a Texas form of Title Insurance and Permitted Encumbrances on Conveyance, which such items the Water Supply Corporation shall have no obligation to cure. In the event that an environmental report recommends that further action be taken, then the Water Supply Corporation shall, as a condition precedent to closing of the assignment and conveyance to SAWS, cause all such necessary remediation to be performed such that SAWS can qualify as an “innocent landowner” or “bona fide prospective purchaser”; provided, however, that notwithstanding the above, the Water Supply Corporation shall only be responsible for remediating environmental issues which have been caused by the Water Supply Corporation and which are required by State of Texas or Federal environmental laws to be remediated to allow for the continued use of the Water Supply Corporation Project Assets in the manner contemplated, and not otherwise.

4.5 Notice in Event of Conveyance due to SAWS Default. In the event that the Project Company terminates the WTPA due to a default by SAWS and requires SAWS to purchase the Project Assets in accordance with Article 21 of the WTPA, the Water Supply Corporation, at the request of either the Project Company or SAWS shall provide to SAWS, or cause to be provided to SAWS, the Project Assets Purchase Price for the Project Assets owned by the Water Supply Corporation that will be assigned and conveyed to SAWS. SAWS will provide the Water Supply Corporation with notice of the closing date for the assignment and conveyance of the Project Assets to the Water Supply Corporation in accordance with the provisions of Section 21.3 of the WTPA, and the provisions of Section 21.3 of the WTPA shall apply to the procedures for closing, providing that payment of the Project Asset Purchase Price shall be payable to the Project Company as provided in the WTPA.

4.6 Assignment and Conveyance Requirements. Each assignment and conveyance provided for under this Project Real Property Conveyance Agreement shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument in accordance with the provisions of the WTPA, including but not limited to Section 23.4 of the WTPA, and said instrument shall be recordable and shall be otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Water Supply Corporation shall indemnify and defend SAWS. The Water Supply Corporation shall pay all Taxes required to be paid by any party in connection with any such transfers, including any recording fees. The assignment and conveyance documents shall include the following:

(1) Assignment of Easements. All easements comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, the permanent easements for the Collection Pipeline Rights-of-Way, the Transmission Pipeline Easements (including those obtained via the Cross Country Easement Agreement), shall be assigned by the Water Supply Corporation to SAWS in accordance with the provisions of the WTPA and this Agreement.

(2) Conveyance of Land. All land owned by the Water Supply Corporation (other than the easement interests addressed in Section 4.6(1) above) comprising a portion of the Water Supply Corporation Project Real Property, including, but not limited to, all Well Sites (if any) , the High Service Pump Station Site, the sites for the Transmission Pipeline Pumping Stations and the Project Company Portion of the Transmission Pipeline Terminus Site (together with any and all Water Supply Corporation Project Improvements and all other rights and benefits attributable to such land, shall each be conveyed
by the Water Supply Corporation to SAWS, in the manner provided in the WTPA and this Agreement.

(3) **Conveyance of Water Supply Corporation Other Project Assets.** All other interests in the Water Supply Corporation Project Assets, including, but not limited to, the Project Improvements, which include the Well Field Facilities and the Transmission Pipeline System, to the extent the same do not convey as a fixture to the Water Supply Corporation Project Real Property, shall be conveyed by the Water Supply Corporation to SAWS via a bill of sale, in the manner provided in the WTPA and this Agreement.

(4) **Non-Foreign Affidavit.** The Water Supply Corporation shall provide a non-withholding statement that will satisfy the requirements of Section 1445 of the Internal Revenue Code on such form as may be required by the IRS.

(5) **Affidavit as to Debts, Liens and Possession and Other Title Company Documents.** If SAWS elects in its sole discretion to obtain an Owner’s Policy of Title Insurance (“Title Policy”), then the Water Supply Corporation shall provide (a) an affidavit certifying that there are no debts or liens affecting the Water Supply Corporation Project Real Property that will not be released prior to conveyance, nor any rights of parties or tenants in possession, except for the Permitted Encumbrances on Conveyance, in a form reasonably acceptable to SAWS, the Water Supply Corporation and the Title Company, and (b) such other documents and miscellaneous items as are reasonably necessary for the Title Company to issue a Title Policy on the standard form in use in Texas as long as the same do not impose any additional cost or liability upon the Water Supply Corporation beyond its obligations under this Project Real Property Conveyance Agreement.

(6) **Evidence of Authority.** The Water Supply Corporation shall provide such evidence or other documents as may be reasonably required by SAWS or the Title Company evidencing the status and capacity of the Water Supply Corporation and the authority of the person or persons who are executing the various documents on behalf of the Water Supply Corporation in connection with the assignment and conveyance of the Water Supply Corporation Project Real Property.

(7) **Other Documents.** The Water Supply Corporation shall provide such other documents as the Title Company and SAWS may reasonably require to consummate the assignment and conveyance contemplated by this Project Real Property Conveyance Agreement.

4.7 **Further Assurances.** The Water Supply Corporation shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for herein, including executing and delivering such further documents or instruments giving or filing such notices, as SAWS may reasonably request.

4.8 **Applicability of Related Provisions.** The provisions of Sections 23.5 (Full Settlement; Antecedent and Post-Termination Liabilities), 23.6 (Additional Obligations Upon Project Assets Purchase), 23.7 (Transitional Arrangements), and 23.8 (Project Company to Cooperate) of the WTPA shall apply to an assignment and conveyance made by the Water Supply Corporation to SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to such an assignment and conveyance by the Water Supply Corporation upon the Termination Date or Expiration Date, as applicable, rather than to a conveyance by the Project Company to SAWS made pursuant to a purchase option occurring upon the termination of the Water Purchase and Transmission Agreement prior to the Expiration Date. The provisions of Section 11.7 (Project Asset Transfer Condition) of the WTPA shall apply to an assignment and conveyance made by the Water Supply Corporation to SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to such an assignment and conveyance by the Water Supply Corporation.
upon the Termination Date or Expiration Date, as applicable, rather than to a conveyance by the Project Company to SAWS. Additionally, to the extent applicable, Article 15 of the WTPA shall apply to the Water Supply Corporation’s obligations to convey Project improvements and tangible personal property in the manner required herein and in the WTPA.

4.9 Indemnity for Prior Activities. The Water Supply Corporation hereby agrees to indemnify, defend and hold harmless SAWS from and against any cost or liability asserted against SAWS, as grantee arising out of or resulting from the Water Supply Corporation’s failure to perform any duty, responsibility or obligation under this Real Property Conveyance Agreement prior to the effective date of the assignment or conveyance to SAWS of the Water Supply Corporation Project Real Property and Water Supply Corporation Other Project Assets, and/or any environmental issues which have been caused by the Water Supply Corporation and which are required by State of Texas or Federal environmental laws to be remediated to allow the for the continued use of the Water Supply Corporation Project Assets in the manner contemplated. This paragraph 4.9 shall survive the termination or expiration of this Project Real Property Conveyance Agreement.

ARTICLE 5
REMEDIES OF THE PARTIES

5.1 Dispute Resolution. The provisions of Article 18 (Dispute Resolution) of the WTPA shall apply to any dispute between the Water Supply Corporation and SAWS pursuant to this Project Real Property Conveyance Agreement, to the extent applicable, as if written to apply to any such dispute between the Water Supply Corporation and SAWS pursuant to this Project Real Property Conveyance Agreement, rather than to a dispute between the Project Company and SAWS pursuant to the WTPA.

5.2 Remedies for Breach. Subject to the provisions of Sections 2.2, and 3.12 of this Real Property Conveyance Agreement, the parties agree that in the event that either party breaches this Project Real Property Conveyance Agreement, the other party may exercise any legal rights it may have under this Project Real Property Conveyance Agreement or under Applicable Law to recover damages or to secure specific performance, subject to the waiver of special, consequential or punitive damages set out in Section 19.6 of the WTPA (which is made applicable herein) and the duty to mitigate damages set out in Section 26.4 of the WTPA, and that such rights to recover damages and to secure specific performance shall constitute the sole and exclusive remedies for any such breach. Notwithstanding the foregoing, neither party shall have the right to terminate this Project Real Property Conveyance Agreement.

5.3 Waiver of Remedies. No failure to exercise, and no delay in exercising, any right or remedy under this Project Real Property Conveyance Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Real Property Conveyance Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

5.4 Exercise of Remedies.

(1) Remedies Cumulative. The rights and remedies of the parties are described in Section 5.2 of this Agreement and this Section 5.4.
(2) **Similar Rights and Remedies.** A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(3) **Single or Partial Exercise of Remedies.** No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

5.5 **No Duplicative Recovery or Claims Outside Contract.** Every right to claim compensation, indemnification or reimbursement under this Project Real Property Conveyance Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Real Property Conveyance Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Project Real Property Conveyance Agreement.

**ARTICLE 6**

**MISCELLANEOUS**

6.1 **Recording.** Upon the Effective Date, a memorandum of this Project Real Property Conveyance Agreement shall be recorded in the land records of the Counties in which Water Supply Corporation Project Real Property is located in order to (i) make of public record the limitations and restrictions on the Water Supply Corporation’s ownership and operation of the Water Supply Corporation Project Real Property during the term of this Project Real Property Conveyance Agreement, and (ii) preserve SAWS’ assignment and conveyance rights under Article 4 and make the same of public record. Notwithstanding the foregoing, (a) as reasonably promptly following the Effective Date upon the availability of specific legal descriptions for the easements and fee simple tracts subject to this Project Real Property Conveyance Agreement, (b) upon the Financial Closing Date, and (c) thereafter from time-to-time, at SAWS cost and expense, upon written request from SAWS to the Water Supply Corporation, the Water Supply Corporation shall execute and record in the land records of the Counties in which Water Supply Corporation Project Real Property is located, further memorandums hereof or amendments thereto, each to attach specific legal descriptions for the easements and fee simple tracts subject to this Project Real Property Conveyance Agreement.

6.2 **Rule Against Perpetuities.** If the rule against perpetuities or any other rule of law would invalidate this Project Real Property Conveyance Agreement or any portion or provision hereof, or would limit the time during which this Project Real Property Conveyance Agreement or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property shall be effective only from the date hereof until the passing of twenty one (21) years after the death of the last survivor of the now living descendants of the members of Congress of the United States of America (including the House of Representatives and the Senate) who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

6.3 **Relationship of the Parties.** The Water Supply Corporation is an independent contractor of SAWS with regard to the obligations owed to SAWS under this Real Property Conveyance Agreement, and a subcontractor with regard to the obligations owed by the Water Supply Corporation to the Project Company under the terms of the Transportation Agreement, and the relationship between SAWS and the
Water Supply Corporation shall be limited to performance of this Project Real Property Conveyance Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Project Real Property Conveyance Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party’s agent or employee as a result of this Project Real Property Conveyance Agreement or the performance thereof.

6.4 No Other Business; No Public Utility.

(1) **No Other Business.** The Water Supply Corporation shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or activities expressly permitted hereunder without the prior consent of SAWS.

(2) **No Public Utility Regulation.** The Water Supply Corporation is not and will not by reason of this Project Real Property Conveyance Agreement be providing "retail water utility service" as that term is defined by Section 13.002(20) of the Texas Water Code. This Project Real Property Conveyance Agreement is not a "wholesale water service" agreement as that term is defined by Section 13.002(25) of the Texas Water Code.

6.5 Binding Effect; Term. This Project Real Property Conveyance Agreement shall inure to the benefit of and shall be binding upon SAWS and the Water Supply Corporation and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control) of the WTPA. The term of this Project Real Property Conveyance Agreement shall commence on the Effective Date and shall expire upon the full assignment and conveyance of the Project Assets to SAWS as contemplated herein, except for such provisions as expressly survive such assignment and conveyance.

6.6 Notices, Consents and Approvals.

(1) **Procedure.** All notices, consents, approvals or written communications given pursuant to the terms of this Project Real Property Conveyance Agreement shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(a) if delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(b) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(c) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon
the commencement of business hours on the next Business Day following confirmation of the transmission; and

(d) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

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

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: President and Chief Executive Officer  
Fax No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, TX 78212  
Attention: General Counsel  
Fax No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

(3) **Water Supply Corporation Notice Address.** Notices required to be given to the Water Supply Corporation shall be addressed as follows:

Central Texas Regional Water Supply Corporation  
P.O. Box 40573  
Austin, Texas 78716  
Attention: President  
Fax No.: 512-292-2722  
Email: secretary@ctrwsc.org

with a copy to:

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway, Building One, Suite 300  
Austin, TX 78746  
Attention: Manuel Mendez  
Fax No.: 512-320-5638  
Email: mmendez@bickerstaff.com  
Phone: 512 472-8021

Section 26.8 of the WTPA is incorporated herein, as applicable, to apply to approvals and consents requested by the Water Supply Corporation in the same manner as requests made by the Project Company under said Section 26.8.
6.7 Notice of Litigation. In the event the Water Supply Corporation or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

6.8 Further Assurances. The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Real Property Conveyance Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Real Property Conveyance Agreement.

6.9 Commissions. Each party hereby represents and warrants that it has not entered into any agreements which could give rise to a real estate commission being passed as a result of this Project Real Property Conveyance Agreement, and each party hereby indemnifies and agrees to hold the other party harmless from any loss, liability, damage, cost or expense (including reasonable attorneys’ fees) resulting to the other party by reason of any brokerage fees or claims by brokers, arising out of any agreement entered into by such party in connection with the Water Supply Corporation Project Real Property.

[Signature Page Followed]
This Project Real Property Conveyance Agreement is executed by the parties below to be effective as of the Effective Date.

THE CITY OF SAN ANTONIO, TEXAS
ACTING BY AND THROUGH THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES

By: ________________________________________
Name: ______________________________________
Title: _______________________________________
Date: _______________________________________

Central Texas Regional Water Supply Corporation,
a Texas non-profit water supply corporation

By: ________________________________________
Name: ______________________________________
Title: President
Date: _______________________________________

By: ________________________________________
Name: ______________________________________
Title: Vice President, Secretary and Treasurer
Date: _______________________________________
CONSENT AND JOINDER OF PROJECT COMPANY

By its execution of this Consent and Joinder, Project Company hereby approves this Project Real Property Conveyance Agreement, and consents to its terms, including but not limited to the provisions of Section 3.12, and agrees that, to the extent Project Company is the party acquiring any Project Assets instead of the Water Supply Corporation, Project Company shall acquire, hold, convey, convey in trust and assign such Project Assets in the manner set forth in this Project Real Property Conveyance Agreement, and the applicable terms, provision and conditions of this Project Real Property Conveyance Agreement pertaining thereto shall be interpreted as if written to apply to the Project Company.

PROJECT COMPANY:

ABENGOA VISTA RIDGE, LLC,
a Texas limited liability company

By: ____________________________
Name: __________________________
Title: ____________________________
SCHEDULE A

WATER SUPPLY CORPORATION FORMATION DOCUMENTS

See attached
Office of the Secretary of State

CERTIFICATE OF FILING
OF

Central Texas Regional Water Supply Corporation
802071610

The undersigned, as Secretary of State of Texas, hereby certify that a Restated Certificate of Formation for the above named domestic nonprofit corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 09/18/2015
Effective: 09/18/2015

Carlos H. Cascos
Secretary of State
Form 414
(Revised 09/13)
Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See Instructions

Restated Certificate of
Formation
With New Amendments

Entity Information
The name of the filing entity is:
Central Texas Regional Water Supply Corporation
State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.
The filing entity is a: (Select the appropriate entity type below.)
☐ For-profit Corporation
☒ Nonprofit Corporation
☐ Professional Corporation
☐ Professional Limited Liability Company
☐ Cooperative Association
☐ Professional Association
☐ Limited Liability Company
☐ Limited Partnership
The file number issued to the filing entity by the secretary of state is: 802071610
The date of formation of the filing entity is: 09/25/2014

Statement of Approval
Each new amendment has been made in accordance with the provisions of the Texas Business Organizations Code. The amendments to the certificate of formation and the restated certificate of formation have been approved in the manner required by the Code and by the governing documents of the entity.

Required Statements
The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated and each amendment to the certificate of formation being restated that is in effect, and as further amended by the restated certificate of formation. The attached restated certificate of formation does not contain any other change in the certificate of formation being restated except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity.
Effectiveness of Filing (Select either A, B, or C.)

A. ☒ This document becomes effective when the document is filed by the secretary of state.
B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from
the date of signing. The delayed effective date is: ____________________________
C. ☐ This document takes effect upon the occurrence of the future event or fact, other than the
passage of time. The 90th day after the date of signing is: ____________________________

The following event or fact will cause the document to take effect in the manner described below:

________________________________________________________________________

Execution

The undersigned affirms that the person designated as a registered agent in the restated certificate of
formation has consented to the appointment. The undersigned signs this document subject to the
penalties imposed by law for the submission of a materially false or fraudulent instrument and
certifies under penalty of perjury that the undersigned is authorized under the provisions of law
governing the entity to execute the filing instrument.

Date: 9/18/2015

Central Texas Regional Water Supply Corporation
Name of entity (see Execution Instructions)

[Signature]
Signature of authorized individual (see instructions)

Michael Irlbeck, President
Printed or typed name of authorized individual

Attach the text of the amended and restated certificate of formation to the completed statement form.
Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."
RESTATED CERTIFICATE OF FORMATION
OF
CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION
(WITH NEW AMENDMENTS)

1. The Corporation's Certificate of Formation as amended is hereby restated in its entirety and reads as set forth below:

ARTICLE ONE

The name of the Corporation is Central Texas Regional Water Supply Corporation (the "Corporation").

ARTICLE TWO

The Corporation is a non-profit corporation organized and operating under Chapters 67 and 49 of the Texas Water Code and Chapter 22, Texas Business Organizations Code, as amended (collectively, the "Acts"). The Corporation is authorized to exercise all powers, privileges and rights conferred on a corporation by the Acts for the purpose of providing water supply, and all powers and rights incident to carrying out the water supply purpose for which the Corporation is formed, including acquiring, producing, treating, transporting, storing and distributing water, except such powers and rights as are inconsistent with the express provisions of the Acts.

ARTICLE THREE

The period of the Corporation's duration is perpetual.

ARTICLE FOUR

The Corporation is organized for the exclusive purposes of providing, acquiring, constructing, reconstructing, repairing, extending, improving, expanding, owning, operating, repairing and maintaining water supply, pumping, transportation and storage facilities, and appurtenances thereto, or property interests related thereto, which may be used for the delivery of water to the San Antonio Water System and its customers, as well as the central Texas region, being a service area of at least four counties, and all matters relating thereto as may be determined by the Board of Directors of the Corporation, from time to time. All of the facilities which may be used for the delivery of water to the San Antonio Water System and its customers, owned by the Corporation shall be transferred to the San Antonio Water System as may be provided by any agreements between the Corporation and the San Antonio Water System or upon dissolution of the Corporation.

ARTICLE FIVE

The street address of the registered office of the Corporation is 1999 Bryant Street, Suite 900, Dallas, Texas 75201-3136, and the name of its initial registered agent at that address is CT Corporation System.

ARTICLE SIX

The Corporation shall have members. The classes, designations, manner of election or appointment of the Members and the qualifications and rights of the Members shall be as set forth in the bylaws.
ARTICLE SEVEN
The number of directors constituting the Board of Directors of the Corporation is four (4). The names and addresses of the persons who are to serve as the directors are:

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<tr>
<th>Name</th>
<th>Address</th>
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</thead>
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<tr>
<td>Richard Morgan</td>
<td>P. O. Box 160573</td>
</tr>
<tr>
<td></td>
<td>Austin, TX 78716</td>
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<tr>
<td>Jorge A. Arroyo</td>
<td>129 Kingwood Dr.</td>
</tr>
<tr>
<td></td>
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<tr>
<td>Joaquín Abaurre Benjumea</td>
<td>P. O. Box 160573</td>
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<td></td>
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<tr>
<td>Michael Irlebeck</td>
<td>P. O. Box 160573</td>
</tr>
<tr>
<td></td>
<td>Austin, TX 78716</td>
</tr>
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</table>

ARTICLE EIGHT
The initial bylaws of the Corporation shall be adopted by its Board of Directors and the power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the Board of Directors.

ARTICLE NINE
The Corporation is and shall continue to be a Corporation without capital stock.

ARTICLE TEN
No member of the Board of Directors of the Corporation shall be liable, personally or otherwise, to the Corporation for monetary damages caused in any way by an act or omission occurring in the Director’s capacity as a Director of the Corporation, to the extent provided by Sections 22.221(b), 22.225, 22.227 or 22.28, Texas Business Organizations Code, as amended, and shall be entitled to contribution as provided in Section 22.229, Texas Business Organizations Code, as amended. A Director of the Corporation shall not be personally liable to the Corporation for monetary damages for any act or omission in the Director’s capacity as a Director, except to the extent a statute of the State of Texas expressly precludes elimination or limitation of such personal liability. Any repeal or modification of this provision of the Certificate of Formation shall be prospective only and shall not adversely affect any limitation of the personal liability of a Director of the Corporation existing at the time of the repeal or modification.

ARTICLE ELEVEN
In accordance with the provisions of Section 67.008 of the Texas Water Code, the Corporation will pay annually to political subdivisions, private corporations or other persons that have transacted business with the Corporation during the previous year any profits in direct proportion to the amount of business the Corporation transacts with such person or entity during the year; provided, that the Corporation may not make any such distribution if the Corporation has unpaid indebtedness.
ARTICLE TWELVE

The Corporation shall be wound-up, dissolved and terminated in the event a "Termination Date" or "Expiration Date" (as such terms are defined in that certain "Vista Ridge Project Real Property Conveyance Agreement" to be entered into between the City of San Antonio, Texas, acting by and through the San Antonio Water System, an agency of the City of San Antonio, and the Corporation) has occurred. Upon such event requiring winding-up (as such term is used in Section 11.051(3) of the Texas Business Organizations Code), after all liabilities and obligations of the Corporation are paid, satisfied, discharged or provided for, the remaining assets of the Corporation shall be transferred to the San Antonio Water System in accordance with the provisions of Section 11.30 of the Texas Tax Code because the San Antonio Water System provides water supply and wastewater service and is exempt from ad valorem taxation.
SCHEDULE B

WATER SUPPLY CORPORATION BYLAWS

See attached
AMENDED AND RESTATED BYLAWS (WITH NEW AMENDMENTS)  
of the  
CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

These Amended and Restated Bylaws of Central Texas Regional Water Supply Corporation (the “Corporation”), having been presented to the Board of Directors of said Corporation and duly adopted as follows:

ARTICLE I

The Corporation may have such officers as the Board of Directors determines and appoints from time to time including, without limitation, a President, Vice President, Secretary and Treasurer. One person may hold two or more offices; provided, however, that President and Secretary shall not be the same person. Terms of any officers elected after the organizational meeting shall commence on the date of the annual meeting following the election by the Board and shall end on the date of the annual meeting of the Members that is two years subsequent.

ARTICLE II

The President shall preside at all meetings of the Members and Directors. The President may, and upon demand of any Member shall, call a special meeting of the Members or the Directors. Such special meetings shall be held upon giving such notice as required in Article VII of these Bylaws. The President shall also have such authority and duties as usually pertain to such office and such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

ARTICLE III

The Vice President shall, in case of the absence or disability of the President, perform the duties of the President. The Vice President shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

ARTICLE IV

The Secretary shall keep minutes of all meetings of the Members and the Directors. The Secretary shall have custody of the seal of the Corporation and affix it as directed hereby or by resolution passed by the Board of Directors. The Secretary shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors. The Board of Directors may appoint an employee as assistant or deputy secretary to assist the Secretary in all official duties pertaining to the office of the Secretary.

ARTICLE V

The Treasurer shall have the custody of all the monies and securities of the Corporation. The Treasurer shall keep regular books. All monies of the Corporation shall be deposited by the Treasurer in such depository as shall be selected by the Board of Directors. All checks or demands for money and notes of the Corporation shall be signed by the Treasurer or such other officer or officers as the Board of Directors may from time to time designate. The Treasurer
shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors. The Board of Directors may appoint an employee as assistant or deputy treasurer to assist the Treasurer in all official duties pertaining to the office of the Treasurer.

The position of the Treasurer and other positions entrusted with receipt and disbursement of funds shall be placed under a fidelity bond in an amount which shall be set from time to time, but not less than once each year, by the Board of Directors.

ARTICLE VI

Section 1. The Board of Directors shall initially consist of four (4) Directors, a majority of whom shall constitute a quorum. Each Director shall be a Member and shall satisfy all other applicable requirements of Chapter 67 of the Texas Water Code and other applicable law. The number of Directors may be increased or decreased from time to time by an amendment to these Bylaws, provided that the number of Directors may not be decreased to fewer than three (3) or increased to more than twenty-one (21). No decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Upon formation of the Corporation, and annually thereafter at the time of the annual meeting of the Members, the Board of Directors shall elect a President, a Vice President, a Secretary and a Treasurer. The initial Board of Directors shall serve until replaced by the subsequent Directors that are elected or appointed as herein provided.

Section 2. At the first annual meeting of the Members (and at subsequent annual meetings to the extent necessary), the Directors shall be divided into three (3) classes, each class to be as near as equal in number as possible. The terms of the Directors of the first class shall expire at the first annual meeting of the Members after their election; the terms of the Directors of the second class shall expire at the second annual meeting of the Members after their election; and the terms of the Directors of the third class shall expire at the third annual meeting of the Members after their election. At each annual meeting after such classification, the number of Directors equal to the number of classes whose term expires at the time of such meeting shall be elected to hold office until the third succeeding annual meeting. The Directors may receive such directors' fees (not to exceed $5,000 per year) as the Directors may approve by majority vote and shall be reimbursed for actual expenses incurred in their duties as directors. Any vacancy occurring in the Board of Directors, whether due to death, resignation, removal or otherwise, may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. A Director elected to fill a vacancy shall be elected for the unexpired term of the previous Director. Any directorship to be filled by reason of an increase in the number of Directors shall be filled by election by the Members at an annual meeting or at a special meeting of the Members, called for that purpose. Any Director may be removed from office at any time, with or without cause, by vote of a majority of the Members.

Section 3. The Directors may meet by video conference as permitted by Chapter 6, Texas Business Organizations Code, as amended (the “BOC”), but only in the manner and to the extent permitted by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended (the “Open Meetings Act”). The Board may appoint committees to act on behalf of the Board as authorized by the BOC or to act in an advisory or fact-finding capacity.
ARTICLE VII

Section 1. All meetings of the Board of Directors shall be held at such time and place as the President or the Board may determine and the conduct and notice of said meeting shall comply with any applicable provisions of the Open Meetings Act. Each Director shall be given 72 hours prior notice or shall sign a waiver of notice.

Section 2. The Board of Directors shall provide access for the public, new service applicants, or the Members to the meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals or grievances. The Board of Directors shall establish reasonable rules for access to such meetings.

ARTICLE VIII

The Directors of the Corporation shall establish and maintain, in an institution insured by the State or Federal Government, or invested in readily marketable securities backed by the full faith and credit of the United States of America, all funds of the Corporation.

ARTICLE IX

Section 1. The Corporation shall have Members. Members shall consist of those persons who are elected to serve on the Corporation’s Board of Directors, but only so long as such person continues to serve as a director. If a Director resigns, is removed or dies, such director shall automatically cease to be a Member of the Corporation. The initial Members shall be the four persons designated as Directors in the Corporation’s Certificate of Formation. Members shall each have one vote in the election of Directors. Members shall have no other voting rights and shall not be required to approve any transactions by the Corporation (or any amendments to the Corporation’s Certificate of Formation or bylaws) that are approved by the Board of Directors.

Section 2. The Members shall elect the Directors at any annual or special meeting of the Members. Each Member shall have one vote in such election and the action of a majority of the Members shall be required to elect Directors.

Section 3. Membership rights of Members shall not be assignable or transferable, either voluntarily or involuntarily.

ARTICLE X

There shall be a regular meeting of the Members held annually to transact all business that may be properly brought before it on such date and at such time as the Board of Directors shall fix and set forth in the notice of meeting. The Secretary shall give at least fifteen (15) days’ written notice of such annual meeting to the Members indicating the time, place and purpose of such meeting, and shall address and mail the notice to each of the Members at the address last known to the Corporation. Failure to hold or call an annual or special meeting in accordance with these Bylaws shall give the Members the right to compel the Board of Directors to properly hold an annual or special meeting of the Members.
ARTICLE XI

Prior to convening any special meeting of the Members, the President shall request in writing that the Secretary give at least ten (10) days' notice to the Members, and that such special meeting is otherwise noticed as provided under Article VII of these Bylaws. Such notice shall specify the time, place and purpose of the meeting, and shall be addressed and mailed to each Member at the address last known to the Corporation.

ARTICLE XII

The business of the Corporation may be handled under the direction of the Board of Directors by a manager to be elected by a majority of the Board. The manager shall serve with or without compensation. The manager, with the approval of the Board of Directors, may employ, with or without compensation, such supervisory, clerical, and other employees as may be required to effectively operate the business of the Corporation.

ARTICLE XIII

Upon the discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation remaining after discharge of the indebtedness of the Corporation shall be transferred to SAWS in accordance with the provisions of Section 11.30 of the Texas Tax Code because SAWS provides water supply and wastewater service and is exempt from ad valorem taxation.

ARTICLE XIV

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XV

The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the Members, Board of Directors, and committees, and shall keep a record of the names and addresses of its Members at its registered office or principal office in Texas.

Annually, the Board of Directors shall prepare or cause to be prepared a report of the financial activity of the Corporation for the preceding year, including a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses and balance sheets for all funds. Such reports shall be submitted for approval to the Board of Directors.

With prior written request, corporate records, books and annual reports, subject to exceptions provided by law, shall be available for public inspection and copying by the public or their duly authorized representatives during normal business hours subject to a reasonable charge for the preparation of copies.
ARTICLE XVI

The Corporation shall not provide retail water or sewer service as such terms are used in Sections 67.0052-67.007 of the Texas Water Code. Accordingly, under Section 67.0075 of the Texas Water Code, annual meetings and election of directors shall be conducted in compliance with Chapter 22 of the BOC. Annual meetings, as well as all other meetings held by the Corporation, are also subject to the Open Meetings Act. If any provision of these Bylaws is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of these Bylaws. In the event that the Texas Water Code or any other applicable statute is hereafter amended to change any governance requirements applicable to the Corporation, these Bylaws and, if necessary, the Corporation’s Certificate of Formation, shall be amended to comply with such new governance requirements.

ARTICLE XVII

The Corporation (i) shall make distributions at a time and in a manner as not to subject it to tax under Section 4942 of the Internal Revenue Code (the “Code”); (ii) shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; (iii) shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; (iv) shall not make any investments which would subject it to tax under Section 4944 of the Code; and (v) shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code.

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under the Code and related regulations, rulings and procedures. Regardless of any other provision in these Bylaws or state law, the Corporation may not:

1. Engage in activities or use its assets in manners that do not further one or more exempt purposes, as set forth in these Bylaws and defined by the Code and related regulations, rulings and procedures, except to an insubstantial degree.

2. Serve a private interest other than one clearly incidental to an overriding public interest.

3. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Code and related regulations, rulings and procedures.

4. Participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office. The prohibited activities include publishing or distributing statements and any other direct or indirect campaign activities.

5. Have objectives characterizing it as an “action organization” as defined by the Code and related regulations, rulings and procedures.

6. Distribute its assets on dissolution other than for one or more exempt purposes. On dissolution, the Corporation’s assets remaining after payment of the
indebtedness of the Corporation will be distributed to SAWS as set forth in Article XIII hereof, to be used to accomplish the general purposes for which the Corporation was organized.

7. Permit any part of the Corporation’s net earnings to inure to the benefit of any private individual.

8. Carry on an unrelated trade or business, except as a secondary purpose related to the Corporation’s primary, exempt purposes.

**ARTICLE XVIII**

These Bylaws may be altered, amended or repealed by a majority vote of the Board of Directors at a meeting of the Board of Directors or by a vote of the Members present at any regular meeting of the Corporation, or at any special meeting of the Corporation called for that purpose, except that neither the Board of Directors nor the Members shall have the power to change the purpose of the Corporation so as to decrease its rights and powers under the laws of the State, or to waive any requirements of bond or other provisions for the safety and security of the property and funds of the Corporation or its Members, or to deprive the Members of rights and privileges then existing, or so to amend these Bylaws as to effect a fundamental change in the policies or purposes of the Corporation. Notice of any amendment must be given to all members of the Board of Directors and the Members at least ten (10) days before such meeting and must set forth the amendments to be considered.

**ARTICLE XIX**

The seal of the Corporation shall consist of a circle within which shall be inscribed “CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION.”

**ARTICLE XX**

The Corporation pledges its assets for use in performing the organization's non-profit functions.
ARTICLE XXI

The above Amended and Restated Bylaws and regulations were unanimously adopted by the Board of Directors of the CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, at a meeting held on the 18th day of September, 2015.

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

By: ____________________________
Joaquin Abaunza Benjumea

Vice President, Secretary and Treasurer
WTPA Conforming Changes – Redline

(For reference to track changes to WTPA being made in the SAWS Consent and Amendment to WTPA)
VISTA RIDGE REGIONAL SUPPLY PROJECT
WATER TRANSMISSION AND PURCHASE AGREEMENT

between

THE CITY OF SAN ANTONIO, TEXAS

ACTING BY AND THROUGH
THE SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES

and

ABENGOA VISTA RIDGE, LLC

Dated

November 4, 2014

As Amended on
May __, 2016
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VISTA RIDGE REGIONAL SUPPLY PROJECT  
WATER TRANSMISSION AND PURCHASE AGREEMENT

This VISTA RIDGE REGIONAL SUPPLY PROJECT WATER TRANSMISSION AND PURCHASE AGREEMENT is entered into on November 4, 2014, and amended on May __, 2016 between the City of San Antonio, Texas (the “City”), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), and Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”).

RECITALS

WHEREAS, the City and SAWS have determined that it is in the City’s and SAWS’ best interests to contract with a private entity to supplement and diversify SAWS’ existing and projected water inventory; and

WHEREAS, the water supply project will consist of the production, treatment, delivery and sale to SAWS of up to 50,000 acre-feet per year of potable water on a long term basis, based on the acquisition of water rights and the design, construction, financing, operation and maintenance of new production wells, pumping stations, raw water collection and transmission pipelines, storage tanks and appurtenant facilities; and

WHEREAS, pursuant to Section 252.002 of the Texas Local Government Code, SAWS issued on January 14, 2011, Solicitation No. P-11-003-DS entitled Request for Competitive Sealed Proposals Regarding the Provision and Delivery of Alternative Water Supplies for the purpose of bringing SAWS’ future water supply needs to the marketplace and inviting proposals for potential non-Edwards Aquifer supplies to be compared, selected or rejected on a competitive basis; and

WHEREAS, SAWS received nine responses to the solicitation on July 22, 2011, from a variety of public and private vendors, including a response submitted by Abengoa Water USA, an Affiliate of the Project Company; and

WHEREAS, on March 8, 2013, SAWS issued Addendum #1 to the solicitation and received revised proposals in response to Addendum #1; and

WHEREAS, SAWS engaged in a comprehensive evaluation of the competing proposals in accordance with the criteria of the solicitation; and

WHEREAS, at its July 1, 2014 meeting, the Board of Trustees accepted the proposal by the Project Company in response to the solicitation on the basis that it was the most advantageous to SAWS and the City considering the evaluation factors set forth in the solicitation, subject to the negotiation of an acceptable contract and receipt of required support from the City Council; and

WHEREAS, in July, 2014 negotiations were initiated with the Project Company, which negotiations have concluded with this Water Transmission and Purchase Agreement; and

WHEREAS, on September 29, 2014 and October 15, 2014, the Board of Trustees adopted Resolution Number 14-269 and 14-274, respectively, authorizing the execution and delivery of this Water Transmission and Purchase Agreement and requesting its approval by the San Antonio City Council; and
WHEREAS, on October 30, 2014, by Ordinance, the San Antonio City Council approved this Water Transmission and Purchase Agreement; and

WHEREAS, SAWS desires to purchase and take delivery of, and the Project Company desires to produce, transport, make available and sell potable water in accordance with this Water Transmission and Purchase Agreement; and

WHEREAS, the Project Company intends to cause a Texas non-profit water supply corporation to be formed in a manner consistent with Texas Water Code 49.222(a) for the purpose of acquiring easements, rights of way and other interests necessary to construct and own a transmission line for the transportation of potable water to SAWS for the public use of the citizens of San Antonio and regional communities; and

WHEREAS, payment of the monthly water purchase payments and all other amounts payable hereunder by SAWS to the Project Company will be made solely from revenues of SAWS available thereto under City Ordinance No. 75686, and shall not be an obligation of the City’s general fund, any other City enterprise fund or any other asset or revenue of the City;

WHEREAS, this Water Transmission and Purchase Agreement was amended on __________, 2016, in connection with the acquisition by Garney P3 LLC of a majority interest in the Project Company and SAWS consent thereto;

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto, intending to be legally bound, covenant and agree as follows:
ARTICLE 1  
DEFINITIONS AND INTERPRETATION

SECTION 1.1.  DEFINITIONS.

As used in this Water Transmission and Purchase Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Water Transmission and Purchase Agreement whether or not this Article contains a cross-reference to such definitions.

“Abeinsa” means Abeinsa Abeima Teyma General Partnership, a general partnership organized and existing under the laws of the State of Delaware.

“Abengoa” means Abengoa S.A., a company organized and existing under the laws of the Kingdom of Spain.

“Abengoa Water USA” means Abengoa Water USA LLC, a limited liability company organized and existing under the laws of the State of Texas.

“Acceptable Disposal Site” has the meaning set forth in Section 10.12(B) (Acceptable Disposal Site).

“Acceptance” means satisfaction of the Acceptance Conditions.

“Acceptance Conditions” has the meaning set forth in Section 8.5 (Conditions).

“Acre Foot” means 43,560 cubic feet, which is equal to 325,851.42 U.S. gallons.

“Actual Annual Electricity Costs” means the sum of all actual annual electricity costs resulting from the Project Company’s performance of this Water Transmission and Purchase Agreement as reflected in the electricity bills paid by SAWS pursuant to Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period), excluding any fines, charges and penalties imposed by the electricity provider which are required to be reimbursed by the Project Company to SAWS on a monthly basis as provided in such Section.

“Actual Compensable Costs” has the meaning set forth in Section 17.3(G) (Actual Compensable Costs).

“Additional Product Water Quality Standards” has the meaning set forth in Section 10.2(B) (Additional Product Water Quality Standards).

“Advance Project Company Make-Up Units” has the meaning set forth in Section 10.4(B)(3) (Supply Following Commercial Operation Date).

“Affiliate” means, in respect of a person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise,
including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of trustees or similar body governing the affairs of such person.

“Annual Settlement Statement” has the meaning set forth in Section 17.11(A) (Annual Settlement Statement).

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

“Applicable Law” means:

(1) Any federal, state or local law, statute, code or regulation;

(2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and

(3) Any Governmental Approval, in each case having the force of law and applicable from time to time to the Project.

“Asset Registry” has the meaning set forth in Section 11.3(A) (Asset Registry).

“Assumed Liabilities” has the meaning set forth in Section 12.6 (Assumed Liabilities) of Appendix 12 (Project Assets and Liabilities).

“Avoidable Costs” means, when used in relation to an event or circumstance, all costs and expenditures which:

(1) Are saved, avoided as a result of, or in responding to, the event or circumstance or its effects; or

(2) If the Project Company did not act reasonably and in accordance with this Water Transmission and Purchase Agreement (including Section 26.4(A) (Mitigation by the Project Company), such additional costs and expenses that would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects if the Project Company had acted reasonably and in accordance herewith.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time, and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Baseline Annual Volume” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Baseline Daily Volume” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).
“Billing Period” means each month of a Contract Year, except that:

(1) The first Billing Period of the first Contract Year shall begin on the Commercial Operation Date and shall continue to the last day of the month in which the Commercial Operation Date occurs, and

(2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Blue Water Systems, LP” means Blue Water Systems, LP, a limited partnership organized and existing under the laws of the State of Texas.

“Blue Water Vista Ridge, LLC” means Blue Water Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Texas.

“Board of Trustees” means the board of trustees of SAWS.

“Bridge Loan” has the meaning set forth in Appendix 22 (Project Company-Related Loans).


“Budgeted Compensable Costs” has the meaning set forth in Section 17.3(C) (Budgeted Annual Compensable Costs).

“Business Day” means a day other than a Saturday, Sunday or an official SAWS holiday.

“Capital and Raw Groundwater Unit Price” has the meaning specified in Section 17.2 (Capital and Raw Groundwater Unit Price).

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“Capital Modification” has the meaning set forth in Section 12.1 (Capital Modifications Generally).

“Carrizo-Wilcox Aquifer” means the Carrizo-Wilcox Aquifer, as delineated by the TWDB.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“CFS” means cubic feet per second.

“Change in Control” has the meaning set forth in Section 24.2(A) (Change in Control Defined).
“Chief Executive Officer” means the President and Chief Executive Officer of SAWS.

“Chief Operator” has the meaning set forth in Section 9.2(A) (Project Company’s Chief Operator).

“City” means the City of San Antonio, Texas, a body corporate, home rule municipality, and political subdivision of the State.

“City Discriminatory Change in Law” means the coming into effect of any ordinance, resolution or other Applicable Law of the City which materially impairs or prevents the Project Company (or any person performing work on behalf of the Project Company) from carrying out any Contract Obligation or materially increases the costs to the Project Company (or any person performing work on behalf of the Project Company) of carrying out any Contract Obligation and which specifically applies to discriminate against:

(1) the Project or the Project Company; or any person performing work on behalf of the Project Company;

(2) projects or entities (including the Project or the Project Company) involved with public works-type services or projects, utility-related services or projects, or projects or services delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;

(3) Persons (including the Project Company) that have contracted with SAWS or the City or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or

(4) Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is described in clauses (2) and (3) above.

“CMMS” has the meaning set forth in Section 11.5 (Computerized Maintenance Management System).

“Collection Pipelines” means the pipelines for the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells, as further described in Appendix 1 (Description of the Project).

“Collection Pipelines Rights-of-Way” means the 50 feet-wide rights-of-way in the Well Field Facilities Site within which the Collection Pipelines and roads to the Well Field Facilities are to be constructed.

“Commercial Operation Date” has the meaning set forth in Section 8.6(D) (Commercial Operation Date).

“Commercial Operation Longstop Date” has the meaning set forth in Section 8.6(B) (Commercial Operation Longstop Date Defined).

“Commissioning Plan” has the meaning set forth in Section 4.9.1 (General Commissioning Plan Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) and in Section 8.1(B) (Commissioning Plan).
“Compensable Costs” has the meaning set forth in Section 17.3(A) (General Principles).

“Compensation Adjustment Event” has the meaning set forth in Section 17.8 (Form of Compensation Adjustment For Events Occurring After the Conforming Contract Amendment Date).

“Confidential Project Company Information” has the meaning set forth in Section 26.13 (SAWS’ Confidentiality Obligations).

“Confidential SAWS Information” has the meaning set forth in Section 26.12 (Project Company’s Confidentiality Obligations).

“Conforming Contract Amendment” means the amendment of this Water Transmission and Purchase Agreement to make conforming changes in connection with SAWS consent to the Change-in-Control effectuated by the Membership Interest and Purchase Agreement.

“Conforming Contract Amendment Date” means May ____, 2016, the date on which this Water Transmission and Purchase Agreement was amended by the Conforming Contract Amendment.

“Construction Governmental Approvals” means all Governmental Approvals required from time to time during the Construction Period for the commencement and continuance of the Construction Work, excluding the Project Company Public Water Supplier Designation.

“Construction Management Agreement” means the Construction Management Agreement, to be effective on or before the Financial Closing Date, required to be executed dated April 10, 2015, between the Project Company and the Water Supply Corporation pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

“Construction Period” means the period from and including the Financial Closing Date through the Commercial Operation Date.

“Construction Quality Management Plan” means the Project Company’s plan for quality assurance and quality control in implementing the Construction Work to be developed in accordance with the requirements set forth in Section 4.7 (Quality Management) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

“Construction Superintendent” means the executive in charge of construction of the Project designated by the Project Company for communications with SAWS during the Construction Period.

“Construction Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Project Company pursuant to this Water Transmission and Purchase Agreement prior to the date of Final Completion.

“Contract Administration Memorandum” has the meaning set forth in Section 26.6(D) (Contract Administration Memoranda).

“Contract Date” means November 4, 2014, the date on which this Water Transmission and Purchase Agreement was executed and delivered by the parties following
authorization by the SAWS Board of Trustees pursuant to the Resolution Numbers 14-269 and 14-274 and approval by the San Antonio City Council by Ordinance.

“Contract Date Financial Model” means the financial model that was delivered on or about the Contract Date.

“Contract Obligations” means everything required to be furnished and done for and relating to the permitting, design, construction, financing, operation and maintenance of the Project and the production and delivery of Product Water by the Project Company to the Product Water Delivery Point pursuant to this Water Transmission and Purchase Agreement.

“Contract Services” means the Construction Work and Operating Work.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

(1) Applicable Law;
(2) The Design Requirements;
(3) Good Engineering and Construction Practice;
(4) The Major Repair and Replacement Plan;
(5) The Maintenance Repair and Replacement Schedule;
(6) The Performance Guarantees;
(7) The Operating and Maintenance Standards;
(8) Good Management Practice;
(9) The Construction Quality Management Plan;
(10) Applicable written equipment manufacturers’ specifications;
(11) Applicable Insurance Requirements; and
(12) Any other standard, term, condition or requirement specifically provided in this Water Transmission and Purchase Agreement to be observed by the Project Company.

Section 1.2(X) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

“Contract Year” means each of:

(1) The period from the Contract Date to the next December 31;
(2) Each subsequent period of 12 calendar months commencing on January 1; and
(3) The period from January 1 in the year in which this Water Transmission and Purchase Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made or requirement established on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Conveyance Litigation” means litigation relating to the conveyance of the Project Assets, including any failure to convey the Project Assets to SAWS.

“Cost Substantiation” has the meaning described in Section 17.14 (Cost Substantiation).

“Counties” means each of the counties in which the Project Sites are located, including Burleson, Lee, Bastrop, Caldwell, Guadalupe, Comal and Bexar Counties.

“Creditors’ Remedies Agreement” means the creditors’ remedies agreement to be entered into on or before the Financial Closing Date between SAWS, the Senior Debt Creditors and the Project Company pursuant to [Section 4.1][[Section 4.1]] (Financial Closing Date Conditions Defined).

“Cross County Water Supply Corporation” means the Cross County Water Supply Corporation, a not-for-profit water supply corporation organized and existing under Chapter 67 of the Texas Water Code.

“Daily Delivered Water Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Daily Maximum Volume” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Deductions” means those deductions from the otherwise applicable Monthly Water Purchase Payments that SAWS is permitted to take as offsets on account of SAWS having taken delivery of Off-Specification Water, pursuant to Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water).

“Deductions Credit” has the meaning set forth in Section 17.6 (Deductions Credit).

“Demand Shortfall Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Design Documents” means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Construction Work.

“Design Requirements” means the design requirements for the Project set forth in Appendix 3 (Technical Specifications).

“Design Requirements Change” means a change in the Design Requirements made between the Financial Closing Date and the Commercial Operation Date (1) as a result of a Project Company request agreed to by SAWS pursuant to Section 5.7 (Project Company-
Requested Design Requirements Changes), or (2) at the request of SAWS pursuant to Section 5.8 (SAWS-Requested Design Requirements Changes).

“**Development and Financing Period**” means the period from and including the Contract Date through the Financial Closing Date.

“**Development and Financing Work**” means everything required to be furnished and done by the Project Company for and relating to the development and financing of the Project prior to the Financial Closing Date.

“**Differing Site Conditions**” means concealed or latent subsurface conditions at the Project Sites that materially differ from any of the conditions that may have been assumed by the Project Company in entering into this Water Transmission and Purchase Agreement.

“**Direct Payments**” has the meaning set forth in Section 17.8(C) (Direct Payments by the Parties).

“**Disclosed Data**” means any information, data and documents made available or issued to the Project Company or a Project Contractor or Subcontractor in connection with the Project by or on behalf of SAWS, including any information relating to the Project Sites or the requirements of any Governmental Body, whether before or after the execution of this Water Transmission and Purchase Agreement.

“**Discriminatory Change in Tax Law**” means the coming into effect of any Applicable Law which results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against:

1. the Project or the Project Company with respect to the Project and not other projects or persons;
2. other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to those and not other projects;
3. Persons (including the Project Company) that have contracted with SAWS, the City or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or
4. Persons (including the Project Company) holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

No change in fees or other Taxes imposed by the POSGCD or by any other Governmental Body having regulatory jurisdiction over any Raw Groundwater pumping, production or transportation shall be considered to be a Discriminatory Change in Tax Law.

“**Draft Reinstatement Plan**” has the meaning set forth in Section 15.2(A) (Draft Reinstatement Plan).

“**Electronic Operation and Maintenance Manual**” means the electronic manual prepared by the Project Company as described in the Design Requirements.
“Employee Payments” means any liability that has been reasonably incurred by the Project Company arising as a result of termination of this Water Transmission and Purchase Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project Company, including severance (whether accrued or not) and vacation pay accrued.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“End of Term Performance Evaluation Period” has the meaning set forth in Section 11.6(D) (Applicable End of Term Performance Evaluation Period).

“End of Term Performance Evaluation Requirements” has the meaning set forth in Section 11.5.2 (End of Term Performance Evaluation Requirements) of Appendix 11 (End of Term Project Condition Requirements).

“Environmental Mitigation Measures” means any environmental mitigation measures set forth in the Governmental Approvals required to be obtained by the Project Company.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“EPC Agreement” means the Engineering, Procurement and Construction Agreement to be entered into between the Water Supply Corporation or the Project Company, pursuant to the Construction Management Agreement, and the EPC Contractor on or before the Financial Closing Date.

“EPC Contractor” means Abeinsa Garney Companies, Inc., or another design and construction company that is an Affiliate of Abengoa Garney Holding Company and that is reasonably acceptable to SAWS.

“Equity Contribution Agreement” means the Equity Contribution Agreement to be entered into on or before the Financial Closing Date between the Project Company, the Shareholders, and the Senior Debt Creditors pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

“Excess Product Water” has the meaning set forth in Section 10.3 (Product Water Supply and Demand Definitions).

“Excluded Assets” has the meaning set forth in Section 12.5 (Excluded Assets) of Appendix 12 (Project Assets and Liabilities).

“Excluded Liabilities” has the meaning set forth in Section 12.7 (Excluded Liabilities) of Appendix 12 (Project Assets and Liabilities).

“Excused Supply Shortfall Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Exit Performance Test” has the meaning set forth in Section 11.6(C) (Non-Compliance With End of Term Performance Evaluation Requirements).
“Expiration Date” means (1) the date that is 30 years following the Commercial Operation Date, or (2) such later date not to exceed 50 years following the Commercial Operation Date as may be established pursuant to Section 10.7 (Extension of Term).

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

“Final Completion” means completion of the Construction Work in compliance with the Design Requirements and the requirements of Section 8.8 (Final Completion).

“Financial Close” has the meaning set forth in Section 4.1(B)(25) (Financial Close).

“Financial Close Financial Model” means the financial model delivered on or before the Financial Closing Date which meets the requirements set forth in Section 4.1(B)(25) (Financial Close).

“Financial Closing Date” has the meaning set forth in Section 4.3(A) (Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date).

“Financial Closing Date Conditions” has the meaning set forth in Section 4.1(B)(25) (Financial Closing Date Conditions Defined).

“Financial Closing Longstop Date” has the meaning set forth in Section 4.3(B) (Financial Closing Longstop Date Defined).

“Financial Model” has the meaning set forth in Section 4.1(B)(25) (Financial Model).

“Fitch” means Fitch Ratings Ltd., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

“Fixed Compensable Costs” has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

“Flow Rate” means the rate of flow of Product Water delivered to SAWS measured at the Project Flow Meter, and expressed in CFS.

“Force Majeure Event” has the meaning set forth in Section 5.2(D) (Force Majeure Events).

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“Garney Change-in-Control” has the meaning set forth in subsection 24.6(A) (Garney Change-in-Control Defined).
“Garney Companies, Inc.” means Garney Companies, Inc., a corporation organized and existing under the laws of the State of Missouri.

“Garney Holding Company” means Garney Holding Company, a corporation organized and existing under the laws of the State of Missouri.


“Garney P3 LLC” means Garney P3 LLC, a limited liability company organized and existing under the laws of the State of Missouri.

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the design and construction of drinking water wells, treatment and pumping facilities and pipelines as observed in the State.

“Good Management Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices as observed for drinking water wells, treatment and pumping facilities and pipelines as observed in the State.

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

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including SAWS, acting in its governmental capacity other than as a party to this Water Transmission and Purchase Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Water Transmission and Purchase Agreement or the Project. A Governmental Body includes the POSGCD and any other Governmental Body with jurisdiction over Raw Groundwater or the Project Site Conveyance Instruments.

“Groundwater Drilling and Operating Permit” means the Amended and Restated Drilling and Operating Permit (Permit No. POS-D&O/A&M-0001), issued and effective on January 13, 2008, by Director of the Board of Trustees of the POSGCD to Blue Water Systems, LP, or a successor Drilling and Operating Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

“Groundwater Lease Conveyance Agreement” means the Groundwater Lease Conveyance Agreement, dated January 31, 2015, between the Project Company; Blue Water Vista Ridge, LLC; Blue Water Regional Supply Project LP; and the Master Lease Trust, attached hereto as Reference Document 32 (Groundwater Lease Conveyance Agreement).

“Groundwater Leases” means the leases listed in Exhibit A to Reference Document 2 (List of Blue Water Systems Groundwater Leases, Lease Conveyance Agreement).
“Groundwater Lessee” means Blue Water Vista Ridge LLC or the Master Lease Trust, as assignee.

“Groundwater Lessors” means the owners of the fee interest in the Raw Groundwater and the lessors under the Groundwater Leases.

“Groundwater Supply Agreement” means the Groundwater Supply Agreement, dated November 4, 2014, between SAWS and Blue Water Vista Ridge, LLC, executed in substantially the form set forth as Transaction Form E (Groundwater Supply Agreement).

“Groundwater Transportation Permit” means the Amended Permit to Transport Groundwater from within the POSGCD (Permit No. POS-T-0001), issued by the Board of Trustees of the POSGCD to Blue Water Systems, LP on September 14, 2004 and amended effective September 14, 2010, or any new permit issued to the Project Company that allows the Project Company to transport Raw Groundwater from the POSGCD, or a successor Groundwater Transportation Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

“Guaranteed Maximum Annual Electricity Costs” means the Project Company’s guaranteed maximum annual electricity costs for the Project for which SAWS is responsible and which are calculated based on the applicable Guaranteed Maximum Electricity Utilization, the Guaranteed Maximum Electricity Demand, Product Water delivered, and the electricity provider’s applicable per unit electric rate, all as provided in Section 17.11(B) (Annual Settlement of Electricity Costs).

“Guaranteed Maximum Electricity Demand” has the meaning specified in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

“Guaranteed Maximum Electricity Utilization” has the meaning specified in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

“Guaranty Agreement” means the Guaranty Agreement, dated the Conforming Contract Amendment Date of execution and delivery hereof, between Abengoa Garney Holding Company and SAWS, executed in the form set forth as Transaction Form A (Abengoa Garney Guaranty Agreement).

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment or otherwise, or is capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“Hazardous Substance Management Program” means the written Hazardous Substances management program developed by the Project Company during the Construction Period in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and updated during the Operating Period.

“High Service Pump Station” means the high service pump station, cooling tower, water treatment facilities, tanks and related and appurtenant facilities to be constructed on the High Service Pump Station Site for the collection, treatment and storage of Raw
Groundwater prior to its conveyance as Product Water to the Transmission Pipeline System, as further described in Appendix 1 (Description of the Project).

“High Service Pump Station Site” means the site of approximately 18 acres upon which the High Service Pump Station is to be constructed.

“Income Tax” means any tax imposed on the income of a person by any federal, State or local Governmental Body.

“Independent Evaluator” means a qualified independent evaluator or evaluation firm with demonstrated skill and experience of water utility property similar to the Project, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of the parties for the purpose of evaluating and determining the condition of the Project pursuant to Section 11.3 (Project Evaluations) and Appendix 11 (End of Term Project Condition Requirements). The Independent Evaluator may be an engineer or other technical professional competent to perform such services.

“Index Linked” means, with respect to an amount at any time, that the amount is increased as of January 1 of each Contract Year (commencing on January 1 of the Contract Year ending on December 31, 2016) by adding to it (1) an amount equal to such amount, multiplied by (2) the percentage representing the increase in the Inflation Index from (a) the Inflation Index for the last six months of the Contract Year ending on December 31, 2014, to (b) the Inflation Index for the last six months of the Contract Year immediately preceding the Contract Year for which a determination is to be made.

“Inflation Index” means, with respect to items related to the Operating Work, the Consumer Price Index, All Urban Consumers (CPI-U) (1982-84 = 100) for the San Antonio MSA published by the Bureau of Labor Statistics of the United States Department of Labor; provided, however, that if such Consumer Price Index shall cease to exist or is changed, then the term “Inflation Index” shall mean such other or similar index or formula as the parties reasonably select.

“Initial Senior Debt” means the Senior Debt issued at Financial Close, subject to Section 7.1(J) (Execution of the Senior Secured Credit Facility).

“Insurance Proceeds” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under this Water Transmission and Purchase Agreement.

“Insurance Receivables” means Insurance Proceeds which a person is entitled to receive but which have not been received.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Water Transmission and Purchase Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Intellectual Property” means any trade secrets, proprietary rights, patents, copyrights, or trademarks recognized under Applicable Law.

“Interim Operations Approval” has the meaning set forth in Section 8.2(A) (Authorization of Operation and Water Introduction).
“Joint Inspection and Survey” has the meaning set forth in Section 11.7(C) (Transfer Condition Survey and Work Plan).

“Key Individuals” has the meaning set forth in Appendix 14 (Project Company and Project Contractors Information).

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Water Transmission and Purchase Agreement, and all appeals therefrom.

“Lien” means any and every lien against the Project, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Loss-and-Expense” means, and is limited to, (in each case subject to Section 19.6 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify SAWS hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Water Transmission and Purchase Agreement.

“Maintenance, Repair and Replacement Plan” means the maintenance, repair and replacement plan prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

“Maintenance, Repair and Replacement Schedule” means the maintenance, repair and replacement schedule prepared by the Project Company pursuant to Appendix 6 (Operating and Maintenance Standards).

“Major Repair and Replacement Compensable Costs” has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

“Make-Up Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Master Lease Trust” means the Burleson/Milam Master Lease Trust, a Texas trust formed under the Texas Trust Act.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 18.2 (Non-Binding Mediation).


“mg” or “MG” means millions of gallons.

“mgd” or “MGD” means millions of gallons per day.

“mg/L” means milligrams per liter.

“Minimum Performance Criteria” has the meaning set forth in Section 5.4 (Minimum Performance Criteria) of Appendix 5 (Performance Test Procedures and Standards).
“Monthly Delivered Water Units” means, for any Billing Period and subject to Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee - Unacceptable Product Water), the number of Units actually made available by the Project Company and received and taken by SAWS.

“Monthly Water Purchase Payment” means the monthly amount to be paid by SAWS for the purchase of Product Water, calculated as provided in Section 17.5 (Monthly Water Purchase Payments).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 18.2 (Non-Binding Mediation) for addressing disputes arising under this Water Transmission and Purchase Agreement.

“Notice of Acceptance” has the meaning set forth in Section 8.5(B) (Notice and Report of Acceptance).

“Notice of Final Completion” has the meaning set forth in Section 8.8(B) (Notice and Report of Final Completion).

“NPDES Project Permit” means any National Pollutant Discharge Elimination System (NPDES) Permit for the Project required to be obtained by the Project Company from TCEQ, and all subsequent renewals.

“NTU” means nephelometric turbidity unit.

“O & M Budget Panel” has the meaning set forth in Section 17.3(A) (General Principles).

“Off-Specification Product Water” means Product Water conveyed to SAWS that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Product Water.

“Operating and Maintenance Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 6 (Operating and Maintenance Standards).

“Operating and Maintenance Unit Price” has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).

“Operating Notice” means a written notice given by one party to the other hereunder relating to routine operational matters arising under this Water Transmission and Purchase Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.

“Operating Period” means the period between the Commercial Operation Date and the Termination Date.
“Operating Protocol” means the protocol governing operation of the Project, including all interface, coordination, and water delivery and supply policies, procedures, plans and protocols to be established, adopted and revised in accordance with Article 9 (Operation and Management of the Project) and Appendix 6 (Operating and Maintenance Standards).

“Operating Service Agreement” means the Operating Service Agreement to be entered into between the Project Company and the Operating Service Provider on or before the Financial Closing Date pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

“Operating Service Provider” means Abengoa Water USA, the person designated by the Project Company and approved by SAWS as the Operating Service Provider in the manner provided in subsection 13.1(F) (Operating Service Provider), or any assignee or replacement entity permitted under this Water Transmission and Purchase Agreement.

“Operating Service Provider Breakage Costs” means the amount payable by the Water Supply Corporation to the Operating Service Provider under the Operating Service Agreement as a direct result of the exercise by SAWS of an option to purchase the Project Assets pursuant to Section 23.1(A) (Option) and the resulting termination of this Water Transmission and Purchase Agreement, which shall be reasonable as compared to an amount that would be agreed to between comparable, independent persons in comparable transactions and comparable circumstances, as such amount shall be approved by SAWS when the Operating Service Agreement is negotiated pursuant to Section 4.1(B) (Financial Closing Date Condition Defined).

“Operating Work” means everything required to be furnished and done relating to the operation, maintenance and management of the Project by the Project Company pursuant to this Water Transmission and Purchase Agreement during the Operating Period.

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Other Project Assets” has the meaning set forth in Section 12.4 (Other Project Assets) of Appendix 12 (Project Assets and Liabilities).

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or 7.5 percent annually, whichever is lower.

“Performance Guarantees” means the guarantees of performance made by the Project Company specifically set forth in Section 10.2 (Product Water Quality Guarantee); Section 10.12 (Project Company Disposal of Residuals); Section 10.13 (Project Company Disposal of Wastewater); and Appendix 8 (Performance Guarantee Requirements).

“Performance Test” means the performance test to be conducted pursuant to Appendix 5 (Performance Test Procedures and Standards) for the achievement of Acceptance.

“Performance Test Protocol” has the meaning set forth in Section 8.3(A) (Performance Test Protocol).

“Permitted Debt” has the meaning set forth in Section 7.1(C) (Limitations on Project-Secured Debt).
“Permitted Debt Issuance Date” has the meaning specified in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

1. Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company or Water Supply Corporation and against which the Project Company or Water Supply Corporation has established appropriate reserves in accordance with GAAP;

2. Any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company or Water Supply Corporation, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company or Water Supply Corporation to construct the Project or operate the Project;

3. Any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company or Water Supply Corporation and against which the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors);

4. Those items which are (i) servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements, (ii) any other Encumbrance other than liens arising (a) in the ordinary course of business during construction, or (b) in connection with worker’s compensation or unemployment insurance or social security or pension obligations, (iii) the Groundwater Leases, (iv) the Groundwater Lease Conveyance Agreement, (v) liens or other encumbrances subordinate to this Water Transmission and Purchase Agreement, (vi) any statutory landlord’s liens for the payment of rent under the terms of the Groundwater Leases, (vii) the sublease of the Groundwater Leases to the Project Company, or (viii) similar items which shall not individually or in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company or Water Supply Corporation;

5. Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants which individually or in the aggregate do not materially and adversely affect the value or operation of the Project for the purposes for which it is or may reasonably be expected to be used;

6. Any Encumbrance (a) that does not materially interfere with the use or operation of the Project, with respect to which SAWS has given its consent, not to be unreasonably withheld, or (b) existing as of the Financial Closing Date on the land upon which the Groundwater Leases are situated arising by, through or under the respective Groundwater Lessor, save and except any unsubordinated liens;
(7) Undetermined Encumbrances and charges incident to construction or maintenance, and Encumbrances and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired), provided that the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors); 

(8) Notices of lis pendens or other notices of or Encumbrances with respect to pending actions which are being contested in good faith and have not proceeded to final judgment (and for which all applicable periods for appeal or review have not expired) and against which the Project Company or Water Supply Corporation has established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors); 

(9) Encumbrances for taxes, assessments, or other governmental charges which are not delinquent, or if delinquent, are payable without penalty or are being contested in good faith; provided that, with respect to any taxes, assessments or other governmental charges which are being contested the Project Company or Water Supply Corporation established appropriate reserves or bonded against, at SAWS’ request (such appropriateness, in connection with Acceptance, to be determined by the Senior Debt Creditors); 

(10) Exceptions to title, of record, listed in a Title Insurance Policy being an easement, restriction or other matter customarily accepted by a water pipeline operator in Texas which individually or in the aggregate do not materially adversely affect the operation of the Project for the purposes for which it is or may reasonably be expected to be used; 

(11) Encumbrances granted under any Senior Debt Financing Agreement, including the rights of the Senior Debt Creditors or to secure obligations owed by the Water Supply Corporation to the Project Company; 

(12) Encumbrances securing indebtedness for the payment, redemption or satisfaction of which money (or evidences of indebtedness) in the necessary amount shall have been deposited in trust with a trustee or other holder of such indebtedness; and 

(13) Encumbrances created as a result of a Change-in-Law.

“Personal Information” means information about a person, the disclosure of which would constitute an unwarranted invasion of privacy.


“POSGCD” means the Post Oak Savannah Groundwater Conservation District, located in Milam and Burleson Counties, Texas, Ground Water Management Area 12.

“POSGCD Rules and Regulations” means the Rules and Management Plan of the POSGCD, established by POSGCD pursuant to Chapter 36 of the Texas Water Code.
“Product Water” means Raw Groundwater which has been treated at the Project in accordance with the Contract Standards. Product Water includes Off-Specification Product Water, but does not include Unacceptable Product Water.

“Product Water Delivery Point” means the flange in the pipe between the Project Company Storage Tank and SAWS Storage Tanks on the Project Company Portion of the Transmission Pipeline Terminus Site designated by the parties for determining the transfer of ownership of Product Water from the Project Company to SAWS and, in the event SAWS exercises its right to sell Product Water to any person pursuant to Section 26.5 (Opportunities), the delivery points established pursuant to such subsection.

“Product Water Quality Guarantee” has the meaning set forth in Section 10.2(B) (Additional Product Water Quality Standards).

“Product Water Quality Sampling Location” means the location at which the quality of Product Water is sampled and measured for purposes of determining compliance with the Performance Guarantees, which shall be located between the Product Water Delivery Point and the Project Company Storage Tank or another location approved by the parties.

“Project” means the Vista Ridge Regional Supply Project, consisting of (1) the acquisition by the Project Company of Raw Groundwater under the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System or the SAWS Interconnection Improvements.

“Project Assets” means the Project Real Property and the Other Project Assets.

“Project Assets Purchase Date” has the meaning set forth in Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option).

“Project Assets Purchase Price” means the applicable price payable by SAWS to the Project Company for the purchase of the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options).

“Project Assets Transfer Date” means the Project earlier of the Project Assets Purchase Date or the Expiration Date, as applicable.

“Project By-Products” means Residuals and Wastewater requiring disposal by the Project Company in accordance with Section 9.1(A) (Operation and Management Responsibility for the Project) and Article 10 (Performance).

“Project Company” means Abengoa Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Project Company Bankruptcy-Related Event” has the meaning set forth in Section 20.1(C) (Project Company Bankruptcy-Related Event Defined).

“Project Company Event of Default” has the meaning set forth in Section 20.1(A) (Project Company Events of Default Defined).
“Project Company Fault” means:

(1) A breach by the Project Company of any of its obligations under this Water Transmission and Purchase Agreement;

(2) A breach of any representation or warranty made by the Project Company under this Water Transmission and Purchase Agreement;

(3) Willful misconduct of the Project Company or any Project Company Person; or

(4) A negligent act or omission of the Project Company or a Project Company Person.

“Project Company Make-Up Units” has the meaning specified in Section 10.6(A) (Project Company Make-Up Units).

“Project Company Person” means:

(1) Any owner, shareholder, or member holding 5% or more of the equity ownership interests of Garney Holding Company, Abengoa or the Project Company, or a director, officer, employee or agent of Garney Holding Company, Abengoa or the Project Company in each case acting as such; or

(2) A Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such Person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

“Project Company Portion of the Transmission Pipeline Terminus Site” has the meaning set forth in Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site).

“Project Company Public Water Supplier Designation” means the public water supplier designation required to be issued by TCEQ to the Project Company and authorizing the use of Product Water as a source of potable water for public consumption through the SAWS Distribution System.

“Project Company Reimbursable Costs” has the meaning set forth in Section 4.6(A) (Project Company Reimbursable Costs Defined).

“Project Company-Related Loans” means the loans entered into or debt incurred by the Project Company as of the Conforming Contract Amendment Date, as further described in Appendix 22 (Project Company-Related Loans).

“Project Company Remediable Breach” has the meaning set forth in Section 20.1(B) (Project Company Remediable Breach Defined).

“Project Company Representative” means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Water Transmission and Purchase Agreement.

“Project Company-Requested Capital Modification” means a Project Company-Requested Capital Modification made pursuant to Section 12.2 (Capital Modifications at Project Company Request).
“Project Company-Requested Capital Modification Financing” means a financing by the Project Company of permitting, design and construction costs resulting from a Project Company-Requested Capital Modification effected pursuant to Section 7.3 (Financing the Capital Costs of Project Company-Requested Capital Modifications).

“Project Company Storage Tank” means the Product Water holding structure, to be designed, constructed, tested and maintained by the Project Company on the Transmission Pipeline Terminus Site for the storage of Product Water prior to SAWS taking delivery, as more particularly described in the Design Requirements. The Project Company Storage Tank includes the pipe between the Project Company Storage Tank and the SAWS Storage Tanks up to the Product Water Delivery Point; the portion of such pipe between the Product Water Delivery Point and the SAWS Storage Tanks shall constitute part of the SAWS Storage Tanks. The Project Flow Meter and related totalizer shall be located on the Project Company Storage Tank side of the Product Water Delivery Point and constitute part of the Project Company Storage Tank.

“Project Construction Loan Agreement” means the Loan Agreement, to be effective on or before the Financial Closing Date, required to be entered into between the Project Company and the Water Supply Corporation pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

“Project Contractor” means the EPC Contractor, the Operating Service Provider, the Water Supply Corporation and the parties to the Groundwater Lease Conveyance Agreement, and “Project Contractors” means any two or all of them.

“Project Contracts” means the EPC Agreement, the Water Transportation Agreement, and the Operating Service Agreement, and the Groundwater Lease Conveyance Agreement.

“Project Costs” means, without duplication, costs and expenses incurred by the Project Company on or prior to the date on which Final Completion has occurred in connection with the development, design, engineering, permitting, construction, financing, installation, equipping, assembly, inspection, start-up, testing and initial operations of the Project; the leasing and preparation of the Project Sites; together with an adequate contingency, which costs and expenses shall include: (1) all amounts payable under the EPC Agreement and the other agreements relating to any of the foregoing activities, any state sales taxes on equipment or other goods or services, amounts payable for power and other utilities relating to construction, start-up and testing, and all project development expenses and fees incurred by the Project Company or any of its Affiliates; (2) interest incurred on or in respect of the Permitted Debt and any other amounts required to be paid by the Project Company under the agreements with respect to the Permitted Debt, including fiduciary fees; (3) bond insurer payments and payments contemplated by any bond insurance policy, and the fees and expenses and other reimbursement of the issuer, and any agent or trustee party to the agreements with respect to the Permitted Debt; (4) legal, accounting, consulting, financial advisory and other transaction fees and expenses incurred by the Project Company and its Affiliates prior to Final Completion; (5) operating and maintenance costs incurred on or prior to Final Completion; (6) the costs of obtaining surety bonds, letters of credit or other security required to be delivered under an agreement or Governmental Approval on or prior to Final Completion (including any cash collateral required to be provided in connection therewith and security deposits made to applicable counterparties); and (7) costs incurred in compliance with Governmental Approvals.

“Project Equipment” means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, including tanks (other than concrete tanks), basins (other than concrete basins), process and treatment, mechanical, piping (with an original useful life of less than 20 years), electrical, instrumentation and controls, remote monitoring and communications, HVAC, chemical and
other storage and feed systems, cranes and hoists, and any ancillary, appurtenant and support equipment and systems utilized in or at the Project.

“Project Flow Meter” means the flow meter built in conformance with the requirements of Appendix 3 (Technical Specifications) for measuring the volume of Product Water of which SAWS has taken delivery, and located between the Project Water Delivery Point and the Project Company Storage Tank or another location on the Transmission Pipeline Terminus Site agreed to by the parties.

“Project Improvements” means the Well Field Facilities and the Transmission Pipeline System.

“Project Real Property” means: (1) the Well Field Facilities, (2) the Well Field Facilities Site Real Property Interests, (3) the Project Company Portion of the Transmission Pipeline Terminus Site, (4) the Transmission Pipeline System, and (5) the Transmission Pipeline System Real Property Interests. Project Real Property also includes any other interest in real property acquired by the Project Company or the Water Supply Corporation that is ancillary to the Project Real Property. Project Real Property does not include any rights to Raw Groundwater, the Groundwater Leases, the Groundwater Drilling and Operating Permit or the Groundwater Transportation Permit.

“Project Real Property Conveyance Agreement” means the Project Real Property Conveyance Agreement dated __________, 2016, between SAWS and the Water Supply Corporation based on the terms set forth in Section 13.2(H) (Terms of the, attached hereto as Reference Document 4 (Project Real Property Conveyance Agreement) in the event of an election by the Project Company to contract and conduct business with the Water Supply Corporation pursuant to Section 13.2(B) (Right of Election).

“Project Schedule” means the schedule set forth in Attachment 4A (Preliminary Project Schedule) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) and updated in accordance with Section 4.2.3 (Project Schedule Updates) of Appendix 4.

“Project Site Conveyance Instruments” means the Groundwater Leases, the Transmission Pipeline Easements, and the instruments conveying the Well Field Facilities Site Real Property Interests to the Project Company or Water Supply Corporation.

“Project Site Leases” means any lease of all or any portion of the Project Sites.

“Project Site Lessors” means the Groundwater Lessors and the Transmission Pipeline Easement Grantors.

“Project Sites” means the Well Field Facilities Site, the Transmission Pipeline Alignment and the Transmission Pipeline Terminus Site.

“Project Structures” means all structures, buildings, concrete tanks and basins, appurtenances (including valves, gates and weirs), and piping (with an original useful life of equal to or greater than 20 years) constituting part of the Project, other than Project Equipment.

“Proposed Financing” has the meaning specified in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

“Public Information Act” means the Texas Public Information Act, Chapter 552 of the Texas Government Code.
“Punch List” means the list prepared at the time of Substantial Completion (and periodically revised as necessary), which list shall set forth (1) all items of Construction Work which remain to be performed or corrected in order to ensure that the Project fully complies with all of the standards and requirements set forth herein (and shall include those items of Construction Work damaged or destroyed by the Project Company during completion of the Performance Test) and which do not affect the performance or safe and continued operation of the Project, and (2) an assessed valuation of each such item of Construction Work that is equal to 150% of the estimated cost thereof. The final Punch List shall be provided to SAWS by the Commercial Operation Date. The Punch List shall not include any items of Construction Work, alone or in the aggregate, the non-completion of which (a) prevents the Project from being used for its purpose as described in this Water Transmission and Purchase Agreement in accordance with Applicable Law, (b) prevents the Project from operation and maintenance on a legal, safe, environmentally sound and reliable basis, or (c) could have a materially adverse effect on the operation, maintenance, performance, warranties, efficiency, safety or reliability of the Project or the environment.


“Qualified Commercial Bank” means a reputable domestic or foreign commercial bank:

(1) Whose long term and short term debt is rated “A3” or higher by Moody’s, “A” or higher by Standard & Poor’s and “A” or higher by Fitch (the lower of the three applying if there is a split rating), and

(2) Which maintains a banking office, branch or agency in San Antonio or Houston, Texas.

“Qualified Insurer” means a reputable insurer authorized to conduct business in the State and having a credit rating of:

(1) A-VIII or better with A.M. Best; or

(2) The equivalent thereof by any other recognized insurance rating agency.

“Rating Service” means Moody’s, Standard & Poor’s or Fitch.

“Raw Groundwater” means groundwater drawn from the Carrizo-Wilcox Aquifer or the Simsboro Aquifer for treatment and conveyance to SAWS by the Project Company in accordance with the Contract Standards.

“Raw Groundwater Permits” means the permits listed in Reference Document 1 (Blue Water Systems Raw Groundwater Permits) issued by the POSGCD permitting Blue Water Systems to produce and transport Raw Groundwater.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Refinancing” means any refinancing of the Senior Debt and any subsequent refinancings.
“Refinancing Gain” means the nominal cash flow savings on debt service payable with respect to the Senior Debt in each Contract Year over the remaining Term resulting from a Refinancing.

“Regulated Site Condition” means:

(1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance;

(2) Any habitat of an endangered or protected species as provided in Applicable Law;

(3) The presence anywhere in, on or under the Project Sites of wells or underground storage tanks for the storage of chemicals or petroleum products;

(4) The presence of Hazardous Substances in, on or under the Project Sites (including presence in surface water, groundwater, soils or subsurface strata; and

(5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment.

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances and contaminated soils requiring special handling or disposal.

“Reinstatement Plan” has the meaning set forth in Section 15.2(C) (Reinstatement Plan).

“Reinstatement Works” has the meaning set forth in Section 15.2(A) (Draft Reinstatement Plan).

“Required Insurance” means the insurance specified in Appendix 7 (Insurance Requirements).

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

“Response Plan” means a Hazardous Substance emergency/spill response plan developed by the Project Company in accordance with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) during the Construction Period, and updated during the Operating Period.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

(1) Is disbarred, suspended, or otherwise disqualified from federal, State, SAWS, Counties or City contracting for any services similar in nature to the Contract Obligations;
(2) Was or is subject to any material claim of the United States, State, SAWS, Counties or City in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Water Transmission and Purchase Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the Board of Trustees or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Is any other person whose work on or association with the Project would be detrimental to the reputation of SAWS, as formally determined by SAWS in its discretion.

“Right-Of-Way Easement Form” means the form set forth in Transaction Form D (Right-Of-Way Easement Form).

“SAWS” means the San Antonio Water System, established and created pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code.

“SAWS Distribution System” means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project.

“SAWS Engineer” has the meaning set forth in Section 5.4(I) (SAWS Engineer).

“SAWS Event of Default” has the meaning set forth in Section 21.1 (SAWS Events of Default).

“SAWS Fault” means:

(1) A breach by SAWS of any of its obligations under this Water Transmission and Purchase Agreement; or

(2) A breach of any representation or warranty by SAWS under this Water Transmission and Purchase Agreement; or
(3) Willful misconduct of SAWS or a SAWS Indemnitee; or

(4) A negligent act or omission of SAWS or a SAWS Indemnitee; or

(5) A City Discriminatory Change in Law.

“SAWS Indemnitee” has the meaning set forth in Section 25.1 (Project Company’s Obligation to Indemnify).

“SAWS Interconnection Improvements” means the SAWS Storage Tanks and the other improvements required to be constructed by SAWS pursuant to Section 6.2 (SAWS Interconnection Improvements), as generally described in Appendix 13 (SAWS Interconnection Improvements).

“SAWS Interface Cabinet” means the interface for electronic communications and security information between SAWS and the Project Company to be installed by SAWS at the Transmission Pipeline Terminus Site as the operating interface between the SAWS Distribution System and the Project.

“SAWS Make-Up Units” has the meaning specified in Section 10.6(B) (SAWS Make-Up Units).

“SAWS Portion of the Transmission Pipeline Terminus Site” has the meaning set forth in Section 4.1(B)(9) (Other Due Diligence Documents for the Transmission Pipeline Terminus Site).

“SAWS Public Water Supplier Designation” means SAWS’ existing public water supplier designation issued by TCEQ authorizing the use of the SAWS Distribution System to supply potable water for public consumption.

“SAWS Reimbursable Costs” has the meaning set forth in Section 4.7(A) (SAWS Reimbursable Costs Defined).

“SAWS Representative” or “SAWS Administrator” means the individual SAWS employee specified in writing by SAWS as the representative of SAWS from time to time for all purposes of this Water Transmission and Purchase Agreement.

“SAWS-Requested Design Requirement Change” has the meaning set forth in Section 5.8 (SAWS-Requested Design Requirements Changes).

“SAWS-Requested Capital Modification” means a SAWS-Requested Capital Modification made pursuant to Section 12.3 (Capital Modifications at SAWS Request).

“SAWS-Requested Capital Modification Financing” means a financing by the Project Company of permitting, design and construction costs resulting from a SAWS-Requested Capital Modification effected pursuant to Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs).

“SAWS Storage Tanks” means the storage tanks to be constructed by SAWS on the Transmission Pipeline Terminus Site as part of the SAWS Interconnection Improvements, as generally described in Appendix 13 (SAWS Interconnection Improvements).

“SCADA” means supervisory control and data acquisition.
“Security Plan” has the meaning set forth in Section 9.7 (Security).

“Senior Debt” means debt or other obligations issued or incurred by the Project Company under the Senior Debt Financing Agreements secured by a first lien on all or substantially all of the revenues and assets of the Project Company, including the Initial Senior Debt.

“Senior Debt Creditors” means the lenders, bondholders or other parties, as the case may be, and their respective agents and trustees holding Senior Debt under the Senior Debt Financing Agreements.

“Senior Debt Financing Agreements” means the following as and to the extent that the same may be in effect to document the issuance or incurrence of Senior Debt that may be outstanding from time to time: (1) any loan or credit agreement and any notes issued pursuant thereto; (2) any bond indenture and the bonds issued pursuant thereto; (3) any security agreement relating to collateral pledged to secure Senior Debt, which may include all assets and contract rights of the Project Company and the Water Supply Corporation with respect to the Project; (4) any trust or collateral agency agreement relating to the administration of such collateral on behalf of the Senior Debt Creditors; (5) any interest rate hedge agreement entered into by the Project Company for the purpose of fixing or capping interest rates that might otherwise be floating rates; (6) the Creditors’ Remedies Agreement and other consents to assignment or direct agreements between the Senior Debt Creditors and SAWS relating to the assignment of this Water Transmission and Purchase Agreement by the Project Company and the rights of the Senior Debt Creditors thereunder; and (7) any guaranties, letters of credit and other third party assurances provided to the Senior Debt Creditors by third parties as additional security.

“Senior Secured Credit Facility” means the approximately [$799,000,000] credit facility further described in Appendix 16 (Plan of Development and Financing and Garney Holding Company Letter of Support).

“Service Area” means all territory in which customers are served by SAWS Distribution System during the Term thereof.

“Shareholder” means any holder or owner of Shares.

“Shares” means shares or other equity interests of any class in the capital of the Project Company.

“Simsboro Aquifer” means the Simsboro aquifer, as delineated by the TWDB.

“Specified Change in Tax Law” means the coming into effect of any Applicable Law which results in a new Tax imposed by the United States, the State or the City and paid by the Project Company, the Project Contractor or any Subcontractors with respect to the performance of the Contract Obligations, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; any unincorporated business, payroll, franchise or employment Tax; or any Taxes imposed by a foreign government or any of their agencies.

“Standard & Poor’s” means Standard & Poor’s Financial Services LLC, a division of The McGraw-Hill Companies, Inc., or any of its successors and assigns. If such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS.
“Standby Deed of Trust” has the meaning set forth in Section 19.7 (Standby Deed of Trust), as further described in Reference Document 4 (Project Real Property Conveyance Agreement).

“State” means the State of Texas.

“Subcontract” means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Water Transmission and Purchase Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor” means any person that enters into a Subcontract.

“Substantial Completion” has the meaning set forth in Section 8.1(D) (Conditions to Substantial Completion).

“Substantial Completion Procedures” means the procedures set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) for determining when the Project Company has achieved Substantial Completion.

“Substantial Completion Procedures Report” has the meaning set forth in Section 4.12 (Substantial Completion Procedures Report) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

“Substantial Completion Protocol” has the meaning set forth in Section 4.10.9 (Substantial Completion Protocol) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

“Supply Shortfall Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Target Equity Return Amount” has the meaning set forth in Section 23.1(B)(3) (Project Assets Purchase Price).

“Tax” means, from time to time, all taxes, surtaxes, fees, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection.

“TCEQ” means the Texas Commission on Environmental Quality, or any predecessor or successor agency.

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term).

“Termination Date” means the earlier of the Expiration Date or the date of termination of this Water Transmission and Purchase Agreement provided in Section 22.1(D) (Termination Date).

“Title Insurance Policy” means all title insurance policies with respect to the Project Sites issued to the Project Company.

“Transaction Form” means any of the Transaction Forms appended to this Water Transmission and Purchase Agreement and identified as such in the Table of Contents.
“Transfer Condition Plan Completion Certificate” has the meaning set forth in Section 11.7(G) (Final SAWS Condition Assessment).

“Transfer Condition Requirements” has the meaning set forth in Section 11.7(B) (Required Project Condition).

“Transfer Condition Retainage” has the meaning set forth in Section 11.7(D) (Determination of Transfer Condition Retainage).

“Transfer Restriction Date” has the meaning set forth in Section 24.1 (Limitation on Assignment by Project Company).

“Transmission Pipeline” means the pipeline, constituting part of the Project, for the conveyance of Product Water from the Well Field Facilities to the Project Company Storage Tank, as more particularly described in Appendix 1 (Description of the Project) and Appendix 3 (Technical Specifications). The Transmission Pipeline includes Transmission Pipeline Pumping Stations.

“Transmission Pipeline Alignment” means the real property over or within which the Transmission Pipeline is to be constructed.

“Transmission Pipeline Easement Grantors” means the grantors of the Transmission Pipeline Easements.

“Transmission Pipeline Easements” means the perpetual rights-of-way, easements, leases or other instruments necessary to construct, operate, maintain, repair and replace the Transmission Pipeline System in the Transmission Pipeline Alignment.

“Transmission Pipeline Pumping Stations” means the major pumping stations constituting part of the Transmission Pipeline System, as more particularly described in Appendix 1 (Description of the Project), which include the High Service Pump Station, Intermediate Pump Station #1 and Intermediate Pump Station #2.

“Transmission Pipeline System” means the Transmission Pipeline and the Project Company Storage Tank.

“Transmission Pipeline System Real Property Interests” means (1) a fee simple absolute in the Project Company Portion of the Transmission Pipeline Terminus Site, (2) permanent easements for the Transmission Pipeline Alignment, (3) a fee simple absolute interest in the sites for the Transmission Pipeline Pumping Stations, and (4) a fee simple absolute interest in the High Service Pump Station Site.

“Transmission Pipeline Terminus Site” means the parcel of approximately 20 acres located in the City at the terminus of the Transmission Pipeline on which the Project Company Storage Tank is to be constructed as part of the Project and SAWS Storage Tanks are to be constructed as part of the SAWS Interconnection Improvements, as described in Appendix 1 (Description of the Project).

“TWDB” means the Texas Water Development Board, or any predecessor or successor agency.

“Unacceptable Product Water” means water produced by the Project Company and made available to SAWS that does not comply with the Product Water Quality Guarantee to such an extent that it (1) does not meet primary and secondary drinking water standards under
Applicable Law; (2) presents a risk to public health or safety; or (3) has the potential to materially damage or destroy SAWS or private property or create an imminent need to clean, repair, replace or restore any such property.

“Uncontrollable Circumstances” means any act, event or circumstance that (a) is beyond the reasonable control of the Project Company in relying on it as a justification for performance or schedule relief as provided hereunder, and (b) materially expands the scope, interferes with, delays or prevents the performance by the Project Company of the Contract Obligations, to the extent that such act, event or circumstance is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Water Transmission and Purchase Agreement by the Project Company. Subject to the forgoing, Uncontrollable Circumstances include the following acts, events and circumstances specifically enumerated in Section 5.2 (Project Company Assumption of Risk):

1. Section 5.2(B) (Change in Law Events) – paragraphs (1), (2), (3), (4), (5) and (6) only;
2. Section 5.2(C) (Raw Groundwater Events) – all paragraphs;
3. Section 5.2(D) (Force Majeure Events) – all paragraphs;
4. Section 5.2(E) (Project Site and Project Site Lessor Risks) – paragraph (4); and
5. Section 5.2(F) (Other Circumstances) – paragraphs (1), (2), (3) (but solely to the extent that such act, circumstance or event would constitute an Uncontrollable Circumstance applicable to the Project Company), (4), (5), (6), (7) and (8).

An Uncontrollable Circumstance also includes a SAWS Fault (without, however, limiting the Project Company’s right to bring an action for breach on account of a SAWS Fault or the obligations of SAWS to make any payments provided under Section 16.3 (Project Company Relief Due to a SAWS Fault)). The acts, events and circumstances specifically enumerated in Section 5.2 (Project Company Assumption of Risks) that are not specifically referred to above in items (1), (2), (3), (4) and (5) of this definition shall not constitute Uncontrollable Circumstances.

“Unexcused Supply Shortfall Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions).

“Unit” means an Acre Foot of Product Water, or the equivalent in gallons or cubic feet, as applicable in the circumstances.

“Unit Price” has the meaning set forth in Section 17.4 (Unit Price).

“Unit Price Adjustments” has the meaning set forth in Section 17.8(B) (Adjustments to the Unit Price).

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Variable Compensable Costs” has the meaning set forth in Section 17.3(B) (Determination of Compensable Costs).
“Variable Compensable Costs Unit Price” has the meaning set forth in Section 17.3(E) (Budgeted Variable Compensable Costs Unit Price).

“Wastewater” means (1) any process wastewater produced at the Project, and (2) any Product Water produced at the Well Field Facilities that requires discharge from the Transmission Pipeline before reaching the Product Water Delivery Point for any reason, including flushing requirements or any failure to meet disinfection standards under the Product Water Quality Guarantee.

“Water Supply Corporation” means the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of the Texas Water Code and authorized to exercise the power of eminent domain under Section 49.222(a) of the Texas Water Code, and its permitted successors and assigns.

“Water Transmission and Purchase Agreement” means this Water Transmission and Purchase Agreement, and includes the Conforming Contract Amendment and the Transaction Forms and Appendices.

“Water Transmission and Purchase Agreement Amendment” has the meaning set forth in Section 26.7 (Water Transmission and Purchase Agreement Amendments).

“Water Transportation Agreement” means the Water Transportation Agreement, to be effective on or before the Financial Closing Date, required to be executed dated March 9, 2015, between the Project Company and the Water Supply Corporation pursuant to Section 4.1(B) (Financial Closing Date Conditions Defined).

“Well Field Facilities” means the facilities and roads to be constructed on the Well Field Facilities Site for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Wells and the Collection Pipelines.

“Well Field Facilities Site” means the land upon which the Well Field Facilities are to be constructed, including approximately 50,000 acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project).

“Well Field Facilities Site Real Property Interests” means (1) a fee simple absolute interest in the Well Sites, and (2) permanent easements for the Collection Pipelines Rights-of-Way.

“Well Field Meters” has the meaning set forth in Section 10.10(C) (Well Field Meters).

“Wells” means wells, casings, related pumping equipment and appurtenant facilities to be constructed on the Well Field Facilities Site for the pumping and production of Raw Groundwater, as further described in Appendix 1 (Description of the Project).

“Well Sites” means each of the sites of approximately two-acres upon which the Wells are to be constructed.
SECTION 1.2. INTERPRETATION.

This Water Transmission and Purchase Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Water Transmission and Purchase Agreement otherwise require.

(A) **Plurality.** Words importing the singular number mean and include the plural number and vice versa.

(B) **Persons.** Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited liability companies, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) **Headings.** The table of contents and any headings preceding the text of the Articles, Sections and Subsections of this Water Transmission and Purchase Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) **References Hereto.** The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Water Transmission and Purchase Agreement.

(E) **References to Days and Time of Day.** All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

(F) **References to Including.** The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(G) **References to Statutes.** Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) **References to SAWS, Governmental Bodies and Private Persons.** Each reference to SAWS or a Governmental Body is deemed to include a reference to any successor to SAWS or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of SAWS or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) **References to Business Days.** If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) **References to Documents and Standards.** Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) **References to All Reasonable Efforts.** The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either
party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) References to Treatment. The terms “treat,” “treated,” “treatment,” “treating” and any similar terms, when used with respect to Raw Groundwater, shall mean and refer to the operation of the Project by the Project Company to clarify, filter, disinfect and treat Raw Groundwater and make available Product Water to SAWS, all in accordance with this Water Transmission and Purchase Agreement.

(M) References to “Making Available Product Water”. The expressions “making available,” “make available,” “made available” and any similar expressions, when used with respect to Product Water, shall mean and refer to conditions in which (1) there is Product Water in the Project Company Storage Tank at a level that is higher than the level of the opening of the pipe connecting the Project Company Storage Tank to the SAWS Storage Tank, and (2) there is Product Water in the Transmission Pipeline System that is free to flow without obstruction into the Project Company Storage Tank to replenish continuously (with further replenishment of the Product Water in the Transmission Pipeline System) any Product Water in the Project Company Storage Tank to such higher level as Product Water moved from the Project Company Storage Tank to the SAWS Storage Tank. In the event both of the conditions described in items (1) and (2) above are satisfied and in effect, Product Water shall be deemed to have been made available hereunder. In the event either or both of the conditions described in items (1) and (2) are not satisfied and in effect, Product Water shall be deemed not to have been made available hereunder. Protocols or conventions for measuring the number of Units of Product Water that has not been made available in such circumstances shall be developed and agreed to by the parties before the Financial Closing Date when the design of the Project Improvements is sufficiently advanced for such protocols or conventions to be established. The resulting agreement shall be documented in a Contract Administration Memorandum.

(N) References to “Take Delivery Of”. The expression “take delivery of”, and any similar expressions, when used with respect to Product Water, shall mean and refer to the operation by SAWS of the gravity feed system at the SAWS Interconnection Improvements to move Product Water from the Project Company Storage Tank through the Product Water Delivery Point into the SAWS Storage Tanks. The number of Units that SAWS takes delivery of on any day shall be measured by the totalizer attached to the Project Flow Meter.

(O) References to “Mortgage”. The term “mortgage” shall mean and include “deed of trust”, and the granting of a deed of trust.

(P) Entire Agreement. This Water Transmission and Purchase Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and thereby. Without limiting the generality of the foregoing, this Water Transmission and Purchase Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

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

(R) Governing Law. This Water Transmission and Purchase Agreement shall be governed by and construed in accordance with the applicable laws of the State.
(S) **Severability.** Each provision of this Water Transmission and Purchase Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Water Transmission and Purchase Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Water Transmission and Purchase Agreement, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Water Transmission and Purchase Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Water Transmission and Purchase Agreement as nearly as possible to its original intent and effect.

(T) **Drafting Responsibility.** The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Water Transmission and Purchase Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(U) **Rounding of Acre Foot Calculations.** All calculations hereunder involving Acre Feet shall be rounded to the nearest one-tenth of an Acre-Foot.

(V) **Interpolation.** If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(W) **Accounting and Financial Terms.** All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(X) **Applicability, Stringency and Consistency of Contract Standards.** The parties understand that one or more of the Contract Standards applicable to a performance obligation of the Project Company may include a range of applicable criteria; in such circumstances, performance by the Project Company shall be deemed to have satisfied such Contract Standard so long as it is within such range. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. Any reference in this Water Transmission and Purchase Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Water Transmission and Purchase Agreement.

(Y) **Delivery of Documents in Digital Format.** In this Water Transmission and Purchase Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to SAWS both in printed form (in the number of copies indicated) and, at SAWS’ request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Water Transmission and Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.
(Z) **Obligations to Provide Assistance.** The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party’s personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(AA) **Third-Party Rights.** This Water Transmission and Purchase Agreement is exclusively for the benefit of SAWS and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party SAWS Indemnitees as provided in Section 25.1 (Project Company’s Obligation to Indemnify) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(BB) **Acting Reasonably and in Good Faith; Discretion.** Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its “discretion” by the express terms hereof. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Water Transmission and Purchase Agreement. When a party does not have “discretion” it means that the party shall act reasonably. A party may exercise any termination right hereunder in its discretion.

(CC) **Convenience Termination.** The exercise by SAWS or the Project Company of its right of convenience termination under any provision of this Water Transmission and Purchase Agreement shall not be deemed a breach of any implied duty of good faith dealing or a SAWS Event of Default or a Project Company Event of Default, nor shall any damages be payable by SAWS or the Project Company on account thereof. The only compensation payable by SAWS or the Project Company upon the exercise of their respective convenience termination options shall be the amounts specified herein in connection therewith.
ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF SAWS.

SAWS represents and warrants, as of the Conforming Contract Amendment Date, that:

(A) **Existence and Powers.** SAWS is an agency of the City created by City Ordinance 75686 as a public utility, validly existing and in good standing under the laws of the State, and has the authority to do business in the State and in any other state in which it conducts its activities with full legal right, power and authority to execute, deliver and perform its obligations under this Water Transmission and Purchase Agreement.

(B) **Validity and Enforceability.** This Water Transmission and Purchase Agreement has been duly authorized, executed and delivered by SAWS, and constitutes a legal, valid and binding special obligation of SAWS, enforceable against SAWS in accordance with its terms, except to the extent that its enforceability may be limited by the law of sovereign or governmental immunity (except as provided in Section 17.19 (Goods and Services)), bankruptcy, insolvency or other similar laws affecting creditors’ rights from time to time in effect, and equitable principles of general application.

(C) **No Conflict.** To the best of its knowledge, neither the execution and delivery by SAWS of this Water Transmission and Purchase Agreement nor the performance by SAWS of its obligations in connection with the transactions contemplated hereby or the fulfillment by SAWS of the terms or conditions hereof:

1. Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to SAWS; or

2. Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which SAWS is a party or by which SAWS or any of its properties or assets are bound or constitutes a material default under any of the foregoing.

(D) **All Required Approvals Obtained.** No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or prior approval of voters is required for the valid execution and delivery by SAWS of this Water Transmission and Purchase Agreement or the performance by SAWS of its payment or other obligations hereunder other than those which have been duly obtained or made.

(E) **No Litigation.** Except as disclosed in writing to the Project Company, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against SAWS, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by SAWS or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against SAWS, or any other agreement or instrument entered into by SAWS in connection with the transactions contemplated hereby or on the ability of SAWS to perform its obligations hereunder or under any such other agreement or instrument.
SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Conforming Contract Amendment Date, that:

(A) **Existence and Powers and Ownership.** The Project Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Water Transmission and Purchase Agreement. **Abengoa owns indirectly 100% of the Shares of the Project Company.**

(B) **Validity and Enforceability.** This Water Transmission and Purchase Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors’ rights from time to time in effect and equitable principles of general application.

(C) **No Conflict.** To the best of its knowledge, neither the execution nor delivery by the Project Company of this Water Transmission and Purchase Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

1. Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company or

2. Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) **All Required Approvals Obtained.** No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Water Transmission and Purchase Agreement by the Project Company except as such have been duly obtained or made.

(E) **No Litigation Affecting the Project Company.** Except as provided in Appendix 21 (Certain Litigation Matters), to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company’s knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Water Transmission and Purchase Agreement by the Project Company or the validity, legality or enforceability of this Water Transmission and Purchase Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) **No Litigation Affecting the Project Contractors.** To the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending, overtly threatened or publicly announced against a Project
Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of a Project Contractor to perform its obligations under its respective Project Contract.

(G) **Groundwater Leases.** Groundwater leases listed in Reference Document 2 are in force and effect sufficient to provide groundwater, in aggregate, in a volume at least equal to the Baseline Annual Volume, subject to the authority for such groundwater to be pumped, withdrawn, and transported under the terms of the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit.

(H) **Sufficiency of Groundwater Permitting Arrangements.** The existing Groundwater Drilling and Operating Permit and the existing Groundwater Transportation Permit constitute legal authority sufficient for the pumping, withdrawal and transportation of Raw Groundwater from the Carrizo-Wilcox Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes at least equal to the Baseline Annual Volume, subject only to the terms and conditions of such permits.

(I) **Intellectual Property.** The Project Company owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(J) **Plan of Development and Financing and AbengoaGarney Holding Company Letter of Support.** The statements made by AbengoaGarney Holding Company in the Plan of Development and Financing and the AbengoaGarney Holding Company Letter of Support, are an expression of AbengoaGarney Holding Company’s good faith intention as to the manner in which AbengoaGarney Holding Company intends to proceed to develop and finance the Project in order to reach the Financial Closing Date.

(K) **Compliance with Applicable Law Generally.** The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company’s business and services.

(L) **No Public Utility Regulation.** The Project Company is not and will not by reason of this Water Transmission and Purchase Agreement or otherwise be a “retail public utility” within the meaning of Chapter 13 of the Texas Water Code, and is not and will not be subject to the jurisdiction of utility rates of the TCEQ or Public Utility Commission of Texas.

(M) **Practicability of Performance.** Subject to, and in accordance with, the terms of this Water Transmission and Purchase Agreement, the Project Company assumes the risk of the practicability and possibility of performance of the Project and the Contract Obligations on the scale, within the time for completion, and in the manner required hereunder, and agrees that sufficient consideration for the assumption of such risk is included in the Monthly Water Purchase Payments.

(N) **No Restricted Persons.** Neither Abengoa, Garney Holding Company, nor any of their Affiliates is a Restricted Person.

(O) **Project Company-Related Loans.** The Project Company-Related Loans constitute the only loans entered into or debt incurred by the Project Company as of the Conforming Contract Amendment Date.
(P) No Events of Default. No Project Company Event of Default exists under this Water Transmission and Purchase Agreement nor has any event occurred which, with the giving of notice or passage of time, would constitute a Project Company Event of Default under this Water Transmission and Purchase Agreement, except that no representation is made with respect to the use of funds under the Bridge Loan Agreement.

(Q) Project Company Ownership. Abengoa owns indirectly 20% of the Shares of the Project Company and Garney P3 LLC owns 80% of the Shares of the Project Company. Garney P3 LLC is wholly owned by Garney Holding Company.
ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Water Transmission and Purchase Agreement shall become effective, and the term hereof (the “Term”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Water Transmission and Purchase Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Water Transmission and Purchase Agreement shall:

1. Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

2. Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. ASSIGNMENT AND CONVEYANCE OF THE PROJECT ASSETS EFFECTIVE ON THE EXPIRATION DATE.

(A) Obligation to Assign and Convey. Not later than 60 days prior to the Expiration Date, unless this Water Transmission and Purchase Agreement has been terminated earlier, the Project Company, at its sole cost and expense, shall assign and convey, or cause to be assigned and conveyed, to SAWS, and SAWS shall accept and assume, good and indefeasible title and interest in, to and under the Project Assets and SAWS shall accept and assume the assignment and conveyance. Such assignment, conveyance, acceptance and assumption shall be effective on the Expiration Date.

(B) Assignment and Conveyance Requirements. Each assignment and conveyance provided for in Section 3.2(A) (Obligation to Assign and Convey) shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to the Project Company or any other person. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Project Company shall indemnify and defend SAWS. The Project Company shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) Project Real Property Conveyance Agreement. The Project Company shall, effective on the Expiration Date, (1) convey to SAWS Project Real Property which is owned by the Project Company and (2) cause the Water Supply Corporation to comply with its obligations under the Project Real Property Conveyance Agreement to convey to SAWS all other Project Real Property. Such conveyance shall convey good and indefeasible title and interest in the Project Real Property, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances. In making any assignment and conveyance of Project Real Property, the Project Company shall comply with all of the real property acquisition, holding, conveyance and assignment obligations of the Water Supply Corporation (including...
particularly those set forth in Article 4) of the Project Real Property Conveyance Agreement, as if expressly applicable to the Project Company for an assignment and conveyance of Project Real Property hereunder.

(D) Further Assurances. The Project Company shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for in Section 3.2(A) (Obligation to Assign and Convey), including executing and delivering such further documents or instruments and giving or filing such notices as SAWS may reasonably request.

(E) Applicability of Related Provisions. The provisions of Sections 23.4 (Conveyance), 23.5 (Full Settlement; Antecedent and Post-Termination Liabilities), 23.6 (Additional Obligations Upon Project Assets Purchase), 23.7 (Transitional Arrangements), and 23.8 (Project Company to Cooperate) shall apply to a conveyance and assignment made pursuant to Section 3.2(A) (Obligation to Assign and Convey), as if written to apply to such a conveyance rather than to a conveyance made pursuant to a purchase option occurring upon the termination of this Water Purchase and Transmission Agreement prior to the Expiration Date.

SECTION 3.3. SURVIVAL.

Notwithstanding any other provision of this Water Transmission and Purchase Agreement, this Section and the following provisions hereof will survive the expiration or any earlier termination of this Water Transmission and Purchase Agreement:

1. Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date);

2. Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period);

3. Section 5.11 (Financial Books and Records);

4. Section 11.7 (Project Assets Transfer Condition);

5. Article 18 (Dispute Resolution);

6. Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;

7. Article 23 (SAWS Project Assets Purchase Options);

8. Article 25 (Indemnification), including all of the indemnities referred to therein;

9. Section 26.10 (Intellectual Property Rights);

10. Section 26.12 (Project Company's Confidentiality Obligations);

11. Section 26.13 (SAWS' Confidentiality Obligations);

12. Section 26.14 (Personal Information);
(13) All provisions of this Water Transmission and Purchase Agreement with respect to payment obligations of the Project Company or SAWS accrued prior to the Termination Date; and

(14) Any other provision of this Water Transmission and Purchase Agreement providing for survival by its express terms;

together with any provisions necessary to give effect to the above provisions.
ARTICLE 4
DEVELOPMENT AND FINANCING PERIOD

SECTION 4.1. FINANCIAL CLOSING DATE CONDITIONS.

(A) Documents Delivered Prior to the Conforming Contract Amendment Date. The parties acknowledge that, on or before the Conforming Contract Amendment Date, the following documents were executed and delivered in connection with the execution and delivery of this Water Transmission and Purchase Agreement:

(1) The Abengoa Garney Holding Company Letter of Support, attached hereto in Appendix 16 (Plan of Development and Financing and Abengoa Garney Holding Company Letter of Support);

(2) The Guaranty Agreement;

(3) The Groundwater Lease Conveyance Agreement; and

(4) The Groundwater Supply Agreement.

(B) Financial Closing Date Conditions Defined. The obligations of the Project Company and SAWS to proceed with their respective obligations hereunder during the Construction Period and the Operating Period shall not commence unless and until all of the following conditions (the “Financial Closing Date Conditions”) are satisfied or have been waived by SAWS:

(1) Transmission Pipeline System Real Property Interests. The Water Supply Corporation shall have acquired (i) at a minimum, 184,000 linear feet of the Transmission Pipeline Easements, and (ii) all of the other Transmission Pipeline System Real Property Interests (or binding and enforceable options to acquire such Transmission Pipeline System Real Property Interests) sufficient to commence construction of substantially all of the Transmission Pipeline System. In acquiring easements, the Project Company shall comply with Section 26.1(A) (Right-of-Way Easements). For any other parcels, the Project Company shall (except as SAWS may otherwise approve, acting reasonably) have acquired a valid right-of-way entry to construct, shall have initiated or caused to be initiated an eminent domain proceeding or a right of entry if the acquisition of such parcel is not material to the completion of the Transmission Pipeline System within the Project Schedule.

(2) Well Field Facilities Site Real Property Interests. The Project Company, acting in cooperation with the Water Supply Corporation, as appropriate, shall have acquired all of the Well Field Facilities Site Real Property Interests. In acquiring easements, the Project Company shall comply with Section 26.1(A) (Right-of-Way Easements).

(3) Groundwater Leases and Permits. Groundwater Leases sufficient for the production of the Baseline Annual Volume shall be in full force and effect, and there shall be no material breach or event of default existing under such Groundwater Leases sufficient for the production of the Baseline Annual Volume by any party thereto. The Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit constitute legal authority sufficient for the pumping, withdrawal and transportation of Raw Groundwater from the Carrizo-
Wilcox Aquifer and the Simsboro Aquifer commencing on the Commercial Operation Date in volumes at least equal to the Baseline Annual Volume and to continue such pumping, withdrawal and transportation for a term of not less than 30 years commencing not earlier than September 1, 2014, subject only to the terms and conditions of such permits. No other legal authority is required for such pumping, withdrawal and transportation from the POSGCD or any other Governmental Body.

(4) **Groundwater Lease Conveyance Agreement.** The Groundwater Lease Conveyance Agreement shall be in full force and effect, and there shall be no material breach or event of default existing thereunder by either party thereto.

(5) **Raw Groundwater Parameters.** The Project Company shall have drilled additional test wells and tested all additional samples of Raw Groundwater in the Well Field to the extent reasonably required in order to permit the Project Improvements to be designed and constructed in accordance with Good Engineering and Construction Practice, and in a manner that will allow the Project to achieve Acceptance and be operated and maintained in accordance with the Performance Guarantees.

(6) **Project Site Conditions.** The Project Company shall have made all soil test borings in the Project Sites and made all Project Site inspections and reasonably required in order to permit the Project Improvements to be designed and constructed in accordance with Good Engineering and Construction Practice, and in a manner that will allow the Project to achieve Acceptance and be operated and maintained in accordance with the Performance Guarantees.

(7) **Land Use Proceedings and Government Approvals.** The Project Company shall have conducted and completed all zoning, planning and land use proceedings, and shall have submitted applications for and obtained all Governmental Approvals required to be obtained, for the commencement of construction of the Project.

(8) **Transmission Pipeline Terminus Site Plan.** The Project Company shall have delivered to SAWS a site plan of the Transmission Pipeline Terminus Site showing:

(a) that the proposed location of the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tanks and related portion of the SAWS Interconnection Improvements, as set forth in Appendix 1 (Description of the Project), on the Transmission Pipeline Terminus Site is in compliance with all applicable building and setback lines and does not encroach on or interfere with existing easements (whether on, above or below ground in any material matter); and

(b) no encroachments from the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tanks and related portion of the SAWS Interconnection Improvements, extending to adjacent property or from adjacent property onto the Project, nor any gaps, gores, projections, protrusions or other survey defects which will have a material adverse impact on the use of the Transmission Pipeline Terminus Site.

(9) **Other Due Diligence Documents for the Transmission Pipeline Terminus Site.** The Project Company shall provide SAWS, with respect to that portion of the Transmission Pipeline Terminus Site being conveyed to SAWS (the
“SAWS Portion of the Transmission Pipeline Terminus Site”) pursuant to Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site), a survey prepared by a registered professional land surveyor licensed in the State satisfying the requirements of a Category 1A, Condition II Survey, sufficient for a title company to issue all requested survey endorsements, certified to SAWS, the title company and the Project Company; a Phase I Environmental Site Assessment (i) dated no more than 180 days prior to the conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site, (ii) made in accordance with then-current ASTM standards, (iii) naming SAWS as a “user”, (iv) unless recommending further action, sufficient to satisfy the “all appropriate inquiries” necessary for SAWS to be an “innocent landowner” or “bona fide prospective purchaser”, together with any other follow-up reports obtained by the Project Company or Water Supply Corporation; and a title commitment from Chicago Title Insurance Company or such other reputable title company to issue an owner policy of title insurance to SAWS, based on a value which is the allocable cost of such tract based on the Project Company’s purchase price (on a per square foot allocation), subject only to those exceptions to title of record in the Official Public Records of Real Property of Bexar County, Texas that do not materially affect the ability of SAWS to use the SAWS Portion of the Transmission Pipeline Terminus Site for the purposes of this Water Transmission and Purchase Agreement. The Project Company shall, prior to and as a condition of conveyance described in Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site), cure any defects to title, and cause to be removed from the title commitment, that materially affect the ability of SAWS to use the SAWS Portion of the Transmission Pipeline Terminus Site for the purposes of this Water Transmission and Purchase Agreement. The SAWS Portion of the Transmission Pipeline Terminus Site must be separately platted as its own lot, at Project Company’s sole expense, prior to conveyance pursuant to Section 4.1(B)(10) (Conveyance to SAWS of a Portion of the Transmission Pipeline Terminus Site). At the closing of the conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site, SAWS and the Project Company shall execute such reasonable and customary documents required by the title company to close such transaction and issue to SAWS the owner policy of title insurance subject to no exceptions or exclusions that have not been approved by SAWS, and shall each pay such reasonable and customary expenses as are typically allocated to a buyer and seller for a closing of a real estate transaction in San Antonio, Texas. The remaining portion of the Transmission Pipeline Terminus Site is the “Project Company Portion of the Transmission Pipeline Terminus Site.”

(11) **EPC Agreement.** The Project Company shall have caused the definitive EPC Agreement to be negotiated and executed with the EPC Contractor. The EPC Contractor shall be a licensed contractor in the State. The EPC
Agreement shall provide for the engineering, procurement, construction and completion of the Project Improvements on a fixed price, turnkey basis.

(12) **Operating Service Agreement.** The Project Company shall have negotiated and executed the definitive Operating Service Agreement between the Project Company and the Operating Service Provider. The Operating Services Agreement shall provide for the operation, maintenance, repair and replacement of the Project for the Term.

(13) **Construction Management Agreement.** The Project Company shall have negotiated and executed the definitive Construction Management Agreement with the Water Supply Corporation. The Construction Management Agreement shall provide for the management of the construction of the Project Improvements under the EPC Agreement by the Water Supply Corporation.

(14) **Water Transportation Agreement.** The Project Company shall have negotiated and executed the definitive Water Transportation Agreement with the Water Supply Corporation. The Water Transportation Agreement shall provide for the transportation of Product Water to the Project Company Water Storage Tank through the Transmission Pipeline by the Water Supply Corporation.

(15) **Project Construction Loan Agreement.** The Project Company shall have negotiated and executed the definitive Project Construction Loan Agreement with the Water Supply Corporation. The Project Construction Loan Agreement shall provide for a loan from the Project Company to the Water Supply Corporation to finance the design and construction of the portions of the Project to be owned by the Water Supply Corporation.

(16) **Required Construction Period Insurance.** The Project Company shall have submitted to SAWS certificates of insurance for all Required Construction Period Insurance.

(17) **Representations.** The Project Company shall have delivered to SAWS a certificate of an authorized officer to the effect that the representations of the Project Company set forth in Section 2.2 (Representations and Warranties of the Project Company) hereof are true and correct in all material respects as of the Financial Closing Date as if made on and as of the Financial Closing Date (except to the extent such representations expressly refer to an earlier or other date, in which case they shall be true and correct as of such earlier or other date).

(18) **Legal Proceedings.** There shall be no Legal Proceeding, at law or in equity, pending before or by any court or Governmental Body, which seeks to enjoin or restrict the construction or operation of the Project in the manner or for the purposes contemplated by this Water Transmission and Purchase Agreement that would substantially impair the Project Company’s ability to perform the Contract Obligations. In addition, without limiting any of the foregoing, the Project Company shall have provided confirmation satisfactory to SAWS in its discretion that the litigation involving Blue Water Systems, LP, as described in Appendix 21 (Certain Litigation Matters), shall have been resolved to the satisfaction of SAWS in its discretion, including, at a minimum, a copy of the final unappealable judgment dismissing such litigation with prejudice.

(19) **Financial Condition.** The Project Company shall provide financial statements of the Project Company and AbengoaGarney Holding Company, audited if available, for the most recently completed fiscal year and quarterly
Since the Contract Date, There shall not have occurred any change, financial or otherwise, in the condition of the Project Company \textit{or Abengoa since the Contract Date}, or in the condition of Garney Holding Company since the Conforming Contract Amendment Date, that would materially and adversely affect the ability of the Project Company or \textit{Abengoa Garney Holding Company} to perform their respective obligations under this Water Transmission and Purchase Agreement, the Guaranty Agreement, the Groundwater Lease Conveyance Agreement or any other Transaction Agreement.

(20) \textbf{Project Company Counsel Opinion}. The Project Company shall deliver to SAWS such favorable opinions of counsel for the Project Company, in customary form for project financing transactions, as to this Water Transmission and Purchase Agreement, any agreements made pursuant hereto, matters of law covered by the representations of the Project Company set forth in Section 2.2(A), (B), (C), (D) and (E) (Representations and Warranties of the Project Company), and as to such other matters of law as SAWS may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates. Such opinions shall further state in substance that the Project Company owns the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and has the right under the leasehold estate granted by the Groundwater Lease Conveyance Agreement to produce Raw Groundwater from the Well Field Facilities Site and transport such Raw Groundwater through the Transmission Pipeline to the Project Company Storage Tank.

(21) \textbf{Blue Water Vista Ridge, LLC Counsel Opinion}. The Project Company shall deliver to SAWS such favorable opinions of counsel for Blue Water Vista Ridge, LLC, in customary form for project financing transactions, as to the Groundwater Lease Conveyance Agreement and the Groundwater Supply Agreement, any agreements made pursuant thereto, matters of law covered by the legal representations of Blue Water Vista Ridge, LLC set forth therein, and as to such other matters of law as SAWS may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates.

(22) \textbf{Water Supply Corporation Counsel Opinion}. The Project Company shall deliver to SAWS a letter from counsel for the Water Supply Corporation confirming that the substantially in the form attached as Transaction Form F (Opinion of such Counsel delivered pursuant to Section 13.2(E) to the Water Supply Corporation Counsel Opinion) remains in effect on and as of the Financial Closing Date).

(23) \textbf{Completion of Appendices 3, 5 and 9}. Appendices 3 (Technical Specifications), 5 (Performance Test Procedures and Standards) and 9 (Guaranteed Maximum Electricity Utilization and Demand) shall be completed as provided therein.

(24) \textbf{Project Real Property Ownership}. The Project Company shall have delivered a certificate to SAWS, as of the Financial Closing Date, as to which elements of the Project Real Property are owned by the Project Company and which elements are owned by the Water Supply Corporation, together with appropriate evidence thereof.

(25) \textbf{Financial Close}. Financial Close shall have occurred. In connection therewith:
(a) Financial Close Defined. Financial Close shall be deemed to have occurred when (1) Initial Senior Debt has been issued under the definitive Senior Debt Financing Agreements on a permanent basis, and equity has been definitively committed under the Equity Contribution Agreement for the financing in full of amounts sufficient to pay the costs of achieving Acceptance as projected in the Financial Close Financial Model, and (2) the other requirements of this Section 4.1(B) (Financial Closing Date Conditions Defined) have been met. If the Senior Secured Credit Facility is executed, Financial Close shall not be deemed to have occurred except as described in Section 4.1(B)(25)(b) (Initial Senior Debt Requirements). Financial Close shall not include (1) elective payments by or on behalf of Abengoa Garney Holding Company or its Affiliates for early construction costs (or financing arrangements made to pay such costs), (2) any transaction in which the Initial Senior Debt is issued to or purchased by Abengoa Garney Holding Company or any Affiliate of Abengoa Garney Holding Company, or (3) any transaction in which any such Project Costs are not financed on a permanent basis in a bona fide third-party transaction. Financing on a permanent basis includes construction financing in which the lender does not require committed take-out financing as a condition to making the construction loan.

(b) Initial Senior Debt Requirements. The Initial Senior Debt shall comply with Section 7.1 (Project Financing) and the Project shall be financed substantially in compliance with Appendix 16 (Plan of Development and Financing and Abengoa Garney Holding Company Letter of Support), subject to such exceptions as SAWS, acting reasonably, may approve. If the Senior Secured Credit Facility is executed, Financial Close shall not be deemed to have occurred until all of the Financial Closing Date Conditions hereunder have been satisfied and all conditions to the initial disbursement of loan proceeds under the Senior Secured Credit Facility have been satisfied or waived by the parties thereto (provided that any such waiver shall be subject to SAWS’ consent in its discretion). Alternatively, in the event that the Senior Secured Credit Facility is not executed, the Project Company shall use commercially reasonable efforts to issue Initial Senior Debt utilizing a method of permissible financing in accordance with the requirements of the Water Transmission and Purchase Agreement, including tax-exempt private activity bonds that, if issued, are assigned an investment grade rating by at least two Rating Services, to the extent private activity bond volume cap is reasonably available for such purposes and taking into account the overall impact on the Project and the costs and equity returns associated with such a financing in relation to alternative financing methods. Any Initial Senior Debt not issued by the Project Company as tax-exempt private activity bonds is not required to be rated by any Rating Service and, if rated, is not required to carry an investment grade credit rating by any Rating Service. To the extent required by State law, any Initial Senior Debt issued by or on behalf of the State or any local government shall be approved by the Texas Attorney General and registered with the Texas Comptroller of Public Accounts and issued under and pursuant to Chapter 1371, as amended, Texas Government Code and other Applicable Law providing a legal basis for such issuance of debt.

(c) SAWS Review. The Project Company shall provide to SAWS (1) for its review, reasonably in advance of any proposed bond or securities offering or bank loan commitment, copies of the draft Senior Debt Financing Agreements and, if applicable, the draft preliminary official statement or preliminary offering memorandum, and (2) reasonable advance notice of the commencement of any bond offering or loan commitment.
(d) **Financial Model.** The Project Company shall have submitted to SAWS a financial model (the "**Financial Close Financial Model**") meeting the requirements of this Section 4.1(B)(25)(d) (Financial Model). The Financial **Close Financial Model**:

1. Shall be prepared by or on behalf of the Project Company in good faith and in accordance with generally accepted standards prevailing for the preparation of similar models in connection with the project financing of major public works projects of a similar size;

2. Shall be audited and verified by an independent recognized model auditor;

3. Shall fairly disclose all material cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Water Transmission and Purchase Agreement and by shareholders in purchasing Shares;

4. Shall be the financial model that was used as the basis for the decision by the Senior Debt Creditors to enter into the Senior Debt Financing Agreements (either directly or indirectly in the preparation of the disclosure documents that were provided in a bond or securities offering or placement) and, if applicable, by the Rating Services in rating or shadow rating the Initial Senior Debt; and

5. Shall be prepared in a format and using a methodology consistent with the **Contract Date Financial Model** delivered to SAWS in connection with the authorization or the execution of this Water Transmission and Purchase Agreement to enable the proper determination of the Target Equity Return Amount.

SAWS shall have the right to review and comment on the Financial Close Financial Model to ensure that it was prepared in a manner consistent with the **Contract Date Financial Model**. This Financial Closing Date Condition shall not be deemed to have been satisfied until the parties execute a Contract Administration Memorandum which reflects the discount rate and the pre-tax internal rate of return generated by the Financial Close Financial Model and refers to the appropriate Financial Close Financial Model tabs and rows, as further described in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) and Section 23.1(B) (Project Assets Purchase Price). Upon the execution of the **Contract Administration Memorandum**, this Water Transmission and Purchase Agreement shall be deemed to be amended to reflect such references, rate of return and discount rate. The Project Company shall bear the entire risk of any errors in or omissions from the Financial Close Financial Model, and shall not be entitled to any compensation from or other redress against SAWS in relation to any loss or damage that it suffers in consequence of such error or omission. In no event shall the agreement of the parties to establish the Financial Close Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

(e) **Creditors’ Remedies Agreement.** The Senior Debt Creditors and the Project Company shall have negotiated and executed the definitive Creditors’ Remedies Agreement with SAWS, **which shall have been approved by SAWS in its discretion**. The Creditors’ Remedies Agreement shall provide for step-in and cure
rights by the Senior Debt Creditors, and be in a form consistent with the form of similar agreements customarily executed in project financings similar to the Initial Senior Debt financing.

(f) All Conditions. The parties acknowledge and agree that the conditions itemized in Section 4.1(B) (Financial Closing Date Conditions Defined), other than Section 4.1(B)(25) (Financial Close), are independent of the Financial Close, and must be satisfied in order for the Financial Closing Date to be established, irrespective of whether such conditions are or are not prerequisites of Financial Close.

(g) Financial Close Contract Administration Memorandum. On or promptly following the Financial Closing Date, the parties shall execute a Contract Administration Memorandum which confirms that all of the Financial Closing Date Conditions were satisfied, specifies the Financial Closing Date and reflects the parties’ acknowledgement and agreement that Financial Close has been deemed to have occurred.

(26) Acceptability and Effectiveness of Documents. Each of the agreements, documents and instruments identified in Section 4.1(B) (Financial Closing Date Conditions Defined) shall have terms and conditions that are materially consistent with this Water Transmission and Purchase Agreement; shall not materially and adversely affect the rights and obligations of SAWS hereunder; and shall be valid, in full force and effect and enforceable against each party thereto on the Financial Closing Date. No such agreement, document or instrument shall be subject to the satisfaction of any outstanding condition precedent except those expressly to be satisfied after the Financial Closing Date, no party to any such document, instrument or agreement shall be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall reasonably requested.

(C) Official Certificate as to Certain Matters. The conditions specified in subsections (1), (2), (3), (5), (6), (7), (17), (18) and (19) of this Section 4.1(B) (Financial Closing Date Conditions Defined) shall be deemed to have been satisfied upon the delivery of a certificate of a duly authorized officer of the Project Company confirming the matters set forth in such certificate, absent manifest error or credible evidence of fraud.

(D) Expenses. All costs and expenses incurred by the Project Company in performing the Development and Financing Work shall be for the account of the Project Company and shall not be reimbursable by SAWS, except as and to the extent provided in Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) in the event SAWS exercises its right to terminate this Water Transmission and Purchase Agreement during the Development and Financing Period.

SECTION 4.2. SAWS DEVELOPMENT AND FINANCING PERIOD RESPONSIBILITIES AND RIGHTS.

(A) Initial Senior Debt. In connection with the Initial Senior Debt, SAWS at its own cost and expense shall:

(1) SAWS Information. Cooperate with and assist the Project Company in connection with the issuance of the Initial Senior Debt by (a) providing any information, certifications or documents that are in SAWS possession and that are reasonably required in connection with the issuance by
the Project Company of the Initial Senior Debt, and (b) if the Initial Senior Debt Financing involves an offering or placement of bonds, providing a letter to the Project Company and to the lead investment business or placement agent, prior to the issuance of any preliminary official statement or preliminary offering memorandum, as to whether the Financial Closing Date Conditions have or have not been satisfied as of the date of the letter.

(2) **Representations.** Deliver to the Project Company a certificate of an authorized officer to the effect that the representations of SAWS set forth in Section 2.1 (Representations and Warranties of SAWS) hereof are true and correct in all material respects as if made on and as of the Financial Closing Date.

(3) **SAWS Counsel Opinion.** Deliver to the Project Company and to the Senior Debt Creditors such favorable opinions of counsel for SAWS, in customary form for project financing transactions, as to this Water Transmission and Purchase Agreement, any agreements made pursuant hereto, matters of law covered by the representations of SAWS set forth in Section 2.1 (Representations and Warranties of SAWS), and as to such other matters of law as to the Project Company may reasonably request, together with appropriate certified authorizing resolutions and incumbency certificates.

(4) **Modifications to this Water Transmission and Purchase Agreement.** Make such modifications, corrections and clarifications to this Water Transmission and Purchase Agreement, the Project Real Property Conveyance Agreement, the Groundwater Supply Agreement or any other agreement directly related thereto to which SAWS is a party and may reasonably be requested by the Project Company to facilitate the issuance of the Initial Senior Debt, except that no such modification, correction or clarification shall increase or potentially increase the cost of Product Water to SAWS, reduce the economic benefit of the Project to SAWS, or materially and adversely affect the rights and obligations of SAWS hereunder.

(B) **Failure of Compliance by SAWS.** No failure by SAWS for any reason to comply with its obligations under Section 4.2(A) (Initial Senior Debt) shall constitute a breach by SAWS of this Water Transmission and Purchase Agreement or an Event of Default by SAWS hereunder. If, however, (1) SAWS fails for any reason to comply with such obligations within 30 days following receipt of a written request for the items specified in Section 4.2(A) (Initial Senior Debt), and (2) the Project Company shall have satisfied the Financial Closing Date Conditions (other than Section 4.1(B)(25) (Financial Close)), SAWS shall be deemed to have exercised its right to terminate this Water Transmission and Purchase Agreement for convenience as provided in Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period), and shall pay the Project Company the termination payment specified in Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) (as applicable to the date of termination) within 60 days following receipt of such written request.

**SECTION 4.3. CLOSING THE DEVELOPMENT AND FINANCING PERIOD.**

(A) **Satisfaction of the Financial Closing Date Conditions and Establishment of Financial Closing Date.** The Project Company shall provide SAWS with periodic reports regarding the satisfaction of the Financial Closing Date Conditions, and shall give SAWS prompt written notice when all of the Financial Closing Date Conditions have been achieved. Upon the satisfaction or waiver by SAWS of the Financial Closing Date Conditions, the parties shall hold a formal closing at a location reasonably determined by SAWS acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Financial Closing Date has occurred. The Construction Period shall thereupon commence. The date of such closing shall
be the **Financial Closing Date** hereunder. On or promptly following the Financial Closing Date, the Project Company shall deliver to SAWS copies of the executed Senior Debt Financing Agreements in the case of the Senior Secured Credit Facility, to the extent not already delivered to SAWS in final form as of the Financial Closing Date in accordance with Section 7.1(J) (Execution of the Senior Secured Credit Facility) and all related closing documents provided in connection with Financial Close.

(B) **Financial Closing Longstop Date Defined.** The **Financial Closing Longstop Date** shall mean the date that is 910 days following the Contract Date. The Financial Closing Longstop Date is not subject to extension for any reason.

(C) **Failure by the Project Company to Satisfy the Financial Closing Date Conditions.** If, by the Financial Closing Longstop Date, the Project Company fails to satisfy all of the Financial Closing Date Conditions, and any such failure has not been waived by SAWS, SAWS may terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4(D) (SAWS Termination After the Financial Closing Longstop Date). No such failure shall constitute a breach by the Project Company of this Water Transmission and Purchase Agreement or a Project Company Event of Default. SAWS shall not have any payment, compensation, reimbursement or other obligation to the Project Company on account of any such failure.

**SECTION 4.4. SAWS CONVENIENCE TERMINATION OPTION DURING THE DEVELOPMENT AND FINANCING PERIOD.**

(A) **SAWS Convenience Termination Option Generally.** At any time from the Contract Date until the Financial Closing Date, SAWS shall have the right, exercisable in its discretion for any reason by written notice to the Project Company, to terminate this Water Transmission and Purchase Agreement; provided, however, that, SAWS shall not exercise such termination option during the period between the issuance of any preliminary official statement or offering or placement memorandum relating to the Initial Senior Debt through the Financial Closing Date. The date of delivery of any such written termination notice shall be the Termination Date hereunder. The execution of the Senior Secured Credit Facility shall not limit the rights of SAWS under this Section 4.4 in any manner.

(B) **SAWS Termination On or Before the Financial Closing Longstop Date.** If the Financial Closing Date has not occurred and SAWS exercises its termination option pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally) on or before the Financial Closing Longstop Date, SAWS shall pay the Project Company, within 60 days following the Termination Date, an amount equal to Project Company Reimbursable Costs. Concurrently with payment by SAWS to the Project Company of the termination payment due upon any convenience termination of this Water Transmission and Purchase Agreement under this Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date) and subject to Section 26.13 (SAWS’ Confidentiality Obligations), the Project Company shall deliver to SAWS copies of, and transfer title to, all of the property developed or acquired during the period commencing on the Contract Date and ending on the Termination Date that was funded by the Project Company Reimbursable Costs, including designs, studies, surveys, professional work product, contract rights, and interests of any kind in real property. Such property may be used by SAWS thereafter for any purpose, but without liability of the Project Company with respect thereto. All such property (1) shall be delivered without any representation or warranty as to its content or conclusions, including title or the practicability or feasibility of the completion or operation of the Project, and (2) shall exclude any property or contract rights to Raw Groundwater that was not funded by the Project Company Reimbursable Costs.

(C) **Project Assumption Fee.** If, at any time within five years following termination of this Water Transmission and Purchase Agreement pursuant to Section 4.4(B) (SAWS Termination On or Before the Financial Closing Longstop Date), SAWS undertakes a
project substantially similar to the Project, SAWS shall give prompt notice thereof to Abengoa Garney Holding Company and shall promptly pay the Project Company a project assumption fee of $10,000,000. SAWS shall be deemed to have undertaken a project substantially similar to the Project only if (1) SAWS (or an intermediary acting on behalf of SAWS) enters into an agreement with Blue Water Vista Ridge, LLC or any Affiliate (or an intermediary acting on behalf of Blue Water Vista Ridge, LLC or any Affiliate, or a successor to all or substantially all of the business or assets of Blue Water Vista Ridge, LLC) for the purchase of Raw Groundwater and an assignment of permits under an arrangement similar in substance to that contemplated by the Groundwater Lease Conveyance Agreement, and (2) SAWS (or an intermediary acting on behalf of SAWS) enters into an agreement for the construction of a transmission pipeline system similar to the Transmission Pipeline System to transport such Raw Groundwater (treated or untreated) to the SAWS Distribution System.

(D) **SAWS Termination After the Financial Closing Longstop Date.** If the Financial Closing Date has not occurred and SAWS exercises its termination option pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally) after the Financial Closing Longstop Date, (1) SAWS shall have no payment, compensation, reimbursement or other obligation to the Project Company, and (2) the Project Company shall pay SAWS an amount equal to SAWS Reimbursable Costs.

**SECTION 4.5. PROJECT COMPANY CONVENIENCE TERMINATION OPTION DURING THE DEVELOPMENT AND FINANCING PERIOD.**

At any time from the Conforming Contract Amendment Date until the Financial Closing Date, the Project Company shall have the right, exercisable in its discretion for any reason by written notice to SAWS, to terminate this Water Transmission and Purchase Agreement. The date of delivery of any such written notice shall be the Termination Date hereunder. In the event the Project Company exercises its termination option pursuant to this Section, the Project Company shall pay the SAWS, within 60 days following the Termination Date, an amount equal to SAWS Reimbursable Costs.

**SECTION 4.6. PROJECT COMPANY REIMBURSABLE COSTS.**

(A) **Project Company Reimbursable Costs Defined.** “Project Company Reimbursable Costs” shall mean reasonable costs and expenses paid or incurred by the Project Company directly and solely in connection with the performance of the Development and Financing Work from the Contract Date through the Termination Date or the Financial Closing Longstop Date (whichever is earlier), as more particularly described in Appendix 18 (Reimbursable Costs Payable on Convenience Termination During the Development and Financing Period). The maximum amount of Project Company Reimbursable Costs is $40,100,000.

(B) **Cost Records and Reporting.** During the Development and Financing Period, the Project Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the Development and Financing Work which the Project Company has performed since the Contract Date, the costs of which would constitute Project Company Reimbursable Costs if SAWS were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4 (SAWS Convenience Termination Option During the Development and Financing Period). All such financial records of the Project Company shall be maintained in accordance with generally accepted accounting principles and auditing standards. In addition, on or before the fifteenth day of each month following the end of each quarter after the Conforming Contract Amendment Date, the Project Company shall provide to SAWS a general summary of the Development and Financing Work undertaken in the prior quarter and a reasonable estimate of its costs, a summary of the Development and Financing Work expected to be undertaken in the current quarter and the immediately following quarter,
and an estimate of the percentage of the Development and Financing Work that has been completed.

SECTION 4.7. SAWS REIMBURSABLE COSTS.

(A) SAWS Reimbursable Costs Defined. “SAWS Reimbursable Costs” shall mean reasonable costs and expenses paid or incurred by SAWS directly and solely in connection with this Water Transmission and Purchase Agreement from the Contract Date through the Termination Date, as more particularly described in Appendix 18 (Reimbursable Costs Development and Payable on Convenience Termination During the Development and Financing Period). The maximum amount of SAWS Reimbursable Costs is $2,000,000.

(B) Cost Records and Reporting. During the Development and Financing Period, SAWS shall prepare and maintain proper, accurate and complete books and records of the cost and description of the work which SAWS has performed since the Contract Date, the costs of which would constitute SAWS Reimbursable Costs (1) if SAWS were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.4(D) (SAWS Termination After the Financial Closing Longstop Date), or (2) if the Project Company were to elect to terminate this Water Transmission and Purchase Agreement pursuant to Section 4.5 (Project Company Convenience Termination Option During the Development and Financing Period). All such financial records of SAWS shall be maintained in accordance with the accounting principles and auditing standards under which SAWS financial records are generally kept. In addition, on or before the fifteenth day of each month following the end of each quarter after the Contract Date, SAWS shall provide to the Project Company a general summary of all such work undertaken in the prior quarter, and a reasonable estimate of its costs, and a summary of all such work expected to be undertaken in the current and immediately following quarter.

SECTION 4.8. EARLY CONSTRUCTION.

Nothing in this Water Transmission and Purchase Agreement shall be construed to prohibit (1) the Project Company, at its risk, cost and expense, from beginning construction of the Project Improvements before the Financial Closing Date, or (2) SAWS, at its risk, cost and expense, from beginning construction of the SAWS Interconnection Improvements before the Financial Closing Date, but no such costs or expenses shall constitute Project Company Reimbursable Costs or SAWS Reimbursable Costs.
ARTICLE 5

CONTRACT OBLIGATIONS GENERALLY

SECTION 5.1.  GENERAL RESPONSIBILITIES OF THE PARTIES.

(A)  Project Real Property Ownership. The Project Real Property shall be owned by the Project Company or the Water Supply Corporation, as the Project Company may determine.

(B)  Project Company. The Project Company shall, subject to the terms and conditions of this Water Transmission and Purchase Agreement, (1) obtain and maintain the rights to all groundwater and Governmental Approvals relating thereto required to meet the Performance Guarantees, (2) permit, design, construct, finance, operate, maintain, repair, replace and manage the Project, and (3) produce, supply, make available and sell Product Water to SAWS. The parties acknowledge that Project Company is not obligated under this Water Transmission and Purchase Agreement to construct the SAWS Interconnection Improvements.

(C)  SAWS. SAWS shall, subject to the terms and conditions of this Water Transmission and Purchase Agreement, (1) construct the SAWS Interconnection Improvements, and (2) purchase and take delivery of Product Water.

(D)  Product Water Ownership. SAWS shall become the owner of all Product Water at the Product Water Delivery Point. The Project Company shall have no rights with respect to any effluent resulting from the use of Product Water by SAWS' customers.

(E)  Risk of Loss of Product Water. The Project Company shall bear the risk of loss of Product Water at all locations up to the Product Water Delivery Point, beyond which SAWS shall bear the risk of loss.

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

(G)  Grants and Subsidies Benefit SAWS. All grants, subsidies or other payments in aid of construction or operation made by any Governmental Body with respect to the Project shall be for the exclusive account of SAWS, whether paid or made to the Project Company, SAWS or any other person. The Project Company shall cooperate with SAWS in obtaining all such grants, subsidies or other payments that are available during the Term. This Section does not apply to the proceeds of a Refinancing.

(H)  Public Communications. Public communications concerning the Project shall be handled by the parties in accordance with the principles set forth in Appendix 15 (Public Communications).

SECTION 5.2.  PROJECT COMPANY ASSUMPTION OF RISK.

(A)  General Risk Assumption. Except as provided in Section 5.3 (Exceptions to Project Company Assumption of Risk), Article 16 (Uncontrollable Circumstances), and any provision of this Water Transmission and Purchase Agreement specifically relating to Uncontrollable Circumstances, all risks, costs and expenses in relation to the performance by the Project Company of its obligations under this Water Transmission and Purchase Agreement
wherever occurring (whether in or outside the United States) are allocated to, and accepted by, the Project Company as its entire and exclusive responsibility. Without limiting the generality of the foregoing, the risks allocated to and accepted by the Project Company include all of the risks described or referred to in Sections 5.2(B), (C), (D), (E), (F) and (G), except as provided in the immediately preceding sentence.

(B) **Change in Law Events.** The occurrence of any change in Applicable Law, including:

(1) The coming into effect of any Applicable Law, whether enacted before or after the Contract Date;

(2) Any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date;

(3) Any non-issuance or delay of the TCEQ or any other Governmental Body in the issuance of any Governmental Approval required for or relating to the Project or the Contract Obligations;

(4) The imposition of any term, condition or requirement by any Governmental Body in connection with any Governmental Approval required for or relating to the Project or the Contract Obligations;

(5) The enactment or adoption of any law, statute, code or regulation that has been enacted or adopted on or before the Contract Date to take effect after the Contract Date;

(6) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law;

(7) Changes in denials of Governmental Approvals in consequence of the enforcement, lapse or invalidation of an existing Governmental Approval resulting from any action or inaction of the Project Company;

(8) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date;

(9) Any change in Tax Law (except as provided in Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law).

(C) **Raw Groundwater Events.** Any act, event or circumstance pertaining to Raw Groundwater or the quantity or quality thereof available for pumping, treatment and conveyance to SAWS as Product Water hereunder, including:

(1) **Quantity Events:**

(a) The unavailability of Raw Groundwater in the quantities required to meet the Performance Guarantees due to any cause, including the absence of legal authority as described in item (3) of this subsection or the pumping and withdrawal of groundwater by any person from any aquifer in volumes that reduce the volume available to the Project Company; or
(b) The cost or difficulty of drilling for, pumping or withdrawing Raw Groundwater in the quantities required to meet the Performance Guarantees; or

c) The capacity of, or the insufficiency of the number of, Wells initially built with the proceeds of the Initial Senior Debt; or

d) The quantity of Raw Groundwater available at each Well when the Well is actually drilled; or

e) Mistakes, errors or inaccuracies for any reason in any pilot testing or other investigations performed by the Project Company to determine the quantity of Raw Groundwater available for pumping and withdrawal at the Well Field.

(2) Quality Events:

(a) The contamination of Raw Groundwater due to any cause; or

(b) Any parameters or characteristics of Raw Groundwater, whether known or unknown or anticipated or unanticipated on the Conforming Contract Amendment Date.

(3) Regulatory Events. In connection with the Groundwater Drilling and Operating Permit, the Groundwater Transportation Permit, or any other permit, license or other Governmental Approval required to perform the Contract Services or meet the Performance Guarantees:

(a) Loss of Authority. The non-issuance, revocation, suspension, withdrawal or expiration for any reason of legal authority to act;

(b) Reduction in Capacity. The reduction for any reason in permitted water drilling, operating or transportation capacity by the POSGCD or any other Governmental Body;

(c) Stringency of Water Quality Standards. The establishment of new or more stringent standards for public drinking water;

(d) New Terms. The establishment of new or changed terms in permitted authority to act;

(e) Taxes. The imposition of new or changed Taxes; or

(f) Procedures. The establishment of new or more burdensome procedural requirements, such as testing, reporting and inspections.

(D) Force Majeure Events. Any force majeure event ("Force Majeure Event"), including the following:

(1) naturally occurring events, including any weather or climate event or circumstance, underground movement, earthquakes or earth movement, lightning, fires, tornados, hurricanes, floods, epidemics and other acts of God;

(2) explosion, sabotage, acts of a declared public enemy, extortion, insurrection, riot or civil disturbance;
(3) war, civil war or armed conflict and related causes;

(4) terrorism arising from nuclear, biological or chemical materials;

(5) certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)); or

(6) nuclear explosion or nuclear, radioactive, chemical or biological contamination.

(E) **Project Site and Project Site Lessor Risks.** Any act, event or circumstance relating to any Project Site, Project Site Lease or Project Site Lessor, including:

(1) The failure or impairment of title to or any other interest in any Project Site, or the foreclosure of any mortgage on or security interest in any Project Site;

(2) The sale, bankruptcy, reorganization, merger or insolvency of any Project Site Lessor;

(3) A breach or default by any party under any Project Site Lease or under any other agreement between any Project Site Lessor and the Project Company or any Project Company Affiliate;

(4) The denial, modification or change in a term or condition of any Applicable Law, Governmental Approval or any other law, regulation license, permit or approval affecting any of the Project Sites or any Raw Groundwater.

(F) **Other Circumstances.** Any other act, event or circumstance that is or may be within the control or management of the Project Company or that is or may be outside the control or management of the Project Company, including:

(1) a third party Legal Proceeding, or an injunction or similar order issued by a Governmental Body;

(2) the failure of any appropriate Governmental Body or utility having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project which are required for the performance of this Water Transmission and Purchase Agreement;

(3) the failure of a Project Contractor or Subcontractor to furnish services, materials, chemicals or equipment on the dates agreed to;

(4) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project;

(5) a violation of Applicable Law by a person other than SAWS, the Project Company or a Project Company Person;

(6) the existence of a Regulated Site Condition affecting the Project or the Project Sites;
(7) the existence of a Differing Site Condition affecting the Project or the Project Sites;

(8) contamination of the Project Sites from groundwater, soil or airborne Regulated Substances migrating from any source in or outside of the Project Sites;

(9) any act, event or circumstance that would not have occurred but for the Project Company’s failure to comply with its obligations hereunder;

(10) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, currency values, exchange rates or other general economic conditions;

(11) any changes in the financial condition of the Project Company, its Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(12) the consequences of error, willful misconduct, neglect or omissions by the Project Company, a Project Contractor, any Subcontractor, any of their Affiliates or any other person in the performance of the Contract Services;

(13) strikes, work stoppages or labor disputes;

(14) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Project Company of performing the Contract Services;

(15) mechanical failure of equipment; and

(16) failure of the Project Company to secure any patent or other intellectual property right which is or may be necessary for the performance of the Contract Services.

Nothing in this Section 5.2(F) (Other Circumstances) shall be construed to limit the Project Company’s right (1) to an adjustment of the Unit Price on account of a change in reference interest rates prior to the Financial Closing Date, as and to the extent provided in Section 17.2(B) (Adjustment at Financial Closing Date) and Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), and (2) to compensation for operating, maintenance, repair and replacement costs as and to the extent provided in Section 17.3 (Operating and Maintenance Costs) and Appendix 19 (Compensable Costs and O & M Budget Panel).

(G) Risks Expressly Allocated to the Project Company Hereunder. Any act, event or circumstance as to which the Project Company assumes and is expressly allocated the risk under any other provision of this Water Transmission and Purchase Agreement, including (subject to Section 5.2(A) (General Assumption of Risk)) those risks expressly allocated to the Project Company under:

(1) Section 2.2(M) (Practicability of Performance)

(2) Section 5.1(E) (Risk of Loss of Product Water)
(3) Section 5.4(M) (Hazardous Substances Management)

(4) Section 5.5(F) (Project Company Assumption of Permitting Risk for Construction Work Generally)

(5) Section 5.6(B) (Sampling, Testing and Laboratory Work)

(6) Section 7.1(A) (Project Company Financing)

(7) Section 8.2(C) (Project Company Assumption of Risk of Obtaining Project Company Public Water Supplier Designation)

(8) Section 9.14 (Hazardous Substance Management During the Operating Period)

(9) Section 14.1(A) (Required Insurance)

(10) Section 15.4 (Unavailability of Required Insurance)

(11) Section 17.13 (Risk of Adverse Tax or Accounting Treatment)

(H) Additional Risks Expressly Assumed by Project Company. The Project Company expressly assumes the risk of any now pending or hereafter filed Legal Proceeding, at law or in equity, before or by any court or Governmental Body, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the Project or the Project Company, including, without limitation, the matters set forth in Appendix 21 (Certain Litigation Matters). Accordingly, the Project Company acknowledges and agrees that, notwithstanding the fact that the Project Company may incur any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, charge or expense resulting from or relating to any such matter, any adverse effect resulting from or relating to any such matter shall not constitute an Uncontrollable Circumstance, and there shall be no extension of Term or adjustment to the Unit Price or any other compensation obligation of SAWS hereunder.

SECTION 5.3. EXCEPTIONS TO PROJECT COMPANY ASSUMPTION OF RISK.

(A) SAWS Fault. The Project Company does not assume the risk of any SAWS Fault. If a SAWS Fault occurs, the Project Company shall be entitled to relief as and to the extent provided in Section 16.3 (Project Company Relief Due to a SAWS Fault).

(B) Uncontrollable Circumstances Affecting Performance and Schedule. The Project Company does not assume the risk of Uncontrollable Circumstances as they may affect its performance and schedule obligations hereunder, and shall be entitled to relief upon the occurrence of an Uncontrollable Circumstance as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances), Section 10.3(A)(8) (Excused Supply Shortfall Units), Section 16.4(A) (Performance and Schedule Relief), and Section 17.3 (Operating and Maintenance Costs). Without limiting the Project Company’s rights under Section 10.7 (Extension of Term), no Uncontrollable Circumstance shall entitle the Project Company to any compensation relief, except to the extent Compensable Costs payable under Appendix 19 (Compensable Costs and O & M Budget Panel) may include compensation for costs resulting from Uncontrollable Circumstances.
SECTION 5.4. CONSTRUCTION OF THE PROJECT.

(A) Commencement and Prosecution of Construction Work Generally. On the Financial Closing Date, the Project Company shall promptly proceed to undertake, perform and complete the Construction Work in accordance with the requirements of the Design Requirements and the Contract Standards.

(B) Payment of Costs. Except as otherwise specifically provided in this Water Transmission and Purchase Agreement, the Project Company shall pay directly, and SAWS shall have no responsibility for, all costs and expenses of the Construction Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Project Company; obtaining and maintaining the Required Insurance; Utility costs, financing costs; payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Project Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the Project Company of all Construction Work; the preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Substantial Completion, Acceptance and Final Completion.

(C) Protection of the Project Against Any Effect of SAWS Distribution System Operations; No SAWS Liability. As between SAWS and the Project Company, the Project Company shall design, construct, operate and maintain the Project in a manner such that the Project cannot be damaged or destroyed by any actions that SAWS may take, whether intentionally or unintentionally, or not take with respect to the operation or maintenance of the SAWS Distribution System, including the operation and maintenance of the SAWS Interconnection Improvements, the SAWS Interface Cabinet, or any other electrical, digital or mechanical operating interface between the SAWS Distribution System and the Project. SAWS shall have no liability to the Project Company for any damage to or destruction of the Project or otherwise resulting from or alleged to result from any SAWS actions or inactions with respect to the SAWS Distribution System.

(D) Project Company Control of the Construction Work; No SAWS Responsibility. The Project Company shall have total control of the Construction Work and shall effectively direct and supervise the Construction Work so that it is undertaken safely and in compliance with the terms of this Water Transmission and Purchase Agreement. The Project Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the Contract Standards or the fact that in negotiating this Water Transmission and Purchase Agreement SAWS participated in certain design review activities. Nothing in this Water Transmission and Purchase Agreement shall be interpreted as giving any responsibility for the Construction Work to SAWS, any SAWS Indemnitee, or the SAWS Engineer. Any SAWS rights of review and comment provided in this Water Transmission and Purchase Agreement with respect to any aspect of the Construction Work shall be for SAWS’ benefit only, and no review or comment by the SAWS Representative shall in any way relieve the Project Company of its obligation for all aspects of the Project. The Project Company shall have no obligation to accept any SAWS comments or to propose any changes to the SAWS Representative.

(E) Electrical Power Required During Construction. The Project Company acknowledges that as of the Contract Date, there may be insufficient utility facilities available to supply the electrical power required for the construction of the Project. Accordingly, the Project Company shall be responsible for assuring the availability of all utilities (including on-site power generators) required for the performance of the Construction Work. All costs related to the supply of electrical power incurred in the performance of the Construction Work prior to the Commercial Operation Date shall be borne by the Project Company; provided, however, that
SAWS will be responsible for ensuring that electrical service is constructed and adequate to allow the Performance Tests to be performed in accordance with the Performance Test Protocol.

(F) **Construction Work Reviews.** During the Construction Period, SAWS shall have the right, but not the obligation, to: (1) attend design progress meetings; (2) attend preconstruction conferences; (3) attend construction progress meetings described in Section 4.6 (Construction Meetings and Reports) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (4) review the Construction Work for compliance with Appendix 3 (Technical Specifications). The Project Company shall consider and address in good faith any comments or concerns raised by SAWS in connection with such matters in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(G) **Project Schedule.** The Project Company shall deliver and update the Project Schedule in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion). Any failure to do so shall constitute a Project Company Remediable Breach.

(H) **Construction of Tie-Ins and Connection to SAWS Interconnection Improvements.** In performing the Construction Work and in preparing and updating the Project Schedule, the Project Company shall take into account the time and work necessary for both parties relating to connections and tie-ins with the SAWS Interconnection Improvements required to achieve Substantial Completion of the Project, and required to conduct the Performance Test.

(I) **SAWS Engineer.** SAWS may employ or engage the services of an independent engineering firm (the employee or firm being referred to herein as the “**SAWS Engineer**”) to act as its agent and to assist SAWS and its staff in connection with this Water Transmission and Purchase Agreement. Subject to the SAWS Engineer entering into a confidentiality agreement reasonably acceptable to the Project Company for the protection of Confidential Project Company Information, the Project Company shall cooperate with the SAWS Engineer in performing its duties and provide the SAWS Engineer all information required hereunder or otherwise reasonably requested in such connection. The obligation of the Project Company to cooperate with the SAWS Engineer as provided in this Section shall not (a) be construed to create any SAWS rights or obligation in addition to those specifically provided herein, or (b) obligate the Project Company to accept any comments from or propose any changes to the SAWS Engineer. The services of the SAWS Engineer may include:

1. reviewing and monitoring the progress of design and construction;
2. reviewing a proposed Design Requirements Change;
3. reviewing plans, drawings and specifications for compliance with the Design Requirements;
4. reviewing the Performance Test Protocol, the performance of the Performance Tests, and the reports prepared with respect thereto;
5. reviewing Uncontrollable Circumstance claims and relief requests by the Project Company; and
6. reviewing matters related to proposed Capital Modifications.
(J) **Fees.** The fees and expenses of the SAWS Engineer shall be borne by SAWS.

(K) **Operating Protocol.** The Project Company shall deliver an initial draft of the Operating Protocol to SAWS at least 30 days prior to Substantial Completion.

(L) **SAWS Administrative Space During the Construction Period.** The Project Company shall provide construction office space adjacent to the principal construction offices of the Project Company for the exclusive use of SAWS’ compliance personnel and advisors and the SAWS Engineer. The cost related to SAWS’ use of such office space (including janitorial services to be provided by the Project Company) has been priced into the Monthly Water Purchase Payments.

(M) **Hazardous Substances Management.** As between the parties, the Project Company shall be responsible for, and bear the risk, cost and expense of, managing and disposing of Hazardous Substances arising in connection with the Project after the Contract Date; provided, however that nothing herein shall excuse SAWS from responsibility for any Hazardous Substances released by, or attributable to, actions of SAWS. The Project Company shall develop and maintain (1) a Hazardous Substance Management Program; and (2) a Response Plan.

SECTION 5.5. **CONSTRUCTION GOVERNMENTAL APPROVALS.**

(A) **Generally.** The Project Company shall make all applications and take all other action necessary to obtain and maintain all Construction Governmental Approvals, and shall pay all fees, costs and charges due in connection therewith.

(B) **Copies.** The Project Company shall make available for review and copying by SAWS, upon request, copies of all the Construction Governmental Approvals and related applications.

(C) **Review and Comment.** The Project Company shall manage the process of obtaining the Construction Governmental Approvals in a manner which affords SAWS a reasonable opportunity, in advance of submittal, to review and comment upon all material documentation submitted to and issued by the Governmental Body in connection therewith.

(D) **SAWS Interests.** The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Construction Governmental Approvals or the terms and conditions thereof that would impose any cost or material burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement or that would contravene any SAWS policies with respect to the matters contained therein. The Project Company shall notify SAWS of any action which would have the effect described in the preceding sentence promptly upon having knowledge thereof, and SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have any such effect.

(E) **Limited Construction Governmental Approval Assistance by SAWS.** SAWS shall provide reasonable assistance to the Project Company in connection with the Project Company’s obligation to obtain and maintain the Construction Governmental Approvals required under this Section, including attending public hearings and meetings of the Governmental Bodies charged with issuing the Construction Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within SAWS’ custody or control or are reasonably obtainable by SAWS and which are reasonably required for such purpose; provided, however, that SAWS’ obligation to provide such reasonable assistance shall be limited,
in light of the Project Company’s role as the exclusive developer of the Project, only to those actions which are legally required to be taken by SAWS as permittee or which involve providing information which is in the possession of or reasonably obtainable by SAWS. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to SAWS, and SAWS shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate SAWS to staff the Project Company’s permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Construction Governmental Approvals. SAWS shall not take any action, however, which seeks to cause the denial or delay of any application for any Construction Governmental Approval.

Project Company Assumption of Permitting Risk for Construction Work Generally. The Project Company explicitly assumes the risk of obtaining and maintaining the Construction Governmental Approvals, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body. In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Construction Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Obligations, all of which costs or risks shall be for the account of and borne by the Project Company.

Permits and Approvals Required Upon Completion. Section 8.2 (Interim Operations Approval and Project Company Public Water Supplier Designation) shall apply with respect to Construction Governmental Approvals required upon Substantial Completion and as conditions to the introduction of Product Water into the SAWS Distribution System.

SECTION 5.6. COMPLIANCE WITH APPLICABLE LAW.

Compliance Obligation. The Project Company shall perform the Contract Obligations in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law, including all registration, licensing and certification requirements imposed by any Governmental Body. The Project Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Project, Raw Groundwater, Product Water, Project By-Products, air emissions, noise, light, emissions and odor. The Project Company shall comply with and perform all Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals. At the request of SAWS, the Project Company shall participate in general regional facility evaluation and water quality surveys conducted by the TCEQ or the EPA.

Sampling, Testing and Laboratory Work. The Project Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be TCEQ, State and EPA certified, as applicable, for the applicable test, shall be operated in accordance with Good Management Practice. All sampling and test data shall be available for review by, and reported to, SAWS in accordance with Section 9.8(D) (Reports to Governmental Bodies). The Project Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Project Company shall permit SAWS, at SAWS’ expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Project, laboratory services available to the Project Company, or otherwise.

Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Obligations, including the Project
Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) **Investigations of Non-Compliance.** In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Contract Obligations, the Project Company shall, in addition to any other duties which Applicable Law may impose:

1. Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;
2. Attend all meetings and hearings with respect to the Project required by any Governmental Body;
3. Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to SAWS; and
4. Promptly upon receipt thereof, provide SAWS with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish SAWS with a prompt written notice describing the occurrence of any event or the existence of any circumstance which results, or could reasonably be expected to result, in any such notice of violation or non-compliance, to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. The Project Company shall provide SAWS a reasonable opportunity to review and comment on any proposed Project Company response to any material non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) **Fines, Penalties and Remediation.** In the event that the Project Company, Project Contractor or any Subcontractor fails at any time to materially comply with Applicable Law with respect to the Contract Obligations, the Project Company shall:

1. Correct such failure and resume compliance with Applicable Law as soon as practicable;
2. Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
3. Indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company’s Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
4. Make all commercially reasonable changes in performing the Contract Obligations which are necessary to assure that the failure of compliance with Applicable Law will not recur; and
5. Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, Project Contractor or any Subcontractor to comply with Applicable Law.
(F) **No Nuisance Covenant.** The Project Company shall ensure that the operation of the Project does not create any material odor, litter, noise, rust, corrosion, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur, the Project Company shall, as soon as practicable remedy the condition, pay any fines or penalties relating thereto, make all commercially reasonable capital investments, improvements or modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless SAWS and SAWS Indemnitees from any Loss-and-Expense relating thereto in the manner provided in Section 25.1 (Project Company’s Obligation to Indemnify).

SECTION 5.7. **PROJECT COMPANY-REQUESTED DESIGN REQUIREMENTS CHANGES.**

The Project Company shall give SAWS written notice of, and reasonable opportunity to review and comment upon, any Design Requirements Changes proposed to be made at the Project Company’s request. The notice shall contain sufficient information for SAWS to determine that the Project Company-Requested Design Requirement Change: (1) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of the Project; (3) is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Water Transmission and Purchase Agreement; and (4) is feasible. SAWS shall have the right in its discretion to accept, reject or modify any Design Requirement Change to the Design Requirements set forth in Appendix 3 (Technical Specifications) proposed by the Project Company. Any such Design Requirement Change accepted or modified by SAWS, and any related change in the terms and conditions of this Water Transmission and Purchase Agreement, shall be reflected in a Water Transmission and Purchase Agreement Amendment.

SECTION 5.8. **SAWS-REQUESTED DESIGN REQUIREMENTS CHANGES.**

SAWS shall have the right to direct the Project Company to make Design Requirements Changes at any time prior to the Commercial Operation Date in its discretion for any reason whatsoever, whether or however the exercise of such rights affects this Water Transmission and Purchase Agreement ("SAWS-Requested Design Requirement Change"), subject to the terms of Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications). The design and construction costs resulting from any such SAWS-Requested Design Requirement Change under this Section, shall at the discretion of SAWS be financed by the Project Company as and to the extent provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications) or shall be paid by SAWS as a Direct Payment. Any such Design Requirement Change and any related change in the terms and conditions of this Water Transmission and Purchase Agreement shall be reflected in a Water Transmission and Purchase Agreement Amendment. SAWS shall have no obligation to initiate any SAWS-Requested Design Requirement Change under this Section.

SECTION 5.9. **RESTRICTIONS ON SAWS-REQUESTED DESIGN REQUIREMENTS CHANGES AND SAWS-REQUESTED CAPITAL MODIFICATIONS.**

SAWS shall not, in the exercise of any of its rights hereunder, at any time during the Term require, and the Project Company may refuse to implement, a SAWS-Requested Design Requirements Change or a SAWS-Requested Capital Modification which:

1. Would be contrary to Applicable Law, Good Engineering and Construction Practice, or Good Management Practice;
(2) Would render any policy of Required Insurance void or voidable unless SAWS agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;

(3) Would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Water Transmission and Purchase Agreement;

(4) Would require a new Governmental Approval for the Project Company to perform its obligations under this Water Transmission and Purchase Agreement which Governmental Approval would not, using reasonable efforts, be obtainable; or

(5) Would materially and adversely affect the risk allocation, ability to perform (including any material increase in the risk of non-performance) or cost of performance under this Water Transmission and Purchase Agreement with respect to the Contract Obligations, unless the material and adverse effects of such requirement are remedied by SAWS to the Project Company’s reasonable satisfaction.

SAWS shall enter into any agreement reasonably requested by the Project Company to protect its rights under this Section in connection with a proposed SAWS-Requested Design Requirement Change or SAWS-Requested Capital Modification.

SECTION 5.10. GOOD MANAGEMENT PRACTICE AND GOOD ENGINEERING AND CONSTRUCTION PRACTICE.

Good Management Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Management Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall be relieved of its obligation to comply with such evolved Good Management Practice and Good Engineering and Construction Practice (but not Good Management Practice and Good Engineering and Construction Practice as of the Conforming Contract Amendment Date) unless SAWS agrees to adjust the Unit Price (subject to Cost Substantiation) to account for such additional costs.

SECTION 5.11. FINANCIAL BOOKS AND RECORDS.

(A) Recordkeeping Requirements. The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Obligations, including, to the extent available to the Project Company, all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Obligations, this Water Transmission and Purchase Agreement, the Project Contracts, any Subcontract or any transactions in which SAWS has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design Requirements Changes, SAWS Fault costs, or other adjustments to the Unit Price or other payments based on costs for which SAWS is responsible under this Water Transmission and Purchase Agreement. The Project Company shall produce such financial books and records for examination and copying for all such purposes promptly upon request by SAWS. All such information upon delivery to SAWS shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP, to the
extent applicable. The Project Company shall not be required to provide SAWS any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to SAWS through the Cost Substantiation process upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the tenth anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending for which such financial books and records are relevant. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Water Transmission and Purchase Agreement.

(B) Inspection, Audit and Adjustment. SAWS shall have the right, at its cost and expense, to perform or commission an inspection or independent audit of the financial information required to be kept under this Section, and shall provide the results of such inspection or audit to the Project Company. If an inspection or audit reveals that the Project Company has overstated any component of the Monthly Water Purchase Payments, then the Project Company shall, at the election of SAWS, either immediately reimburse SAWS or adjust the Monthly Water Purchase Payments based on the overpaid amount, plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to SAWS. If the overpayment exceeds 1% of the total amount that should have been properly paid by SAWS during the period audited, then the Project Company shall, in addition, reimburse SAWS for any and all fees and costs reasonably incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies SAWS may have hereunder, including remedies for a Project Company Event of Default. If an inspection or audit reveals that the Project Company has understated any component of the Monthly Water Purchase Payments, then the Project Company shall include the amount of the understated payment in the next Billing Period invoice for payment in the regular course under Section 17.9 (Billing and Payment).

SECTION 5.12. DELIVERY OF DOCUMENTS.

(A) Project Company. In this Water Transmission and Purchase Agreement, the Project Company is obligated, subject to the terms and conditions hereof, to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. Except for document submittal governed by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), the Project Company agrees that all such documents shall be submitted to SAWS in digital form, unless copies are specifically required to be delivered under this Water Transmission and Purchase Agreement. Digital copies shall consist of computer readable data submitted in any standard interchange format which SAWS may reasonably request to facilitate the administration and enforcement of this Water Transmission and Purchase Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) SAWS. SAWS shall provide to the Project Company upon request copies of all information relating to the Project which is in the possession of SAWS and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

SECTION 5.13. COMPLIANCE WITH SAWS POLICIES.

(A) Non-Discrimination. The Project Company, the Project Contractors and the Subcontractors (1) understand and agree to comply with the “Non-Discrimination Policy” of
the City contained in Chapter 2, Article X of the City Code, and (2) agree not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this paragraph occurs, the Project Company, upon written notification by SAWS, shall commence compliance procedures within 30 days.

(B) **Small, Minority and Women-Owned Business Opportunities.** The Project Company acknowledges that it is the policy of SAWS to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman-owned Businesses ("SMWB") to afford greater opportunity for such groups to obtain and participate in SAWS contracts. The Project Company agrees to establish SMWB outreach and goals for the Project similar to those employed by the SAWS SMWB Program. Facilitation of reasonable outreach to SMWB firms shall be accomplished by the following:

1. **Diversity Coordinator.** Appointment by the Project Company of a diversity coordinator, who, along with his or her other duties at the Project Company, will work with the SAWS SMWB program manager to monitor and facilitate the Project Company’s progress in meeting its SMWB goals and compliance reporting requirements. The name, telephone number, and email address of the diversity coordinator shall be provided to SAWS. In the event that the diversity coordinator is no longer able to fulfill his or her duties, the Project Company shall appoint a new diversity coordinator as soon as possible, and supply the new diversity coordinator’s contact information to SAWS. This procedure shall remain in effect for the duration of the Term.

2. **Database and Sponsorship.** Obtaining direct access to the South Central Texas Regional Certification Agency’s database, for the purposes of conducting reasonable means of outreach to SMWB firms, shall be accomplished through a corporate sponsorship agreement between Project Company and the South Central Texas Regional Certification Agency. The Project Company’s membership shall be renewed annually for the duration of the Term, until further notice, and proof of corporate membership shall be reported on an annual basis to the SAWS SMWB program manager.

3. **SMWB Participation Goals.** The Project Company shall take reasonable steps to achieve 15% SMWB participation on the design component of the Construction Work; 15% SMWB participation on the construction phase of the Construction Work; and 15% SMWB participation in the Operating Work for the duration of the Term. The SMWB goal is expressed as a percentage of the total dollar amount involved in each of the three such categories of work.

4. **Compliance.** SMWB firms must be certified through the South Central Texas Regional Certification Agency. Actual SMWB participation is the percent of SMWB participation that is actually awarded to the Project Contractors and Subcontractors that are awarded contracts in the three work categories. Within five days of a contract award, the Project Company shall report relevant SMWB information to SAWS.

5. **Reporting.** On a bi-annual basis, the Project Company will provide SAWS with a SMWB plan showing how the SMWB goals are intended to be achieved for the appropriate ongoing phase of the project (design, construction,
operating). Each bi-annual report will document how the SMWB plan goals were achieved through certification, contracts and actual payment evidence.

(6) Information. Electronic submittal of payment information will be accessed through a link on SAWS’ “Business Center” web page. The Project Company and all Project Contractors and Subcontractors will be provided a unique log-in credential and password to access the SAWS S.P.U.R. System. The link may also be accessed through the following internet address: https://saws.smwbe.com. The Project Company and its Project Contractors and Subcontractors may contact the SMWB program manager at 210-233-3420 for assistance or clarification with issues specifically related to the SMWB Program and S.P.U.R. System reporting.

(C) Ethics. The Project Company shall comply with the following ethics obligations:

(1) Project Company’s Warranty. Except to the extent permitted by Applicable Law, the Project Company warrants that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Project Company) any Project Company Person has employed or retained any company or person other than a bona fide employee working solely for the Project Company, to solicit or secure this Water Transmission and Purchase Agreement, and that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Project Company) any Project Company Person has for the purpose of soliciting or securing this Water Transmission and Purchase Agreement, paid or agreed to pay any company or person, other than a bona fide employee working solely for the Project Company or any of its Affiliates, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Water Transmission and Purchase Agreement.

(2) Interest in SAWS Agreements Prohibited. No member of the Board of Trustees of SAWS, nor any officer, agent or employee of the Board of Trustees of SAWS, nor any officer or employee of the City, shall have a financial interest, direct or indirect, in any contract or agreement with SAWS, or shall be financially interested, directly or indirectly, in the sale to SAWS of any land, materials, supplies, or service, except on behalf of the City or SAWS as an officer or employee. The Project Company shall cause any of its Affiliates that enter into a contract in connection with the Project to include a similar provision in each such contract.

(3) Gift Policy. SAWS employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources. A copy of SAWS’ Policy 2-17 "Procedures for Gift and Meal Policy” is available upon request.

(4) Ethics Hotline. SAWS Ethic Hotline for reporting suspected ethics violations is 1-800-687-1918.
ARTICLE 6

SAWS OBLIGATIONS GENERALLY

SECTION 6.1.  SAWS OBLIGATIONS GENERALLY.

SAWS, subject to and in accordance with the terms and conditions hereof and in addition to the obligations it has accepted elsewhere in this Water Transmission and Purchase Agreement, shall:

(1) Except with respect to the mitigation measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements), construct the SAWS Interconnection Improvements, as provided in Section 6.2 (SAWS Interconnection Improvements), including obtaining all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained for such construction;

(2) Take delivery of and purchase the Product Water pursuant to Section 10.5 (SAWS Obligation to Take Delivery of and Purchase Product Water) in the applicable Billing Period if and to the extent Product Water is produced and available for delivery by the Project Company in such volume;

(3) Maintain and repair in good working order SAWS Interconnection Improvements that are material to the Project Company's performance of the Operating Work;

(4) In accordance with Section 9.4 (Utilities), secure and maintain throughout the Operating Period all electricity needed for the operation of the Project, it being understood that a failure in the supply of electricity provided to the Project shall constitute for all purposes under this Water Transmission and Purchase Agreement an Uncontrollable Circumstance;

(5) Pay the Monthly Water Purchase Payments and any other amounts due the Project Company; and

(6) Make available to the Project Company upon request copies of all information relating to the Project which is in the possession of SAWS and material to the Project Company's performance hereunder.

SECTION 6.2.  SAWS INTERCONNECTION IMPROVEMENTS.

(A) Design and Construction. In order to allow for Product Water to be taken delivery of by SAWS and introduced in the SAWS Distribution System in accordance with this Water Transmission and Purchase Agreement, SAWS, at its cost and expense, shall design and construct the SAWS Interconnection Improvements. Appendix 13 (SAWS Interconnection Improvements) sets forth the general nature, capacity and functionality of SAWS Interconnection Improvements intended as of the Conforming Contract Amendment Date to be constructed by SAWS. SAWS shall have complete discretion to design and construct the SAWS Interconnection Improvements in any manner it chooses, whether consistent or inconsistent with Appendix 13, so long as the SAWS Interconnection Improvements have the capacity to take delivery of Product Water in volumes and in a manner consistent with SAWS’ Product Water purchase obligations under this Water Transmission and Purchase Agreement.
(B) **Scheduled SAWS Interconnection Improvements Completion Date.** SAWS should cause construction of the SAWS Interconnection Improvements to be substantially complete, and capable of taking delivery of Product Water for purposes of commencing the Performance Test as described in Appendix 5 (Performance Test Procedures and Standards), by the date that is 1,170 days following the Financial Closing Date (the “Scheduled SAWS Interconnection Improvements Date”). SAWS shall regularly apprise the Project Company as to the progress of construction.

(C) **Completion Delay.** A delay or failure by SAWS for any reason to complete construction of the SAWS Interconnection Improvements, to any extent or by any date, shall not be a breach of this Water Transmission and Purchase Agreement or a SAWS Event of Default. The parties acknowledge and agree, however, that a delay or failure by SAWS to complete the SAWS Interconnection Improvements may impede the ability of the Project Company on a timely basis to commence and complete the Performance Test or to achieve the Commercial Operation Date. Accordingly, subject to Section 26.4(A)(Mitigation by the Project Company)

1. For each day during the period (a) commencing on the Scheduled SAWS Interconnection Improvements Date and (b) ending on the day that the SAWS Interconnection Improvements are completed to the level required to allow the Project Company to begin, continue and complete the Performance Test, and on which the Project Company has achieved Substantial Completion and is prepared to commence the Performance Test, SAWS shall pay the Project Company, as a Direct Payment, an amount equal to the daily general conditions costs reasonably incurred by the EPC Contractor attributable to the delay in beginning, continuing and completing the Performance Test; and

2. For each day during the period (a) commencing on the day that the Project Company would have achieved the Commercial Operation Date and been able to make available Product Water in daily volumes at least equal to the Baseline Daily Volume but for the failure of SAWS for any reason to have completed construction of the SAWS Interconnection Improvements by the Scheduled SAWS Interconnection Improvements Date to the level required to allow the Project Company to begin, continue and complete the Performance Test (but not earlier than 1,260 days following the Financial Closing Date), and (b) ending on the Commercial Operation Date, Product Water in a volume up to the Baseline Daily Volume shall be deemed to have been made available, and SAWS shall pay the Project Company (1) the Capital and Raw Groundwater Unit Price, multiplied by (2) the Baseline Daily Baseline Volume.

(D) **Operation, Maintenance, Repair and Replacement.** SAWS shall use reasonable efforts to operate, maintain, repair and replace the SAWS Interconnection Improvements during the Term so as to permit the delivery of Product Water to the SAWS Distribution System in accordance with this Water Transmission and Purchase Agreement.

**SECTION 6.3. SAWS INTERFACE CABINET.**

The parties shall cooperate to assure the timely installation and testing by SAWS of the SAWS Interface Cabinet at the Project.

**SECTION 6.4. NOTICE OF SHUTDOWNS AND CLOSURES.**

(A) **Notice.** SAWS shall give notice as soon as practicable of any shutdown or closure of the SAWS Distribution System that may prevent or limit SAWS from receiving Product Water. SAWS’ notice shall include a written report:
(1) Describing the shutdown or closure;

(2) Stating the date on which the shutdown or closure began and its estimated duration, to the extent known; and

(3) Summarizing the likely consequences of the shutdown or closure of SAWS’ ability to take delivery of Product Water under this Water Transmission and Purchase Agreement.

(B) Updates. SAWS shall provide the Project Company with weekly updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the shutdown or closure. In particular, SAWS shall notify the Project Company as soon as the shutdown or closure has ceased and of the time when it reasonably expects to be again capable of receiving Product Water.
ARTICLE 7
PROJECT FINANCING AND REFINANCING

SECTION 7.1. PROJECT FINANCING.

(A) Project Company Financing. The Project Company is solely responsible, subject to SAWS obligations under Article 4 (Development and Financing Period), for obtaining and repaying all financing necessary for the design, permitting and construction of the Project at its own cost and risk and without recourse to SAWS, both initially, as may be required to complete the Project and for any Project purpose during the Term. SAWS shall have the right to review and comment on any Senior Debt Financing Agreements, including all agreements pertaining to the Senior Secured Credit Facility. The Project Company, subject to SAWS obligations under Article 4 (Development and Financing Period), exclusively bears the risk of (1) the availability or unavailability at any time and for any reason of tax-exempt private activity bond financing for the Project, and (2) any changes in the interest rate, payment provisions or the other terms and conditions of any of its financings (except as provided in Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), pertaining to interest rate changes occurring between the Contract Date and the Financial Closing Date). SAWS shall have no obligation to provide financing for the Project or for any Project Company-Requested Capital Modifications (other than Project Company-Requested Capital Modifications pursuant to Section 12.3(B) (Inability of Project Company to Obtain Financing)), or for any other purpose; provided, however, that this provision is not intended to relieve SAWS of its obligations related to SAWS Fault, including under Section 16.3 (Project Company Relief Due to a SAWS Fault).

(B) Adequacy of Initial Senior Debt Proceeds to Pay Project Costs. The proceeds of the Initial Senior Debt shall be applied to the payment of Project Costs in the manner provided by the Senior Debt Financing Agreements. In the event the proceeds of the Equity Contribution Agreement and the Initial Senior Debt are insufficient to pay all Project Costs necessary to achieve Substantial Completion and Acceptance, the Project Company shall provide any additional financing required to pay the balance of such Project Costs.

(C) Limitations on Project-Secured Debt. The Project Company shall not issue any debt secured by the Project or its revenues other than the following (any such debt constituting “Permitted Debt” hereunder): (1) Senior Debt; (2) debt for Project Costs; (3) debt for Final Completion; (4) debt issued for Refinancing purposes; (5) debt to finance short-term Project cash flow requirements; (6) debt to finance Capital Modifications; (7) debt to finance letters of credit to secure the Project Company’s obligations under agreements and Governmental Approvals with respect to the Project; (8) debt to finance the costs of compliance with Governmental Approvals; (9) debt in connection with interest rate or other hedging arrangements related to the financing of the Project; and (10) subordinated debt issued for Project purposes. The term of any Permitted Debt issued by the Project Company shall not extend beyond the Expiration Date then in effect, except as provided in Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

(D) Permitted Debt Other than Senior Debt. SAWS, notwithstanding any other provision of this Water Transmission and Purchase Agreement, shall have no obligation under this Water Transmission and Purchase Agreement for making any payment measured or calculated by or with reference to Permitted Debt, nor shall the issuance of any Permitted Debt result in an adjustment of the Unit Price except as provided in Section 17.2(B) (Adjustment at Financial Closing Date) and Section 7.6 (Refinancing Gain).

(E) Permitted Debt Non-Recourse to SAWS. All Permitted Debt or other obligations issued or incurred by the Project Company in connection with this Water
Transmission and Purchase Agreement or the Project shall be issued or incurred only in the name of the Project Company (or, in the case of tax-exempt private activity bonds, in the name of the conduit bond issuer, secured by a loan, lease or installment sale agreement in the name of the Project Company). SAWS shall have no obligation to pay debt service on any Permitted Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company.

(F) **Project Company Liability.** Notwithstanding any foreclosure or other enforcement of any security interest created by a Senior Debt Financing Agreement, the Project Company shall remain liable to SAWS for the payment of all sums owing to SAWS under this Water Transmission and Purchase Agreement and the performance and observance of all of the Project Company’s covenants and obligations under this Water Transmission and Purchase Agreement.

(G) **SAWS Interconnection Improvements.** The Project Company shall have no obligation to finance the SAWS Interconnection Improvements.

(H) **SAWS’ Option to Purchase Senior Debt at Issuance.** As an option reserved exclusively thereto, and in no way to be determined or deemed an obligation to do the same, SAWS hereby reserves to itself, and the Project Company hereby grants to SAWS, the right (but not the duty or obligation) to purchase, in whole or in part and prior to all other potential initial purchasers, the Initial Senior Debt and any additional Senior Debt (including any additional Senior Debt issued as provided in Section 10.7(b) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) from time to time thereafter issued, upon the terms and conditions at such time determined by such parties. Not later than 90 days prior to the anticipated date of sale of the Initial Senior Debt, as well as not later than 90 days prior to the anticipated date of sale of any subsequent issuance of Senior Debt (or, with respect to any subsequent issuance of Senior Debt that must be issued on an expedited basis in extraordinary circumstances, no less than 30 days prior to such anticipated date of sale), the Project Company shall provide written notice of its intention to issue such Initial Senior Debt or Senior Debt, from which date SAWS shall, within 15 days for issuances of the Initial Senior Debt and within 30 days15 days for issuances of all subsequent Senior Debt, deliver to the Project Company written notice of its intention to exercise or not exercise its right to purchase any such indebtedness. SAWS intends that any purchased debt, if issued on a tax-exempt private activity bond basis, will have and maintain any and all commercially-reasonable features inherent in a publicly marketed and sold, project-finance debt offering (including, but not limited to, an investment-grade credit rating, qualification for tax-exempt treatment under federal income tax law (except as such tax-exemption may be affected by SAWS’ purchase), receipt of any and all necessary approval from governmental authorities whose approval serves as a prerequisite to delivery of such indebtedness, and ability to negotiate the Senior Debt Financing Agreement, along with evidence of the foregoing and delivery of usual and customary legal opinions). SAWS has reserved this right to purchase the Initial Senior Debt and any additional Senior Debt for the purpose of lowering the Capital and Raw Groundwater Unit Price through its ability to deliver costs of capital at levels lower than may be attainable by the Project Company in a given financial market. The adjustment to the Capital and Raw Groundwater Unit Price resulting from any such purchase shall be made in the manner provided in Section 17.2(B) (Adjustment at Financial Closing Date).

(I) **Other Project Company-Related Loans.** The Project Company acknowledges and agrees that no Project Company-Related Loan constitutes Senior Debt for any purpose hereunder, including particularly the determination of Senior Debt on the basis of which such termination payments are required to be calculated pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default), except to the extent that
consideration of the Bridge Loan has been taken into account in establishing the amount of the Senior Secured Credit Facility.

(J) Execution of the Senior Secured Credit Facility. The Project Company reasonably expects that the Senior Secured Credit Facility will be executed on or about July 1, 2016 and that the initial disbursement thereunder will occur on or about September 30, 2016 based on satisfaction or waiver of all conditions precedent specified therein by such date. Upon execution, the Senior Secured Credit Facility will have the status of Senior Debt hereunder such that the Project Company’s obligations thereunder will be secured by a first lien on all or substantially all of the revenues and assets of the Project Company, notwithstanding the fact that Financial Close hereunder will not occur until satisfaction of all conditions specified in Section 4.1(B)(25)(b); provided, however, that such lien shall remain subject to all rights reserved to SAWS hereunder prior to Financial Close without limitation, including those arising under Section 4.4 hereof. On or promptly following the execution of the Senior Secured Credit Facility, the Project Company shall deliver to SAWS copies of all executed agreements pertaining to the Senior Secured Credit Facility, which shall constitute Senior Debt Financing Agreements hereunder. In no event shall the Senior Secured Credit Facility permit disbursements of loan proceeds prior to Financial Close hereunder.

SECTION 7.2. FINANCING THE CAPITAL COSTS OF SAWS-REQUESTED CAPITAL MODIFICATIONS.

(A) Financing SAWS-Requested Capital Modification Capital Costs. In the event SAWS requests the Project Company to make Capital Modifications pursuant to Section 12.3 (Capital Modifications at SAWS Request), the Project Company shall use all reasonable efforts to finance the design and construction of such SAWS-Requested Capital Modifications to the extent permitted under the Senior Debt Financing Agreements. The parties acknowledge that (1) the resulting increase in the Capital and Raw Groundwater Unit Price will be based on the actual debt service payable by the Project Company on the Permitted Debt issued for such purposes (and any other reasonable costs and expenses incurred by the Project Company in connection with such Permitted Debt), and an equitable adjustment to the Project Company’s equity return to reflect the terms of any SAWS-Requested Capital Modification Financing, and (2) such Permitted Debt shall have a final maturity concurrent with the Expiration Date; provided, however, that in no event shall any such Permitted Debt adversely affect any credit rating of any Senior Debt.

(B) SAWS Rights With Respect to SAWS-Requested Capital Modification Finalnings. The Project Company acknowledges that SAWS has a direct interest in the terms under which the Permitted Debt is issued and new equity is raised for a SAWS-Requested Capital Modification Financing. Accordingly, the Project Company shall assure that SAWS and its financial advisors are substantially involved in all matters pertaining to the development and execution of the plan of financing for any such Permitted Debt, including direct participation in and review of the structuring, maturities, interest rates and pricing of any such Permitted Debt. Permitted Debt issued for such purposes shall not be sold or issued without the approval of SAWS, acting reasonably.

(C) SAWS Right to Finance SAWS-Requested Capital Modification Capital Costs. SAWS shall have the right but not the obligation, in its discretion and in lieu of any Project Company-Requested Capital Modification Financing by the Project Company, to finance any SAWS-Requested Capital Modification Capital Costs itself. In such event, SAWS shall pay the Project Company for such costs from the proceeds of a SAWS direct recourse financing or from SAWS internally-generated funds, and there shall be no adjustment to the Unit Price on account of such SAWS-Requested Capital Modification Capital Costs.
(D) Financing Unavailability for SAWS-Requested Capital Modifications. If the Project Company is unable to obtain financing for any SAWS-Requested Capital Modification or SAWS does not approve the proposed financing therefor pursuant to this Section, the Project Company shall have no further obligations with respect to the financing of the SAWS-Requested Capital Modification, and Section 12.3 (Capital Modifications at SAWS Request) shall apply to the implementation of the SAWS-Requested Capital Modification.

SECTION 7.3. FINANCING THE CAPITAL COSTS OF PROJECT COMPANY-REQUESTED CAPITAL MODIFICATIONS.

The Project Company shall finance the cost of Capital Modifications requested by the Project Company pursuant to Section 12.2 (Capital Modifications at Project Company Request). There shall be no adjustment to the Unit Price or any other compensation payable to the Project Company on account of any such Capital Modifications.

SECTION 7.4. COMPLIANCE WITH SENIOR DEBT FINANCING AGREEMENTS; DELIVERY OF REPORTS TO SAWS.

(A) Compliance. The Project Company shall comply with the Senior Debt Financing Agreements to the extent necessary to perform its obligations under this Water Transmission and Purchase Agreement. If at any time the Project Company receives a notice that an “event of default”, any event entitling the Senior Debt Creditors to enforce any security or any other similar event has occurred under the Senior Debt Financing Agreement, the Project Company shall forthwith deliver to SAWS a copy of such notice.

(B) Delivery of Financing-Related Reports to SAWS. The Project Company shall deliver to SAWS subsequent to the period beginning on the Financial Closing Date and (or, if executed, the effective date of the Senior Secured Credit Facility) and continuing throughout the Term copies of all material reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to the Senior Debt Creditors under or in connection with the Senior Debt Financing Agreements, including reports prepared by the consulting engineer in connection with the Senior Debt and any continuing disclosure reports required under applicable securities laws, in each case to the extent that such items are in the Project Company’s possession.

SECTION 7.5. CHANGES TO SENIOR DEBT FINANCING AGREEMENTS.

(A) SAWS Consent Required. The Project Company shall not without the written consent of SAWS (which shall not be unreasonably withheld or delayed) terminate, amend or otherwise modify the Senior Debt Financing Agreements, or waive or exercise any of its rights under the Senior Debt Financing Agreements, if such action would materially and adversely affect the Project Company’s ability to perform its obligations under this Water Transmission and Purchase Agreement or have the effect of materially increasing any liability or potential liability of SAWS. In the event the Project Company delivers to SAWS a request for its consent to any such proposed termination action, amendment, modification, waiver or exercise of rights, together with the definitive text pertaining to such action or document, and SAWS has not responded to the Project Company’s request within 45 days of receipt (whether through rejecting the request or seeking clarification or information), SAWS’ consent shall be deemed to have been given. If at any time any material amendment is made to any Senior Debt Financing Agreement or the Project Company enters into any replacement Senior Debt Financing Agreement (or any agreement which affects the interpretation or application of any Senior Debt Financing Agreement), the Project Company shall deliver to SAWS a copy of each such material amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.
(B) **SAWS' Expenses.** The Project Company shall pay SAWS' reasonable and properly incurred third party professional services costs in connection with any significant proposed changes to the Senior Debt Financing Agreements referred to in (A) (SAWS Consent Required), such costs to be paid to SAWS by the Project Company within 60 days after receipt of a valid invoice in respect of such amount.

**SECTION 7.6. REFINANCING GAIN.**

(A) **Consent Required for Refinancing.** The Project Company shall not enter into any Refinancing without the prior written consent of SAWS. Such consent will not be unreasonably withheld or delayed if the Refinancing occurs after the Commercial Operation Date, has no material and adverse effect on the Project Company's ability to perform its obligations under this Water Transmission and Purchase Agreement, and does not increase any liability or potential liability of SAWS (unless SAWS is specifically compensated for such liability or potential liability).

(B) **SAWS' Share of Refinancing Gain.** SAWS shall be entitled to receive a 25 percent share of any Refinancing Gain arising from a Refinancing.

(C) **Project Company Proposal to Refinance.** The Project Company shall promptly provide SAWS with full details of any proposed Refinancing, including:

- (1) All proposed revisions to the Senior Debt Financing Agreements; and

- (2) SAWS' estimated share of the Refinancing Gain, expressed in terms of the reduction of the Capital and Raw Groundwater Unit Price described in (D) (Reduction in the Capital and Raw Groundwater Unit Price).

SAWS shall (before, during and within two years after any Refinancing) have unrestricted rights of audit over any books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing; provided, however, that the Project Company shall not be required to provide SAWS any income statement showing profit or loss, provided that the Project Company recognizes that profit and loss information may become discernible to SAWS through the Cost Substantiation process upon the delivery of financial records for the purposes hereof.

(D) **Reduction in the Capital and Raw Groundwater Unit Price.** SAWS shall receive its share of any Refinancing Gain as a reduction in the Capital and Raw Groundwater Unit Price, in accordance with Section 17.8(B) (Adjustments to the Unit Price), over the period ending on the Expiration Date. Any such reduction in the Capital and Raw Groundwater Unit Price shall reflect the savings in actual debt service payable with respect to the Senior Debt.

(E) **Calculation of Refinancing Gain.** SAWS and the Project Company shall negotiate in good faith the basis and method of calculation of the Refinancing Gain and the reduction in the Capital and Raw Groundwater Unit Price resulting from SAWS' share of the Refinancing Gain. The Refinancing Gain will be calculated after taking into account the reasonable and proper professional costs that the Project Company directly incurs in relation to the Refinancing and SAWS' costs that the Project Company pays pursuant to Section 7.6(F) (SAWS' Expenses). If SAWS and the Project Company are unable to agree on the basis and method of calculation of the Refinancing Gain or the reduction in the Capital and Raw Groundwater Unit Price, the dispute may be referred to Non-Binding Mediation.
(F) **SAWS' Expenses.** The Project Company shall pay SAWS’ reasonable and properly incurred third party professional services costs in connection with a Refinancing, such costs to be paid to SAWS by the Project Company within 60 days after receipt of a valid invoice in respect of such amount following the close of the Refinancing.
ARTICLE 8
COMPLETION AND ACCEPTANCE OF THE PROJECT

SECTION 8.1. SUBSTANTIAL COMPLETION.

(A) Substantial Completion Procedures. Substantial Completion shall be determined on the basis of the Substantial Completion Procedures set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(B) Commissioning Plan. The Project Company shall prepare and submit to SAWS for its approval (the “Commissioning Plan”) no later than 60 days prior to the anticipated commencement of commissioning of the Project for review and comment by SAWS. Within 30 days after SAWS’ receipt of the Commissioning Plan, SAWS shall provide written notice to the Project Company either acknowledging that the Commissioning Plan is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Commissioning Plan to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld). The Commissioning Plan shall also provide for the coordination of any necessary testing of: (1) the Project with SAWS’ SCADA system in order to confirm the operability of the communications system prior to the Performance Test; (2) any tuning and calibration of the chemical feed systems of the SAWS Interconnection Improvements, as required by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (3) calibration and tuning of the instrumentation and control signals from the flow control facility which constitute a portion of the SAWS Interconnection Improvements to SAWS, as required by Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion).

(C) Substantial Completion Procedures Report. The Project Company shall prepare and submit to SAWS for its approval a Substantial Completion Procedures Report for review and comment by SAWS. Within 15 days after SAWS’ receipt of the Substantial Completion Procedures Report, SAWS shall provide written notice to the Project Company either acknowledging that the Substantial Completion Procedures Report is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Substantial Completion Procedures Report to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld).

(D) Conditions to Substantial Completion. “Substantial Completion” shall occur only when the Project Company has satisfied, except for Punch List items that do not affect the performance, safety or operation of the Project and except to the extent waived in writing by SAWS, the requirements and criteria applicable for the individual Project components and for the Project in its entirety as defined in the Substantial Completion Procedures, including:

   (1) Physical Completion. All pipelines, facilities, materials and equipment for the Project have been installed in accordance with the requirements of this Water Transmission and Purchase Agreement and inspected and approved for alignment, lubrication, rotation, vibration, leakage, noise, and hydrostatic and pneumatic pressure integrity; all systems required to be installed by the Project Company have been installed and tested; and the Project has been flushed and cleaned out as necessary and required by the TCEQ;

   (2) Project Equipment. The Project Equipment is installed in a manner that does not void any Subcontractor or vendor warranties and such that the Project Equipment can be operated in a safe and prudent manner;
(3) **Pre-Commissioning and Certificates of Proper Installation.** The Project Company has properly installed, tested and calibrated each specific Project system and subsystem in accordance with the manufacturers’ recommendations and requirements, and delivered to SAWS certificates of proper installation for each specific Project system and subsystem, as set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(4) **Design and Process Verification.** The Project Company has completed the Construction Work in accordance with the Design Requirements, and delivered to SAWS design and process verification checklists for each specific Project system and subsystem, as set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

(5) **Dry Commissioning.** The Project Company has performed all the dry commissioning activities identified in the Commissioning Plan, and necessary for the Project Equipment to be ready to conduct wet commissioning set forth in Section 8.1(D)(6);

(6) **Wet Commissioning.** The Project Company has performed all the wet commissioning activities identified in the Commissioning Plan, and necessary for the verification of operational preparedness set forth in Section 8.1(D)(8);

(7) **Equipment, Instrumentation and Controls Readiness Verification.** The Project Company has delivered to SAWS certificates of system readiness that certify that all the identified Project systems, subsystems, equipment, instrument, or control systems have been reviewed by the Project Company and are ready and able to undergo sustained continuous operation as required for its intended purpose in the Project;

(8) **Verification of Operational Preparedness.** The Project is ready to physically commence Performance Testing and operations in accordance with the Contract Standards;

(9) **Verification of Governmental Approval Compliance.** The Project Company shall provide documentation that all activities and conditions have been met to comply with all the Governmental Approvals;

(10) **Commissioning Plan.** The requirements of Section 8.1(B) (Commissioning Plan) have been met;

(11) **Instrument Calibration.** The Project Company has demonstrated that all instrument calibration activities that are required to assure all Project instrumentation provide reading accurate within manufacturer’s tolerance;

(12) **SCADA.** The Project SCADA system is operational and provides the input and output to and from SAWS’ SCADA system, permitting SAWS read-only access to all Project operations data and information;

(13) **Operating and Maintenance Staff Training.** The Project Company has completed all operation and maintenance staff training on equipment operations and maintenance provided on-site by the equipment manufacturers sufficient to start-up the Project in accordance with Good Management Practices;
Electronic Operation and Maintenance Manual. The Project Company has delivered to SAWS a draft copy of the Electronic Operation and Maintenance Manual as required under Section 9.5 (Electronic Operation and Maintenance Manual);

Operating Protocol. The Project Company has delivered to SAWS a final copy of the Operating Protocol and obtained SAWS’ approval for the Operating Protocol, which approval shall not unreasonably be withheld or delayed;

Governmental Approvals. The Project Company has obtained all necessary Governmental Approvals required to commence Performance Testing;

Sanitary Control Easements. The Project Company has obtained all sanitary control easements required by TCEQ for the Project, and such easements have been executed and recorded in appropriate land records;

Substantial Completion Procedures Report. The Project Company has prepared and submitted in Adobe Acrobat electronic format, indexed and fully-searchable (with five copies, if provided on compact disc), of the Substantial Completion Procedures Report prepared in accordance with the requirements set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion);

Certificate of Occupancy. A temporary or final certificate of occupancy, if required, has been issued for any occupied portion of the Project; and

Punch List. The Project Company has delivered a Punch List to SAWS.

Notice of Substantial Completion. The Project Company shall give SAWS Representative at least 10 days' prior written notice of the expected date of Substantial Completion.

Achievement of Substantial Completion. In order to accomplish Substantial Completion, the Project Company (1) shall satisfy the conditions to Substantial Completion set forth in Section 8.1(D) (Conditions to Substantial Completion), (2) shall comply with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), including those relating to Project commissioning, and (3) shall satisfy the requirements and criteria applicable for the individual Project components and for the Project in its entirety as defined in the Substantial Completion Procedures. The Project Company shall submit the deliverables defined in the Substantial Completion Procedures (documents and other items) for review and SAWS shall review such deliverables within the times required under the Substantial Completion Protocol. If, pursuant to the Substantial Completion Protocol, SAWS does not approve an item, such item shall be added to a list prepared by the Project Company of items which remain to be performed in order to achieve Substantial Completion (the "Substantial Completion List"). The Project Company shall complete the items on the Substantial Completion List in accordance with the Substantial Completion Protocol and the other requirements of this Water Transmission and Purchase Agreement related to Substantial Completion prior to achieving Substantial Completion. Within five Business Days after receipt by SAWS of notice that Substantial Completion has been achieved, SAWS shall (a) deliver its written acknowledgment that Substantial Completion has been achieved, or (b) notify the Project Company that Substantial Completion has not been achieved, stating in detail the reasons therefor. If SAWS notifies the Project Company that...
Substantial Completion has not been achieved, the Project Company shall take such steps as are necessary to achieve Substantial Completion, and shall resubmit to SAWS notice that Substantial Completion has been achieved. If SAWS does not provide timely notice of objection within 10 Business Days, Substantial Completion shall be conclusively deemed to have been achieved. The foregoing procedure shall be repeated until SAWS acknowledges that Substantial Completion has been achieved. Notwithstanding anything in this Section to the contrary, SAWS’ approval of the individual items identified in the Substantial Completion Protocol shall not relieve the Project Company of its obligation to meet the requirements of Substantial Completion at the time that it provides SAWS notice that it has achieved Substantial Completion.

SECTION 8.2. INTERIM OPERATIONS APPROVAL AND PROJECT COMPANY PUBLIC WATER SUPPLIER DESIGNATION.

(A) Authorization of Operation and Water Introduction. The Project Company acknowledges that the operation of the Project and the introduction of Product Water into the SAWS Distribution System are prohibited by Applicable Law until an Interim Operations Approval, as defined below, and the Project Company Public Water Supplier Designation are issued by TCEQ. TCEQ may, but is not legally obligated to, issue a letter, permit with provisions, or other instrument authorizing temporary operation of the Project and introduction of Product Water into the SAWS Distribution System until such time as the conditions of such letter, permit with provisions, or other instrument have been satisfied and the Project Company Public Water Supplier Designation is issued (an “Interim Operations Approval”). The Project Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of TCEQ.

(B) Project Company Obligations Generally. The Project Company shall cooperate with TCEQ throughout the Construction Period; shall make all applications and take all other action necessary to obtain and maintain the Project Company Public Water Supplier Designation and any Interim Operations Approval; and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of SAWS, subject to SAWS’ rights hereunder. The Project Company shall manage the process of obtaining the Project Company Public Water Supplier Designation and any Interim Operations Approval and shall provide SAWS at least 10 Business Days to review such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 2 (Governmental Approvals). The Project Company shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Project Company Public Water Supplier Designation and any Interim Operations Approval or the terms and conditions thereof that would impose any material cost or burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement or that would contravene any SAWS policies with respect to the matters contained therein. SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence. The Project Company also shall assist SAWS and provide any information concerning the Project in its possession that may reasonably be required to be furnished by SAWS to any Governmental Body relating to the effect of the delivery of Product Water to SAWS and the use of Product Water in the SAWS Distribution System.

(C) Project Company Assumption of Risk of Obtaining Project Company Public Water Supplier Designation. Except to the extent the Project Company is entitled to relief under Section 16.4 (Project Company Relief Due to Uncontrollable Circumstances), the Project Company explicitly assumes the risk of obtaining and maintaining the Project Company Public Water Supplier Designation and any Interim Operations Approval from TCEQ as contemplated in (B) (Project Company Obligations Generally), including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith.
In assuming this risk, the Project Company acknowledges in particular that (1) the delay or non-issuance of the Project Company Public Water Supplier Designation or an Interim Operations Approval may delay or prevent the delivery of Product Water to the SAWS Distribution System, the commencement of the Performance Test, or the occurrence of Acceptance, and thereby give SAWS the right to terminate this Water Transmission and Purchase Agreement, and (2) TCEQ may impose or enforce terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company. In particular, the exercise by TCEQ of any of its rights with respect to the Project Company Public Water Supplier Designation or an Interim Operations Approval shall constitute a Project Company risk. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Project, use of additional technologies or equipment, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Project Company assumes the risk.

SECTION 8.3. PERFORMANCE TESTING.

(A) Performance Test Protocol. At least 180 days prior to the commencement of the Performance Test, the Project Company shall submit a detailed plan to SAWS setting forth the Performance Test activities, monitoring, calculation methodologies, specific test instruments or equipment, and applicable calibration procedures proposed for demonstration of achievement of the Minimum Performance Criteria as set forth in Appendix 5 (Performance Test Procedures and Standards) (the "Performance Test Protocol"). The Performance Test Protocol shall also include a delivered Product Water schedule, which projects the proposed daily volume of Product Water the Project Company intends to make available during the Performance Test. Within 30 days after SAWS’ receipt of the Performance Test Protocol, SAWS shall provide written notice to the Project Company either acknowledging that the Performance Test Protocol is acceptable to SAWS or specifying the deficiencies therein. In the latter instance, the Project Company shall revise and resubmit the Performance Test Protocol to SAWS until the same is acceptable to SAWS (such approval not to be unreasonably withheld).

(B) Performance Test. The Performance Test is to be conducted, and the results calculated, in accordance with the Contract Standards. The Project Company shall keep SAWS continuously apprised of the specific schedule, and changes therein, for the commencement and re-performance of the Performance Test.

(C) Notice of Commencement of the Performance Test. The Project Company shall notify SAWS and the SAWS Engineer that it wishes to perform a Performance Test complying with this Section 8.3. The Project Company shall provide the SAWS Engineer and SAWS with at least three Business Days’ prior written notice of the expected initiation of the Performance Test. The Project Company shall not attempt to perform the Performance Test if SAWS gives notice to the Project Company of uncompleted Construction Work, the completion of which is required for the safe operation of all or any part of the Project during the Performance Test.

(D) Conditions to Commencement of the Performance Test. The Project Company shall not commence the Performance Test until the following events have occurred:

1. The requirements of Section 8.3(C) (Notice of Commencement of the Performance Test) have been met;

2. If required by Applicable Law, TCEQ has approved the Performance Test plan proposed by the Project Company;
(3) Substantial Completion has occurred;

(4) The Project Company Public Water Supplier Designation or an Interim Operations Approval has been issued by TCEQ, and contains sufficient authorization to permit the Performance Test and post-Performance Test operations to be conducted in accordance herewith;

(5) All Utilities specified or required under this Water Transmission and Purchase Agreement to be arranged for by the Project Company are connected and functioning properly;

(6) The Project Company has met with SAWS at least 60 days prior to the scheduled Performance Test to provide a forecast of expected Product Water production and availability, described the intended management of Product Water and Off-Specification Product Water, and reviewed such forecast and intended management with SAWS staff responsible for the introduction of water into the SAWS Distribution System; and

(7) The requirements of Section 5.2 (Performance Testing Prerequisites) of Appendix 5 (Performance Test Procedures and Standards) have been met.

(E) Conduct of the Performance Test. The Performance Test shall consist of the operation of the Project as a whole, as described in Appendix 5 (Performance Test Procedures and Standards), for the time period mentioned therein, in compliance with the Contract Standards. Achievement of Acceptance will be determined in accordance with the criteria set forth in Appendix 5 (Performance Test Procedures and Standards) and this Water Transmission and Purchase Agreement. SAWS shall designate and make available qualified and authorized representatives to observe the Performance Test and to monitor the taking of measurements to determine the level of achievement of the Performance Guarantees, all in accordance with this Water Transmission and Purchase Agreement. The SAWS Engineer shall have the right to observe the Performance Test and the taking of measurements discussed in the preceding sentence. Neither SAWS nor the SAWS Engineer shall interfere with the conduct of the Performance Test. The Project Company’s election and report of Performance Test results shall be made in accordance with the requirements defined in Appendix 5 (Performance Test Procedures and Standards).

(F) Test Report. Within 45 days following the last day of any Performance Test, the Project Company shall furnish the SAWS Engineer and SAWS with five copies of a written Performance Test report consistent with the requirements specified in Appendix 5 (Performance Test Procedures and Standards). The Performance Test results will be calculated in accordance with the Contract Standards. Within 20 days after SAWS’ and SAWS Engineer’s receipt of the Performance Test results, SAWS shall provide written notice to the Project Company either acknowledging that the Performance Test report is complete and correct or specifying the deficiencies of the Performance Test. In the latter instance the foregoing procedure will be repeated or the report withdrawn; provided, that if such notice specifying deficiencies is provided more than 10 Business Days after receipt of the Performance Test results, the Commercial Operation Longstop Date shall be extended for each day from the 10th Business Day from receipt of the Performance Test results until the day such notice is provided to the Project Company.

SECTION 8.4. PRODUCT WATER DELIVERIES PRIOR TO THE COMMERCIAL OPERATION DATE.

(A) Performance Tests. During any Performance Test, the Project Company shall notify SAWS of the volumes of Product Water to be made available to the Project Flow Meter
at least one day in advance of such availability. The cost of all Performance Test activities, including any repetition of the Performance Tests, has been priced in the Monthly Water Purchase Payments. If repeated Performance Tests are required due to the failure of the Project Company to achieve Acceptance, the Project Company shall reimburse SAWS for reasonable costs and expenses incurred in monitoring and reviewing the results of any such repeated Performance Tests.

(B) **Interim Operations.** If TCEQ issues the Project Company Public Water Supplier Designation, or an Interim Operations Approval, prior to the Commercial Operation Date, SAWS shall take delivery of Product Water made available by the Project Company, subject to the following:

1. SAWS shall have completed the SAWS Interconnection Improvements;
2. SAWS and the Project Company, acting reasonably, shall have agreed on a schedule of Flow Rates for the delivery and receipt of such Product Water;
3. The Product Water meets the Product Water Quality Guarantee;
4. SAWS may, on reasonable notice to the Project Company, terminate its obligation to take delivery of such Product Water if the Project Company fails to make available Product Water substantially in accordance with the agreed-upon delivery schedule;
5. SAWS’ obligation to take delivery of Product Water under this Section shall terminate upon earlier of (a) the expiration or termination of any authority to operate the Project under an Interim Operations Approval, or (b) the termination of this Water Transmission and Purchase Agreement, whether under Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date) or otherwise hereunder.

SAWS shall have no obligation to compensate the Project Company for any Product Water delivered during interim operations or otherwise prior to the Commercial Operation Date.

(C) **Other Obligations of the Parties During Interim Operations.** During interim operations, the Operating Period shall not have commenced. The parties shall, however, comply with all of their respective obligations hereunder during interim operations as if the Operating Period had commenced, except that: (1) the Project Company’s right to make available Product Water shall be as described in Section 8.4(B) (Interim Operations); (2) SAWS shall have no obligation to pay the Monthly Water Purchase Payments; and (3) Product Water shall comply at all times with the requirements of Applicable Law. Nothing in this Section shall be construed to limit SAWS obligations under Section 6.2(C) (Completion Delay).

(D) **Water Disposal and Disinfection Required by Curtailments.** The Project Company shall be responsible for SAWS’ actual costs of any required disposal of stagnant water in and disinfection of water at the SAWS Interconnection Improvements, resulting from the Project Company’s curtailment of Performance Testing or interim operations for any reason other than SAWS Fault or at the direction of SAWS.
SECTION 8.5. ACCEPTANCE.

(A) Conditions. The following conditions shall constitute the “Acceptance Conditions,” each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Acceptance and establish the Commercial Operation Date:

1. Substantial Completion. Substantial Completion has been achieved (and all conditions of Substantial Completion continue to be satisfied) and all equipment and facilities necessary for the operation of the Project have been properly constructed, installed, erected, insulated and protected where required, and correctly adjusted;

2. Achievement of the Minimum Performance Criteria. A Performance Test shall have been conducted demonstrating that the Project has achieved the Minimum Performance Criteria and complied with the Contract Standards, and a Performance Test report shall have been delivered to SAWS and the SAWS Engineer validating such achievement, certified as correct and complete by the Project Company;

3. EPC Contractor Letter of Confirmation. The EPC Contractor shall have delivered a letter to SAWS and the SAWS Engineer confirming the matters stated in (2) (Achievement of Minimum Performance Criteria);

4. Operating Governmental Approvals. All Governmental Approvals required under Applicable Law, including the Project Company Public Water Supplier Designation, which are required to be obtained by the Project Company as of the Commercial Operation Date for the performance of the Operating Work shall have been duly obtained by the Project Company and shall be in full force and effect. True and correct copies of all such Governmental Approvals, to the extent not in SAWS’ possession, shall have been delivered to SAWS to the extent required by Section 5.5(B) (Copies) and Section 9.8(E) (Copies of Operating Governmental Approvals);

5. No Encumbrances. There are no Encumbrances registered or recorded on the Project Sites or any part of the Project other than Permitted Encumbrances;

6. Governmental Body Readiness Confirmations. To the extent required under Applicable Law, all other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures comprising the Project on the Project Sites are ready for use and occupancy;

7. Required Operating Period Insurance. The Project Company has obtained and submitted to SAWS endorsements and certificates of insurance for all Required Insurance specified in Section 7.2 (Insurance During the Operating Period) of Appendix 7 (Insurance Requirements); and


(B) Notice and Report of Acceptance. When the Project Company believes that it has achieved Acceptance, it shall deliver to SAWS and the SAWS Engineer a notice thereof (the
“Notice of Acceptance”). The Notice of Acceptance shall contain a report in a form acceptable to SAWS, and with sufficient detail to enable SAWS to determine that Acceptance has been achieved.

(C) **Achievement of Acceptance.** SAWS and the SAWS Engineer shall, within 30 days following receipt of the Notice of Acceptance, inspect the Project and all Construction Work and either (a) deliver a certificate to the Project Company certifying that the requirements under clauses (1) through (8) of Section 8.5(A) (Conditions) have been satisfied, or (b) notify the Project Company in writing that Acceptance has not been achieved, stating in detail the reasons therefor. In the event that Acceptance has not been achieved, the Project Company shall promptly take such action or perform such Construction Work to effect compliance with Acceptance, and shall issue to SAWS and the SAWS Engineer another Notice of Acceptance pursuant to (B) (Notice and Report of Acceptance). Such procedure shall be repeated as necessary until Acceptance has been achieved. Any expense incurred by SAWS in any such repeated inspections and reviews shall promptly be reimbursed by the Project Company as a Direct Payment.

SECTION 8.6. ACHIEVEMENT OF ACCEPTANCE AND COMMERCIAL OPERATION DATE.

(A) **Acceptance.** The Project Company shall achieve Acceptance by the Commercial Operation Longstop Date.

(B) **Commercial Operation Longstop Date Defined.** The “Commercial Operation Longstop Date” is the date that is 1,620 days following the Financial Closing Date, as such Commercial Operation Longstop Date may be extended as provided in (C) (Extension for Uncontrollable Circumstances).

(C) **Extension for Uncontrollable Circumstances.** If an Uncontrollable Circumstance occurs between the Financial Closing Date and the Commercial Operation Longstop Date, the Commercial Operation Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the Uncontrollable Circumstance on any matter in the Project Schedule affected by the Uncontrollable Circumstance, but in no event longer than the date that is 2,160 days following the Financial Closing Date (except that if the Uncontrollable Circumstance is a SAWS Fault, the Commercial Operation Longstop Date shall be so extended without limit).

(D) **Commercial Operation Date.** The “Commercial Operation Date” shall be the date by which the Notice of Acceptance is delivered to SAWS, if, subsequent to such delivery, SAWS delivers a certificate to the Project Company certifying, in response to such Notice of Acceptance, that the Acceptance Conditions have been satisfied.

SECTION 8.7. FAILURE TO ACHIEVE THE COMMERCIAL OPERATION DATE BY THE COMMERCIAL OPERATION LONGSTOP DATE.

In the event the Project Company fails to achieve the Commercial Operation Date by the Commercial Operation Longstop Date (as extended pursuant to Section 8.6(C) (Extension for Uncontrollable Circumstances), a Project Company Event of Default shall be deemed to have occurred and SAWS, subject to the terms of the Creditors’ Remedies Agreement, may pursue all remedies available under Article 19 (Remedies of the Parties), Article 20 (Project Company Events of Default) and Article 22 (Termination).
SECTION 8.8. FINAL COMPLETION.

(A) Requirements. “Final Completion” shall occur when all of the following conditions have been satisfied:

1. Acceptance. The Project Company has achieved Acceptance in accordance with Section 8.5 (Acceptance);

2. Construction Work Completed. All Construction Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Water Transmission and Purchase Agreement;

3. Equipment Warranties and Manuals. The Project Company shall have delivered to SAWS, copies of the warranties of equipment and fixtures constituting a part of the Project received from the equipment suppliers, together with copies of all related operating manuals supplied by the equipment suppliers;

4. Record Drawings. The Project Company has delivered to SAWS a final and complete set of as-built construction record drawings, prepared in accordance with Attachment 4B (SAWS Drawing Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and signed and sealed by a Texas registered professional engineer;

5. Acquisition of All Project Real Property. The Project Company has acquired all Project Real Property required for the Project and has delivered to SAWS copies of all easements and Project Site Conveyance Instruments acquired by the Water Supply Corporation or the Project Company or otherwise necessary in connection with the Project, together with copies of all title insurance policies with respect thereto; and

6. Claim Statement. The Project Company has delivered to SAWS a claims statement setting forth in detail all claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Construction Work, and arising out of or based on events prior to the date when the Project Company gives such statement to SAWS.

(B) Notice and Report of Final Completion. When the Project Company believes that it has achieved Final Completion, it shall deliver to SAWS and the SAWS Engineer a written notice thereof (the “Notice of Final Completion”). The Notice of Final Completion shall contain a report in a form acceptable to SAWS and the SAWS Engineer, and with sufficient detail to enable SAWS and the SAWS Engineer to determine the achievement by the Project Company of all Construction Work to be performed under this Water Transmission and Purchase Agreement, including completed Punch List items, and such other information that SAWS may require to determine whether Final Completion has been achieved.

(C) Achievement of Final Completion. SAWS and the SAWS Engineer, shall, within 20 days following receipt of the Notice of Final Completion, inspect the Project, review the report submitted by the Project Company and either (a) deliver a certificate to the Project Company stating that clauses (1) through (6) of Section 8.8(A) (Requirements) have been satisfied, or (b) notify the Project Company in writing that Final Completion has not been achieved, stating in detail the reasons therefor. In the event that SAWS or the SAWS Engineer determines that Final Completion has not been achieved, the Project Company shall promptly take such action or perform such Construction Work as will achieve Final Completion and shall issue to SAWS another Notice of Final Completion pursuant to Section 8.8(B) (Notice and Report
of Final Completion). Such procedure shall be repeated as necessary until Final Completion is achieved. Any expenses incurred by SAWS in any such repeated inspections and reviews shall promptly be reimbursed by the Project Company as Direct Payment.

(D) **Obligation to Achieve Final Completion; Punch List Items.** The Project Company shall achieve Final Completion within 365 days after the Commercial Operation Date.
ARTICLE 9
OPERATION AND MANAGEMENT OF THE PROJECT

SECTION 9.1.  PROJECT COMPANY OBLIGATIONS GENERALLY.

(A)  Operation and Management Responsibility for the Project.  Commencing on the Commercial Operation Date, the Project Company shall operate and manage the Project; treat Raw Groundwater; produce, supply, make available and sell Product Water to SAWS; transport and dispose of Project By-Products; provide all information necessary to secure and maintain Governmental Approvals to the extent required under this Water Transmission and Purchase Agreement; and otherwise operate and manage the Project so as to comply with the Contract Standards applicable to such activities.

(B)  Application of Industry Experience.  The Project Company shall use all reasonable efforts to apply at the Project the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Project Company, the Operating Service Provider and their Affiliates through the operation of their water businesses and industry research and development activities conducted over the Term, and which are useful and appropriate in the good faith judgment of the Project Company for carrying out the Operating Work in a manner which improves upon the Contract Standards.

(C)  SAWS Administrative Space.  The Project Company shall provide office space at or adjacent to the permanent offices of the Operating Service Provider (if located outside Bexar County) for the exclusive use of SAWS' compliance personnel and advisors in accordance with Appendix 6 (Operating and Maintenance Standards).  The cost related to SAWS' use of such office space (including janitorial services to be provided by the Project Company) shall constitute a Compensable Cost.

SECTION 9.2.  SERVICE COORDINATION.

(A)  Project Company's Chief Operator.  The Project Company shall appoint a full-time manager of the Project (the "Chief Operator").  The Chief Operator shall have a TCEQ Grade A operator's certification as of the date of the commencement of start-up and commissioning of the Project and shall be otherwise appropriately certified under Applicable Law.  The sole employment responsibility of the Chief Operator shall be managing the operation of the Project.  In the event SAWS determines that (1) the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, or (2) an unworkable relationship (as defined below) has developed between the Chief Operator and SAWS, SAWS shall provide the Project Company with written notice, describing such failure or development of an unworkable relationship (as defined below) and its duration in reasonable detail.  An unworkable relationship shall be deemed to have developed if the Chief Operator, by his or her persistent conduct, is non-responsive or non-communicative with Governmental Bodies, Project Site Lessors, SAWS or the Project Company; makes misrepresentations; provides false or incomplete information; dishonors commitments; fails to make timely decisions; or fails to manage or control the employees under his or her managerial control.  The parties shall thereupon schedule a meeting to discuss and seek to resolve SAWS' concerns, to be held not more than 30 days following delivery of such notice, which meeting shall be attended by senior executives of SAWS, the Project Company and the Operating Service Provider with authority to resolve the dispute.  If, following such meeting, based on the persistent conduct that prompted SAWS' concern or conduct occurring following the meeting, SAWS, acting reasonably, still determines that an unworkable relationship exists or that the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, SAWS shall so notify the Project Company and the Project Company shall remove such Chief Operator as soon as reasonably practicable, but in no event later than 60 days.
(B) **Communications and Meetings.** On or before the Commercial Operation Date, the Project Company shall provide SAWS with contact information for the Chief Operator and senior management representatives of the Project Company. SAWS shall furnish to the Project Company comparable communications information with respect to the Contract Administrator. The Project Company shall meet with SAWS each month to review the contents of the monthly operations reports required to be prepared pursuant to Section 9.11 (Periodic Reports). The Chief Operator (or other senior representative of the Operating Services Provider acceptable to SAWS) and, if requested by SAWS, a senior management representative of the Project Company each shall personally attend the monthly operations meetings with SAWS, and all special meetings which SAWS may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Project and this Water Transmission and Purchase Agreement. The Project Company shall have the right to have a representative present at all such meetings. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation in accordance with Section 18.2 (Non-Binding Mediation), and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum or a Water Transmission and Purchase Agreement Amendment, as applicable.

(C) **Complaints and Communications.** The Project Company shall respond in a timely and effective manner to all complaints and communications received by the Project Company or received by SAWS and forwarded to the Project Company regarding the treatment and distribution of water, odor and air emissions, noise, light emissions, construction or any other matter related to the Operating Work as to which there is a Contract Standard, to the extent required by the following sentence. The Project Company shall investigate each such complaint and communication and, if it has a valid basis, the Project Company shall promptly respond to or rectify the matter, as applicable, provided however, that the Project Company shall have no obligation to respond to or rectify a matter raised in a complaint or communication if the Project Company is in compliance with the Contract Standards with respect to the matter. The Project Company shall respond to complaints and communications concerning (1) emergencies related to the Project within one hour; (2) material spillages, leaks, breaks, noise, light, and emissions relating to the Project as soon as reasonably possible; and (3) other material communications within two Business Days. All such complaints and communications shall be immediately logged and responded to in writing, faxed to SAWS on a daily basis, and reported to SAWS as part of the monthly operations reports delivered pursuant to Section 9.11 (Periodic Reports). The Project Company shall establish, maintain and make publicly known a telephone number, e-mail address and mailing address to which customer or citizen complaints and communications may be directed.

SECTION 9.3. **STAFFING AND PERSONNEL.**

(A) **Staffing Generally.** The Project Company shall staff (or cause the Operating Service Provider to staff) the Project during the Term in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of the State. The Project staff, taken as a whole, shall be trained, experienced and proficient in the management and operation of water treatment systems using treatment processes similar to the Project. The Project Company shall (or shall cause the applicable Project Contractor to) appropriately discipline or replace, as appropriate, any employee of the Project Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Project Company shall notify SAWS of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely materially and adversely affect the ability of the Project Company to provide the Operating Work in accordance with the Contract Standards.
(B) **Key Operations Staff.** Collectively, the Chief Operator and those reporting directly to the Chief Operator shall have experience with all of the technologies and practices utilized in the Project sufficient to operate and maintain the Project and perform the Contract Services in accordance with the Contract Standards.

(C) **Training.** The Project Company shall be responsible for training the Chief Operator, operations supervisors and other Project Company personnel. No later than the Commercial Operation Date, the Project Company shall prepare a personnel training program which the Project Company proposes to institute in order to ensure that the Project is managed and operated by qualified personnel throughout the Term and in accordance with this Water Transmission and Purchase Agreement. Such personnel training program shall include the personnel training guidelines, policies and procedures established (1) by the TCEQ and the EPA; (2) in any Governmental Approval or operator’s certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

### SECTION 9.4. UTILITIES.

(A) **General.** The Project Company shall arrange for and establish the supply of gas, water, sewer and other utility service required for the Project in accordance with the Design Requirements, except that electric service during the Operating Period shall be arranged for and established by SAWS as provided in Section 9.4(B).

(B) **SAWS Payment of Project Electricity Costs During the Operating Period.** SAWS shall have the exclusive right and obligation during the Operating Period to enter into contracts or other arrangements for the supply of electricity to the Project (not later than such time as is necessary to enable the Performance Test to be performed in a timely manner in accordance with the Performance Test Protocol), to determine the electricity supplier, and to negotiate and establish electric rates with the electricity supplier, subject to the approval of the Project Company, acting reasonably, all as set forth in greater detail in Appendix 9 (Guaranteed Maximum Electrical Utilization and Demand); provided, however, that the Project Company shall cause all Well Field electric service easements that may be required by any electric utility that provides electric service to the Well Field Facilities to be provided and conveyed to the electric utility service provider. The Project Company shall cooperate with and assist SAWS in making such arrangements, and SAWS shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity supply. SAWS shall pay all electricity bills during or related to the Operating Period in a timely manner, subject to annual reimbursement by the Project Company as part of the Annual Settlement Statement process set forth in Section 17.11 (Annual Settlement) in the event that the Guaranteed Maximum Annual Electricity Costs are exceeded as provided in Section 17.11(B) (Annual Settlement of Electricity Costs). Notwithstanding the preceding sentence, the Project Company shall reimburse SAWS on a monthly basis in an amount equal to all fines and penalties imposed by the electricity provider resulting from the Project Company’s failure to operate in accordance with the Contract Standards. The Project Company shall operate the Project in a manner which minimizes, to the maximum extent reasonably practicable in light of its obligation to provide the Operating Work, charges for electricity use, demand, transmission and distribution which are payable by SAWS hereunder.

(C) **No SAWS Liability.** In no event, notwithstanding SAWS role in the selection of any electricity supply, shall SAWS have any liability or responsibility for the performance or non-performance of any electricity supplier, including any failure to supply electricity in a timely or reliable manner as required for the Project or any additional costs or delays in providing Product Water that may result therefrom.
SECTION 9.5. ELECTRONIC OPERATION AND MAINTENANCE MANUAL.

The Project Company shall deliver a preliminary draft Electronic Operation and Maintenance Manual to SAWS for review and comment at least 45 days prior to Substantial Completion, and a draft final Electronic Operation and Maintenance Manual at least 60 days following Acceptance. SAWS shall have the right to review and comment on such draft final Electronic Operation and Maintenance Manual within a 30-day period following its receipt, and the Project Company shall give reasonable consideration to such comments in finalizing the draft. The Operating Work shall be performed substantially in compliance with the Electronic Operation and Maintenance Manual, the Operating Protocol and the CMMS. The Project Company shall keep the Electronic Operation and Maintenance Manual current in accordance with the Contract Standards, including changes required to reflect updates to record documents made on account of Capital Modifications or made pursuant to Section 9.10(C) (Record Documents).

SECTION 9.6. SAFETY.

The Project Company shall maintain the safety of the Project at a level consistent with all federal, State and local safety and health rules and regulations, and the Contract Standards. Without limiting the foregoing, the Project Company shall:

(1) take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Project to,

(a) all employees performing the Contract Obligations and other persons who may be directly affected thereby;

(b) all visitors to the Project;

(c) all materials and equipment under the care, custody or control of the Project Company on the Project Sites;

(d) other property constituting part of the Project, and

(e) SAWS Property affected by Project operations;

(2) issue all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss;

(3) designate a qualified and responsible employee at the Project whose duty shall be the development and implementation of safety and health requirements at the Project, the prevention of fires and accidents and the coordination of such activities, with federal, State, local and SAWS officials;

(4) operate all equipment in a manner consistent with the manufacturer's safety requirements; and

(5) develop and implement a health and safety program that includes a written site-specific health and safety plan designed to implement the requirements of this Section. The Project Company shall make all modifications to the Project which are or may be required under OSHA.
SECTION 9.7. SECURITY.

The Project Company, in accordance with the Contract Standards, shall be responsible for the security and protection of the Project. The Project Company shall prepare and keep current a security plan for the Project and conduct vulnerability assessments in accordance with the requirements of Section 6.5 (Security Plan) of Appendix 6 (Operating and Maintenance Standards) (the “Security Plan”), and shall comply with the requirements of the Security Plan. The Project Company shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Project in accordance with the Contract Standards.

SECTION 9.8. OPERATING GOVERNMENTAL APPROVALS.

(A) Applications and Submittals. The Project Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained, maintained, renewed or extended by or in the name of the Project Company under Applicable Law in order to operate the Project, including those set forth in Appendix 2 (Governmental Approvals). All permit and filing fees required in order to obtain and maintain Governmental Approvals that are material to the Operating Work shall be paid by the Project Company, regardless of the identity of the applicant.

(B) Data and Information. All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Operating Work shall be supplied and taken on a timely basis by the Project Company considering the requirements of Applicable Law. The data and information supplied by the Project Company to SAWS and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Project Company shall provide all material documentation to be submitted to a Governmental Body in connection with the Operating Governmental Approvals for SAWS’ review and comment at least 14 days prior to submission to the applicable Governmental Body. The Project Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information. Unless required under Applicable Law, the Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or burden on SAWS in its capacity as a buyer of Product Water under this Water Transmission and Purchase Agreement. SAWS reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence, provided that any such action by SAWS shall not cause the Project Company to fail to comply with Applicable Law.

(C) Non-Compliance and Enforcement. The Project Company shall report to SAWS, immediately upon obtaining knowledge thereof, all notices or communications it receives with respect to violations of the terms and conditions of any Project Site Lease, Governmental Approval or Applicable Law pertaining to the Project. The failure of the Project Company to comply with any Governmental Approval in all material respects shall constitute a breach of this Water Transmission and Purchase Agreement.

(D) Reports to Governmental Bodies. The Project Company shall, in accordance with the Contract Standards, prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Project, including sampling and testing results. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for SAWS, if such are acceptable to the
Governmental Body. The Project Company first shall provide SAWS with copies of such regulatory reports prior to their filing as and to the extent required pursuant to Section 9.8(B) (Data and Information).

(E) **Copies of Operating Governmental Approvals.** The Project Company shall make available for review and copying by SAWS, upon request, copies of the Operating Governmental Approvals and related applications.

(F) **Potential Regulatory Change.** The Project Company shall keep SAWS regularly advised as to potential material changes in regulatory requirements affecting the Project or the Raw Groundwater of which the Project Company becomes aware, together with anticipated responses to such potential changes (including potential Capital Modifications and the acquisition of additional water rights).

SECTION 9.9. **SAWS ACCESS TO PROJECT.**

(A) **General Access.** Subject to (1) reasonable safety precautions and execution of waivers of liability on the part of SAWS visitors, (2) reasonable prior notice requirements required by the Project Company, and (3) reasonable limitations imposed by the Project Company for purposes of assuring minimum disruption to operations of the Project (in all cases to be established in the Operating Protocol), SAWS shall have the right at any time to visit and inspect the Project and related records and observe the Project Company’s performance of the Operating Work in order to determine compliance with the Contract Standards, including the Project Company’s obligations under Article 11 (Maintenance, Repair and Replacement); provided that unless a Project Company Event of Default shall have occurred and be continuing arising directly from an alleged failure of the Project Company to act within Contract Standards, or other exigent circumstances exist which, in SAWS reasonable opinion, creates an imminent risk to the health and safety of its customers, any such visitation rights shall be limited to normal business hours, except for visits in and around the Product Water Delivery Point. SAWS shall give reasonable prior notice to the Project Company of any visit outside the immediate vicinity of the Product Water Delivery Point and afford the Project Company a reasonable opportunity to enable a Project Company representative to accompany any visit by SAWS personnel. To the extent SAWS personnel visit or inspect the Project unaccompanied, such SAWS personnel (including agents and contractors) shall announce themselves to the staff and Project Company employees that may be present at or near each location visited. The Project Company shall permit and facilitate access to the Project for such purposes by SAWS personnel and by agents and contractors designated by SAWS. All visitors and on-site SAWS personnel shall comply with the Project Sites-specific health and safety plan and rules, and shall not interfere with the Project Company’s operation of the Project.

(B) **Tours.** The Project Company shall conduct public tours of the Project during normal business hours, and take visitors through such portions of the Project as are suitable for public visitation, all during normal business hours and in a pre-arranged and mutually agreed upon manner that does not interfere with the Project Company’s performance of the Contract Obligations.

SECTION 9.10. **ASSET RECORDS.**

(A) **Information Systems.** The Project Company, on and after the Commercial Operation Date, shall establish and maintain computerized information systems with respect to the Project for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Water Transmission and Purchase Agreement and demonstrate compliance with the Contract Standards. The Project Company shall grant SAWS real time, continuous access to such computerized information systems through the SAWS Interface Cabinet.
(B) **Availability of Project Records to SAWS.** The Project Company shall make available for inspection and copying by SAWS, upon request, copies of all operations, maintenance, performance, Project By-Products management, process control and similar records and data kept by the Project Company in its performance of the Operating Work.

(C) **Record Documents.** The Project Company shall maintain at the Project and make available to SAWS upon request for review and copying: (1) all material Design Documents and record drawings and documents pertaining to the Project copies of which were delivered to SAWS by the Project Company pursuant to Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion); and (2) similar documents relating to any Capital Modifications. The Project Company shall: (1) update annually all such records to show any material changes to the Project made by the Project Company in the performance of the Operating Work (which shall include any change that alters the functionality, performance or usability of any Project Equipment and Project Structures, or which could impact Product Water quality or SAWS aqueduct operations); and (2) provide advice and assistance to SAWS, based on such records, in establishing and maintaining any SAWS geographic mapping and information systems.

(D) **Annual Update of Record Drawings and Documents.** The Project Company, within 60 days following the end of each Contract Year, shall deliver to SAWS an electronic copy of an updated set of as-built drawings reflecting any material changes to the Project during such Contract Year, of any updates to record drawings and documents that were made during the previous Contract Year. The annual record drawings and documents update shall be prepared in accordance with the requirements of Section 9.12(D) (Drawing Requirements) and delivered separately from the annual operation and maintenance reports delivered pursuant to Section 9.11(B) (Annual Operation and Maintenance Reports).

**SECTION 9.11.** **PERIODIC REPORTS.**

(A) **Monthly Operations.** The Project Company shall provide SAWS with monthly operations reports no later than 15 days after the end of each Billing Period. In addition to the operating data specified in Appendix 6 (Operating and Maintenance Standards), the monthly operations reports shall include a report by the Project Company as to the following:

1. A table or other information format acceptable to SAWS setting forth all results of operations pertaining to the availability or unavailability of Product Water, presented using each of the categories used for billing and tracking purposes under Article 17 (Monthly Water Purchase Payments);

2. Summary of the quantities and characteristics of Raw Groundwater and Product Water produced during the prior month, in a manner consistent with the listing of the characteristics set forth in Appendix 8 (Performance Guarantee Requirements);

3. Summary of all sampling and test data required by this Water Transmission and Purchase Agreement;

4. Quantities of electricity, natural gas, water and other Utility services used during such month;

5. Summary of staffing levels, job positions and workforce turnover;

6. Statement of any complaints or communications received by the Project Company in relation to the Operating Work as to which the Project
Company is obligated to respond under Section 9.2(C) (Complaints and Communications), and how each such complaint and communication was addressed by the Project Company;

(7) Description of the maintenance, repair and replacement activities performed and Capital Modifications made during the prior month and anticipated during the current month;

(8) Description of maintenance backlog and status of work orders of preventative and unplanned maintenance;

(9) List of material machinery and equipment which was unavailable for service during the prior month, and a timetable for repair and replacement;

(10) Description of any asset abandoned in place pursuant to Section 6.2.14(b) of Appendix 6 (Operating and Maintenance Standards);

(11) Description of partial or total Project equipment shutdowns for maintenance and repairs during the prior month and anticipated during the current month;

(12) Adverse conditions which may be expected to arise during the current month that may affect the ability of the Project Company to pump or treat Raw Groundwater and produce Product Water in accordance with the terms and conditions of this Water Transmission and Purchase Agreement;

(13) Results of any regulatory or insurance inspections conducted during the prior month;

(14) Information on any Utility outages occurring during the prior month;

(15) Descriptions of any failures to meet the Performance Guarantees and data required to determine performance liquidated damages under this Water Transmission and Purchase Agreement, if any;

(16) Listing and description of any reports or other submittals made to or received from any Governmental Body with respect to any environmental, health or safety tests or monitoring procedures conducted by the Governmental Body during the prior month;

(17) Notices of material violations of any Governmental Approval received during the prior month;

(18) Notices of any material breach or default under any Project Site Lease; and

(19) List of visitors to the Project in the prior month.

The Project Company shall submit for SAWS’ review and approval, acting reasonably, in accordance with Section 6.3.1 of Appendix 6 (Operating and Maintenance Standards), the proposed format of the monthly operations report required to be provided by the Project Company pursuant to this Section.
(B) Annual Operations and Maintenance Reports. The Project Company shall furnish SAWS, within 60 days after the end of each Contract Year following the Commercial Operation Date, an annual summary of the information contained in the monthly operations reports, including a report by the Project Company of any administrative fine, penalty or consent order against it or any of its Affiliates with respect to the performance of operation and maintenance services at other water projects located in the State. The Project Company shall also perform and report to SAWS, as part of its annual operations and maintenance report and in accordance with the Contract Standards, a review and analysis of the administrative, operational and maintenance practices employed in the management of the Project. The annual operations and maintenance report shall also include a summary of all replacements or retirement of material Project Equipment and Capital Modifications. The annual record drawing updates required by Section 9.10(D) (Annual Update of Record Drawings and Documents) shall be prepared as a separate submittal to SAWS.

(C) Default Reports. The Project Company shall provide to SAWS, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Project Contract entered into by the Project Company in connection with the Operating Work.

SECTION 9.12. MAINTENANCE OF RECORDS.

(A) Duty to Maintain Records. The Project Company shall retain and maintain all the records (including superseded records) referred to in Section 9.12(E) (Records to Be Kept) in accordance with this Section and other applicable terms of this Water Transmission and Purchase Agreement, in chronological order, in a form that is capable of audit. The Project Company shall make such records (other than books of account) available to SAWS for inspection during normal business hours upon reasonable notice.

(B) Maintenance of Records. Wherever practical and unless otherwise agreed, the Project Company shall retain and maintain original records in electronic form and, to the extent legally required, in hard copy form. True copies of the original records may be kept by the Project Company if it is not practicable to retain original records.

(C) Disposal of Records. During the Term, the Project Company may dispose of any records referred to in Section 9.12(E) (Records to Be Kept) if any are more than 10 years old or in respect of which the required period for their retention has expired, provided that the Project Company first notifies SAWS in writing and provides SAWS with 60 days to elect to receive delivery of such records.
(D) **Drawing Requirements.** Any drawings required to be made or supplied pursuant to this Water Transmission and Purchase Agreement shall be prepared in accordance with the requirements of Attachment 4B (SAWS Drawing Requirements) of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids. Where by prior agreement with the Project Company SAWS has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Project Company shall make or supply, or have made or supplied, drawings and other documents in such agreed upon form.

(E) **Records to Be Kept.**

The Project Company shall retain the following:

1. This Water Transmission and Purchase Agreement and the documents executed based on the Transaction Forms, including all amendments to such agreements;
2. Records relating to the appointment and supervision of SAWS Representative and the Project Company Representative;
3. Documents relating to Governmental Approvals, including applications, refusals and appeals;
4. Documents relating to any amendment, material dispute or litigation under any Project Site Lease;
5. Notices, reports, results and certificates relating to completion of the Construction Work, Commissioning, and Capital Modifications;
6. All operation and maintenance manuals;
7. Record drawings and documents, and periodic updates;
8. Documents relating to Uncontrollable Circumstances;
9. All notices made to or received from the SAWS Representative;
10. Documents relating to a request for the consent of SAWS to any Change in Control by the Project Company;
11. Documents relating to a Refinancing of the Project Company;
12. Tax invoices and records applicable to the Project (other than any income tax records for the Project Company or records pertaining to other taxes personal to the Project Company);
13. Records required by Applicable Law (including in relation to health and safety matters) to be maintained by the Project Company with respect to the Construction Work and Operating Work;
14. Documents relating to the Required Insurance; and
(15) All other records, notices or certificates required to be produced or maintained by the Project Company pursuant to the express terms of this Water Transmission and Purchase Agreement.

SECTION 9.13. EMERGENCIES.

(A) Emergency Plan. Within 90 days prior to the Commercial Operation Longstop Date, the Project Company shall provide SAWS with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety, power outage, and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to SAWS and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by SAWS and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays). The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary, in accordance with the Operating Protocol.

(B) Emergency Action. Notwithstanding any requirement of this Water Transmission and Purchase Agreement requiring SAWS approval or consent to reports or submittals, if at any time the Project Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Project, or to mitigate the immediate consequences of an emergency event, then the Project Company shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Project Company shall notify SAWS of the event at an emergency phone number supplied by SAWS, and the Project Company’s response thereto.

SECTION 9.14. HAZARDOUS SUBSTANCE MANAGEMENT DURING THE OPERATING PERIOD.

As between the parties, the Project Company shall be responsible for, and shall bear the risk and cost of managing and disposing of Hazardous Substances (including Hazardous Substances in Unacceptable Water) as may exist at or as may arise from the operation of the Project during the Operating Period; and SAWS shall be responsible for, and shall bear the risk and cost of managing and disposing of, such Hazardous Substances as may exist at, or arise from the operation of, the SAWS Distribution System during the Operating Period. The Project Company shall update as reasonably necessary: (1) the Hazardous Substance Management Program; and (2) the Response Plan.
ARTICLE 10
PERFORMANCE

SECTION 10.1. GENERAL PERFORMANCE RESPONSIBILITIES.

(A) Project Company Acknowledgment. The Project Company acknowledges that the Project will constitute: (1) a significant source of treated drinking water for conveyance to the SAWS Distribution System; and (2) a critical part of SAWS’ long term water supply availability program. The parties acknowledge and agree that this Section shall not be construed to expand or otherwise modify the Project Company’s obligations under this Water Transmission and Purchase Agreement.

(B) Asset Management. SAWS: (1) has and shall retain full management responsibility for the SAWS Distribution System; and (2) shall be responsible for the operation, maintenance, repair, replacement and management of the SAWS Interconnection Improvements. The Project Company shall be responsible, in accordance with this Water Transmission and Purchase Agreement, for the operation, maintenance, repair, replacement and management of the Project.

(C) Limitations on Project Company Rights. The Project Company shall not treat water other than Raw Groundwater, and shall not use the Project for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than SAWS. Except at the direction and with the permission of SAWS given under Section 26.5 (Opportunities), the Project Company shall not deliver Product Water to any person other than SAWS, and shall not impose a fee or charge on any person other than SAWS for the supply of Product Water. The only compensation to the Project Company for the supply of Product Water and for performing the Operating Work shall be the Monthly Water Purchase Payments and other amounts payable by SAWS hereunder.

(D) Reserved Opportunities and Rights. SAWS shall own the opportunities and have the reserved rights with respect to the Project set forth in Section 26.5 (Opportunities).

SECTION 10.2. PRODUCT WATER QUALITY GUARANTEE.

(A) Applicable Law Limits. The Project Company shall operate the Project so as to produce Product Water from Raw Groundwater in compliance with the quality and other requirements of Applicable Law and this Water Transmission and Purchase Agreement. In no event shall the Project Company make available Product Water that is not in compliance with the requirements of Applicable Law.

(B) Additional Product Water Quality Standards. In addition to its obligation to comply with the Product Water requirements imposed by Applicable Law as provided in Section 10.2(A) (Applicable Law Limits), the Project Company shall make available Product Water in compliance with the quality requirements set forth in Appendix 8 (Performance Guarantee Requirements), including the bacterial testing and rectification requirements set forth therein (the “Additional Product Water Quality Standards”). The Additional Product Water Quality Standards and the requirements in Section 10.2(A) (Applicable Law Limits) shall collectively mean the “Product Water Quality Guarantee”.

(C) Compliance. Compliance with the Product Water Quality Guarantee shall be measured at the Product Water Quality Sampling Location. SAWS shall have no obligation prior to or after taking delivery of any Product Water made available by the Project Company to conduct tests to determine whether such Product Water meets the Product Water Quality Guarantee or is Off-Specification Product Water or Unacceptable Product Water. SAWS may,
however, conduct tests to make such a determination, either by testing Product Water in the Project pursuant to Section 10.10(B) (SAWS Testing Rights) or by testing Product Water in the SAWS Distribution System.

(D) Remedies for Breach of Product Water Quality Guarantee - Off-Specification Product Water. In the event SAWS takes delivery of any Product Water that constitutes Off-Specification Product Water: (1) each Unit of such Off-Specification Water shall be deemed to constitute a Monthly Delivered Water Unit; (2) SAWS shall have the right in its discretion to impose a Deduction in the amounts specified in Table 8-2 of Appendix 8 (Performance Guarantee Requirements); (3) SAWS in its discretion may cease taking delivery of Product Water until appropriate measures have been taken so that Product Water that is taken delivery of by SAWS upon the resumption of deliveries will not constitute Off-Specification Product Water; and (4) SAWS shall further have the additional remedies set forth in Section 10.8 (SAWS Remedies for Non-Compliance With Performance Guarantees). Any Unit of Product Water made available by the Project Company but not taken delivery of by SAWS pursuant to the exercise of its rights under this Section shall not constitute a Monthly Delivered Water Unit.

(E) Remedies for Breach of Product Water Quality Guarantee - Unacceptable Product Water. In the event SAWS takes delivery of any Product Water that constitutes Unacceptable Product Water: (1) each Unit of Unacceptable Product Water shall be deemed not to constitute a Monthly Delivered Water Unit; (2) SAWS shall have no obligation to compensate the Project Company for such Unit of Unacceptable Product Water; (3) SAWS in its discretion may cease taking delivery of Product Water until appropriate measures have been taken so that Product Water that is taken delivery of by SAWS upon suspension of deliveries will not constitute Unacceptable Product Water; (4) SAWS shall have the right to bring an action for damages; and (5) SAWS shall further have the additional remedies set forth in Section 10.8 (SAWS Remedies for Non-Compliance With Performance Guarantees). Any damages payable by the Project Company as a result of any such judgment or settlement shall be paid as a Direct Payment.

(F) Boil Water and Do Not Drink Notices. In the event the TCEQ requires the issuance of a “boil water” or “do not drink” notice on the basis of the quality of Product Water of which SAWS has taken delivery: (1) the Project Company shall, if reasonably required by SAWS, terminate the Operating Service Agreement and enter into a replacement Operating Service Agreement in accordance with Section 13.4 (Project Contracts), (2) such notice shall constitute a Project Company Remediable Breach pursuant to Section 20.1(B) (Project Company Remediable Breach Defined), and (3) SAWS shall have the further remedies specified herein, including those specified in Section 10.8 (SAWS Remedies for Non-Compliance with Performance Guarantees). If, at any time during the Term following the issuance of a first such notice, the TCEQ subsequently requires the issuance of a second such notice on the basis of the quality of Product Water delivered to SAWS, a Project Company Event of Default shall be deemed to have occurred and SAWS may pursue the remedies available under Article 19 (Remedies of the Parties), Article 20 (Project Company Events of Default), and Article 22 (Termination).

(G) Reporting Off-Specification Product Water and Unacceptable Product Water. The Project Company shall report to SAWS the making available to SAWS of any Off-Specification Product Water and Unacceptable Product Water immediately upon having actual knowledge of any such circumstance.

(H) Indemnity for Loss-and-Expense from Non-Complying Product Water. In the event that SAWS takes delivery of any Product Water that fails to comply with the Product Water Quality Guarantee, the Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting from the supply of such non-complying Product Water to third parties. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from
exposure to or as a result of using or consuming such non-complying Product Water based on any theory of recovery, including theories of product liability, toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends to and shall include any special, incidental, consequential, punitive and other similar damages awarded to such third parties, notwithstanding waivers contained with respect to such damages in Section 19.6 (No Special, Consequential or Punitive Damages).

(I) No Uncontrollable Circumstances Relief. In no event shall an Uncontrollable Circumstance excuse the Project Company from its obligation to comply with the Product Water Quality Guarantee. No Unacceptable Product Water taken delivery of by SAWS shall constitute Daily Delivered Water Units, irrespective of the occurrence of an Uncontrollable Circumstance.

SECTION 10.3. PRODUCT WATER SUPPLY AND DEMAND DEFINITIONS.

(A) Definitions. As used in this Water Transmission and Supply Agreement:

(1) Advance Make-Up Units. “Advance Project Company Make-Up Units” has the meaning set forth in Section 10.4(B) (Supply Following Commercial Operation Date).

(2) Baseline Annual Volume. “Baseline Annual Volume” means 50,000 Acre Feet.

(3) Baseline Daily Volume. “Baseline Daily Volume” means 137.0 Units.

(4) Daily Delivered Water Units. “Daily Delivered Water Units” means, for any day, the number of Units actually made available by the Project Company and taken delivery of by SAWS at the Product Water Delivery Point.


(6) Demand Shortfall Units. “Demand Shortfall Units” means, for any day, the number of Units by which the volume of Product Water that has been taken delivery of by SAWS on such day is less than the number of Units that the Project Company has made available on such day (up to the maximum number of Units specified in Section 10.4(B) (Supply Following Commercial Operation Date).

(7) Excess Product Water. “Excess Product Water” means, for any Contract year, the number of Daily Delivered Water Units for such Contract Year that is in excess of 50,000 Units.

(8) Excused Supply Shortfall Units. “Excused Supply Shortfall Units” means the number of Supply Shortfall Units which the Project Company did not make available due to an Uncontrollable Circumstance. The Project Company shall be allowed seven days for scheduled maintenance of the Project Improvements in each Contract Year, and accordingly on each day on which the Project Improvements are shut down for any such scheduled maintenance, the Project Company shall be credited with 137.0 Excused Supply Shortfall Units.
(9) **Make-Up Units.** “Make-Up Units” means the number of Units made available by the Project Company at the Product Water Delivery Point that exceeds 137.0 Units on any day.

(10) **Supply Shortfall Units.** “Supply Shortfall Units” means the number of Units by which the volume of Product Water made available by the Project Company at the Product Water Delivery Point is less than the Baseline Daily Baseline Volume.

(11) **Unexcused Supply Shortfall Units.** “Unexcused Supply Shortfall Units” means the number of Supply Shortfall Units which the Project Company did not make available that was not due to an Uncontrollable Circumstance.

(B) **Records and Tracking Accounts.** The Project Company shall record the Daily Delivered Water Units, the Excused Supply Shortfall Units, the Unexcused Supply Shortfall Units, the Demand Shortfall Units, the Make-Up Units and the Advance Make-Up Units on a daily basis (rounding the number of Units in each to the nearest one-tenth of one Acre Foot), and keep tracking accounts for all such Units by Category.

SECTION 10.4. **PROJECT COMPANY RIGHT TO SUPPLY PRODUCT WATER.**

(A) **Supply Prior to Commercial Operation Date.** The Project Company shall have the right, commencing the date that is 1,170 days following the Financial Closing Date, to deliver Product Water for purposes of conducting the Performance Test. SAWS shall take delivery of such Product Water to the extent that the SAWS Interconnection Improvements are completed and permit Product Water delivery. No compensation shall be payable by SAWS for any Product Water of which it takes delivery prior to the Commercial Operation Date.

(B) **Supply Following Commercial Operation Date.** The Project Company shall have the right, commencing on the Commercial Operation Date (but not earlier than the date that is 1,260 days following the Financial Closing Date) and throughout the Term, to make available 50,000 Acre Feet of Product Water each Contract Year at the Product Water Delivery Point. Product Water may be delivered (1) in any volume up to 137.0 Units on any day in the months of November, December, January and February, and (2) in any volume up to 149.2 Units in all other months, except that:

(1) In the first and second months of March and the first and second months of April following the Commercial Operation Date, the daily volume limits shall be 137.0 Units; and

(2) Subject to the daily limitations of 137.0 Units and 149.2 Units as provided above, on any day when there are Excused Supply Shortfall Units standing to the account of the Project Company or Demand Shortfall Units standing to the account of SAWS, the Project Company shall have the right to make available Product Water constituting Make-Up Units so long as the maximum volume of Product Water made available in any Contract Year does not exceed 53,000 Acre Feet; and

(3) Subject to daily limitations of 137.0 Units and 149.2 Units as provided above, on any day when there are no Excused Supply Shortfall Units standing to the account of the Project Company or Demand Shortfall Units standing to the account of SAWS, the Project Company shall have the right to make available Product Water constituting Make-Up Units (“Advance Project Company Make-Up Units”) up to a maximum of 3,000 Advance Project Company Make-Up Units at any time outstanding, which Advance Project Company Make-
Up Units shall be available for application whenever Excused Supply Shortfall Units subsequently occur.

SECTION 10.5. SAWS OBLIGATION TO TAKE DELIVERY OF AND PURCHASE PRODUCT WATER.

(A) SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date. Following the Commercial Operation Date, SAWS shall take delivery of and purchase all Product Water made available by the Project Company, subject to and in accordance with the limits set forth in Section 10.4(B) (Supply Following Commercial Operation Date) and the terms and conditions of this Water Transmission and Purchase Agreement.

(B) SAWS Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date. To the extent that in any Billing Period following the Commercial Operation Date there are any Demand Shortfall Units that have not been made up by SAWS Make-Up Units, SAWS shall pay the Unit Price for such Demand Shortfall Units even though SAWS has not taken delivery of the Product Water made available by the Project Company that would have constituted Daily Delivered Water Units. The failure of SAWS to take delivery of any Product Water to any degree or for any reason shall not constitute a breach of this Water Transmission and Purchase Agreement or the basis for a SAWS Event of Default.

(C) Off-Specification Product Water and Unacceptable Product Water. Any SAWS failure to take delivery of Product Water pursuant to the exercise of rights under Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water) and Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water) shall not constitute a breach of Section 10.5(A) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date), and any Product Water not taken delivery of on account of such exercise of rights shall not constitute Demand Shortfall Units.

(D) Measurement. The volume of Product Water of which SAWS has taken delivery shall be measured by the Product Water Flow Meter.

(E) Excess Product Water. It is the intention of the parties that the Project Company shall not make available and SAWS shall not take delivery of, Excess Product Water (except as provided in Section 10.4(B)(2) and Section 10.4(B)(3) (Supply Following Commercial Operation Date). In the event that SAWS nonetheless takes delivery of Excess Product Water (except as provided in Section 10.4(B)(2) and Section 10.4(B)(3) (Supply Following Commercial Operation Date), SAWS shall have no obligation to pay the Unit Price to the Project Company on account thereof.

(F) Payments. SAWS shall make the payments required under this Section by making Monthly Water Purchase Payments in accordance with Article 17 (Monthly Water Purchase Payments).

SECTION 10.6. MAKE-UP UNITS.

(A) Project Company Make-Up Units. Any Make-Up Units on any day shall first be applied to the credit of the Project Company to make up any Excused Supply Shortfall Units in the Excused Supply Shortfall Units tracking account ("Project Company Make-Up Units"). Project Company Make-Up Units shall be purchased by SAWS as provided in Section 10.5(A) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date). The Project Company shall not have any opportunity to make up Unexcused Supply Shortfall Units.
(B) **SAWS Make-Up Units.** Any Make-Up Units on any day that are not credited to the Project Company as Project Company Make-Up Units under Section 10.6(A) (Project Company Make-Up Units) shall constitute "**SAWS Make-Up Units.**" Because SAWS shall have already paid the Unit Price for Demand Shortfall Units as provided in Section 10.5(B) (SAWS Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date), SAWS Make-Up Units shall be made available by the Project Company and taken delivery of by SAWS without any additional compensation.

(C) **Delivery of Make-Up Water.** To the extent that at any time there are Demand Shortfall Units that have not been made up by SAWS Make-Up Units, the Project Company (subject to the daily limit of 137.0 and 149.2 Units as provided in Section 10.4(B) (Supply Following Commercial Operation Date), shall use all reasonable efforts to deliver Product Water so as to create SAWS Make-Up Units.

### SECTION 10.7. EXTENSION OF TERM

(A) **Shortfall Units.** The Term shall be extended as and to the extent required:

1. **Excused Supply Shortfall Units.** To allow for any Excused Supply Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Project Company and taken delivery of and purchased by SAWS;

2. **Demand Shortfall Units.** To allow for any Demand Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Project Company and taken delivery of and purchased by SAWS without further compensation.

The Project Company shall provide written notice to SAWS, at least 90 days prior to the Expiration Date, as to whether and to what extent the Expiration Date will need to be extended as of the date thereof to account for the matters described in this Section 10.7(A) (Shortfall Units), together with the basis therefor. Prior to the Expiration Date, the parties shall execute a Contract Administration Memorandum confirming the extended Expiration Date. Throughout the extended Term, the Project Company shall provide quarterly updates as to such matters, as well as additional information related to events that occur during the extended Term that may require additional extensions.

(B) **Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance.** In the event that the Project Company determines that additional Permitted Debt is required to be issued to pay for Capital Modifications required due to the occurrence of an Uncontrollable Circumstance, then the Term shall be extended subject to and in accordance with the following:

1. As soon as practicable after the Project Company becomes aware of the need to issue additional Permitted Debt, the Project Company shall provide to SAWS the following information at least 45 days prior to the date on which the Project Company proposes to issue the Permitted Debt (the "**Permitted Debt Issuance Date**"):  
   
   a. a term sheet and other relevant information on the terms of the proposed Capital Modification;

   b. details concerning any proposed financing of such proposed Capital Modification including the amount of any anticipated equity contribution.
and the principal amount and anticipated interest rate pertaining to any additional Permitted Debt proposed to be issued (the “Proposed Financing”);

(c) the Contract Date Financial Model as of the Contract Date (which targets a pre-tax internal rate of return of 13.741% (as referenced on the “Quarterly Calculations” tab, row 2256)); and

(d) a pro-forma post-Proposed Financing Financial Model, which modifies the Contract Date Financial Model as of the Contract Date by making the following adjustments to take into account the Proposed Financing:

(i) Entry of the proposed equity contribution, if any, into the Contract Date Financial Model as of the proposed Permitted Debt Issuance Date. This incremental equity contribution will be assumed to earn a pre-tax internal rate of return of 13.741%;

(ii) Entry of the proposed Permitted Debt issuance amount into the Contract Date Financial Model as of the Permitted Debt Issuance Date. This debt issuance will be assumed to bear interest at the rate set forth in subsection (1)(b) above;

(iii) Holding the amount of the Capital and Raw Groundwater Unit Price as established at the Financial Closing Date constant, extend the Term for the necessary number of years to amortize the proposed Permitted Debt issuance to maturity (assuming level debt service payments which begin on the date that is 30 years following the Commercial Operation Date or such later date as may be necessary assuming principal balances of Initial Senior Debt or previously issued Permitted Debt remain outstanding beyond the date that is 30 years following the Commercial Operation Date); and

(iv) To the extent that the cash flows associated with the extension of Term in subsection (1)(d)(iii) above have not been sufficient to generate a pre-tax internal rate of return of 13.741% in accordance with the review of the Contract Date Financial Model’s “Quarterly Calculations” tab, row 2256, further extend the Term (beyond the extension described in subsection (1)(d)(iii) above) for the additional necessary number of quarters to achieve this target level of return. For purposes of this computation, it is assumed that all cash flows previously being utilized to service Permitted Debt will now be available to provide additional equity returns.

(2) Following receipt of the information from the Project Company set forth in subsection (1) above, SAWS shall within 21 days review and, if in agreement, provide its approval to the Proposed Financing and its requisite extension of the Term, such approval not to be unreasonably withheld. In the event SAWS does not approve such extension, it shall provide the reasons therefor in detail in writing to the Project Company within such 21 day-period and shall make available representatives with decision-making authority at a mutually agreed time and place to meet with equivalent representatives of the Project Company within 10 days thereafter to discuss and review in detail the information set forth in the submittals of the Project Company and the reasons for the disapproval of SAWS.
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(3) SAWS shall cooperate with the Project Company and provide reasonable assistance to the Project Company with respect to each financing pursuant to this Section 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance).

(4) Upon completion of the Proposed Financing, the steps outlined in subsection (1)(d) above will be completed using the actual interest rates achieved in order to determine the ultimate extension of the Term. A copy of the Contract Date Financial Model taking into account the actual results of the financing will be forwarded to SAWS within 10 days of the Financial Close, with the actual extension of the Term being as determined in this Contract Date Financial Model. The parties shall document any extension of the Term by executing a Contract Administration Memorandum.

(5) The parties acknowledge that in the event that the Project Company determines that additional Permitted Debt is required to be issued to pay for Capital Modifications required due to the occurrence of any Uncontrollable Circumstances during the extended Term, then the parties shall follow the same procedures set forth in this Section 10.7 (Extension of Term) in order to further extend the Term, subject to the limitations set forth in this Section 10.7 (Extension of Term).

(C) Maximum Term Extension. The maximum Term extension resulting from any or all of the extensions provided for in Sections 10.7(A) (Shortfall Units) and 10.7(B) (Issuance of Permitted Debt for Capital Modifications Required Due to an Uncontrollable Circumstance) shall be 20 years following the original Expiration Date.

(D) No Increase in Capital and Raw Groundwater Unit Price. During the period of any extension of the original Term occurring under this Section 10.7 (Extension of Term), there shall be no adjustment of the Capital and Raw Groundwater Unit Price for any reason, including the reasons that caused an extension of the original Term.

SECTION 10.8. SAWS REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES.

(A) Remedies. If the Project Company fails to comply with any Performance Guarantee and is not excused from performance as a result of an Uncontrollable Circumstance, the Project Company shall, without relief under any other Performance Guarantee, and in addition to the payment of Deductions and any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body:

(1) notify SAWS promptly (and in any event not later than 24 hours) of the Project Company’s having knowledge of any such non-compliance;

(2) provide SAWS promptly (and in any event not later than 24 hours) with copies of any notices sent to or received from the EPA, the TCEQ, the POSGCD or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law;

(3) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom;

(4) take any commercially reasonable action necessary in order to comply with such Performance Guarantee, continue or resume performance
hereunder and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Performance Guarantee; and

(5) assist SAWS with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

The Project Company shall consult with SAWS in a timely manner regarding the appropriate remedy.

(B) Project Performance Testing. In the event that the Project Company fails to meet the Performance Guarantees for four consecutive Billing Periods, SAWS may require a performance test of the Project to be conducted by the Project Company, at the Project Company’s cost and expense, to determine the cause of such failure; provided, however, that such test shall not materially and adversely affect the Project or the Project Company’s performance of (or cost of the performance of) the Contract Obligations. The Project Company shall use reasonable efforts to make all necessary repairs and replacements, including major repairs and replacements, or capital investments, improvements or modifications.

SECTION 10.9. SERVICE COORDINATION.

At least 60 days prior to the commencement of each Contract Year following the Commercial Operation Date, the Project Company shall update, subject to the approval of SAWS, the Operating Protocol consistent with the Contract Standards. The Operating Protocol shall set forth all practices, procedures and protocol which are necessary or useful in coordinating the activities of the parties hereunder, including particularly the establishment and modification from time to time of SAWS’ demands for Product Water, all operational and informational communications between SAWS and the Project Company, and all data and information required to demonstrate the extent to which the Project is being operated in compliance with the Performance Guarantees. The Operating Protocol also shall provide for such matters as the parties may mutually deem necessary or desirable in the implementation of this Water Transmission and Purchase Agreement. SAWS’ Representative and the Chief Operator shall be responsible for coordinating all matters relating to the Operating Protocol.

SECTION 10.10. METERING AND TESTING.

(A) Testing. The Project Company shall conduct all tests of Raw Groundwater and Product Water in accordance with the Contract Standards and in accordance with the Operating Protocol. The tests shall be made at State-certified laboratories to the extent required by the Contract Standards and, prior to the Commercial Operation Date, shall be conducted at the Project Company’s sole cost and expense; thereafter, the cost and expense of such tests shall constitute Compensable Costs. All Raw Groundwater and Product Water sampling and testing for contract performance shall be conducted at the testing locations identified in the testing and sampling standards set forth in Appendix 8 (Performance Guarantee Requirements) and the other Contract Standards. SAWS shall have the right to approve all testing locations, acting reasonably.

(B) SAWS Testing Rights. SAWS, using its own personnel or another designated person, shall have the right from time to time, upon reasonable notice to the Project Company, to enter the Project for the purpose of conducting tests of the Raw Groundwater and the Product Water at the approved testing locations, and to conduct such tests in accordance with Good Management Practice in a manner that does not materially interfere with the Project Company’s performance of the Contract Services. If requested by the Project Company, SAWS
shall furnish split samples and copies of all test reports prepared pursuant to this Section to the Project Company.

(C) **Well Field Meters.** In accordance with Appendix 6 (Operating and Maintenance Standards), the Project Company shall maintain in good working order and repair, and replace when necessary, flow metering devices capable of metering the daily total volume of Raw Groundwater received at the Well Field Facilities (the “**Well Field Meters**”).

(D) **Project Flow Meter.** The Project Company shall design, calibrate, test, and install the Project Flow Meter in accordance with Appendix 3 (Technical Specifications). After Acceptance, the Project Company shall be responsible for the routine servicing and maintenance of the Project Flow Meter and appurtenant field mounted instruments, and for all major maintenance, repairs and replacements with respect thereto.

(E) **Meter Inspections.** The Project Company shall engage a qualified third-party inspection firm to confirm the accurate calibration and proper functioning of the Well Field Meters and the Project Flow Meter. The inspection firm shall perform quarterly inspections and provide copies to its inspection reports promptly to SAWS and to the Project Company.

(F) **Project Company Estimates During Meter Incapacitation or Testing.** To the extent any metering device is incapacitated or is being tested, the parties shall estimate as accurately as practicable, based on all available relevant information, the data required by the Project Company to perform the Contract Services and to invoice SAWS. This estimate and methodology shall be used as the basis for determining the operating data required hereunder during the outage.

(G) **Extended Project Flow Meter Incapacitation.** The Project Company shall repair or replace the Project Flow Meter with the utmost urgency in the event the Project Flow Meter is incapacitated. In the event any period of Project Flow Meter incapacitation extends beyond 24 hours, any water made available to SAWS thereafter shall not constitute Monthly Delivered Water Units and SAWS shall have no obligation to compensate the Project Company for any such water.

**SECTION 10.11. RELEASES, LEAKS AND SPILLS.**

(A) **Unauthorized Releases.** The Project Company shall operate the Project in such a manner that Raw Groundwater, Product Water, Project By-Products or chemicals will not contaminate, or be released, leaked or spilled on or into, or discharged to the environment, to the extent prohibited by Applicable Law other than as permitted by the most stringent of any of the Contract Standards.

(B) **Notification and Reporting.** The Project Company shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law related to any unauthorized release of Raw Groundwater, Product Water, Project By-Products or chemicals into the environment from or in connection with its operation and management of the Project. The Project Company shall provide to SAWS copies of documents provided to the relevant Governmental Body regarding the release.

(C) **Project Site Assessment Upon Termination or Expiration.** SAWS may at its own cost and expense conduct an assessment of the Project Sites upon any assignment and conveyance of the Project Assets pursuant to Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), or any election to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) to determine whether any Raw Groundwater, Product Water, Project By-Products or
chemicals have been released, leaked or spilled on or into, or discharged into the environment in violation of Applicable Law. The Project Company shall be responsible for the remediation of any such release caused by the Project Company and discovered by SAWS through any such assessment of the Project Sites in the manner and to the extent provided in Section 10.11(D) (Cleanup and Costs).

(D) **Cleanup and Costs.** The Project Company shall remediate any unauthorized material release of chemicals by the Project Company but only to the extent required by the least stringent standard provided for under such Applicable Law making use of any restrictions or other use limitations consistent with the then current use of the relevant property.

SECTION 10.12. **PROJECT COMPANY DISPOSAL OF RESIDUALS.**

(A) **Residuals Management.** The Project Company shall locate an Acceptable Disposal Site and shall make all necessary arrangements with the owner or operator thereof for the disposal of all Residuals during the Term in accordance with Applicable Law. The Project Company shall transport all Residuals to an Acceptable Disposal Site in accordance with Applicable Law.

(B) **Acceptable Disposal Site.** An "Acceptable Disposal Site" means any waste disposal, treatment or recycling facility permitted or allowed under Applicable Law to accept the Residuals.

(C) **Transportation Operations.** In the event of a release, spill, leak or loss of Residuals during transfer or transit within the Project Company’s control or responsibility or under its supervision, the Project Company shall take all remedial or response measures required under Applicable Law.

(D) **Acceptable Disposal Site Information.** The Project Company shall keep and maintain such logs, records, manifests, bills of lading or other documents as are required to be kept or maintained under Applicable Law pertaining to the Residuals and shall make available for review and copying by SAWS, upon request, copies of all weights and measures data and information relating to residual quantities generated and disposed of hereunder.

(E) **Indemnity.** The Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company’s Obligation to Indemnify) from Loss-and-Expense resulting from the generation, processing, transportation or disposal of residuals by the Project Company.

SECTION 10.13. **PROJECT COMPANY DISPOSAL OF WASTEWATER.**

The Project Company shall manage all Wastewater produced at the Project and the Project Sites during the Term in accordance with Applicable Law. SAWS shall have no obligation to receive, treat or dispose of any Wastewater, and no Wastewater shall be discharged or disposed of on any SAWS property.

SECTION 10.14. **ADMINISTRATIVE OBLIGATIONS.**

Except to the extent excused by Uncontrollable Circumstances, SAWS shall have the right to require the Project Company to make a Direct Payment to SAWS in the amount provided in this Section for failure to perform the following administrative obligations:
(1) report any material violation of any Governmental Approval or Applicable Law as required by Section 9.11 (Periodic Reports);

(2) respond to a written request for information related to this Water Transmission and Purchase Agreement made by the Contract Administrator and designated as a “priority request” within three business days as required by Section 26.6(A) (Authority of SAWS Representative);

(3) respond to complaints and communications received by the Project Company as required by Section 9.2(C) (Complaints and Communications);

(4) report complaints or communications to SAWS as required by Section 9.2(C) (Complaints and Communications);

(5) attend SAWS meetings, as reasonably requested, with advance notice from SAWS;

(6) provide SAWS with any report, record, logs or other document required hereunder on time;

(7) respond to alarms at the Project as required hereunder;

(8) provide any plan, proposal, report or other deliverable required hereunder with respect to an Uncontrollable Circumstance or any regulatory deadline agreed to by the parties thereto;

(9) properly sample, test, report the results thereof as required by Applicable Law or by this Water Transmission and Purchase Agreement; and

(10) mitigate noise complaints as required by Section 9.2(C) (Complaints and Communications).

The amount of such Direct Payment shall be $1,000 (Index Linked) per occurrence for the Project Company’s failure to comply with the Administrative obligations set forth above (an occurrence being deemed to have taken place where, in any Contract Year, there are three instances of non-compliance for the same obligation or three instances of non-compliance for different obligations). The Project Company shall have the right to discuss with SAWS any such occurrence prior to being obligated to make any such Direct Payment.
ARTICLE 11

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 11.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance, Repair and Replacements. The Project Company shall perform all normal and ordinary maintenance of the machinery, equipment structures, improvements and all other property constituting the Project, shall keep the Project in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Project as originally constructed and in accordance with the Design Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of the Project as required by the Contract Standards. The Project Company shall keep maintenance logs in accordance with the Maintenance, Repair and Replacement Plan.

(B) Major Maintenance, Repairs and Replacements. The Project Company shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Project during the Term of this Water Transmission and Purchase Agreement required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The obligations of the Project Company under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency.

(C) Repair and Maintenance of Project Sites. The Project Company, in accordance with the Contract Standards, shall keep the grounds of the Project Sites in a neat and orderly condition. The Project Company shall also maintain and repair all Project Sites signage, fencing and other security systems. In addition, the Project Company shall provide all landscaping services for the Project Sites.

SECTION 11.2. MAINTENANCE, REPAIR AND REPLACEMENT PLAN AND MAINTENANCE, REPAIR AND REPLACEMENT SCHEDULE.

(A) Maintenance, Repair and Replacement Plan. Appendix 6 (Operating and Maintenance Standards) contains requirements for preparing the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan is intended to establish a minimum standard by which to measure the Project Company’s performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs. Within 90 days following the Commercial Operation Date, the Project Company shall incorporate the Maintenance, Repair and Replacement Plan into the Electronic Operation and Maintenance Manual. The Project Company shall adhere to these plans as incorporated in the Electronic Operation and Maintenance Manual, except where it can demonstrate to SAWS that changes are reasonable under Good Management Practice. The timing and extent of maintenance, repair and replacement activities performed by the Project Company hereunder with respect to the Project, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 6 (Operating and Maintenance Standards), as incorporated in the Electronic Operation and Maintenance Manual, and shall take into account the Transfer Condition Requirements that are applicable at the end of the Term. The Project Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.
(B) Maintenance, Repair and Replacement Schedule. Appendix 6 (Operating and Maintenance Standards) sets forth the requirements for major equipment repair and replacement activities which would be required to be performed by the Project Company over the Term in order to achieve the standard of overall Project maintenance and repair for the proper operability, durability and reliability of the Project in accordance with the Contract Standards. Without limiting any of the Project Company’s obligations under this Section, the Project Company shall make and complete all major equipment repairs and replacements which are necessary to achieve such standard of repair and replacement by performing maintenance, repair and replacement in accordance with the Maintenance, Repair and Replacement Schedule, as such schedule may be altered or amended pursuant to this Section. Downtime for scheduled maintenance, repair and component replacement shall, to the extent practicable, be scheduled for the months of November, December, January and February. The parties acknowledge that, in light of the long term nature of the Water Transmission and Purchase Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, it may be appropriate from time to time to alter the Maintenance, Repair and Replacement Schedule. Accordingly, the Project Company shall have the right to deviate from the Maintenance, Repair and Replacement Schedule at any time during the Term, provided that the Project Company provides SAWS with a reasonable justification in advance for such deviation and that such deviation shall be consistent with the requirements set forth in Appendix 6 (Operating and Maintenance Standards). Any alterations to the Maintenance, Repair and Replacement Schedule shall be reflected in a Contract Administration Memorandum and specifically identified in budget variance reports. The Project Company shall coordinate with SAWS with respect to any unscheduled or unanticipated maintenance or repair which would reasonably lead to failure to comply with the Contract Obligations.

SECTION 11.3. PROJECT EVALUATIONS.

(A) Asset Registry. The Project Company shall, prior to the Commercial Operation Date, photograph, video (to the extent reasonably accessible) and prepare an itemized inventory of all material property constituting the Project, including records of assets originally installed, manufacturer and model number, identification number and, to the extent available, original cost data (the “Asset Registry”). The Asset Registry shall be prepared in accordance with Appendix 6 (Operating and Maintenance Standards) based on information and data collected in achieving Substantial Completion, and shall reflect, based on the construction price and the Design Requirements, the condition, functionality and value of the Project as originally constructed by the Project Company hereunder. The purpose of the Asset Registry shall be to establish an informational baseline for determining compliance by the Project Company with its maintenance, repair and replacement obligations under this Article. The Asset Registry shall be kept in a secure environment at a location other than at the Project Sites. The Project Company shall provide an electronic copy of the Asset Registry to SAWS in a form reasonably acceptable to SAWS. The Asset Registry (except the photographs and video components thereof) shall be annually updated by the Project Company as required by Appendix 6 (Operating and Maintenance Standards), and reflected in a report that is separate from the annual operations and maintenance reports prepared pursuant to Section 9.11(B) (Annual Operations and Maintenance Reports).

(B) Final Evaluation of the Project. Within 15 days after SAWS has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or its notice pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option), or no later than three months prior to the Expiration Date, the Independent Evaluator shall conduct a final evaluation of the Project in accordance with the protocol established in Appendix 11 (End of Term Project Condition Requirements) and shall utilize standard utility property evaluation methods. In connection with the final asset evaluation, the Project Company shall furnish SAWS and the Independent Evaluator with the Asset Registry and record documentation prepared pursuant to
Appendix 11 (End of Term Project Condition Requirements) and all database information developed in connection with the implementation of the CMMS.

(C) Disputes. The expense of the Independent Evaluator for all services performed pursuant hereto shall be borne equally by the parties. The final determination by the Independent Evaluator as to any matter arising under this Section involving amounts less than $250,000 (Index Linked) which is in dispute between SAWS and the Project Company shall be final and binding upon the parties. For disputes involving amounts greater than $250,000 (Index Linked), the Independent Evaluator's determination shall be advisory only, and such dispute shall be handled as provided in Sections 18.1 (Forum for Dispute Resolution) and 18.2 (Non-Binding Mediation).

SECTION 11.4. PERIODIC MAINTENANCE INSPECTIONS.

(A) Annual Maintenance Inspection. SAWS may, at its own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 9.9 (SAWS Access to Project) and the Operating Protocol), perform an inspection of the Project and relevant records of the Project Company each Contract Year following the Commercial Operation Date to determine compliance with the Contract Standards. SAWS' annual inspection may include the inspection of: (1) the Project and the Project Sites; (2) all in-house laboratories where tests are conducted for samples from the Project; (3) all areas where chemicals are stored or used; and (4) all operations, maintenance, repair and replacement records kept by the Project Company.

(B) Full-Scale Biennial Inspections. Every full second Contract Year following the Commercial Operation Date, SAWS may, at its own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 9.9 (SAWS Access to Project) and the Operating Protocol), perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment to determine its physical and operational conditions, and inspection of the general status of repairs of all Project Equipment and Project Structures, pipelines, grounds, utility lines, spare parts, inventories, and operation, maintenance, repair and replacement records. Any such inspection and review shall be performed by or on behalf of SAWS by a SAWS Engineer at SAWS' expense, and shall take place at such time as SAWS shall determine upon three months' written notice to the Project Company. The principal purpose of the inspection and review shall be to permit SAWS to ascertain on a comprehensive and focused basis the extent to which the Project is being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports.

(C) Non-Interference. The Project Company shall cooperate fully with all inspections conducted pursuant to this Section, which shall not materially interfere with the Project Company's performance of the Contract Services and shall not impose any material costs on the Project Company.

SECTION 11.5. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM.

The Project Company shall develop and maintain a computerized maintenance management system (the “CMMS”) as part of the Construction Work that it is capable of providing a record of repair and replacement of the Project on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; and monitoring routine operations within the Project. The CMMS shall be developed consistently with the Asset Registry and the requirements of Appendix 6 (Operating and Maintenance Standards), and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Project. The Project Company shall utilize the CMMS to provide SAWS with documentation which allows it to efficiently monitor compliance by the Project Company with its maintenance, repair and replacement obligations hereunder. SAWS
shall have computer-based real time, read-only access to the Project Company’s CMMS. The Project Company shall permit all electronic data to be replicated and provided to SAWS for review by the SAWS Engineer except for information regarding costs incurred by the Operating Service Provider.

SECTION 11.6. END OF TERM PERFORMANCE EVALUATION REQUIREMENTS.

(A) Applicability of End of Term Performance Evaluation Requirements. The provisions of this Section shall apply only (1) in connection with the assignment and conveyance of the Project Assets on the Expiration Date, as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), and (2) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), and not otherwise. In the event that SAWS issues a notice of intent under Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if SAWS subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term).

(B) Compliance With End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Project Company complies with the End of Term Performance Evaluation Requirements, the Project Company shall have no obligation to perform the Exit Performance Test.

(C) Non-Compliance With End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Project Company has not complied with the End of Term Performance Evaluation Requirements, the Project Company shall, at its cost and expense, conduct an Exit Performance Test of the Project (the “Exit Performance Test”). The Exit Performance Test shall be conducted in accordance with Appendix 11 (End of Term Project Condition Requirements) and in the same manner as required hereunder for the Performance Test that established Acceptance. In the event the Exit Performance Test does not demonstrate that the Minimum Performance Criteria were achieved, the Project Company at its own cost and expense shall make all repairs and replacements necessary so that the Project is capable of achieving the Minimum Performance Criteria. Upon completion of the repair and replacement work, the Exit Performance Test shall again be conducted. This procedure shall be repeated until an Exit Performance Test demonstrates that the Minimum Performance Criteria have been achieved.

(D) Applicable End of Term Performance Evaluation Period. The applicable “End of Term Performance Evaluation Period” under this Section shall be a period of six full consecutive Billing Periods, designated by the Project Company by written notice to SAWS, commencing no later than (1) 60 days after SAWS has delivered its notice (pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options)) of its intent to exercise its Project Assets Purchase Option during the Term; and (2) six months prior to the Expiration Date.

(E) Condition of Project Structures and Project Equipment. In addition to either complying with the End of Term Performance Evaluation Requirements or the Exit Performance Test, the Project Company shall meet the Transfer Condition Requirements.
SECTION 11.7. PROJECT ASSETS TRANSFER CONDITION.

(A) SAWS Exercise of End-of-Term Purchase Option. The provisions of this Section shall apply only (1) in connection with the assignment and conveyance of the Project Assets on the Expiration Date, as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date), and (2) in the event SAWs exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), and not otherwise. In the event that SAWs issues a notice of intent under Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if SAWs subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term).

(B) Required Project Condition. On the Termination Date, the Project shall be in a condition:

1. Which, with respect to buildings, structures and pipelines that as of the Conforming Contract Amendment Date were expected to have a useful life of more than 20 years and other Project Structures (as set forth in Appendix 11 (End of Term Project Condition Requirements), have functional or structural ratings of at least “4” (as defined in Appendix 11); and

2. Which, with respect to Project Equipment’s maintenance, repair and replacement status, meet the standards set forth in Section 11.7 (Project Transfer Condition Requirements) of Appendix 11 (End of Term Project Condition Requirements).

The requirements of this Section constitute the “Transfer Condition Requirements”.

(C) Transfer Condition Survey and Work Plan. Within 15 days after SAWs has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of its intent to exercise its Project Assets Purchase Option during the Term, or no later than 18 months prior to the Expiration Date, the Project Company and SAWs shall jointly cause the Independent Evaluator to conduct an inspection and survey of the Project over a 45-day period for the purpose of determining if the Project has been maintained in accordance with the Transfer Condition Requirements (the “Joint Inspection and Survey”). This Joint Inspection and Survey shall be separate from and in addition to all other inspections provided for in this Water Transmission and Purchase Agreement. If these surveys indicate that any element of the Project, on the Termination Date, is not reasonably expected to be in a condition consistent with the Transfer Condition Requirements upon the Project Company implementing the plans and programs required under Appendix 6 (Operating and Maintenance Standards) over the remainder of the Term, within 60 days of completion of the survey the Project Company shall deliver to SAWs the Project Company’s plan to perform the additional work necessary to meet the Transfer Condition Requirements, together with a cost estimate for the work as part of the Transfer Condition Plan (as defined in Appendix 11 (End of Term Project Condition Requirements)).

(D) Determination of Transfer Condition Retainage. Within 30 days of receipt of the Transfer Condition Plan from the Project Company, SAWs shall provide the Project Company written notice which: (i) assesses the adequacy of the Transfer Condition Plan; and (ii) establishes the amount of the Transfer Condition Retainage. If SAWs has determined that the Transfer Condition Plan is inadequate, in its written notice, SAWs shall direct the Project
Company to amend the Transfer Condition Plan to add the corrective work and cost of that work SAWS has reasonably determined is necessary to comply with the Transfer Condition Requirements, in accordance with the costs provided in the Final Project Structure Evaluation Report and the Joint Inspection and Survey Report (both as defined in Appendix 11 (End of Term Project Condition Requirements)). SAWS shall, after giving due consideration to the Project Company’s cost estimate and the Independent Evaluator’s assessment conducted pursuant to Section 11.3(B) (Final Evaluation of the Project) of this Water Transmission and Purchase Agreement and Section 11.8 (Transfer Condition Joint Inspection and Survey) of Appendix 11 (End of Term Project Condition Requirements), determine in good faith the amount SAWS reasonably believes is necessary to complete the additional work required to meet the Transfer Condition Requirements (the “Transfer Condition Retainage”).

(E) Establishment and Use of Transfer Condition Retainage Account. SAWS shall hold back and retain from each Monthly Water Purchase Payment (starting with the monthly payment for the first month after SAWS determines the amount of Termination Condition Retainage pursuant to Section 11.7(D) (Determination of Transfer Condition Retainage) an amount equal to (1) the Transfer Condition Retainage, divided by (2) the number of months between the first monthly payment for which Termination Condition Retainage is withheld and the Termination Date, and shall deposit such amount in an interest bearing account held by a Qualified Commercial Bank. The account shall be the property of SAWS, subject to the Project Company’s withdrawal rights under this Section; provided, however, that any Transfer Condition Retainage remaining in the Transfer Condition Retainage Account shall be reimbursed to the Project Company when the Transfer Condition Requirements have been met. The Project Company shall have the right, upon the submittal of certified requisitions to SAWS with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the additional work necessary to meet the Transfer Condition Requirements. Notwithstanding the foregoing, the Project Company shall be entitled to post a letter of credit with SAWS in an amount equal to the Transfer Condition Retainage in lieu of such holdback from the Monthly Water Purchase Payments.

(F) Performance of the Transfer Condition Work and Further Inspection. The Project Company shall implement the Transfer Condition Plan and take all other steps necessary to assure compliance with the Transfer Condition Requirements, notwithstanding SAWS’ participation in the transfer condition survey or review of the Project Company’s work plan or the fact that the actual cost of compliance may be higher than the amount of the Transfer Condition Retainage. At least 120 days prior to the Termination Date or a date that is mutually agreed upon, the Project Company and SAWS shall conduct a further joint inspection and survey of the condition of the Project and the progress of the Transfer Condition Plan work. If, 90 days prior to the Termination Date, the Project (1) has failed to demonstrate that it has the capacity to meet the End of Term Performance Evaluation Requirements or, if applicable, the Exit Performance Test; or (2) is not being operated or maintained in compliance with the Contract Standards, then SAWS may, acting reasonably, increase the amount of the Transfer Condition Retainage to make the repairs and modifications to the Project that would be necessary to allow the Project to meet the requirements of the Exit Performance Test. If the Project subsequently meets the requirements of the Exit Performance Test prior to the Termination Date, the Transfer Condition Retainage shall be reduced by an appropriate amount, as reasonably determined by SAWS.

(G) Final SAWS Condition Assessment. By the date that is the earlier of five Business Days after the joint inspection set forth in Section 11.7(F) (Performance of the Transfer Condition Work and Further Inspection) or the Termination Date, SAWS shall either:

(1) Issue to the Project Company a certificate confirming compliance with the Transfer Condition Requirements (the “Transfer Condition Plan...
Completion Certificate”) and return any remaining Transfer Condition Retainage to the Project Company; or

(2) Notify the Project Company of its decision not to issue the Transfer Condition Plan Completion Certificate, setting out each respect in which the Project does not comply with the Transfer Condition Requirements and stating SAWS’ estimate of the cost of completing all remaining work required for the Project to comply with the Transfer Condition Requirements.

(H) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with Section 11.7(G)(2) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company’s proposals in respect of such matters.

(I) Final Compliance. If SAWS delivers to the Project Company a Transfer Condition Plan Completion Certificate, SAWS shall transfer any remaining portion of the Transfer Condition Retainage to the Project Company. If the Project did not, at the Termination Date, comply in all respects with the Transfer Condition Requirements, SAWS will promptly either: (1) use any remaining proceeds of the Transfer Condition Retainage to complete any work necessary to cause such compliance; or (2) if a letter of credit is provided in lieu of the Transfer Condition Retainage pursuant to Section 11.7(E) (Establishment and Use of Transfer Condition Retainage Account), draw upon such letter of credit in an amount equal to the estimated value of completing such work, and use such amount to complete such work, provided, however, that any such proceeds of the Termination Condition Retainage or any amounts drawn upon the letter of credit which are not spent on such work shall be paid to the Project Company upon the completion of such work.
ARTICLE 12
CAPITAL MODIFICATIONS

SECTION 12.1. CAPITAL MODIFICATIONS GENERALLY.

A “Capital Modification” means a material change to the physical assets constituting the Project (including the alteration, addition, demolition, removal, extension or expansion of the physical assets constituting the Project, or the installation of new structures, equipment, systems or technology) made after the Commercial Operation Date for any reason that, individually or in the aggregate with any related changes, exceeds $2,000,000 (Index Linked) in capital cost or that materially impairs the quality, integrity, durability or reliability of the Project or materially alters the original design of the Project as set forth in the Design Requirements. Repairs or replacements of the Project Equipment or the Project Structures shall not constitute Capital Modifications.

SECTION 12.2. CAPITAL MODIFICATIONS AT PROJECT COMPANY REQUEST.

(A) General. The Project Company shall give SAWS written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company’s request. Any such Capital Modification shall be financed and paid for by the Project Company, and there shall be no increase in the Unit Price or other compensation payable by SAWS on account thereof.

(B) SAWS Approval. SAWS shall have the right, acting reasonably, to approve any Capital Modification requested by the Project Company under Section 12.2(A) (General). SAWS may condition the exercise of its approval right in any reasonable manner it chooses. To assist SAWS in the exercise of its approval right under this Section, the notice shall contain sufficient information for SAWS to determine that the Capital Modification:

1. Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards; and
2. Does not materially impair the quality, integrity, durability and reliability of the Project; and
3. Is feasible.

SECTION 12.3. CAPITAL MODIFICATIONS AT SAWS REQUEST.

(A) General. SAWS shall have the right to direct the Project Company to make Capital Modifications (whether above or below the $2,000,000 cost threshold) at any time and for any reason whatsoever after the Commercial Operation Date (including Capital Modifications to expand the capacity of the Project), whether and however the exercise of such rights affects this Water Transmission and Purchase Agreement (“SAWS-Requested Capital Modifications”), so long as the implementation of any such SAWS-Requested Capital Modification does not contravene the limitations referred to in Section 5.9 (Restrictions on SAWS-Requested Design Requirements Changes and SAWS-Requested Capital Modifications). The design and construction costs of any such SAWS-Requested Capital Modification, shall be financed by the Project Company as and to the extent as provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications).

(B) Inability of Project Company to Obtain Financing. If the Project Company is unable to obtain financing for SAWS-Requested Capital Modifications, or if SAWS does not
approve the proposed financing therefor, in either case as provided in Section 7.2 (Financing the Capital Costs of SAWS-Requested Capital Modifications), SAWS (1) shall withdraw its direction to make the SAWS-Requested Capital Modification, or (2) shall pay the Project Company directly on a milestone basis (separately from the Monthly Water Purchase Payments) an amount equal to the negotiated lump sum price for the design and construction of such SAWS-Requested Capital Modifications, as such lump sum price is negotiated in accordance with Section 17.14 (Cost Substantiation). SAWS shall make any such payments for design and construction work from its own available funds or reserves, or shall finance such payments using its own borrowing capacity.

(C) **No Senior Debt Creditor Obligation.** SAWS acknowledges that the Senior Debt Creditors have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

**SECTION 12.4. PROCEDURES FOR IMPLEMENTING SAWS-REQUESTED CAPITAL MODIFICATIONS.**

(A) **Primary Implementation Procedure.** The implementation procedures set forth in this Section shall apply with respect to SAWS-Requested Capital Modifications. The Project Company may implement Capital Modifications under Section 12.2 (Capital Modifications at Project Company Request) by any means of its own choosing in accordance with Applicable Law.

(B) **Project Company Conceptual Plan and SAWS Review.** At the request of SAWS, the Project Company shall prepare and deliver to SAWS a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company’s recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The following recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and lifecycle capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project Company is recommending. SAWS shall review the Project Company’s conceptual plan and recommendations, and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(C) **Project Company Implementation Proposal.** Following agreement on a basic approach to the Capital Modification, at the request of SAWS the Project Company shall submit a formal implementation proposal to SAWS for its consideration. The Capital Modification implementation proposal shall contain (1) a Project Company services element, to be implemented through a Water Transmission and Purchase Agreement Amendment, and (2) a third-party services element, to be implemented through third-party contracting.

(1) **Project Company Services Element.** The Project Company services element shall contain: (a) the Project Company’s offer to perform design, construction management and performance testing services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a performance test and a guaranteed maximum construction price if so requested by SAWS and agreed to by the Project Company; and (b) as applicable, the Project Company’s offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and manage the Capital Modification following construction and commissioning for an Index-Linked fixed fee and shall include long-term performance guarantees with respect to the Capital Modification.
(2) **Third-Party Services Element.** The third-party services element shall be a proposal by the Project Company to conduct either qualification-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Project Company.

(D) **Preparation Costs.** The cost and expense of preparing a conceptual plan and any formal implementation proposed under this Section shall be borne by SAWS as a Direct Payment or through an adjustment to the Unit Price.

(E) **Negotiation and Finalization of Project Company Implementation Proposal.** The parties shall proceed, promptly following SAWS’ review of the Project Company’s submittal and quotation, to negotiate to reach an agreement on the required Unit Price adjustment (based on the fixed prices in the Project Company’s implementation proposal) and any related adjustment to the terms and conditions of this Water Transmission and Purchase Agreement. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

1. Design requirements;
2. Construction management services;
3. Performance tests, standards and procedures;
4. A guarantee of completion;
5. Performance guarantees;
6. Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
7. A payment schedule for the design and construction management-related services;
8. Any adjustments to the Unit Price resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
9. A financing plan; and
10. Any other appropriate amendments to this Water Transmission and Purchase Agreement.

The Project Company shall not be obligated to undertake any SAWS-Requested Capital Modification, nor shall the Unit Price be adjusted or any Direct Payment be due the Project Company on account of any such Capital Modification, except following agreement by the parties as to all matters affected thereby.

(F) **Implementation Procedures.** SAWS shall have the same substantive and procedural rights with respect to the implementation of each Capital Modification that it has with respect to the design, construction, commissioning and performance testing of the Project as
originally built (with appropriate changes in light of the nature of the particular Capital Modification), as set forth in this Water Transmission and Purchase Agreement.
ARTICLE 13

CONTRACTING AND LABOR PRACTICES

SECTION 13.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. SAWS acknowledges that the Project Company may carry out the Contract Obligations by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Surety Bonds. The Project Company shall cause the EPC Contractor to provide the performance and payment bonds required under the EPC Agreement, and shall cause the Operating Service Provider to provide the operations performance bond required under the Operating Service Agreement.

(C) Use of Project Contractors, Subcontractors and Key Individuals. The Project Company shall use the Project Contractors, Subcontractors and Key Individuals listed in Appendix 14 (Project Company and Project Contractors Information) or such others as SAWS in its discretion may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Obligations in the roles indicated in Appendix 14 (Project Company and Project Contractors Information). The Operating Service Provider shall be designated as provided in subsection (F) of this section.

(D) Restricted Persons. In performing the Contract Obligations, the Project Company shall not contract with, or allow any of its Project Contractors or any material Subcontractors to contract with, any person that is a Restricted Person. In the event that SAWS determines that the Project Company has contracted with, or allowed Project Contractor to enter into a material contract with, a person that is, in SAWS’ reasonable opinion, a Restricted Person, SAWS shall notify the Project Company and the Project Company shall replace (or use commercially reasonable efforts to cause the Project Contractor to replace) such person within 30 days.

(E) SAWS Access to and Communications with Project Contractors and Subcontractors. The Project Company shall provide SAWS with access to the Project Contractors and Subcontractors as follows:

   (1) General Communications. The Project Company shall grant SAWS’ Director of Engineering and Director of Operations (or management personnel senior to such positions) direct access to the Project Contractors and Subcontractors and their senior management personnel (including the head of security) for meetings and email, telephone and fax communications regarding any material aspect of the work being performed by the Project Contractor or Subcontractor or Blue Water Vista Ridge, LLC. This right of direct access shall apply during normal business hours and at any time during emergencies. Any such meetings on communications shall require 12 hours advance notice to and the approval of the Project Company, acting reasonably, except where SAWS reasonably believes that a material breach of this Water Transmission and Purchase Agreement has occurred or may imminently occur, in which case such notice and approval shall not be required. The Project Company, upon request, shall have the right to be present at any such meetings, and to receive copies of any such communications (including reasonable advance notice of any meetings). In the exercise of its rights under this paragraph, SAWS shall not unreasonably interfere with, and shall have no right to direct, the performance of the Operating Work. The Operating Service Agreement shall expressly obligate the Operating
Service Provider to respond promptly to any communication from SAWS’ Director of Engineering and Director of Operations (or management personnel senior to such positions), to attend any meeting reasonably called by such SAWS personnel, and to furnish any material information requested by SAWS personnel, in each case that has a bearing on the performance of the Contract Obligations with respect to which the Project Contractor has responsibility, involvement or knowledge.

(2) Other Communications During the Construction Period. During the Construction Period, the Construction Superintendent or his or her delegate shall be available to be contacted by SAWS’ on-site representative: (1) on a 24 hours per day basis for emergency response; and (2) during normal business hours for safety concerns or others issues requiring immediate attention.

(3) Other Communications During the Operating Period. During the Operating Period, the Chief Operator or its designee shall be available to be contacted by SAWS on a 24 hours per-day basis for emergency response and operational coordination.

(F) Operating Service Provider. As of the Conforming Contract Amendment Date, the Operating Service Provider has not been designated. The Operating Service Provider shall be designated no later than 18 months prior to the Commercial Operation Date. The Project Company shall give notice to SAWS of a proposed Operating Service Provider, together with the proposed form of Operating Service Agreement, at least 90 days prior to the date on which the Project Company intends to execute the Operating Service Agreement. The parties understand that the Project Company may propose an Operating Service Provider seeking to also serve as an equity investor in the Project. In such event, the Operating Service Provider shall execute both the Operating Service Agreement and an Equity Contribution Agreement, and will also be subject to Section 24.2 (Limitations on Change in Control). SAWS shall have the right, in its discretion, to approve the Operating Service Provider and the terms and conditions of the Operating Service Agreement. Notice of SAWS approval or disapproval shall be given to the Project Company not later than 60 days thereafter. At any time prior to the execution of the Operating Service Agreement, SAWS may request the Project Company to consider contracting with SAWS to serve as the Operating Service Provider, under terms and conditions proposed by SAWS. In the event SAWS makes such a request, the Project Company shall consider the request in good faith. Neither party shall be obligated, however, to enter into an Operating Service Agreement except in its discretion. The Operating Service Provider shall be a highly qualified and experienced operator of water production, treatment and distribution facilities with substantial experience in projects of a similar scale or nature, nationally or internationally, to the Project.

SECTION 13.2. WATER SUPPLY CORPORATION.

(A) Formation and Intended Use. The parties acknowledge that the Project Company has caused the Water Supply Corporation to be formed with the intent of having the Water Supply Corporation facilitate and serve the public purpose of the Project in the manner described herein. To this end, Project Company may request that the Water Supply Corporation and SAWS execute the Project Real Property Conveyance Agreement, and; that the Project Company further may execute the Construction Management Agreement, the Project Construction Loan Agreement, and the Water Transportation Agreement. In addition, and that the Project Company may execute the Operating Service Agreement directly with the Water Supply Corporation, or expects to request the Water Supply Corporation to execute the Operating Service Agreement with the Operating Service Provider, and may execute the EPC Agreement directly with the EPC Contractor, or request the Water Supply Corporation to execute the EPC Agreement with the EPC Contractor.
Article 13

(B) Right of Election on Use; Notice. The Project Company shall have the right to contract and conduct business with the Water Supply Corporation as contemplated hereby, or to elect not to contract and conduct business with the Water Supply Corporation as so contemplated. The Project Company shall make its election as soon as practicable following the Contract Date, and shall notify SAWS in writing promptly thereafter. The Project Company shall not contract with or conduct business with the Water Supply Corporation without making such an election, which shall be documented in a Contract Administration Memorandum.

(C) Election Not to Contract With the Water Supply Corporation. If the Project Company elects not to contract and conduct business with the Water Supply Corporation, the Project Company shall retain and assume (1) all of the rights and duties of the Water Supply Corporation under this Water Transmission and Purchase Agreement, and (2) sole and complete responsibility for the performance of all of the obligations that the Project Company intended to be performed by the Water Supply Corporation. The Contract Administration Memorandum executed pursuant to Section 13.2(B) (Right of Election on Use; Notice) shall confirm the Project Company’s retention and assumption of each of such responsibilities, including specifically the Project Company’s ownership of all of the Project Real Property and obligation to acquire and hold Project Real Property and to assign and convey such Project Real Property to SAWS upon the expiration hereof or upon the termination of this Water Transmission and Purchase Agreement following SAWS exercise of its right to purchase the Project Assets hereunder, all as provided in Articles 3 and 4 and otherwise in the Project Real Property Conveyance Agreement.

(B) (D) Election to Contract With the Water Supply Corporation. If the Project Company elects to contract and conduct business with the Water Supply Corporation in the manner contemplated hereby, Related Covenants. The Project Company:

(1) Covenants that neither the Project Company, nor Abengoa Garney Holding Company or any of their Affiliates shall (a) take or cause to be taken, or (b) to the extent they have legal authority, permit or suffer to be taken, any action (including actions in connection with or related to the creation of the Water Supply Corporation, the appointment of its members, or entering into or performing their obligations under any agreement with the Water Supply Corporation) the effect of which, individually or as a whole, would cause the Water Supply Corporation to lose its status as a not-for-profit corporation under Applicable Law, or to lose its authority under Applicable Law to perform any of its obligations that are material to the Project, the Real Property Conveyance Agreement, or this Water Transmission and Purchase Agreement;

(2) Shall obtain from the Water Supply Corporation a mortgage on the Project Real Property securing the Water Supply Corporation’s payment obligations under the Project Construction Loan Agreement and performance obligations with respect to the conveyance of the Project Real Property upon dissolution, which mortgage shall be subordinate to the mortgage securing the Senior Debt and the Standby Deed of Trust;

(3) Shall cause the Water Supply Corporation to perform all of the obligations to be performed by the Water Supply Corporation under any agreement entered into by the Water Supply Corporation with any party; and

(4) Unconditionally and absolutely guarantees to SAWS the performance of all of the obligations of the Water Supply Corporation under its formation documents or under any agreement entered into by the Water Supply Corporation with any party that are material to the Project, the Project Real Property Conveyance Agreement or this Water Transmission and Purchase Agreement.
(E) Water Supply Corporation Counsel Opinion. On or before the date of any election by the Project Company to contract and conduct business with the Water Supply Corporation under Section 13.2(B) (Right of Election on Use; Notice), the Project Company shall deliver to SAWS a favorable opinion of counsel for the Water Supply Corporation, in customary form for project financing transactions, as to the Project Real Property Conveyance Agreement, any agreements made pursuant thereto, matters of law covered by the legal representations of the Water Supply Corporation set forth therein, together with appropriate certified authorizing resolutions and incumbency certificates. Such opinion further shall state in substance that the Water Supply Corporation has been duly formed as a water supply corporation pursuant to Chapter 67 of the Texas Water Code and the applicable provisions of the Texas Business Organizations Code (the “BOC”), and is authorized and has full power and authority under Texas law: (1) to perform the obligations anticipated to be performed by the Water Supply Corporation as described in and provided under this Water Transmission and Purchase Agreement, including entering into the Project Real Property Conveyance Agreement, the Water Transportation Agreement, the EPC Agreement, and the Operating Service Agreement; (2) to acquire, by purchase or other lawful means, and to own the Project Real Property and, as long as it maintains its status as a Water Supply Corporation under Chapter 67 of the Texas Water Code, to acquire property by eminent domain under Section 49.222 of the Texas Water Code; (3) to mortgage and pledge the Project Real Property as security for the Project Construction Loan Agreement and the Senior Debt; and (4) to assign and convey the Project Real Property owned by the Water Supply Corporation on the Expiration Date or upon the Termination Date of the Water Transmission and Purchase Agreement as a liquidating distribution to SAWS subject to compliance with Section 22.301-22.305 of the BOC. Such opinion shall further state (a) based on the Water Supply Corporation’s status as a not-for-profit water supply corporation and owner of Project Real Property, no ad valorem property tax will be payable on the Project Improvements, provided that conforming dissolution provisions are included in the Water Supply Corporation’s organizational documents in accordance with Texas Tax Code Section 11.30; and (b) subject to (i) obtaining a certification from the Texas Commission on Environmental Quality or SAWS pursuant to Texas Tax Code Section 151.355(5) and 151.355(6), respectively, or (ii) to obtaining a private letter ruling from the Texas Comptroller regarding qualification for exemption under Texas Tax Code Section 151.311, no Texas state sales tax will be payable by or on behalf of the Water Supply Corporation on the cost of constructing the Project Improvements. Nothing in this paragraph shall be construed to obligate SAWS to make any such tax certification.

(F) Certificate of Formation. On or before the date of any election by the Project Company to contract and conduct business with the Water Supply Corporation under Section 13.2(B) (Right of Election), the Project Company or the Water Supply Corporation shall deliver to SAWS for its review, comment and approval (acting reasonably) copies of the amended and restated certificate of incorporation and by-laws of the Water Supply Corporation. The certificate of incorporation shall provide for the transfer and conveyance of Project Real Property to SAWS upon the winding-up of the Water Supply Corporation on terms consistent with the Project Real Property Conveyance Agreement.

(G) Execution of Project Real Property Conveyance Agreement. Promptly following (1) receipt by SAWS of notice from the Project Company of its election to contract and conduct business with the Water Supply Corporation pursuant to Section 13.2(B) (Right of Election), (2) receipt by SAWS of the opinion of counsel to the Water Supply Corporation pursuant to Section 13.2(E) (Water Supply Corporation Counsel Opinion), and (3) receipt of the amended and restated certificate of incorporation and by-laws of the Water Supply Corporation pursuant to Section 13.2(F) (Certificate of Formation), and at the written request of the Project Company, SAWS agrees to negotiate and enter into the Project Real Property Conveyance Agreement with the Water Supply Corporation based on the terms described in Section 13.2(H) (Terms of the Project Real Property Conveyance Agreement), provided the Project Company causes a parallel undertaking on the part of the Water Supply Corporation.
(H) **Terms of the Project Real Property Conveyance Agreement.** The Project Real Property Conveyance Agreement and any related agreements with the Project Company shall assure that the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements, and that the Water Supply Corporation will be the owner for the entire term of the Transmission Pipeline System. The Project Real Property Conveyance Agreement shall effectuate the obligation of the Water Supply Corporation to assign and convey to SAWS, and for SAWS to accept and assume, good and indefeasible title and interest in the Project Real Property (other than Project Real Property which is owned by the Project Company) (1) on any Termination Date resulting from the exercise by SAWS of its rights under Article 23 (SAWS Project Assets Purchase Options), or (2) on the Expiration Date. The Project Real Property Conveyance Agreement shall provide that, until the Termination Date, the Water Supply Corporation shall not engage in any other business or activity other than the businesses or activities conducted for the purposes of the Project, and shall not mortgage or pledge the Transmission Pipeline Easements or such Project Improvements except to secure the Senior Debt. The Project Real Property Conveyance Agreement shall not provide for binding arbitration as a dispute resolution method, and shall not contain any provision relating to governmental immunity or a goods and services characterization of the Agreement. Each instrument of assignment and conveyance shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance accepted by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. The Project Real Property Conveyance Agreement, or a memorandum thereof, shall be recorded in all appropriate recording offices. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to any other party. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities SAWS shall indemnify and defend SAWS. The Water Supply Corporation shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) **Severance and Continued Effect.** The Project Company acknowledges and agrees that the use of the Water Supply Corporation is not essential to the ability of the Project Company to perform the Contract Obligations, and that the Project can be accomplished and the Contract Obligations can be performed without the use of the Water Supply Corporation. In the event the Project Company elects, under Section 13.2(B) (Right of Election on Use; Notice) to contract and conduct business with the Water Supply Corporation and thereafter If, at any time during the Term, the Water Supply Corporation for any reason (including reasons related to its status or powers as a not-for-profit corporation or a water supply corporation) is determined in any Legal Proceeding not to have the authority under Applicable Law to enter into or perform its obligations or exercise its intended powers under any agreement related to the Project:

1. **The provisions of Section 13.2(C) (Election Not to Contract with -No such determination shall affect the Project Company’s sole and complete responsibility for the performance of all of the obligations that the Project Company intended to be performed by the Water Supply Corporation) shall, on and after the date of any such determination, be deemed to apply as if, including specifically the Project Company had elected not to contract and conduct business with the Water Supply Corporation, and is ownership of all of the Project Real Property and obligation to acquire and hold Project Real Property and to assign and convey such Project Real Property to SAWS upon the expiration hereof or upon the termination of this Water Transmission and Purchase Agreement following SAWS exercise of its right to purchase the Project Assets hereunder, all as provided in Articles 3 and 4 and otherwise in the Project Real Property Conveyance Agreement; and**
In accordance with Section 1.2(S) (Severability), the parties acknowledge and agree that:

(a) Any term, condition or provision of this Water Transmission and Purchase Agreement relating to the Water Supply Corporation that is determined in any such Legal Proceeding to be invalid, unenforceable or illegal shall be severed from this Water Transmission and Purchase Agreement;

(b) Such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Water Transmission and Purchase Agreement, which shall continue in effect; and

(c) The continued effectiveness of this Water Transmission and Purchase Agreement as modified is not contrary to the basic understandings and intentions of the parties, and there is no need to negotiate any new provisions to restore this Water Transmission and Purchase Agreement to its original intent and effect.

SECTION 13.3. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to SAWS under this Water Transmission and Purchase Agreement for all matters related to the Contract Obligations. No failure of a Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Obligations shall relieve the Project Company from its obligations hereunder to perform the Contract Obligations. The Project Company shall be responsible for settling and resolving, with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Project Company or Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the EPC Contractor and the Operating Service Provider all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against SAWS for labor, services, materials or equipment furnished for the Contract Obligations. The Project Company acknowledges that its indemnity obligations under Section 25.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by a Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Obligations to the extent that those claims fall within the scope of the indemnity in Section 25.1 (Project Company’s Obligation to Indemnify).

(C) Assignability. All Project Contracts (and any related parent company guaranty) entered into by the Project Company with respect to the Project shall be assignable to SAWS solely at SAWS’ election and without cost or penalty, upon the expiration or termination of this Water Transmission and Purchase Agreement.

SECTION 13.4. PROJECT CONTRACTS.

(A) SAWS Consents. Unless SAWS has consented to such course of action, such consent not to be unreasonably withheld or delayed, and subject to the terms of the Creditors’ Remedies Agreement, the Project Company shall not:

(1) Terminate, or agree to or permit the termination of, all or any material part of any Project Contract; provided, however, that the Project Company may terminate the Operating Service Agreement if it enters into a
replacement Operating Service Agreement on terms reasonably acceptable to SAWS with an Operating Service Provider listed on Appendix 14 (Project Company and Project Contractors Information) or who is otherwise reasonably acceptable to SAWS;

(2) Make, or agree to or permit the making of:

(a) any material amendment of any Project Contract (other than material amendments directly resulting from SAWS-Requested Capital Modifications); or

(b) any material departure by any party from any material provision of any Project Contract;

(3) Permit a Project Contractor to assign or transfer to any person any of such Project Contractor rights or obligations under a Project Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Project Contract;

(4) Enter into, or permit the entering into of, any replacement of a Project Contract entered on or before the Contract Date.

(B) Timeframe for Consents. SAWS shall give or deny such consent within:

(1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Project Contract immediately; and

(2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

The giving or denial of consent by SAWS shall not create any liability of SAWS to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, SAWS’ reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of $25,000 (Index Linked). After SAWS’ decision is rendered, SAWS will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section.

SECTION 13.5. REPLACEMENT PROJECT CONTRACTS.

If any Project Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Project Contract are no longer reasonably required for the Project, the Project Company:

(1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
(2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, Project Contractor Substitution Agreement.

SECTION 13.6. DELIVERY OF AMENDED OR REPLACEMENT PROJECT CONTRACTS.

If at any time any amendment is made to any Project Contract, or a replacement Project Contract (or any agreement which materially affects the interpretation or application of any Project Contract) is entered into, the Project Company shall deliver to SAWS a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 13.7. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. As between SAWS and the Project Company, the Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. SAWS shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with Section 25.1 (Project Company’s Obligation to Indemnify) from any and all Loss-and Expense resulting from any such labor dispute.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that would reasonably be expected to materially and adversely affect any of the Contract Obligations, the Project Company shall promptly:

(1) Give notice thereof to SAWS, including all relevant information related to the dispute of which the Project Company has knowledge; and

(2) Take all reasonable steps to ensure that such labor dispute does not materially and adversely affect the performance of any of the Contract Obligations including, if necessary, by applying for relief to appropriate agencies or courts.
ARTICLE 14

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 14.1. INSURANCE.

(A) **Required Insurance.** At all times during the Term, the Project Company shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable; provided, however, that the Project Company shall not be obligated to carry Required Insurance to the extent and for any period that coverage for any particular risk or event is not available on commercially reasonable terms. SAWS in any such circumstances shall bear no risk or responsibility upon the occurrence of any such uninsured or underinsured risk or event.

(B) **Project Contractors and Subcontractors.** The Project Company shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) **Compliance with Insurer Requirements.** The Project Company shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Project Company shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(D) **Proof of Insurance Coverage.** Annually, the Project Company shall furnish, or shall cause Project Contractor to furnish, SAWS, (1) any endorsements to the policies for such insurance obtained for the Project, and (2) certificates of insurance from each insurance carrier showing that the insurance required under such Project Contract is in force, the amount of the carrier’s liability thereunder, and further providing that the insurance will not be canceled, changed or not renewed until the expiration of at least 30 days (or 10 days in the case of cancellation due to non-payment of premiums) after written notice (by certified mail, return receipt requested) of such cancellation, change or non-renewal has been received by SAWS. Each policy of insurance (or renewal policy of insurance) furnished hereunder shall: (a) evidence the existence and coverage amounts of the Required Insurance; and (b) show SAWS as an “additional insured” or “named insured”, as required by Appendix 7 (Insurance Requirements) for the particular policy of Required Insurance.

(E) **Failure to Provide Insurance Coverage.** If the Project Company fails to pay or cause to be paid any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, SAWS may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by SAWS the amount thereof shall be immediately reimbursable as a Direct Payment to SAWS by the Project Company. The failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses, be a satisfaction of any Project Company liability under this Water Transmission and Purchase Agreement or in any way limit, modify or satisfy the Project Company’s indemnity obligations hereunder.

(F) **Use of Property Insurance Proceeds.** The Senior Debt Financing Agreements shall provide that property Insurance Proceeds shall be deposited in a designated fund established thereunder, and grant the Project Company the right to direct the use thereof, subject to the terms and conditions set forth therein and in the Creditors’ Remedies Agreement. The Project Company shall exercise such right so as to cause all property Insurance Proceeds to
be applied first to the repair or reconstruction of the Project, with any proceeds in excess of those required for such purpose applied to any other purpose permitted under such Section; and in such regard the Project Company shall use all reasonable efforts to satisfy the conditions to the use of property Insurance Proceeds for repair or reconstruction set forth in the Senior Debt Financing Agreements.

SECTION 14.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) Protection. The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to SAWS and the applicable insurers providing the Required Insurance, immediately upon obtaining knowledge thereof, any material damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to SAWS. Upon any such occurrence the Project Company also shall comply with the reporting requirements of any insurer providing Required Insurance. The Project Company shall submit to SAWS within five Business Days of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, adjuster or Governmental Body.

(B) Repair of Property. The Project Company shall promptly repair or replace all property owned by SAWS that is damaged by the Project Company or any Project Company Person in connection with the performance of, or the failure to perform, the Contract Obligations. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to at least its character and condition existing immediately prior to the damage.

SECTION 14.3. WATER TRANSMISSION AND PURCHASE AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.

Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Water Transmission and Purchase Agreement or to demand any increase in any amounts payable to the Project Company under this Water Transmission and Purchase Agreement.
ARTICLE 15
FORCE MAJEURE EVENTS

SECTION 15.1. FORCE MAJEURE EVENTS GENERALLY.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of a Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction in compliance with Applicable Law and in accordance with Section 15.2 (Project Company’s Obligations Upon Material Damage or Destruction).

(B) Performance and Schedule Relief. A Force Majeure Event is an Uncontrollable Circumstance, and the Project Company shall be entitled to performance and schedule relief on account thereof as and to the extent provided herein.

(C) No Compensation Relief. If a Force Majeure Event occurs,

(1) The Unit Price shall not be increased, nor (except for operation and maintenance expenses) shall any other compensation be payable, on account of the occurrence of the Force Majeure Event; and

(2) SAWS shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee in accordance with Section 10.2(D)(Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water).

(D) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. SAWS and the Project Company shall cause an Insurance Proceeds account to be created and held by the Senior Debt Creditors pursuant to the terms of the Senior Debt Financing Agreements. Upon the occurrence of a Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in such Insurance Proceeds account and applied to such repair, replacement or restoration purposes in accordance with the terms of this Water Transmission and Purchase Agreement and following the procedures set forth in the Senior Debt Financing Agreements.

(E) SAWS Remedies and Termination Right. The failure of the Project Company to comply with its obligations under Section 15.1(A) (Project Company Reinstatement) shall constitute a Project Company Remediable Breach which, if not remedied by the Project Company, shall entitle SAWS to exercise all of its remedies, including the right, by notice to the Project Company, to terminate this Water Transmission and Purchase Agreement in accordance with Section 20.4 (SAWS Termination Right).

SECTION 15.2. PROJECT COMPANY’S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction that is likely to cost more than $5,000,000, Index Linked, to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued operations of other parts of the Project, provide SAWS with a draft plan (the “Draft Reinstatement Plan”) for the carrying out of the works necessary (the “Reinstatement Works”) to repair, replace and
restore the damaged or destroyed portions of the Project and related assets, and containing to
the extent possible the details required to be included in the Reinstatement Plan under Section
15.2(D) (Reinstatement Plan Details).

(B) Comment on Draft Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, SAWS shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan.

(C) Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of SAWS’ comments, the Project Company shall deliver to SAWS a revised plan (the “Reinstatement Plan”) to reasonably take into account the comments received from SAWS and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works;

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Contract Obligations to be fully performed);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under this Water Transmission and Purchase Agreement and on the payment obligations of the Project Company under the Project Contracts; and

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works.

Thereafter the Project Company shall repair, replace or restore the Project, subject to Applicable Law.

SECTION 15.3. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Section 15.1 (Force Majeure Events Generally) shall be made or done in compliance with the Design Requirements and the requirements set forth in Appendix 3 (Technical Specifications), subject to any agreement made between SAWS and the Project Company to revise the Design Requirements or the requirements set forth in Appendix 3 (Technical Specifications) as they pertain to the replacement, repair or reconstruction work.

SECTION 15.4. UNAVAILABILITY OF REQUIRED INSURANCE.

The Project Company shall bear the risk of the unavailability of Required Insurance with Qualified Insurers; the risk of any event or circumstance that at any time is uninsurable or is uninsured; and the risk that the premiums payable or the terms and conditions
for insuring the risks intended to be covered by the Required Insurance are to any degree in excess of or are more burdensome than the premiums, terms and conditions existing on the Conforming Contract Amendment Date or assumed by the Project Company in entering into this Water Transmission and Purchase Agreement.
ARTICLE 16

UNCONTROLLABLE CIRCUMSTANCES

SECTION 16.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Project Company. If an Uncontrollable Circumstance occurs, the Project Company may be entitled to relief from its performance obligations and extensions of time, but only as and to the extent provided in this Article. Except as provided in Section 17.3 (Operating and Maintenance Costs) and without limiting the Project Company’s rights under Section 10.7 (Extension of Term), the Project Company may not claim compensation relief on an account of an Uncontrollable Circumstance.

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Article on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 26.4 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Water Transmission and Purchase Agreement in compliance with Applicable Law.

SECTION 16.2. PROCEDURES UPON THE OCCURRENCE OF AN UNCONTROLLABLE CIRCUMSTANCE.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Project Company shall give notice of the occurrence of the Uncontrollable Circumstance to SAWS as soon as practicable, and in any event within ten Business Days of the date the Project Company has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Water Transmission and Purchase Agreement. The Project Company’s notice shall include a written report:

(1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;

(2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;

(3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Project Company’s obligations under this Water Transmission and Purchase Agreement; and

(4) Indicating the nature and scope of the Project Company’s potential entitlement to relief.

(B) Updates. The Project Company shall provide SAWS with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in Section 16.2(A) (Notice and Written Report). In particular, the Project Company shall notify SAWS as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.
(C) **Submittal of Relief Request.** The Project Company shall submit to SAWS a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in Section 16.2(A) (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such 30-day period, the Project Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) **Delay in Notification.** If any Uncontrollable Circumstance notice or any required information is submitted by the Project Company to SAWS after the dates required under this Section, then the Project Company shall be entitled to relief provided due to the occurrence of an Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) **Multiple and Overlapping Claims.** The Project Company may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) **Burden of Proof and Mitigation.** The Project Company shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 26.4 (General Duty to Mitigate).

(G) **Resumption of Performance.** Promptly following the occurrence of an Uncontrollable Circumstance, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Water Transmission and Purchase Agreement.

(H) **Project Company Information.** SAWS shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert an Uncontrollable Circumstance.

(I) **SAWS Response.** Within 30 days after receipt of a relief request by the Project Company pursuant to Section 16.2(C) (Submittal of Relief Request), SAWS (without waiving any claims) shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) **Agreement or Dispute.** The agreement of the parties as to the specific relief to be given the Project Company on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Water Transmission and Purchase Agreement Amendment, as applicable. Either party may refer any dispute for resolution pursuant to Article 18 (Dispute Resolution).

**SECTION 16.3. PROJECT COMPANY RELIEF DUE TO A SAWS FAULT.**

(A) **Schedule and Performance Relief.** The Project Company shall be relieved from its obligation to perform the Contract Obligations to the extent that any failure to perform results from a SAWS Fault. Such relief shall be available irrespective of whether an obligation under this Water Transmission and Purchase Agreement expressly states that it is excused by a SAWS Fault. With respect to schedule relief:

1. The Commercial Operation Longstop Date shall be extended as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances); and

2. Except as provided in Section 10.7 (Extension of Term), the occurrence of a SAWS Fault shall not operate to extend the Expiration Date, and
accordingly shall not extend the period of time during which the Project Company is obligated to perform the Contract Obligations or SAWS is obligated to take delivery of and purchase Product Water.

(B) Compensation Relief for SAWS Fault Occurring Prior to the Commercial Operation Date. If a SAWS Fault occurs prior to the Commercial Operation Date:

(1) Except as provided in Section 6.2(C) (Completion Delay), the Project Company shall not be entitled to any adjustment to the Unit Price or other compensation with respect thereto prior to the Commercial Operation Date, nor any adjustment to the Unit Price or other compensation at all if the Commercial Operation Date never occurs for any reason; and

(2) If the Commercial Operation Date occurs, the Project Company shall be compensated as provided in Section 16.3(C) (Compensation Relief for Changes On or After the Commercial Operation Date), such compensation to be reflected in the Unit Price.

(C) Compensation Relief for Changes On or After the Commercial Operation Date. If a SAWS Fault occurs on or after the Commercial Operation Date (or, as provided in Section 16.3(B)(2)), occurs prior to the Commercial Operation Date and the Project subsequently achieves the Commercial Operation Date,

(1) The Unit Price shall be:

(a) Reduced by an amount equal to Avoidable Costs; and

(b) Increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Obligations in compliance with Applicable Law, to the extent resulting from the SAWS Fault.

SECTION 16.4 PROJECT COMPANY RELIEF DUE TO UNCONTROLLABLE CIRCUMSTANCES.

(A) Performance and Schedule Relief. Except with respect to the Product Water Quality Guarantee, the Project Company shall be relieved from its obligation to perform the Contract Obligations, and from the schedule to perform the Contract Obligations, to the extent that any such failure results from an Uncontrollable Circumstance. Such relief shall be available irrespective of whether an obligation under this Water Transmission and Purchase Agreement expressly states that it is excused by an Uncontrollable Circumstance. With respect to schedule relief:

(1) The Commercial Operation Longstop Date shall be extended, as and to the extent provided in Section 8.6(C) (Extension for Uncontrollable Circumstances);

(2) The Project Company shall have the right to deliver Project Company Make-Up Units to replace the Excused Supply Shortfall Units caused by the Uncontrollable Circumstance, as and to the extent provided in Section 10.6(A) (Project Company Make-Up Units); and

(3) The Expiration Date shall be extended, as and to the extent provided in Section 10.7 (Extension of Term).
(B) **No Compensation Relief.** If an Uncontrollable Circumstance occurs,

1. **No Compensatory Relief.** The Unit Price shall not be increased, nor shall any other compensation be payable, on account of the occurrence of the Uncontrollable Circumstance;

2. **SAWS's Deduction Right.** SAWS shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee; and

3. **Project Company's Costs.** The Project Company shall bear all costs resulting from the occurrence of the Uncontrollable Circumstance, except as provided in Section 17.3 (Operating and Maintenance Costs) and except, further, that nothing in this Section 16.4(B)(3) (No Compensation Relief) shall limit the Project Company's entitlement to payment in the circumstances described in Section 6.2(C) (Completion Delay).
ARTICLE 17

MONTHLY WATER PURCHASE PAYMENTS

SECTION 17.1. PAYMENTS GENERALLY.

(A) Monthly Water Purchase Payments Following the Commercial Operation Date. From and after the Commercial Operation Date and through the Termination Date, SAWS shall pay the Project Company Monthly Water Purchase Payments in accordance with the terms hereof.

(B) Limitation on Payments. Other than the payments expressly provided for herein, the Project Company shall have no right to any further compensation from SAWS in connection with the delivery of Product Water, the performance of the Contract Obligations, or otherwise in connection with the Project.

(C) Operating Expenses. SAWS and the Project Company represent and covenant that, with respect to payments to be made by SAWS to the Project Company pursuant to Section 17.2 (Capital and Raw Groundwater Unit Price) and Section 17.3 (Operating and Maintenance Costs), such payments shall constitute reasonable and necessary “operating expenses” (as defined in Chapter 1502, as amended, Texas Government Code) of the SAWS Distribution System and that all such payments will be made solely from the revenues of SAWS derived from ownership and operation of the SAWS Distribution System. SAWS represents and has determined that the Product Water is absolutely necessary and essential to SAWS’ present and future operation of the SAWS Distribution System and that SAWS’ entering into this Water Transmission and Purchase Agreement represents a long-term plan for making available potable water to meet current and projected needs of the present and future customers of the SAWS Distribution System. Accordingly, the payments required by this Water Transmission and Purchase Agreement represent a long-term plan for making available potable water to meet current and projected needs of the present and future customers of the SAWS Distribution System. Accordingly, the payments required by this Water Transmission and Purchase Agreement to be made by SAWS to the Project Company shall constitute reasonable and necessary operating expenses of the SAWS Distribution System as described above, with the effect that under City Ordinance Number 75686 such payments from revenues of the SAWS Distribution System (1) shall be deducted from gross revenues of the SAWS Distribution System in the same manner as other SAWS Distribution System operating expenses for purpose of determining net revenues available to pay bonds or other similar obligations heretofore or hereafter issued by SAWS, which obligations are payable from and secured by a pledge of the revenues of the SAWS Distribution System after deduction of its operating expenses, and (2) shall be taken into account in establishing and maintaining rates and charges for facilities and services afforded by the SAWS Distribution System.

(D) Limited Source of Payment. The sole source of any payment made or to be made by SAWS in satisfaction of any obligations assumed by it or imposed on it under and by virtue of this Water Transmission and Purchase Agreement shall be limited solely and exclusively to the revenues derived by SAWS from the ownership and operation of the SAWS Distribution System. As further provided in Section 17.18 (No Recourse to City’s General Fund, General Credit or Ad Valorem Taxes) the Project Company (including its successors in legal interest, assigns, or Affiliates), shall never have the right to demand payment from any other source of revenue or fund of the City, including (but not limited to) funds raised or to be raised by taxes. The obligations of SAWS under this Water Transmission and Purchase Agreement shall never be construed to be a debt of any kind or for any purpose, including for the purpose of requiring that the City levy and collect a tax to discharge any such obligation.

SECTION 17.2. CAPITAL AND RAW GROUNDWATER UNIT PRICE.

The “Capital and Raw Groundwater Unit Price” for each Contract Year shall be $____ per Acre Foot, and shall remain fixed for the Term.
(A) Capital and Raw Groundwater Unit Price Defined. The “Capital and Raw Groundwater Unit Price” for each Contract Year shall be $1,852 per Acre Foot. The Capital and Raw Groundwater Unit Price shall be adjusted on the Financial Closing Date as provided in Section 17.2(B) (Adjustment at Financial Closing Date), subject to a maximum price of $1,959 per Acre Foot, and thereafter shall remain fixed for the Term.

(B) Adjustment at Financial Closing Date. The Capital and Raw Groundwater Unit Price shall be adjusted on the Financial Closing Date, if, as and to the extent required under and subject to the limitations set forth in Appendix 10 (Adjustment of the Capital and Raw Groundwater Unit Price on the Financial Closing Date), to account for changes in interest rates between the Contract Date and the Financial Closing Date, including changes in interest rates resulting from the exercise by SAWS of its right under Section 7.1(H) (SAWS’ Option to Purchase Initial Senior Debt at Issuance). The parties shall execute a Contract Administration Memorandum on the Financial Closing Date to document the adjusted Capital and Raw Groundwater Unit Price.

SECTION 17.3. OPERATING AND MAINTENANCE COSTS.

(A) General Principles. It is the intent of the parties that (1) the Project Company be compensated for the reasonable and necessary costs of operating, maintaining, repairing and replacing the Project Improvements, except insofar as such costs result from any Project Company failure to properly operate, maintain, repair and replace the Project Improvements, and (2) that a standing panel determine on a definitive basis the proper level of compensation for such work. Compensable operating, maintenance repair and repair costs (“Compensable Costs”) are described in Section 19.1 of Appendix 19 (Compensable Costs). The composition and functioning of the standing panel (the “O&M Budget Panel”) are described in Section 19.9 of Appendix 19 (O&M Budget Panel Administration). Compensable Costs shall be subject to Cost Substantiation.

(B) Determination of Compensable Costs. The O & M Budget Panel shall determine for each Contract Year throughout the Term following the Commercial Operation Date the amount of Compensable Costs properly payable to the Project Company for operating, maintaining, repairing and replacing the Project Improvements in that Contract Year. Compensable Costs shall be characterized by the O & M Budget Panel as fixed or variable. Fixed Compensable Costs (“Fixed Compensable Costs”) shall be Compensable Costs that must be paid irrespective of the volume of Product Water made available to SAWS. Variable Compensable Costs (“Variable Compensable Costs”) are Compensable Costs that vary with the volume of Product Water made available to SAWS. Compensable Costs for major repairs and replacements (“Major Repair and Replacement Compensable Costs”) shall be determined by the O & M Budget Panel separately from other Compensable Costs.

(C) Budgeted Annual Compensable Costs. Not later than June 1 in the Contract Year preceding each Contract Year, the Project Company shall submit to the O & M Budget Panel and to SAWS a detailed estimate and explanation of estimated Compensable Costs for the upcoming Contract Year. The O & M Budget Panel, not later than July 1 of such preceding Contract Year, shall make its determination as to estimated Compensable Costs for the upcoming Contract Year (“Budgeted Compensable Costs”). In making its determination, the O & M Budget Panel shall take into account the Project Company’s estimate and the Five Year Capital Plan and annual updates thereto prepared by the Project Company pursuant to Section 6.2.20 of Appendix 6 (Operating and Maintenance Standards). The determination of the O & M Budget Panel as to Budgeted Compensable Costs shall be final and non-appealable.

(D) Payment of Budgeted Fixed Compensable Costs. Budgeted Fixed Compensable Costs shall be payable to the Project Company as part of the Monthly Water Purchase Payments as provided in Section 17.5(3) (Monthly Water Purchase Payments).
(E) **Budgeted Variable Compensable Costs Unit Price.** Budgeted Variable Compensable Costs shall be used in determining the Variable Compensable Cost Unit Price. The “**Variable Compensable Costs Unit Price**” for each Contract Year shall be an amount equal to (1) Budgeted Variable Compensable Costs for such Contract Year, divided by (2) 50,000 Acre Feet.

(F) **Payment of Major Repair and Replacement Compensable Costs.** The Project Company shall be compensated for Major Repair and Replacement Compensable Costs as a Direct Payment to be made in the Billing Period following the Billing Period in which the major repair or replacement is actually made. No accruals shall be included in Compensable Costs for any such costs, regardless of their amount. SAWS may reserve for such costs in its discretion.

(G) **Actual Compensable Costs.** The O & M Budget Panel, in connection with establishing the Annual Settlement Amount, shall determine the Compensable Costs to which the Project Company was entitled to receive in the preceding Contract Year (the “**Actual Compensable Costs**”). In connection therewith the Project Company shall provide Cost Substantiation for Compensable Costs to the O & M Budget Panel. The determination by the O & M Budget Panel as to Actual Compensable Costs shall be final and non-appealable to any forum. In the event that Actual Compensable Costs exceed the Budgeted Compensable Costs for a Contract Year, SAWS shall pay the difference to the Project Company as a Direct Payment. In the event that Budgeted Compensable Costs exceed the Actual Compensable Costs for a Contract Year, the Project Company shall pay the difference to SAWS as a Direct Payment. Payment by the obligated party of such Direct Payments shall be made by May 1 following the end of the Contract Year with respect to which payment is due.

SECTION 17.4. **UNIT PRICE.**

The “**Unit Price**” for Product Water delivered in volumes up to the Baseline Annual Volume shall be an amount equal to the sum of (1) the Capital and Raw Groundwater Unit Price, and (2) the Variable Compensable Cost Unit Price.

SECTION 17.5. **MONTHLY WATER PURCHASE PAYMENTS.**

SAWS shall pay the Project Company a Monthly Water Purchase Payment for each Billing Period during the Term equal to:

1. The number of Daily Delivered Water Units delivered during such Billing Period (less any SAWS Make-Up Units, which have been previously paid for as Demand Shortfall Units), multiplied by the Unit Price; plus

2. The number of Demand Shortfall Units occurring during such Billing Period that have not been made up during such Billing Period by SAWS Make-Up Units, multiplied by the Unit Price; plus

3. One-twelfth of the Budgeted Fixed Compensable Costs for the applicable Contract Year; plus or minus

4. Direct Payments,

all subject to the adjustments provided for in this Article.
SECTION 17.6. **DEDUCTIONS CREDIT.**

The "Deductions Credit" component of the Direct Payments shall be the sum of all Deductions imposed with respect to the applicable Billing Period.

SECTION 17.7. **DIRECT PAYMENTS.**

The Direct Payments component of the Monthly Water Purchase Payments, which may be a charge or a credit, shall be equal to the net amount of the Direct Payments with respect to the applicable Billing Period.

SECTION 17.8. **FORM OF COMPENSATION ADJUSTMENTS FOR EVENTS OCCURRING AFTER THE CONFORMING CONTRACT AMENDMENT DATE.**

(A) General. This Water Transmission and Purchase Agreement provides increased or decreased compensation to the Project Company over the Term based on the occurrence of specified events following the Conforming Contract Amendment Date ("Compensation Adjustment Events"). Such payments and adjustments shall be paid and made either as an adjustment to the Unit Price or a Direct Payment, as provided in this Section. The Project Company shall substantiate its entitlement to additional compensation in the manner required by Section 17.14 (Cost Substantiation).

(B) Adjustments to the Unit Price. Compensation to the Project Company shall be payable as an adjustment to the appropriate Charge component of the Unit Price ("Unit Price Adjustments"), and other adjustments to the appropriate Charge component of the applicable Unit Price shall be made, in accordance with and subject to the terms and conditions of this Water Transmission and Purchase Agreement, upon the occurrence of the events described in the following Sections:

1. Section 5.10 (Good Management Practice and Good Engineering and Construction Practice);
2. Section 7.2(A) (Financing SAWS-Requested Capital Modification Capital Costs);
3. Section 7.6 (Refinancing Gain);
4. Section 12.3 (Capital Modifications at SAWS Request);
5. Section 16.3 (Project Company Relief Due to a SAWS Fault).

The adjustment to one or more of the Charge components of the Unit Price to be made under this Section shall be established at the time the appropriate compensation relief is agreed upon, and such compensation shall be payable solely to the extent that SAWS is obligated to make Monthly Water Purchase Payments based on the Unit Price with respect to Product Water delivered or available for delivery hereunder. The Project Company acknowledges, accordingly, that any failure by the Project Company to deliver or make available for delivery Product Water for which it would have been entitled to payment based on the Unit Price (including the adjustment to one or more Charge components thereof reflecting such compensation relief) will result in a reduction in the compensation relief to which it would have been entitled upon the occurrence of the compensation relief circumstance had the Project Company delivered or made available for delivery such Product Water.
Direct Payments by the Parties. SAWS shall pay the Project Company as a direct payment (and not as part of an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price)), and the Project Company shall pay SAWS as a direct payment, any amounts due under or referred to in the following Sections. The net amount shall constitute the "Direct Payment" and, except to the extent payable following any termination of this Water Transmission and Purchase Agreement, applied as a credit or debit in calculating the Monthly Water Purchase Payment:

1. Section 4.4(C) (Project Assumption Fee);
2. Section 6.2 (SAWS Interconnection Improvements);
3. Section 8.5(C) (Achievement of Acceptance);
4. Section 8.8(C) (Achievement of Final Completion);
5. Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period);
6. Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water);
7. Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water);
8. Section 10.14 (Administrative Obligations);
9. Section 12.4(D) (Preparation Costs);
10. Section 17.3(F) (Payment of Major Repair and Replacement Compensable Costs);
11. Section 14.1(E) (Failure to Provide Insurance Coverage);
12. Section 17.6 (Deductions Credit);
13. Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law);
14. Article 19 (Remedies of the Parties);
15. Section 23.8 (Project Company to Cooperate);
16. Section 25.1 (Project Company’s Obligation to Indemnify), and any other term or condition hereof, under which indemnification payments are owed by the Project Company (provided that the Project Company shall promptly pay SAWS any such payment which is owed prior to the Commercial Operation Date or which exceeds the amount of the Monthly Water Purchase Payment);
17. Appendix 7 (Insurance Requirements) (Section 7.2.10), with respect to any additional insurance coverage requested by SAWS;
18. Any term or condition hereof, under which non-compliance results in actual or liquidated damages payable by either party; and
(19) Any other term or condition hereof, under which payment is owed by one party to the other that has not been accounted for by an adjustment to the Unit Price under Section 17.8(B) (Adjustments to the Unit Price).

SECTION 17.9. BILLING AND PAYMENT.

(A) Invoicing and Monthly Water Purchase Payment Due Date. The Project Company shall provide SAWS with an invoice for each Billing Period by the tenth Business Day following the end of such Billing Period. The invoice shall set forth the amount of the Monthly Water Purchase Payment due with respect to such Billing Period and, in addition, shall state the accumulated payments to the date of such invoice and such other documentation or information as SAWS may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Water Transmission and Purchase Agreement. SAWS shall pay the invoice within 30 days of receipt, except as provided in Section 17.15 (SAWS' Right of Set Off) and Section 17.16 (Billing Statement Disputes).

(B) Electricity-Related Payments Made Annually. Any amount due SAWS on account of exceedances of the Guaranteed Maximum Annual Electricity Costs shall be paid as part of the Annual Settlement Statement pursuant to Section 17.11 (Annual Settlement).

(C) Late Annual Monthly Water Purchase Payments. In the event SAWS fails to make a Monthly Water Purchase Payment when due under Section 17.9(A), interest shall accrue and be payable thereon, as and to the extent provided in Section 17.17 (Interest on Overdue Amounts).

SECTION 17.10. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Budgeting. For SAWS budgeting purposes, (1) no later than 60 days prior to the Commercial Operation Date, and (2) no later than 90 days preceding each Contract Year, the Project Company shall provide to SAWS a written statement setting forth for each Contract Year its reasonable estimate of the Monthly Water Purchase Payments, each component thereof, the Inflation Index, and the adjustments provided for in Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand). The estimate shall not be binding on the Project Company but, in the event that any component of the Monthly Water Purchase Payments for a Billing Period cannot be determined when the invoice for such Billing Period is being submitted, then such estimate shall be used, subject to an appropriate adjustment in a subsequent invoice when the actual value of such component becomes available.

SECTION 17.11. ANNUAL SETTLEMENT.

(A) Annual Settlement Statement. Within 60 days after the end of each Contract Year, the Project Company shall provide to SAWS an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Monthly Water Purchase Payments payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by SAWS with respect to such Contract Year. SAWS or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise
finally determined, the Project Company shall file with SAWS an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

(B) Annual Settlement of Electricity Costs. As part of the annual settlement process, SAWS shall, within 30 days after the end of each Contract Year (or within 30 days of the end of the Term if this Water Transmission and Purchase Agreement is earlier terminated), calculate the Actual Annual Electricity Costs and the Guaranteed Maximum Annual Electricity Costs. The Guaranteed Maximum Annual Electricity Costs for a Contract Year shall be calculated in accordance with Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand) based on the Project Company’s Annual Delivered Water Volume. The Project Company acknowledges that the calculation of the Guaranteed Maximum Annual Electricity Costs will include any basic service charges imposed by the electricity provider, and will exclude any fines and penalties imposed by the electricity provider and reimbursed by the Project Company pursuant to Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period). If the Actual Annual Electricity Costs are greater than the Guaranteed Maximum Annual Electricity Costs, the Project Company shall reimburse SAWS in an amount equal to such excess costs.

SECTION 17.12. TAXES.

(A) General. The Project Company shall pay, without reimbursement from SAWS, all Taxes imposed with respect to the Project or the Contract Obligations, including:

1. any property Tax on the Project;
2. any Tax on or related to Raw Groundwater or any Project Site Lease;
3. any possessory interest or similar Tax imposed with respect to the Project;
4. any sales or use Tax imposed on building materials incorporated in the Project; and
5. any sales or use Tax imposed on operating or maintenance supplies and services (except to the extent any such Tax constitutes a Compensable Cost), whether any such Tax exists on the Contract Date or is imposed at any time during the Term. The Project Company acknowledges that all such Taxes have been taken into account in establishing the Monthly Water Purchase Payments.

(B) Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law. All income and other Taxes imposed on the Project Company shall be borne by the Project Company, except as provided in this Section. In the event Taxes are imposed on the Project Company by a Discriminatory Change in Tax Law or a Specified Change in Tax Law, SAWS shall pay the Project Company an amount equal to such Taxes as a Direct Payment. Such payment shall be paid by the last day of the month following the month in which the Project Company paid the Tax, subject to the Project Company’s Cost Substantiation obligations under Section 17.14 (Cost Substantiation) and mitigation obligations under Section 26.4(A) (Mitigation by the Project Company).
SECTION 17.13. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

Except with respect to Discriminatory Changes in Tax Law and Specified Changes in Tax Law as provided herein, there shall be no adjustment of the Monthly Water Purchase Payments or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

(1) Any change in any provision of Income Tax law to take effect after the Conforming Contract Amendment Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Monthly Water Purchase Payments or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Water Transmission and Purchase Agreement or any Project Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person,

(2) Any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the inclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,

(3) Any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or

(4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

SECTION 17.14. COST SUBSTANTIATION.

(A) General. The Project Company shall substantiate all costs for which it claims compensation hereunder other than costs that are part of the Unit Price, including compensation (1) on account of Project Company Reimbursable Costs, (2) on account of Compensable Costs, or (3) for costs related to a SAWS-Requested Design-Requirements Change, a SAWS-Requested Capital Modification or a SAWS Fault ("Cost Substantiation"), whether compensation is to be paid as part of adjustment to the Unit Price or as a lump sum, as provided in Section 17.8 (Form of Compensation Adjustments for Events Occurring After the Conforming Contract Amendment Date). Cost Substantiation shall be provided in advance of incurring or paying the cost, except when emergencies or other immediate needs make advance cost substantiation impracticable. The requirement in this Section for Cost Substantiation for costs that are not related to the Capital and Raw Groundwater Unit Price shall not be construed to mean that the Capital and Raw Groundwater Unit Price is subject to change for any reason other than the adjustment provided in Section 17.2(B) (Adjustment at Financial Closing Date).

(B) Competition Practices. In incurring costs for additional work required due to SAWS-Requested Design Requirements Changes or SAWS-Requested Capital Modifications which are or may be subject to Cost Substantiation, the Project Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three
competing quotes or estimates for costs expected to be in excess of $500,000 (Index Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and SAWS’ potential obligation to pay for it; provided, however, that during the Construction Period, the Project Company shall not be required to utilize competitive practices for additional work self-performed by the EPC Contractor or by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Project Company is not required to utilize competitive practices, it shall instead demonstrate to SAWS that the additional costs in response to a SAWS-Requested Capital Modification hereunder are commercially reasonable.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate expected or incurred cost shall state the amount of such cost and the provisions of this Water Transmission and Purchase Agreement under which compensation is payable by SAWS, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required and reasonably paid or incurred pursuant to this Water Transmission and Purchase Agreement. The Cost Substantiation Certificate shall be accompanied by copies of such documentation as shall be necessary to demonstrate the reasonableness of the cost. Such documentation shall be in a format reasonably acceptable to SAWS and shall include reasonably detailed information concerning all Subcontracts and self-perform work.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm actual incurred costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to SAWS, with the request for reimbursement of such costs.

(E) Mark-Ups. For any self-performed construction work requiring Cost Substantiation, the Project Company shall be entitled to (i) in the case of contracts for work totaling more than $2,000,000, a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 6% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors, and (ii) in the case of contracts for work totaling less than $2,000,000, a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors. There shall be no double mark-up between the Project Company and any contractor relating to the same construction work.

SECTION 17.15. SAWS’ RIGHT OF SET OFF.

Once SAWS determines that any credits, payments, reimbursements or liquidated damages are owed to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement and have not been reflected in any previously submitted Billing Statement, SAWS shall notify the Project Company and the Project Company shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to SAWS under this Article. In the event the Project Company does not include such amounts in the next Billing Period invoice provided to SAWS in accordance with this Section, SAWS shall have the right to offset the Monthly Water Purchase Payment otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing, SAWS shall have the right to offset the Monthly Water Purchase Payment otherwise payable to the Project Company for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to SAWS under this Water Transmission and Purchase Agreement.
SECTION 17.16. BILLING STATEMENT DISPUTES.

If SAWS disputes in good faith any amount billed by the Project Company, SAWS shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to SAWS for the dispute. In the event that the Project Company disputes any amounts offset by SAWS, it shall provide SAWS with a written objection indicating the amount being disputed and the reasons then known to the Project Company. When any billing dispute is finally resolved, if payment by SAWS to the Project Company of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 17.17 (Interest on Overdue Amounts).

SECTION 17.17. INTEREST ON OVERDUE AMOUNTS.

If payment of any amount payable under this Water Transmission and Purchase Agreement is not made when due (including the Project Assets Purchase Price), simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a 365-day year from the date such payment is due (or was determined to have been due, in the case of amounts being disputed by SAWS) under this Water Transmission and Purchase Agreement until paid. The party to whom payment is owed and overdue shall notify the other party at least quarterly of the overdue amount.

SECTION 17.18. NO RECOURSE TO CITY’S GENERAL FUND, GENERAL CREDIT OR AD VALOREM TAXES.

As provided in Section 17.1(D) (Limited Source of Payment), the source of payment in satisfaction of any and all obligations of SAWS assumed or imposed by it or arising under this Water Transmission and Purchase Agreement shall be limited to the revenues derived by SAWS from ownership and operation of the SAWS Distribution System, with such payment constituting an “operating expense” (as defined in Chapter 1502, as amended, of the Texas Government Code) of the SAWS Distribution System. As a result, the Project Company (including its successors in legal interest, assigns, or Affiliates) shall have no recourse to the general fund or general credit of the City (including the right to require the levy and collection of any tax, whether ad valorem or otherwise, or any other fund (including other enterprise funds), source of revenue, asset, instrument or property of the City, in satisfaction of the payment of any amount due the Project Company hereunder, whether on account of the Monthly Water Purchase Payment, any termination payment, or for any payment or claim of any nature arising from the performance or non-performance of SAWS’ obligations hereunder. The sole recourse of the Project Company for the payment of all such amounts shall be to the revenues of SAWS derived from the ownership and operation of the SAWS Distribution System pursuant to City Ordinance 75686, under which SAWS is established and pursuant to which revenue bonds are issued from time to time to finance SAWS’ capital improvements. The payment of all such amounts is subject to the terms and conditions of City Ordinance 75686. No such amount shall be payable from any ad valorem taxes. In furtherance of the foregoing, the Project Company hereby acknowledges and agrees it is not entitled to demand payment of the obligations of SAWS hereunder out of any money raised by taxation.

SECTION 17.19. GOODS AND SERVICES.

The parties agree that the mutual commitments stated in this Water Transmission and Purchase Agreement to make available Product Water, to take delivery of and purchase Product Water and to finance, implement and transfer the Project Improvements required therefor constitute an agreement to provide goods and services, and that this Water Transmission
and Purchase Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

SECTION 17.20. EFFECT OF CITY APPROVAL.

Notwithstanding the City’s approval of this Water Transmission and Purchase Agreement, the City’s obligations hereunder shall be limited as and to the extent provided in City Ordinance Number 75686, under which the City has delegated to SAWS sole management and control over the SAWS Distribution System. The City’s approval hereof shall not be construed to obligate the City (except by and through SAWS as provided herein) to perform any obligation hereunder, or to create a right of any kind of the Project Company against the City (independent of any right against SAWS under the terms hereof).
ARTICLE 18
DISPUTE RESOLUTION

SECTION 18.1. FORUM FOR DISPUTE RESOLUTION.

(A) Court Jurisdiction. It is the express intention of the parties that all Legal Proceedings related to this Water Transmission and Purchase Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas. The Project Company and SAWS each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

(B) Waiver of Jury Trial. EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS WATER TRANSMISSION AND PURCHASE AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(C) Disputes as to Acceptance. In the event (1) SAWS and the Project Company become involved in any mediation or judicial proceeding with respect to whether Acceptance has been achieved, and (2) the Project Company determines that it would be appropriate that any corresponding dispute between the Project Company and the EPC Contractor under the EPC Agreement (with respect to issues that are substantially identical under both the Water Transmission and Purchase Agreement and the EPC Agreement) be resolved in that proceeding, SAWS consents to the EPC Contractor’s joinder to, and consolidated resolution of such substantially identical issues in, such proceeding.

SECTION 18.2. NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Water Transmission and Purchase Agreement. The non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between SAWS and the Project Company.

(B) Procedure. The Mediator shall be a professional firm or individual mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator’s program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Water Transmission and Purchase Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Water Transmission and Purchase Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation. Further, nothing in this Section shall operate to limit or interfere with judicially imposed mediation.
ARTICLE 19

REMEDIES OF THE PARTIES

SECTION 19.1. REMEDIES FOR BREACH.

The parties agree that in the event that either party breaches this Water Transmission and Purchase Agreement, the other party may exercise any legal rights it may have under this Water Transmission and Purchase Agreement and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Water Transmission and Purchase Agreement except as provided or referred to in Article 22 (Termination). Any such damage payment shall be a Direct Payment.

SECTION 19.2. NO EFFECT ON CONTRACT OBLIGATIONS.

The exercise by SAWS of any of its rights under this Article 19 (Remedies of the Parties) shall not reduce or affect in any way the Project Company’s responsibility hereunder to perform the Contract Obligations.

SECTION 19.3. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Water Transmission and Purchase Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Water Transmission and Purchase Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 19.4. EXERCISE OF REMEDIES.

(A) Remedies Cumulative. The rights and remedies of the parties under this Water Transmission and Purchase Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 19.5. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.

Every right to claim compensation, indemnification or reimbursement under this Water Transmission and Purchase Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Water Transmission and Purchase Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Water Transmission and Purchase Agreement.
SECTION 19.6.  NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER OR OBLIGATED IN ANY MANNER TO PAY TO THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR LOSSES OR DAMAGES BASED UPON CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS OR OTHERWISE UNDER THIS WATER TRANSMISSION AND PURCHASE AGREEMENT, OR ANY REPRESENTATION MADE IN THIS WATER TRANSMISSION AND PURCHASE AGREEMENT BEING MATERIALLY INCORRECT, WHETHER SUCH CLAIMS ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL THEORY. THIS SECTION SHALL NOT LIMIT THE RECOVERY OF ANY SUCH LOSSES OR DAMAGES UNDER Article 25 (INDEMNIFICATION) IN RESPECT OF CLAIMS BY THIRD PARTIES.

SECTION 19.7.  STANDBY DEED OF TRUST.

(A) Delivery of Deed of Trust. The parties acknowledge that pursuant to Section 3.12 of the Project Real Property Conveyance Agreement, the Water Supply Corporation will be delivering the Standby Deed of Trust to SAWS (or, if required under the Creditors’ Remedies Agreement, to the Project Company with a collateral assignment to SAWS) as further security for SAWS’ right to timely acquire the Project Assets.

(B) Conveyance of Project Assets. In the event that SAWS shall have commenced Conveyance Litigation and the Project Company disputes that the Project Assets were required to be conveyed to SAWS under the terms of this Water Transmission and Purchase Agreement, then the Project Company shall have the right, as its sole remedy for such dispute, to litigate such claims in the Conveyance Litigation. In the event the Project Company obtains a final unappealable judgment determining that the Project Assets were not required to be conveyed to SAWS at the time of the foreclosure, then SAWS’ foreclosure of the Standby Deed of Trust shall be deemed to have been a purchase by SAWS pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) and, as its sole and exclusive remedy and damages, the Project Company shall be entitled to the payment of (a) the difference between (i) the amount payable to the Project Company pursuant to Section 23.1(B) (Project Asset Purchase Price) (with the Project Asset Purchase Price computed as of the date of the foreclosure) and (ii) any amounts previously paid by SAWS to the Project Company in respect of the foreclosure (including any amounts paid on the Project Company’s behalf in respect of the Senior Debt) plus (b) interest on the amount in clause (a) calculated from the date of the foreclosure to the date of payment at the then-applicable statutory rate for pre-judgment interest.

(C) Remedy for Failure to Convey. Notwithstanding anything to the contrary in this Article 19 (Remedies of the Parties), in the event SAWS shall have foreclosed upon the Project Assets pursuant to the Standby Deed of Trust, such remedy shall be SAWS’ sole remedy for a failure to timely convey, or cause the conveyance of, the Project Assets, as required under this Water Transmission and Purchase Agreement, and no further recovery or damages shall be obtainable against the Project Company for such failure to convey, provided, however, that nothing in this Section 19.7 (Standby Deed of Trust) shall limit or impair SAWS’ rights or remedies in respect of any breach of this Water Transmission and Purchase Agreement other than a failure to convey the Project Assets and SAWS shall be entitled to assert any such other claims in the Conveyance Litigation or otherwise in its discretion without any such limitation on its remedies or its recourse for the recovery of damages.

(D) Monetary Nature of Disputes. The parties agree that SAWS is entitled at any time to conveyance of the Project Assets subject only to compliance with the procedural requirements of this Water Transmission and Purchase Agreement and payment of the amounts provided for hereunder, which amounts are to be determined solely as provided herein. Accordingly, the parties further agree that any disputes relating to any conveyance of the Project
Assets are ultimately disputes over the proper amount to be paid by SAWS and that the purpose of any Conveyance Litigation is to afford to the Project Company and the Water Supply Corporation (as their respective interests may appear) the right to litigate any such monetary dispute while affording to SAWS the ability to expeditiously obtain ownership and possession of the Project Assets in accordance with the terms of this Water Transmission and Purchase Agreement by foreclosing the Standby Deed of Trust notwithstanding any such ongoing dispute. In the event the Project Company seeks an injunction or other judicial action to prevent SAWS’ foreclosure of the Standby Deed of Trust or opposes any application for a lifting of any stay in a Project Company Bankruptcy-Related Event then the limitation on recourse in Section 19.7(C) (Remedy for Failure to Convey) shall be deemed to have been waived to the extent of additional damages, costs and expenses incurred by SAWS and resulting from such actions by the Project Company or the Water Supply Corporation, including but not limited to costs and expenses incurred in exercising any step-in rights or other interim remedies.
ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 20.1. PROJECT COMPANY EVENTS OF DEFAULT

(A) Project Company Events of Default Defined. For the purposes of this Water Transmission and Purchase Agreement, “Project Company Event of Default” means any of the following events or circumstances:

1. The occurrence of a Project Company Remediable Breach that is not remedied in accordance with Section 20.3 (Project Company Remediable Breach Cure and Remedial Program), unless the occurrence of the Project Company Remediable Breach is due to the occurrence of an Uncontrollable Circumstance.

2. The failure of the Project Company to timely achieve Acceptance by the Commercial Operation Longstop Date, as provided in Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date).


4. The Project Company abandons the Project, unless such abandonment is due to the occurrence of an Uncontrollable Circumstance.

5. The Project Company breaches Section 24.1 (Limitation on Assignment by Project Company) or a Change in Control occurs which is prohibited by Section 24.2 (Limitations on Change in Control).

6. The issuance by SAWS at the direction of TCEQ or another authorized Governmental Body of a second “boil water” or “do not drink” notice with respect to Product Water, as provided in Section 10.2(F) (Boil Water and Do Not Drink Notices), unless such event is due to the occurrence of an Uncontrollable Circumstance.

(B) Project Company Remediable Breach Defined. For purposes of this Water Transmission and Purchase Agreement, “Project Company Remediable Breach” means any of the following breaches, unless the breach is due to the occurrence of an Uncontrollable Circumstance:

1. A failure by the Project Company to pay any amount due and owing to SAWS under this Water Transmission and Purchase Agreement on the due date (which amount is not being disputed in good faith) and the Project Company has not remedied such failure to pay within any of the following breaches of failures except to the extent such breach, failure or circumstance is caused by an Uncontrollable Circumstance 30 Business Days following notice from SAWS, provided that interest on any such overdue amount shall be paid as provided in Section 17.17 (Interest on Overdue Amounts);

2. A failure by the Project Company to maintain the policies of insurance required to be maintained by the Project Company under this Water Transmission and Purchase Agreement and to comply with its obligation under Appendix 7 (Insurance Requirements) to name SAWS as an insured party;
(3) A failure by the Project Company to comply with its obligation under Section 15.1 (Force Majeure Events Generally) to repair, replace or restore the Project following the occurrence of a Force Majeure Event;

(4) The Project Company fails to immediately take all appropriate action in the event that SAWS notifies the Project Company that a public health or safety emergency exists or is threatened due to the Project Company’s failure to comply with the Contract Standards;

(5) Except as provided for in items (1) through (4) of this Section, a breach, or series of breaches, by the Project Company of any agreement, covenant or undertaking made to SAWS (other than a breach for which SAWS may impose Deductions) or any representation or warranty made by the Project Company to SAWS in this Water Transmission and Purchase Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(a) a material risk to the health or safety of the public;
(b) a risk of material liability of SAWS to third persons;
(c) an adverse effect on the performance of the Contract Obligations to the extent that SAWS is reasonably likely to be materially deprived of the benefit of this Water Transmission and Purchase Agreement; or
(d) any material provision of the Water Transmission and Purchase Agreement being unenforceable against the Project Company;

(6) a breach in any rolling period of 36 consecutive Billing Periods, the sum in any 24 or more of such Billing Periods of (i) all Daily Delivered Units in such Billing Periods, and (ii) all Demand Shortfall Units in such Billing Periods, is less than 75,000 Acre Feet;

(7) with respect to Product Water Quality, the exceedance of the same primary drinking water MCL in three consecutive months, four times in any consecutive 12 month period;

(8) a breach, other than a breach described in Section 20.1(A) (Project Company Events of Default Defined) or in items (1) through (7) of this Section 20.1(B) (Project Company Remedial Breach Defined) which, due to the fact that such breach, demonstrates either a persistent inability, or a persistent unwillingness, to comply with its obligations under this Water Transmission and Purchase Agreement; or

(9) Any other fact or circumstance designated as a “Project Company Remediable Breach” under this Water Transmission and Purchase Agreement; or

(C) Project Company Bankruptcy-Related Event Defined. For purposes of this Water Transmission and Purchase Agreement, “Project Company Bankruptcy-Related Event” means any of the following events:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process
being levied or enforced upon, the whole or any material part of the assets of the Project Company; or

(2) Any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(3) The Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 90 days of such proceedings being instituted; or

(4) The Project Company ceasing to carry on business.

SECTION 20.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify SAWS of the occurrence, and details, of any Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Company Event of Default, in either case promptly on the Project Company becoming aware of its occurrence.

SECTION 20.3. PROJECT COMPANY REMEDIBLE BREACH CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program. After the occurrence of a Project Company Remediable Breach and while it is continuing, SAWS may serve a notice on the Project Company specifying in reasonable detail the type and nature of the Project Company Remediable Breach and:

(1) The Project Company shall remedy such Project Company Remediable Breach referred to in such notice (if it is continuing) within 60 days after such notice or within such longer period as is reasonably required for the Project Company to rectify or remedy such Project Company Remediable Breach as long as the Project Company is diligently pursuing such rectification or remedy, but in no event exceeding 270 days after such notice; or

(2) If either SAWS (as set forth in its notice) or the Project Company reasonably considers that a Project Company Remediable Breach cannot reasonably be remedied within 60 days of such notice, the Project Company shall deliver to SAWS within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Project Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Project Company Remediable Breach is proposed to be remedied (which date shall be no longer than the maximum cure period provided under Section 20.3(A)(1)).
(B) **Remediable Program Limited to Project Company Remediable Breaches.**
The Project Company Remediable Breach and remedial program provisions of this Section shall apply only to a Project Company Remediable Breach, and not to any other event or circumstance constituting a Project Company Event of Default.

**SECTION 20.4. SAWS TERMINATION RIGHT.**

(A) **Termination Right.** If a Project Company Event of Default occurs, then SAWS may (if the Project Company Event of Default continues unwaived and unremedied), subject to Section 22.1(E) (Continued Performance), terminate this Water Transmission and Purchase Agreement by notice to the Project Company. The right of SAWS to terminate this Water Transmission and Purchase Agreement under this Section is in addition, and without prejudice, to any other right which SAWS may have in connection with the Project Company’s non-compliance with this Water Transmission and Purchase Agreement, including SAWS right to purchase the Project Assets as provided in Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) and those rights set forth in Article 19 (Remedies of the Parties).

(B) **Creditors’ Remedies Agreement.** The right of SAWS under this Section are subject to the terms of the Creditors’ Remedies Agreement.
ARTICLE 21

SAWS EVENTS OF DEFAULT

SECTION 21.1. SAWS EVENTS OF DEFAULT.

For the purposes of this Water Transmission and Purchase Agreement, “SAWS Event of Default” means any of the following events or circumstances:

1. A failure by SAWS to pay any amount due and owing to the Project Company under this Water Transmission and Purchase Agreement within 60 days of the due date for such amount;

2. Except as provided in Section 21.1(1), a breach, or series of breaches, by SAWS of any term, covenant or undertaking to the Project Company or any representation or warranty made by SAWS to the Project Company in this Water Transmission and Purchase Agreement being incorrect when made, the consequence of which is:
   a. a material and adverse effect on the performance of the Contract Obligations; or
   b. any material provision of this Water Transmission and Purchase Agreement being unenforceable against SAWS to the extent that the Project Company is reasonably likely to be materially deprived of the benefit of this Water Transmission and Purchase Agreement;

3. The authorized filing by SAWS of a petition seeking relief under the Bankruptcy Code, as applicable to political subdivisions which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight board by the State for SAWS shall not in and of itself constitute a SAWS Event of Default hereunder; or

4. SAWS breaches Section 24.4 (Limitation on Assignment by SAWS).

SECTION 21.2. PROJECT COMPANY OPTIONS UPON A SAWS EVENT OF DEFAULT.

A. Notice. After the occurrence of a SAWS Event of Default and while a SAWS Event of Default is continuing, the Project Company may, at its option, serve notice on SAWS of the occurrence and specifying the details of such a SAWS Event of Default.

B. Remediable SAWS Event of Default. If the relevant matter or circumstance has not been rectified or remedied by SAWS:

1. in the case of a SAWS Event of Default under Section 21.1(1) (SAWS Events of Default), within 30 days of such notice; or

2. in the case of a SAWS Event of Default under Section 21.1(2), within 60 days after the notice provided by the Project Company pursuant to Section 21.2(A) or within such longer period as is reasonably required for SAWS to rectify or remedy such SAWS Event of Default as long as SAWS is diligently pursuing such rectification or remedy,
the Project Company may serve a further notice on SAWS requiring it to purchase the Project Assets as provided in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets), and thereafter terminating this Water Transmission and Purchase Agreement with immediate effect.

(C) Non-Remediable SAWS Events of Default. In the case of a SAWS Event of Default under Section 21.1(3) or 21.1(4), concurrently with, or at any time after, the delivery of notice under Section 21.2(A), the Project Company may serve a further notice on SAWS requiring it to purchase the Project Assets as provided in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets), and thereafter terminating this Water Transmission and Purchase Agreement with immediate effect.

(D) Other Rights Upon SAWS Non-Compliance. The right of the Project Company to terminate this Water Transmission and Purchase Agreement under this Section is in addition, and without prejudice, to any other right which the Project Company may have in connection with SAWS’ non-compliance with this Water Transmission and Purchase Agreement.

SECTION 21.3. PROJECT COMPANY RIGHT TO REQUIRE SAWS TO PURCHASE THE PROJECT ASSETS.

In lieu of serving a further notice on SAWS terminating this Water Transmission and Purchase Agreement and bringing an action to enforce payment of the amounts due pursuant to Section 21.2(B) (Remediable SAWS Events of Default) or Section 21.2(C) (Non-Remediable SAWS Events of Default), the Project Company may in its discretion serve a further notice on SAWS requiring SAWS to purchase the Project Assets. SAWS shall purchase the Project Assets for the Project Assets Purchase Price set forth in Section 23.1(B) (Project Assets Purchase Price). SAWS shall determine the closing date for the purchase and sale of the Project Assets, which shall be not later than 180 days following receipt of notice from the Project Company under this Section. The procedures set forth in Section 23.3(D) (Purchase Option Procedures) shall apply to any purchase of Project Assets under this Section. Upon payment of the purchase price for the Project Assets provided in this Section, the Termination Date shall be deemed to have occurred and this Water Transmission and Purchase Agreement shall terminate. Between the date of notice given by the Project Company under this Section and such Termination Date, the Project Company shall have no obligation to perform the Contract Obligations, and interest on SAWS’ overdue amounts shall accrue at the Overdue Rate as provided in Section 17.17 (Interest on Overdue Amounts).
ARTICLE 22
TERMINATION

SECTION 22.1. TERMINATION RIGHTS.

(A) SAWS Termination Rights. This Water Transmission and Purchase Agreement may be terminated by SAWS prior to the Expiration Date:

(1) In connection with the convenience termination rights of SAWS during the Development and Financing Period, pursuant to Section 4.4(A) (SAWS Convenience Termination Option Generally);

(2) In connection with a Project Company Event of Default, pursuant to Section 8.7 (Failure to Achieve the Commercial Operation Date by the Commercial Operation Longstop Date);

(3) In connection with a Project Company Event of Default, pursuant to Section 20.4 (SAWS Termination Right); or

(4) Upon the exercise by SAWS of any of its options to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), in which event this Water Transmission and Purchase Agreement shall terminate upon the date of purchase.

(B) Project Company Termination Rights. This Water Transmission and Purchase Agreement may be terminated by the Project Company prior to the Expiration Date:

(1) In connection with the convenience termination right of the Project Company during the Development and Financing Period, pursuant to Section 4.5 (Project Company Convenience Termination Option During the Development and Financing Period);

(2) In connection with a SAWS Event of Default, pursuant to Section 21.2 (Project Company Options Upon a SAWS Event of Default).

(C) Extent of Termination Rights. Except as provided or referred to in Sections 22.1(A) and (B), neither party shall have the right to terminate this Water Transmission and Purchase Agreement.

(D) Termination Date. The “Termination Date” for any early termination of this Water Transmission and Purchase Agreement as provided in Sections 22.1(A) or (B) shall be the date notice of termination is given by one party to the other party in accordance herewith.

(E) Continued Performance. The parties shall continue to perform their obligations under this Water Transmission and Purchase Agreement (including SAWS continuing to pay the Monthly Water Purchase Payments) until the Termination Date, notwithstanding the giving of any notice of default.

(F) Completion or Continuance by SAWS. Subject to the rights of the Senior Debt Creditors under the Creditors’ Remedies Agreement and the prior right of the Senior Debt Creditors to enter into agreements with other operators, contractors and technology and equipment suppliers under agreements directly with such contract counterparties, after the Termination Date, and whether termination occurs due to a Project Company Event of Default
or otherwise, SAWS may at any time (but without any obligation to do so) enter into contracts with the Operating Service Provider and other operators, contractors and technology and equipment suppliers. The Project Company waives any right at law or in equity it may have to restrict SAWS from entering into any such contracts.
ARTICLE 23
SAWS PROJECT ASSETS PURCHASE OPTIONS

SECTION 23.1. PROJECT ASSETS PURCHASE AND CONVENIENCE TERMINATION OPTION DURING THE TERM.

(A) Option. SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets, and thereby terminate this Water Transmission and Purchase Agreement for its convenience, at any time following the Financial Closing Date.

(B) Project Assets Purchase Price. If SAWS exercises its Project Assets purchase option under this Section, SAWS shall pay to the Project Company on the Project Assets Transfer Purchase Date a Project Assets Purchase Price (adjusted as appropriate as provided in Section 23.3(C) (Project Company Notice and Determination)) equal to the aggregate amount, without duplication, of:

1. the aggregate amount required to prepay in full any Senior Debt outstanding as of the Project Assets Transfer Purchase Date, including any prepayment fees, original issue discount, breakage, hedge or swap termination fees, and other amounts that may be payable to any Senior Debt Creditor as a consequence of early termination;

2. the Employee Payments, the Operating Service Provider Breakage Costs, and employee and lease termination costs and other reasonable costs incurred by the Project Company in terminating and winding up its business; and

3. the present value sum, calculated using quarterly compounding, as of the Project Assets Transfer Purchase Date using a discount rate of 8.93165% (except as discussed below), of the Target Equity Return Amount in the Contract Date Financial Model (“Quarterly Calculations” tab, row 2256) for each of the remaining Contract Years from the Project Assets Transfer Purchase Date through the final Contract Year. The Target Equity Return Amount shall mean the quarterly amount shown for each Contract Year as “Pure Equity, Nominal, Pre-SPV-Tax Cash Flows” on the “Quarterly Calculations” tab, row 2256 of the Contract Date Financial Model as of the Contract Date—until expiration of the Water Transmission and Purchase Agreement. In the event that the Project Company is required under the Equity Contribution Agreement executed at Financial Close to contribute an amount other than $81.934 million, the Financial Model as of the Contract Date will be adjusted to reflect this revised equity contribution amount and the discount rate used to discount the Target Equity Return Amount shall be revised to solve for the internal rate of return that results in the present value sum of the Target Equity Return Amount equaling the revised equity contribution amount. This percentage will be multiplied by 0.65 and the resulting percentage will be substituted for the 8.93165% stipulated above. On or promptly following order to satisfy the Financial Closing Date Condition set forth in Section 4.1(B)(25)(d), the parties shall execute a Contract Administration Memorandum setting which provides an updated discount rate, such discount rate to be determined by multiplying the Target Equity Return Amount generated by the Financial Close Financial Model and 0.65, and row references based on the Financial Close Financial Model, and which sets forth in table or chart form the final Target Equity Return Amount payable for each Contract Year calculated using the methodology set forth in this paragraph (3).

The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.
SECTION 23.2. PROJECT ASSETS PURCHASE OPTION UPON A PROJECT COMPANY EVENT OF DEFAULT.

SAWS shall have the option, exercisable in its discretion, to purchase the Project Assets upon a Project Company Event of Default for a Project Assets Purchase Price equal to (1) the aggregate principal amount of Senior Debt outstanding as of the Termination Date, together with any accrued interest thereon, minus (2) an amount equal to all amounts on deposit in the funds and accounts held under the Senior Debt Financing Agreements for the benefit of the Senior Debt Creditors on the Project Assets Transfer Purchase Date; provided, however, that no Senior Debt shall be deemed to be outstanding for this purpose prior to Financial Close, notwithstanding execution of the Senior Secured Credit Facility. The Project Assets Purchase Price shall not include Project Company Reimbursable Costs.

SECTION 23.3. PURCHASE OPTION PROCEDURES.

(A) Notice of Exercise of Project Assets Purchase Option. SAWS shall give the Project Company prior written notice of its election to exercise its option to purchase the Project Assets:

(1) At least 180 days prior to the Project Assets Transfer Purchase Date, in the case of a purchase under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term); and

(2) On or following the date on which a Project Company Event of Default occurs, in the case of a purchase under Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default).

The written notice shall specify the closing date for the purchase and sale of the Project Assets (and such closing date shall be the "Project Assets Transfer Purchase Date").

(B) Notice of Intent Required for Certain Purchase Options. As a condition of SAWS' right to exercise its Project Assets Purchase Option under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), SAWS shall give the Project Company a notice of intent to exercise its Project Assets Purchase Option at least 270 days prior to the Project Assets Transfer Purchase Date. Notwithstanding the delivery of a notice of intent under this Section, SAWS shall have no obligation to exercise the Project Assets Purchase Option that was the subject of such notice.

(C) Project Company Notice and Determination. As soon as practicable after receipt of SAWS' notice of its election to purchase the Project Assets under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term), the Project Company shall, acting reasonably, notify SAWS of the Project Company's determination of the amount of the Project Assets Purchase Price due, and include in such notice the details and calculations of each component thereof, including certificates from the Senior Debt Creditors as to the amounts owed to them. The Project Company shall provide to SAWS all such documents and information as may be reasonably required by SAWS to support and confirm the amount of the Project Assets Purchase Price due under such Section.

(D) Adequacy of Project Assets Purchase Price. The Project Company agrees that any applicable Project Assets Purchase Price provided for in this Article shall constitute the only compensation from SAWS to the Project Company for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Project Company’s right to perform this
Water Transmission and Purchase Agreement in connection with the purchase of the Project Assets under this Article.

(E) Reliance on Senior Debt Creditors Certification. SAWS shall be entitled to rely on one or more certificates of agents of the Senior Debt Creditors as conclusive evidence of the amount of the Senior Debt outstanding, and any accrued interest and redemption premium, in any calculation of a Project Assets Purchase Price. Upon receipt of this amount by Project Company, the Senior Debt Creditors shall discharge SAWS’ obligation to pay any portion of compensation due to the Project Company that is attributable to the Senior Debt.

(F) Termination. Upon payment of the Project Assets Purchase Price on the Project Assets Transfer Purchase Date pursuant to this Article, the Termination Date shall be deemed to have occurred and this Water Transmission and Purchase Agreement shall terminate.

SECTION 23.4. CONVEYANCE.

(A) Obligation to Convey and Assign. Upon payment by SAWS of the applicable Project Assets Purchase Price under this Article, the Project Company shall assign and convey, or cause to be assigned and conveyed, to SAWS and SAWS shall accept and assume, good and indefeasible title and interest in, to and under the Project Assets and SAWS shall accept and assume the assignment and conveyance, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9), (10) and (13) of the definitions of Permitted Encumbrances. Such assignment, conveyance, acceptance and assumption shall be effective on the Project Assets Transfer Purchase Date. In making any assignment and conveyance of Project Real Property, the Project Company shall comply with all of the real property acquisition, holding, conveyance and assignment obligations of the Water Supply Corporation (including those particularly set forth in Article 4) of the Project Real Property Conveyance Agreement, as if expressly applicable to the Project Company for an assignment and conveyance of Project Real Property hereunder.

(B) Assignment and Conveyance Requirements. Each assignment and conveyance provided for in Section 23.4(A) (Obligation to Assign and Convey) shall be made pursuant to a form of deed, bill of sale, assignment or other appropriate instrument that is recordable and is otherwise in form and substance approved by SAWS (and if a State Bar of Texas form for such instrument exists, it shall be deemed approved by SAWS), and shall include a warranty of title acceptable to SAWS. No such assignment or conveyance shall require or be conditioned upon the payment of any additional consideration by SAWS to the Project Company or any other party. In no event shall any such assignment or conveyance impose upon SAWS any cost or liability arising prior to the effective date of such assignment and conveyance, as to which costs and liabilities the Project Company shall indemnify and defend SAWS. The Project Company shall pay all Taxes required to be paid by either party in connection with any such transfers, including any recording fees.

(C) Project Real Property Conveyance Agreement. The Project Company shall cause the Water Supply Corporation, effective on the Project Assets Transfer Date, to comply with its obligations under the Project Real Property Conveyance Agreement to convey to SAWS the Project Real Property required to be conveyed under the Project Real Property Conveyance Agreement. Such conveyance shall convey good and indefeasible title and interest in the subject Project Real Property, free and clear of all Encumbrances other than the items listed in paragraphs (5), (6) (other than liens and security interests, excepting inchoate liens for taxes), (8), (9) and (10) of the definition of Permitted Encumbrances.

(D) Further Assurances. The Project Company shall, at no cost or expense to SAWS, reasonably cooperate in effectuating and confirming the assignments and conveyances provided for in Section 23.4(A) (Obligation to Assign and Convey), including executing and
delivering such further documents or instruments and giving or filing such notices as SAWS may reasonably request.

(E) Project Liabilities. Upon the purchase of the Project Assets pursuant to this Article, SAWS shall assume the Assumed Liabilities as and to the extent provided in Appendix 12 (Project Assets and Liabilities). The Assumed Liabilities shall not include the Excluded Liabilities.

SECTION 23.5. FULL SETTLEMENT; ANTECEDENT AND POST-TERMINATION LIABILITIES.

Any and all amounts paid by SAWS to the Project Company upon a purchase of the Project Assets, and the related termination of this Water Transmission and Purchase Agreement, under this Article will be the full and final settlement of each party’s rights and claims against the other party in connection with such purchase or with respect to the Project Assets, whether under contract, tort, restitution or otherwise, but without prejudice to:

1. Any antecedent liability of either party to the other that arose prior to the date of termination of this Water Transmission and Purchase Agreement (but not from the termination itself); and

2. Any liability of either party to the other that may arise after the Termination Date of this Water Transmission and Purchase Agreement (but not from the termination itself), including liabilities arising under the provisions of this Water Transmission and Purchase Agreement which are intended by Section 3.3 (Survival) to survive termination.

SECTION 23.6. ADDITIONAL OBLIGATIONS UPON PROJECT ASSETS PURCHASE.

(A) Transfer Responsibilities. If SAWS exercises its right to purchase the Project Assets under this Article, on or promptly after the Termination Date:

1. The Project Company shall, or will use reasonable efforts to cause a Project Contractor to, offer to sell to SAWS at fair market value, free from any security interest, all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or a Project Contractor and reasonably required by SAWS in connection with the operation of the Project or the provision of the Contract Obligations;

2. The Project Company shall deliver to SAWS (to the extent not already delivered to SAWS):

   a. relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Contract Obligations (or any Subcontracts); and

   b. to the extent reasonably available to the Project Company, copies of all Subcontracts (with confidential or commercially sensitive information redacted), together with a statement of:

      i. the items ordered and not yet delivered pursuant to each agreement;
(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment;

and

(iv) the estimated cost of canceling each agreement;

(3) The Project Company shall give written notice of termination, effective as of the Expiration Date, promptly under each policy of Required Insurance (with a copy of each such notice to SAWS), but permit SAWS to continue such policies thereafter at its own expense, if possible; and

(4) The Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters.

(B) No Additional Compensation. The Project Company shall ensure that provision is made in all applicable contracts to ensure that SAWS will be in a position to exercise its rights, and the Project Company shall be in a position to comply with its obligations, under this Section without additional payment or compensation to any person.

SECTION 23.7. TRANSITIONAL ARRANGEMENTS.

If SAWS exercises its right to purchase the Project Assets under this Article, the Project Company shall, in connection with the expiration or termination of this Water Transmission and Purchase Agreement:

(1) Stop performance of the Contract Obligations on the Termination Date;

(2) On the Termination Date deliver to SAWS:

(a) all keys, access codes or other devices required to operate the Project; and

(b) any Project Intellectual Property required to be delivered by the Project Company pursuant to Section 23.6(A) (Transfer Responsibilities);

(3) As soon as practicable after the Termination Date vacate, and cause the Project Company Persons to vacate, the Project Sites, and leave the Project in a safe, clean and orderly condition;

(4) On request by SAWS and on payment of the Project Company’s reasonable costs (including costs payable to the Operating Service Provider under the Operating Service Agreement) by SAWS, for a period not to exceed 90 days after the Termination Date, co-operate fully with SAWS and any successor providing to SAWS services in the nature of any of the Contract Obligations or any part of the Contract Obligations, in order to achieve a smooth transfer of the manner in which SAWS obtains services in the nature of the Contract Obligations;

(5) As soon as practicable following the Termination Date, remove from the Project Sites all property of the Project Company or any Project Company Person that does not constitute Project Assets or does not belong to SAWS and if it has not done so within 60 days after any notice from SAWS requiring it to do
so, SAWS may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and

(6) Comply with all requirements of Section 11.7 (Project Assets Transfer Condition).

SECTION 23.8. PROJECT COMPANY TO COOPERATE.

If SAWS exercises its right to purchase the Project Assets under this Article and wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Operating Work following the Termination Date), the Project Company shall prior to the Termination Date co-operate with SAWS fully in such competition process, including by:

(1) Providing any information in the Project Company’s control or possession which SAWS may reasonably require to conduct such competition, except that information which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) Assisting SAWS by providing any participants in such competition process with reasonable access to the Project Sites, provided such access does not affect the Contract Obligations in a way that results in any reduction in Monthly Water Purchase Payments or materially interferes with the activities of the Project Company or the Operating Service Provider.

The Project Company shall be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services and an additional mark-up of 6% of such costs and expenses.

SECTION 23.9. RECORDING.

This Water Transmission and Purchase Agreement, or a memorandum hereof, shall be recorded in the land records of the Counties in order to preserve SAWS’ assignment and conveyance rights under Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date) and SAWS’ purchase options for the Project Assets under this Article.
ARTICLE 24

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 24.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Water Transmission and Purchase Agreement or a Project Contract except:

(1) As security (in accordance with the Creditors’ Remedies Agreement or otherwise substantially in a form approved by SAWS, acting reasonably) for any loan made to the Project Company under the Senior Debt Financing Agreements;

(2) In connection with the exercise of rights of the Senior Debt Creditors under the Creditors’ Remedies Agreement; or

(3) Otherwise:
   
   (a) prior to the day that is two years after the Commercial Operation Date (the “Transfer Restriction Date”), with the prior written consent of SAWS, which may be given or withheld in SAWS’ discretion; and
   
   (b) after the Transfer Restriction Date, with the prior written consent of SAWS, which will not be unreasonably withheld or delayed;

provided that in the case of an assignment under Sections 24.1(2) or (3), the assignee assumes all the obligations of the Project Company under this Water Transmission and Purchase Agreement. Any purported assignment of this Water Transmission and Purchase Agreement in violation of this Section is void.

SECTION 24.2. LIMITATIONS ON CHANGE IN CONTROL.

(A) Change in Control Defined. For purposes of this Water Transmission and Purchase Agreement “Change in Control” means with respect to a person (other than SAWS) any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, Shares or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, Shares or equity, issuance of new shares, Shares or equity or amalgamation, merger consolidation, amendment of a limited liability company certificate or other reorganization, or any other direct or indirect change which results in a person or group of persons, other than the equity holders of the entity immediately prior to the change, directly or indirectly:

(1) Controlling the composition of the majority of the board of trustees of the entity or of a general partner or manager of the entity;

(2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of trustees or by controlling the voting power of any class of shareholders or equity holders of any of the entity, a general partner of the entity or a manager of the entity or otherwise;

(3) Holding equity (either beneficially or otherwise) of that entity with a subscribed value (taking into account contributions to be made in the case of a
limited liability company) of more than one half of the subscribed value (taking into account contributions to be made in the case of a limited liability company) or equity (either beneficially or otherwise) of that entity with more than one half of the voting rights; or

(4) Having the ability to direct or cause the direction of the management, actions or policies of the entity.

(B) Limitations. No Change in Control of the Project Company shall be permitted (whether by the Project Company or otherwise) to occur except:

(1) In connection with the exercise of rights of the Senior Debt Creditors under the Creditors’ Remedies Agreement;

(2) Arising from any bona fide open market transaction in any shares or other securities of the Project Company or of any Affiliate of a Shareholder effected on a recognized public stock exchange;

(3) Any assignment, sale or transfer of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company (or of any person who directly or indirectly owns shares or equity in the Project Company) to Abengoa or any of its Affiliates [to the extent such interest was held by Abengoa Water USA as of the Conforming Contract Amendment Date, or Garney Holding Company or any of its Affiliates; or

(4) Otherwise:

(a) prior to the Transfer Restriction Date, with the prior written consent of SAWS, which may be given or withheld in SAWS’ discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of SAWS, which will not be unreasonably withheld or delayed.

In determining whether to give its consent to any Change in Control under Section 24.2(B)(4)(b) (Limitations), the SAWS shall take into consideration the following factors: (1) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (2) the backgrounds and reputations of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors, and employers and each of their respective Affiliates (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person’s past or present performance on the other projects); (3) compliance with SAWS’ conflict of interest requirements; and (4) the ability of the Project Company to meet its obligations under this Water Transmission and Purchase Agreement after the transfer.

SECTION 24.3. FACTORS SAWS MAY CONSIDER.

In determining whether to provide its consent under Sections 24.1(3)(b) (Limitation on Assignment by Project Company) or 24.2(B)(4)(b) (Limitations), and without limiting SAWS’ consent rights thereunder, it will be reasonable for SAWS to refuse its consent if:

(1) The proposed assignee or the new party in control of the Project Company, as the case may be, or any of their Affiliates, is a Restricted Person;
(2) The proposed assignee or the new party in control of the Project Company, as the case may be, is, in the reasonable opinion of SAWS, less creditworthy than the assignor; or

(3) The assignment or Change in Control could, in the reasonable opinion of SAWS, have a material and adverse effect on SAWS or the Project.

SECTION 24.4. LIMITATION ON ASSIGNMENT BY SAWS.

SAWS shall not assign, transfer or otherwise dispose of any interest in this Water Transmission and Purchase Agreement (except to another Governmental Body to which all or substantially all of the revenues, assets and liabilities constituting the SAWS municipal utility water enterprise are transferred), without the prior written consent of the Project Company, which may be given or withheld in the Project Company’s reasonable discretion. This covenant shall not be construed to restrict the exercise by SAWS of its rights under Section 26.5 (Opportunities).

SECTION 24.5. COSTS OF REQUEST FOR CONSENT.

(A) General. If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 24.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 24.2 (Limitations on Change in Control), the Project Company shall pay SAWS’ reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to SAWS against its obligation under this Section of $50,000 (Index Linked). After the decision of SAWS is rendered, SAWS will either refund any over payment or invoice the Project Company for any additional amounts due under this Section.

(B) Multiple Requests. The obligations of the Project Company under subsection (A) of this Section shall apply to the requested Garney Change-in-Control, and to any subsequent Change-in-Control.

SECTION 24.6. GARNEY CHANGE IN CONTROL.

(A) Garney Change-in-Control Defined. For purposes of this Water Transmission and Purchase Agreement, “Garney Change-in-Control” means the purchase by Garney P3 LLC from Abengoa Water USA LLC of 80% of the membership interests in the Project Company pursuant to Section 1.1 of the Membership Interest and Purchase Agreement.

(B) Delivery of Related Documents. In addition to the documents set forth in Section 4.1(A) (Documents Delivered Prior to the Conforming Contract Amendment Date), the parties acknowledge that the following documents were delivered to SAWS on or before the Conforming Contract Amendment Date:

(1) The executed Project Real Property Conveyance Agreement;

(2) Delivery of mutual certification between Abengoa Water USA and Garney P3 LLC that the conditions to the closing of the Garney Change-in-Control, as described in the Membership Interest and Purchase Agreement, have been fully satisfied; and

(3) Opinions of qualified Spanish or United States legal counsel, as applicable, concerning the validity and enforceability regarding entry and
performance of their applicable duties and obligations thereunder of the respective parties to the transaction documents executed in connection with the Membership Interest and Purchase Agreement.

(C) SAWS Consent to Garney Change-in-Control. SAWS hereby consents, pursuant to its rights under Section 24.2 (Limitations in Change-in-Control), to the Garney Change-in-Control. Nothing in the Membership Interest and Purchase Agreement shall be construed to amend, modify or change any term or condition of this Water Transmission and Purchase Agreement, affect SAWS’ right hereunder, or create any SAWS obligation thereunder or hereunder, nor shall SAWS review of or comment on the Membership Interest and Purchase Agreement or consent to the Garney Change-in-Control be construed to constitute an approval of or consent by SAWS to any of transactions related to the Garney Change-in-Control that are described in or anticipated by the Membership Interest and Purchase Agreement.

(D) Further Change-in-Control Requirements following the Conforming Contract Amendment Date. On and after the Conforming Contract Amendment Date, Section 24.2 (Limitations on Change-in-Control) shall continue to apply to any subsequent Change-in-Control. In addition, any assignment, sale or transfer that results in Garney Holding Company owning less than a majority of any direct or indirect legal, beneficial or equitable interest in any Shares of the Project Company shall be deemed to constitute a Change-in-Control for all purposes hereof.
ARTICLE 25
INDEMNIFICATION

SECTION 25.1. PROJECT COMPANY’S OBLIGATION TO INDEMNIFY.

The Project Company shall indemnify and keep the City and SAWS, and their respective elected officials, trustees, members, appointed officers, employees, representatives, agents, attorneys, financial advisors, and contractors (each a “SAWS Indemnitee”) indemnnified at all times from and against all Loss-and-Expense that any SAWS Indemnitee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any person), arising by reason of any:

(1) Breach of any representation or warranty by the Project Company under this Water Transmission and Purchase Agreement;

(2) Negligent act or omission of the Project Company or any Project Company Person;

(3) Willful misconduct of the Project Company or any Project Company Person;

(4) Non-compliance by the Project Company or any Project Company Person with any of the provisions of the Water Transmission and Purchase Agreement or any Project Company Subcontract or any document, instrument or agreement delivered to SAWS as required under this Water Transmission and Purchase Agreement, except to the extent excused by a SAWS Fault;

(5) Release of Hazardous Substances by the Project Company or any Project Company Person, except to the extent excused by a SAWS Fault;

(6) Breach by the Project Company or any Project Company Person of, or non-compliance by the Project Company or any Project Company Person with, any Governmental Approval or Applicable Law, or the failure of the Project Company or any Project Company Person to obtain all necessary Governmental Approvals in accordance with this Water Transmission and Purchase Agreement, except to the extent excused by a SAWS Fault; or

(7) Any other act, event or circumstance as to which the Project Company is obligated to provide an indemnity hereunder, except to the extent excused by a SAWS Fault.

The Project Company’s indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. Notwithstanding the foregoing, SAWS Indemnitees’ right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the SAWS Indemnitees. This Section may be relied upon by the SAWS Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.
SECTION 25.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a SAWS Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the SAWS Indemnitee is, or may become entitled to, indemnification or compensation under this Water Transmission and Purchase Agreement in respect of the entire claim, the SAWS Indemnitee shall give notice in writing to the Project Company.

(B) Consolidation of Claims. If a notice of claim is given pursuant to Section 25.2(A) (Notice) by more than one SAWS Indemnitee relating to the same facts or circumstances, the Project Company may, in its discretion, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Project Company Right to Dispute Claim. If notice is given as provided in (A) (Notice), the Project Company shall be entitled to dispute the claim in the name of the SAWS Indemnitee at the Project Company’s own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The SAWS Indemnitee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(D) Conflicts of Interest. In defending any claim as described in Section 25.2(C) (Project Company Right to Dispute Claim) in which there is a conflict of interest between the Project Company and SAWS Indemnitee, SAWS Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the SAWS Indemnitee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the SAWS Indemnitee in so doing will be included in the indemnity or compensation from the Project Company.

(E) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to Section 25.2(C) (Project Company Right to Dispute Claim):

1. The Project Company shall keep the SAWS Indemnitee fully informed and consult with it about material elements of the conduct of such defense;

2. The Project Company shall demonstrate to the SAWS Indemnitee, at the reasonable request of the SAWS Indemnitee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

3. The Project Company shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of SAWS, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of SAWS and (2) be subject to the consent of SAWS, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Project Company, SAWS (with the approval of the SAWS Board of Trustees, given in its discretion) shall, at the sole cost and expense of the Project Company, cooperate with the Project Company and its counsel in contesting any claim which the Project Company elects to contest.
(F)  **SAWS Indemnitee Rights to Conduct Defense.** A SAWS Indemnitee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

1. The Project Company is not entitled to take conduct of the claim in accordance with Section 25.2(C) (Project Company Right to Dispute Claim); or

2. The Project Company fails to notify the SAWS Indemnitee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the SAWS Indemnitee under Section 25.2(C) (Project Company Right to Dispute Claim) or notifies the SAWS Indemnitee that it does not intend to take conduct of the claim; or

3. The Project Company fails to comply in any material respect with Section 25.2(E) (Rights and Duties of the Parties).

(G)  **Transfer of Conduct of Claim to SAWS Indemnitee.** A SAWS Indemnitee may at any time, without limiting the Project Company's obligation to indemnify SAWS under this Article (including the obligation to pay fees and costs in connection with such indemnity), give notice to the Project Company that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 25.2(C) (Project Company Right to Dispute Claim) applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the SAWS Indemnitee, and will provide to the SAWS Indemnitee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(H)  **Infringement of Intellectual Property Rights.** In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

1. The replacement is performed without additional cost to SAWS; and

2. The replacement has at least equal quality performance capabilities when used in conjunction with the Project.
ARTICLE 26

MISCELLANEOUS PROVISIONS

SECTION 26.1. MAINTENANCE OF PROJECT SITE CONVEYANCE INSTRUMENTS; COVENANT AGAINST SALE OF THE PROJECT.

(A) Right-of-Way Easements. In acquiring the Transmission Pipeline Easements (other than the Transmission Pipeline Easements acquired by partial assignment of existing easements from Cross County Water Supply Corporation), the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right of Way Easement Form). Except for such Cross County Water Supply Corporation easement assignments, all such right-of-way easements shall permit the construction of two water pipelines in the right-of-way, shall provide for an easement width of at least 100 feet, for which there shall be no more than a 15 feet overlap into an adjoining electrical easement (both of which may be lessened on a case-by-case basis as reasonably approved by SAWS), and shall not contain any indemnity provisions that would according to their terms apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements. In the case of a Transmission Pipeline Easement acquired by way of a judgment in a condemnation proceeding, such instrument shall be in the form as prescribed for such proceedings, but shall in substance conform to the requirements set forth hereinabove. In acquiring right-of-way easements for the Collection Pipelines Rights-of-Way, the Project Company shall use commercially reasonable efforts to obtain such easements on the Right-of-Way Easement Form attached hereto as Transaction Form D (Right-of-Way Easement Form). The Project Company shall acquire all Transmission Pipeline Easements no later than one year following the Conforming Contract Amendment Date.

(B) Compliance With Project Site Conveyance Instruments Generally. The Project Company shall comply with its material obligations under the Project Site Conveyance Instruments and keep and maintain the Project Site Conveyance Instruments in full force and effect, and shall promptly notify SAWS of any material breach or default by any party thereto.

(C) Groundwater Leases. With respect to the Groundwater Leases, the Project Company shall, to the extent required in order to provide the Baseline Annual Volume: (1) maintain Raw Groundwater production at levels sufficient to avoid termination of a Groundwater Lease by any Groundwater Lessor, (2) pay all royalties and other amounts due any party thereunder, and (3) comply with all rules and regulations of the POSGCD and other Applicable Law relating to any activity conducted pursuant to rights granted under the Groundwater Leases.

(D) Covenant Against Sale of the Project. The Project Company shall not sell, lease, assign, convey, move or otherwise transfer its ownership or other interests in the Project, the Project Sites, the Project Site Conveyance Instruments or the Raw Groundwater without the consent of SAWS given in its discretion, except in connection with an assignment of this Water Transmission and Purchase Agreement pursuant to Section 24.1 (Limitation on Assignment by Project Company). There shall be no Encumbrances registered or recorded on the Project Sites, the Project Site Conveyance Instruments or the Raw Groundwater or any part of the Project other than Permitted Encumbrances.

SECTION 26.2. RELATIONSHIP OF THE PARTIES.

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

SECTION 26.3. **NO OTHER BUSINESS; NO PUBLIC UTILITY.**

(A) **No Other Business.** The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or activities expressly permitted hereunder.

(B) **No Public Utility.** Nothing contained in this Water Transmission and Purchase Agreement shall be construed as an intent by the Project Company to dedicate its property or any Project facilities to public use or subject itself to rate regulation as a “retail public utility” (as defined in Chapter 13 of the Texas Water Code or any other Applicable Law).

SECTION 26.4. **GENERAL DUTY TO MITIGATE.**

(A) **Mitigation by the Project Company.** In all cases where the Project Company is entitled to receive any relief from SAWS, or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Uncontrollable Circumstance or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by SAWS to the Project Company under this Water Transmission and Purchase Agreement, or the length of the extension of time. Upon request from SAWS, the Project Company shall promptly submit a detailed description, supported by all such documentation as SAWS may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this Section.

(B) **Mitigation by SAWS.** In all cases where SAWS is entitled to receive from the Project Company any compensation, costs or damages, but not in any other cases, SAWS shall use all reasonable efforts to mitigate such amount required to be paid by the Project Company to SAWS under this Water Transmission and Purchase Agreement, provided that such obligation shall not require SAWS to:

1. Take any action which is contrary to the public interest, as determined by SAWS in its discretion;

2. Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or

3. Alter the amount of Deductions it is entitled to make in accordance with Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water).

SAWS shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or otherwise as expressly provided in this Water Transmission and Purchase Agreement. Upon request by the Project Company, SAWS shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by SAWS to mitigate and meet its obligations under this Section.
SECTION 26.5. OPPORTUNITIES.

(A) General. Except as may be specifically agreed in writing between SAWS and the Project Company during the Term, SAWS reserves the right to all commercial and other opportunities for, arising from, or related to, the Project.

(B) Opportunities Expressly Reserved. Without limiting the generality of Section 26.5(A) (General), SAWS reserves, and subject to the Project Company’s rights under Section 5.9 (Restrictions on SAWS-Requested Design Requirements and SAWS-Requested Capital Modifications), the right to arrange for and exclusively benefit from the conveyance and sale of Product Water to any person, and to direct the Project Company to make a SAWS-Directed Design Requirements Change or a SAWS-Directed Capital Modification to the Transmission Pipeline System to allow for the interconnection of pipelines necessary to convey Product Water to any person. The Product Water Delivery Point for any Product Water sold to any such person shall be the interconnection point on the Transmission Pipeline System designated by SAWS, and title to and ownership of all such Product Water shall pass to SAWS or the purchaser at such Product Water Delivery Point. In any such arrangement, the Project Company shall coordinate the granting of any easement rights and permitting use of the Transmission Pipeline System Real Property Interests as may be required for such interconnection, and SAWS shall remain solely responsible to the Project Company for the purchase of all Product Water in accordance herewith.

SECTION 26.6. CONTRACT ADMINISTRATION.

(A) Authority of SAWS Representative. The Project Company understands and agrees that the SAWS Representative has only limited authority with respect to the implementation of this Water Transmission and Purchase Agreement, and cannot bind SAWS with respect to any Water Transmission and Purchase Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the SAWS Representative. The SAWS Representative shall have the right at any time to issue the Project Company a written request for information relating to a possible breach of this Water Transmission and Purchase Agreement. Any such written request, with respect to a material breach designated as a “priority request” shall be responded to by the Project Company within three Business Days.

(B) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices to the Project Company shall be given by the SAWS Representative and Operating Notices to SAWS shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Water Transmission and Purchase Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Water Transmission and Purchase Agreement between the parties which do not require a Water Transmission and Purchase Agreement Amendment shall be a “Contract Administration Memorandum.” A Contract Administration Memorandum shall be prepared, once all preliminary communications have been
concluded, to evidence the resolution reached by SAWS and the Project Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

(1) Issues as to the meaning, interpretation or application of this Water Transmission and Purchase Agreement in particular circumstances or conditions;

(2) Calculations required to be made;

(3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and

(4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of SAWS reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the SAWS Representative and the Project Company Representative. SAWS and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Water Transmission and Purchase Agreement Amendments and all other documents relating to the administration and performance of this Water Transmission and Purchase Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Water Transmission and Purchase Agreement.

SECTION 26.7. WATER TRANSMISSION AND PURCHASE AGREEMENT AMENDMENTS.

(A) Amendment Generally. Notwithstanding the provisions of Section 26.6 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Water Transmission and Purchase Agreement shall be made except through a written amendment to this Water Transmission and Purchase Agreement (a “Water Transmission and Purchase Agreement Amendment”) duly authorized by SAWS and by the Project Company. Water Transmission and Purchase Agreement Amendments shall be dated and signed by the SAWS Representative and the Project Company Representative.

(B) Water Transmission and Purchase Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Water Transmission and Purchase Agreement, when a Water Transmission and Purchase Agreement Amendment or other agreement with respect to this Water Transmission and Purchase Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging the Water Transmission and Purchase Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 26.8. SAWS APPROVALS AND CONSENTS.

When this Water Transmission and Purchase Agreement requires any approval or consent by SAWS to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of Section 26.6 (Contract Administration), be given by the SAWS Representative in writing and such writing shall be conclusive evidence of such approval.
or consent, subject only to compliance by SAWS with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Water Transmission and Purchase Agreement, and except for (1) Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Water Transmission and Purchase Agreement, require a response or action, if SAWS does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 30 days of SAWS’ receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless SAWS’ approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification.

SECTION 26.9. DISCLOSED DATA.

It is the Project Company’s responsibility to have conducted its own analysis and review of the Project and, before the execution of this Water Transmission and Purchase Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. The Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any SAWS Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Water Transmission and Purchase Agreement on the grounds:

(1) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
(2) That the Disclosed Data was incorrect or insufficient; or
(3) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than SAWS,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Water Transmission and Purchase Agreement on any such ground.

SECTION 26.10. INTELLECTUAL PROPERTY RIGHTS.

The Project Company shall indemnify, defend and hold harmless SAWS and the SAWS Indemnities in the manner provided in Section 25.1 (Project Company’s Obligation to Indemnify) from and against any and all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Construction Work and the Operating Work. At its option, the Project Company shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe.

SECTION 26.11. ACTIONS OF SAWS IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Water Transmission and Purchase Agreement shall be interpreted as limiting the rights and obligations of SAWS under Applicable Law in its governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against SAWS, not based on this Water Transmission and Purchase Agreement, arising out of any act or omission of SAWS in its governmental capacity.
SECTION 26.12. PROJECT COMPANY’S CONFIDENTIALITY OBLIGATIONS.

(A) Confidential SAWS Information. The Project Company shall treat as confidential and proprietary to SAWS all information obtained from SAWS in connection with the Contract Obligations ("Confidential SAWS Information"). The Project Company shall not (a) use Confidential SAWS Information for any purpose other than the performance of the Contract Obligations, or (b) disclose any Confidential SAWS Information to any person other than its own employees, agents, Project Contractors or Subcontractors who have a need for such information in the performance of their work relating to the Project, unless such disclosure is specifically authorized in writing by SAWS.

(B) Security Plan. If requested by SAWS, the Project Company shall prepare a security plan to assure that Confidential SAWS Information is not used for any unauthorized purpose or disclosed to unauthorized persons by the Project Company or any of its Project Contractors or Subcontractors. The Project Company shall advise SAWS of any request for disclosure of such information or of any actual or potential disclosure of such information, whether or not a security plan has been prepared by the Project Company.

SECTION 26.13. SAWS’ CONFIDENTIALITY OBLIGATIONS.

(A) General. The Project Company acknowledges that SAWS is governed by and must comply with the Texas Public Information Act, as set forth in Chapter 552 of the Texas Government Code, as the same may be amended from time to time. SAWS shall have the right to disclose and make public any information received from the Project Company, except as provided in Section 26.13(C) (Confidential Project Company Information; Non-Disclosable Information) (the “Confidential Project Company Information”) and Section 26.13(E) (Procedures Upon Third Party Requests for Confidential Project Company Information).

(B) Disclosable Information. Specifically, SAWS shall have the right to disclose and make public certain information, including the following information, whether or not such information may be withheld pursuant to an exception to disclosure under the Texas Public Information Act:

1. information which is or comes into the public domain other than through any disclosure prohibited by this Water Transmission and Purchase Agreement;

2. reports, notices, certificates, audited financial statements and other documents that the Project Company delivers or causes to be delivered to SAWS;

3. information supplied to any Governmental Body, including regulatory reports and the information and sampling and testing results provided pursuant to Section 9.8(D) (Reports to Governmental Bodies);

4. periodic reports prepared by the Project Company pursuant to Section 9.11 (Periodic Reports);

5. records required to be retained and maintained pursuant to Section 9.12 (Maintenance of Records);

6. the Performance Test Report delivered to SAWS pursuant to Section 8.3(F) (Test Report);
(7) invoices prepared pursuant to Section 17.9 (Billing and Payment), including information and supporting documentation requested by SAWS pursuant to such Section;

(8) any information related to the maintenance, repair and replacement of the Project provided pursuant to Article 11 (Maintenance, Repair and Replacement);

(9) operating procedures, plans, and readings of monitors and operating manuals and records of chemical consumption;

(10) any output of the Contract Date Financial Model or Financial Close Financial Model; and

(11) photographs and videos of the exterior of the Project.

(C) **Confidential Project Company Information; Non-Disclosable Information.** Except as may be required by Applicable Law, SAWS agrees not to disclose the following information that is provided to SAWS and specifically identified by written notation as “confidential” at the time of disclosure to SAWS:

1. the computer programs that generated the Contract Date Financial Model and the Financial Close Financial Model;
2. process and instrumentation diagrams of Project systems and data sheets;
3. financial information regarding Project Contractors and Subcontractors;
4. any Project Contract or Subcontract;
5. information relating to trade secrets, or secret processes; and
6. any legal proceedings involving a Project Contract or Subcontract.

(D) **Use of Confidential Project Company Information by SAWS’ Professional Advisors and Consultants.** Notwithstanding the terms and provisions of Section 26.13(C) (Confidential Project Company Information; Non-Disclosable Information), SAWS may disclose or grant access to Confidential Project Company Information to its professional advisors and consultants to the extent necessary to enable SAWS to perform (or to cause to be performed) or to enforce its rights or obligations under this Water Transmission and Purchase Agreement (provided that such advisors and consultants agree for the benefit of the Project Company not to disclose such Confidential Project Company Information on such terms as may be reasonably agreed to by the Project Company and such advisors or consultants).

(E) **Procedures Upon Third Party Requests for Confidential Project Company Information.** If SAWS receives a third-party request under the Texas Public Information Act for Confidential Project Company Information, SAWS agrees to deliver prompt written notice to the Project Company of any such third-party request so that the Project Company may seek, at no cost to SAWS, an opinion from the Texas Attorney General for SAWS to withhold disclosure of such Confidential Project Company Information. The obligation to maintain the confidentiality of Confidential Project Company Information does not apply to the extent that SAWS is required
to disclose such Confidential Project Company Information as determined by the Texas Attorney General.

SECTION 26.14. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information of employees or agents of SAWS:

(1) with the prior consent of SAWS;

(2) to the extent necessary to perform the Project Company’s obligations under this Water Transmission and Purchase Agreement; and

(3) in accordance with Applicable Law, including the Public Information Act as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow SAWS on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

SECTION 26.15. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under all agreements of the Project Company which are material to the performance of its obligations under this Water Transmission and Purchase Agreement.

SECTION 26.16. BINDING EFFECT.

This Water Transmission and Purchase Agreement shall inure to the benefit of and shall be binding upon SAWS and the Project Company and any assignee acquiring an interest hereunder consistent with Article 24 (Assignment and Change in Control).

SECTION 26.17. NOTICES, CONSENTS AND APPROVALS.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Water Transmission and Purchase Agreement (other than Operating Notices as provided in Section 26.6(B) (Operating Notices), shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(1) if delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(2) if delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt)
on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(3) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

(4) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

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

San Antonio Water System
2800 US Hwy 281 North
San Antonio, TX 78212
Attention: President and Chief Executive Officer
Fax No.: (210) 233-5268
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System
2800 US Hwy 281 North
San Antonio, TX 78212
Attention: General Counsel
Fax No.: (210) 233-4587
Email: nancy.belsnky@saws.org

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

Abengoa Vista Ridge, Garney P3 LLC
1333 NW Vivion Road
Kansas City, MO 64118
2600 Via Fortuna, Suite 220
Austin, TX 78746
Attention: Manager and President
Fax No.: (512) 816-7322
Email: pedro.almagro@water.abengoamheitmann@garney.com

with a copy to:

Abengoa Vista Ridge, LLC
Husch Blackwell LLP
2600 Via Fortuna 4801 Main Street, Suite 2201000
Austin, TX 78746
Kansas City, MO 64112
Attention: Legal Counsel Charles G. Renner
Fax No.: (512) 816-732983
Email: araceli.gomez@water.abengoa.com Charles.renner@huschblackwell.com
SECTION 26.18. **NOTICE OF LITIGATION.**

In the event the Project Company or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 26.19. **FURTHER ASSURANCES.**

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Water Transmission and Purchase Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Water Transmission and Purchase Agreement.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties have caused this Water Transmission and Purchase Agreement to be executed by their duly authorized representatives as of the day and year first above written.

APPROVED BY THE CITY OF SAN ANTONIO, TEXAS, PURSUANT TO CITY ORDINANCE 2014-10-30-0818

By: /s/ Ivy R. Taylor
Name: Ivy R. Taylor
Title: Mayor
Date: November 4, 2014

THE CITY OF SAN ANTONIO, TEXAS ACTING BY AND THROUGH THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES

By: /s/ Berto Guerra, Jr.
Name: Heriberto “Berto” Guerra, Jr.
Title: Chairman
Date: November 4, 2014

ATTEST:

/s/ Leticia Vacek
Leticia Vacek
CITY CLERK

By: /s/ Robert R. Puente
Name: Robert R. Puente
Title: President/Chief Executive Officer
Date: November 4, 2014

APPROVED AS TO FORM: ABENGOA VISTA RIDGE, LLC

/s/ Robert F. Greenblum
Robert F. Greenblum
CITY ATTORNEY

By: /s/ Pedro Almagro Gavilán
Name: Pedro Almagro Gavilán
Title: Manager and President
Date: November 4, 2014
The parties have further caused the Conforming Contract Amendment to be executed and delivered by their duly authorized representatives as of May __, 2016

THE CITY OF SAN ANTONIO, TEXAS
ACTING BY AND THROUGH THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES

By:_____________________

Name:  Heriberto “Berto” Guerra, Jr.
Title:   Chairman
Date: May __, 2016

By: _______________________

Name:  Robert R. Puente
Title:   President/Chief Executive Officer
Date: May __, 2016

ABENGOA VISTA RIDGE, LLC

By: _______________________

Name: _____________________
Title: Manager and President
Date: May __, 2016
TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with the Bexar County Master Gardeners for a total amount not to exceed $237,500.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $95,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The Bexar County Master Gardeners, and professional staff, will be responsible for the following:
  - Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;
  - Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;
  - Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;
  - Participate in innovative programs and special projects promoting water conservation in the community.

Staff recommends that the Board approve this resolution.
FINANCIAL IMPACT:

Conservation funds will be made available from the System Fund. The total amount is not to exceed $237,500.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 5010000, Total 2016 amount: $47,500.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $237,500.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $95,000.00 for each year.

Karen L. Cruz
Director
Conservation

Donovan S. Burton
Vice President
Water Resource and Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A CONTRACT WITH BEXAR COUNTY MASTER GARDENERS IN AN AMOUNT NOT TO EXCEED $237,500.00, FOR AN INITIAL TERM ENDING DECEMBER 31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS, TO PROVIDE CONSERVATION OUTREACH AND PROGRAMS FOR THE COMMUNITY AND SPECIAL PROJECTS-associated WITH THE EXISTING SAN ANTONIO WATER SYSTEM CONSERVATION PROGRAMS; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $237,500.00 FROM THE SYSTEM FUND FOR THE REQUIRED SERVICES UNDER THE INITIAL CONTRACT, AND THAT EXPENDITURES FOR SUBSEQUENT YEARS BE MADE PURSUANT TO THE APPROPRIATIONS MADE IN THE ANNUAL BUDGETS APPROVED BY THE BOARD WITH A LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED TO THIS RESOLUTION AS ATTACHMENT I WITH THE BEXAR COUNTY MASTER GARDENERS, AND TO PAY BEXAR COUNTY MASTER GARDENERS AN AMOUNT NOT TO EXCEED $237,500.00 FOR THE INITIAL TERM OF THE CONTRACT; AUTHORIZING THAT ANY RENEWAL THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER SAME TERMS BE EXECUTED BY THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM, AND TO MAKE THE EXPENDITURES FOR THE TWO ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM FUND; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost effective approach to managing water resources; and

WHEREAS, the System’s goal is to reduce per capita water consumption; and
WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, the Bexar County Master Gardeners brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $237,500.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with the Bexar County Master Gardeners in an amount not to exceed $237,500.00, for the initial term ending December 2018 with two one-year options to extend, to provide conservation outreach and programs for the community and special projects associated with the existing System conservation programs; (ii) to approve the expenditure of funds in an amount not to exceed $237,500.00 for the required services under the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board, with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with the Bexar County Master Gardeners, and to pay Bexar County Master Gardeners an amount not to exceed $237,500.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with the Bexar County Master Gardeners in an amount not to exceed $237,500.00, for the initial term of the contract ending on December 31, 2018 with two one-year options to extend, in substantially the form attached as Attachment I, to provide educational workshops for landscape professionals and the community and special projects associated with the existing System conservation programs is hereby approved.

2. That a total amount not to exceed $237,500.00 for the initial term is hereby made available
and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with the Bexar County Master Gardeners, and to pay the Bexar County Master Gardeners an amount not to exceed $237,500.00 for the initial term.

4. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 18th day of May, 2016.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT

AGREEMENT FOR
WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)

Contract No. __________________

THIS IS A NON-PROFIT ORGANIZATION
PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

BEXAR COUNTY MASTER GARDENERS
a non-profit corporation incorporated in the State of Texas

3355 Cherry Ridge St., Suite 208
San Antonio, Texas 78230

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

1. Program Services.

(a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

(b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

(d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this Agreement, the services, and any information obtained by NPO through Water System in
connection with the performance of the services shall not be disclosed by NPO to any third party unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

The NPO further agrees to make the above requirement apply to any and all sub-consultant agreements in which the NPO has a contractual relationship for the services to be performed under the Agreement. All sub-consultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.
(h) **Equal Employment Opportunity/Minority Business Enterprise.** The NPO agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

(a) Term. The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D.

(b) Termination For Cause. The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

(d) Suspension. The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the NPO. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the NPO shall have the right to terminate this Agreement by written notice to the Water System. NPO may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives NPO written notice to resume the work. Termination (under this paragraph) by NPO shall be effective immediately upon the Water System’s receipt of said written notice from NPO.
(e) **Winding Up.** Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, NPO shall immediately phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders, programs and contracts, insofar as such orders, programs and contracts are chargeable to the Water System under this Agreement.

3. **Miscellaneous.**

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

**If to Water System:**
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: Project Manager  
Email:  

With copy to:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: General Counsel  
Email: Nancy.Belinsky@saws.org

**If to NPO:**
Bexar County Master Gardeners  
3355 Cherry Ridge St., Suite 208  
San Antonio, TX 78230  
Attn: Jack Downey  
Email: bcmgjack@gmail.com

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

(b) **Interest in Water System Agreements Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of NPO contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.
(c) Gift Policy: Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) Tax Matters. NPO shall be solely responsible for payment of all taxes related to NPO's provision of the services.

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

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

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

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

(i) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

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

THE WATER SYSTEM: San Antonio Water System

By: ________________________________
Philip C. Campos, Jr., CPA
Director, Contracting

______________________________
Date

NPO:

By: ________________________________
Signature

______________________________
Title

______________________________
Date

LIST OF EXHIBITS:
Exhibit A: Compensation for Performance Based Services
Exhibit B: Scope of Services
Exhibit C: Insurance Specifications
Exhibit D: Term of Contract
Exhibit E: Security Procedures
Exhibit F: List of Sub-Consultants
EXHIBIT A
COMPENSATION FOR PERFORMANCE BASED SERVICES

Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS and no/100 ($237,500.00) (“Maximum Fee”); provided however, only the amount of FIFTY THOUSAND and no/100 ($47,500.00) has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $95,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. Nonetheless, anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to an contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the initial term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the term, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be in the annual amount not to exceed amount of NINTY-FIVE THOUSAND DOLLARS AND NO CENTS ($95,000.00). It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($237,500.00).

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:
Program Administration Services

Monthly fee: $1,600.00

General Public Workshops

Workshops attended by 3 or less: $50.00
Workshops attended by 4-9 people: $150.00
Workshops attended by 10-19 people: $250.00
(These are not additive – A workshop that has 15 people is billed at $250.00)

Each persons over 19 people (20th person): $10.00 (Not to exceed $500.00)
(A workshop that has 28 in attendance is billed at $330.00)

Events

Per event day rate for events 1-4 hours: $200.00
Per event day rate for events over 5 hours: $300.00

Presentations on Conservation

Per speaking engagement: $75.00

1.5 Definitions of Basic Billing Rate Schedule Activity Requirements:

Program Administration Services:
To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive this monthly fee a contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinate contract related activities, included but not limited to weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

General Public Workshops:
These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and Sign-in sheets to confirm attendance is a requirement to ensure accurate payment.
Events/EVENT TABLE:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

PRESENTATION ON CONSERVATION:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

1.6 INNOVATIVE PROGRAMMING AND SPECIAL PROJECTS:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPOs under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

SECTION 2 - CHANGES
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.

SECTION 3 - METHOD OF PAYMENTS
Payment may be made to the NPO based upon the following:

3.1 NPO will submit a monthly invoice to Water System for the previous months work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.
Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.
5.2 Invoices shall be submitted using the format and platform provided by the Water System to the NPO.
5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.
5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO's additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO's failure to provide adequate documentation for acceptable assignments.
7.2 NPO's failure to invoice as required in Section 5.
7.3 Errors or mistakes in the NPO's or other documents prepared by the NPO which are the basis for the payment request.
7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO’s failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. **Program Minimum Monthly Administration Requirements**

The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. **Contacts and Hours of Operation**

NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name: Anna Vogler, email anna.vogler@bexarmg.org, cell phone #210-316-2650) as its representative for contacting in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. **Conducting Public Workshops**

NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. **Advertising**

NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. **Events**

Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf.
In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.

6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must also be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement, general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. **Commercial Insurance Specifications (“Specifications”):**

a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

This line of insurance coverage shall:

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

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

- $1,000,000.00 Occurrence Limit
- 2,000,000.00 General Aggregate
- 2,000,000.00 Products/Completed Operations Aggregate
- 1,000,000.00 Personal and Advertising Injury
- 1,000,000.00 Contractual Liability

This line of insurance coverage shall be endorsed:

- Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and
- To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY, and it shall be the CONSULTANT's responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT's liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written as to provide SAWS and the City thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT's performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to which the CONSULTANT may be held responsible for payments for damages to persons or property resulting from the CONSULTANT’s or its sub-consultant's performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of “A- (“A”- minus)” and a Financial Size Category of a “VII” or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

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

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

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

2. Certificate(s) of Liability Insurance (“Certificate”) Requirements

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful CONSULTANT pursuant to a Request for Proposal selection process, pending Board final approval, and, a request is made for you to submit your Company’s Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance (“Certificate(s)”) providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.
b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person’s name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the Insurance Specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:
   San Antonio Water System
   Attention: Contract Administration
   P.O. Box 2449
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

3. **SURVIVAL**

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

1. The Term of this Agreement shall commence on the 5th day of June, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1    June 5, 2016 through December 31, 2016
   b. Period 2    January 1, 2017 through December 31, 2017
   c. Period 3    January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1  January 1, 2019 through December 31, 2019
   b. Extension Period 2  January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approval for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in “EXHIBIT B” shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

NPO, its employees, and agents shall obtain a Water System photo identification badge (Contractor's Badge) and parking tag, prior to any work on Water System property, which shall be used only for purposes necessary to perform the work under this Agreement. Water System Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding Water System holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost or damaged badges or parking tags. As a condition of final payment, NPO shall return all badges and parking tags to the Security Office. In the event NPO fails to return all security badges and parking tags, in addition to any other rights or remedies to which Water System may be entitled at law or in equity, Water System may withhold from payment to the NPO the sum of $500.00 dollars per badge or parking tag as liquidated damages. NPO 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 Water System for failure to return the badges or parking tags.

The Water System facilities require a Water System employee to physically escort NPO at all times. The Water System may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of NPO is approved by Water System Security.

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

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave the Water System site immediately and not return until items are remedied.
EXHIBIT F
LIST OF SUB-CONSULTANTS

Bexar County Master Gardeners
Water Conservation Coordinator:
Anna Vogler
anna.vogler@bexarmg.org
210-316-2650
AGENDA ITEM NO. __________

TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with Build San Antonio Green for a total amount not to exceed $175,000.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $70,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The Build San Antonio Green, and professional staff, will be responsible for the following:
  - Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;
  - Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;
  - Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;
  - Participate in innovative programs and special projects promoting water conservation in the community.

- This contractor brings unique resources both in subject matter expertise and the unique site of Build San Antonio Green. The contractor is in full partnership with the City of San Antonio through the Parks and Recreation Department.
Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Conservation funds will be made available from the System Fund. The total amount is not to exceed $175,000.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 5010000, Total 2016 amount: $35,000.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $175,000.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $70,000.00 for each year.

Karen A. Guz  
Director  
Conservation

Donovan S. Burton  
Vice President  
Water Resource and Governmental Relations

Robert R. Puente  
President/Chief Executive Officer

APPROVED:
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A CONTRACT WITH BUILD SAN ANTONIO GREEN IN AN AMOUNT NOT TO EXCEED $175,000.00, FOR AN INITIAL TERM ENDING DECEMBER 31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS, TO PROVIDE CONSERVATION OUTREACH AND PROGRAMS FOR THE COMMUNITY AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING SAN ANTONIO WATER SYSTEM CONSERVATION PROGRAMS; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $175,000.00 FROM THE SYSTEM FUND FOR THE REQUIRED SERVICES UNDER THE INITIAL CONTRACT, AND THAT EXPENDITURES FOR SUBSEQUENT YEARS BE MADE PURSUANT TO THE APPROPRIATIONS MADE IN THE ANNUAL BUDGETS APPROVED BY THE BOARD WITH A LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED TO THIS RESOLUTION AS ATTACHMENT I WITH BUILD SAN ANTONIO GREEN, AND TO PAY BUILD SAN ANTONIO GREEN AN AMOUNT NOT TO EXCEED $175,000.00 FOR THE INITIAL TERM OF THE CONTRACT; AUTHORIZING THAT ANY RENEWAL THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER SAME TERMS BE EXECUTED BY THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM, AND TO MAKE THE EXPENDITURES FOR THE TWO ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM FUND; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost effective approach to managing water resources; and

WHEREAS, the System’s goal is to reduce per capita water consumption; and
WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, Build San Antonio Green brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $175,000.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with Build San Antonio Green in an amount not to exceed $175,000.00, for the initial term ending December 2018 with two one-year options to extend, to provide conservation outreach and programs for the community and special projects associated with the existing System conservation programs, (ii) to approve the expenditure of funds in an amount not to exceed $175,000.00 for the required services under the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with Build San Antonio Green, and to pay Build San Antonio Green an amount not to exceed $175,000.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with Build San Antonio Green in an amount not to exceed $175,000.00, for the initial term of the contract ending on December 31, 2018 with two one-year options to extend, in substantially the form attached as Attachment I, to provide educational workshops for landscape professionals and the community and special projects associated with the existing System conservation programs is hereby approved.

2. That a total amount not to exceed $175,000.00 for the initial term is hereby made available
and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with Build San Antonio Green, and to pay Build San Antonio Green an amount not to exceed $175,000.00 for the initial term.

4. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 18th day of May, 2016.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT

AGREEMENT FOR
WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)

Contract No. _______________

THIS IS A NON-PROFIT ORGANIZATION
PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

BUILD SAN ANTONIO GREEN
a non-profit corporation incorporated in the State of Texas
118 Broadway, Suite 232San Antonio, Texas 78205
210-224-7278

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

1. Program Services

   (a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

   (b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

   (d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this Agreement, the services, and any information obtained by NPO through Water System in connection with the performance of the services shall not be disclosed by NPO to any third party
unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

The NPO further agrees to make the above requirement apply to any and all sub-consultant agreements in which the NPO has a contractual relationship for the services to be performed under the Agreement. All sub-consultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.
(h) Equal Employment Opportunity/Minority Business Enterprise. The NPO agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

(a) Term. The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D.

(b) Termination For Cause. The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

(d) Suspension. The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the NPO. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the NPO shall have the right to terminate this Agreement by written notice to the Water System. NPO may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives NPO written notice to resume the work. Termination (under this paragraph) by NPO shall be effective immediately upon the Water System’s receipt of said written notice from NPO.
(e) **Winding Up.** Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, NPO shall immediately phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders, programs and contracts, insofar as such orders, programs and contracts are chargeable to the Water System under this Agreement.

3. **Miscellaneous.**

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

If to Water System:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: Project Manager  
Email:  

With copy to:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: General Counsel  
Email: Nancy.Belinsky@saws.org

If to NPO:  
NPO Name  
Address  
City, State, Zip  
Attn: POC Name  
Email:

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

(b) **Interest in Water System Agreements Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of NPO contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.
(c) Gift Policy: Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) Tax Matters. NPO shall be solely responsible for payment of all taxes related to NPO's provision of the services.

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

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

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

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

(i) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

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

THE WATER SYSTEM:  
San Antonio Water System

By: ____________________________  
Philip C. Campos, Jr., CPA  
Director, Contracting

_________________________________  
Date

NPO:

By: ____________________________  
Signature

_________________________________  
Title

_________________________________  
Date

**LIST OF EXHIBITS:**

Exhibit A: Compensation for Performance Based Services  
Exhibit B: Scope of Services  
Exhibit C: Insurance Specifications  
Exhibit D: Term of Contract  
Exhibit E: Security Procedures  
Exhibit F: List of Sub-Consultants
EXHIBIT A
COMPENSATION FOR PERFORMANCE BASED SERVICES

Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed **ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND no/100 ($175,000.00)** (“Maximum Fee”); provided however, only the amount of THIRTY-FIVE THOUSAND and no/100 ($35,000.00) has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $70,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. **Notwithstanding anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to and contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.**

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the Initial term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the term, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be in the annual amount not to exceed amount of **SEVENTY THOUSAND DOLLARS AND NO CENTS ($70,000.00)**. It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of **ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS ($175,000.00)**.

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:
Program Administration Services

Monthly fee: $1,600.00

General Public Workshops

Workshops attended by 3 or less: $50.00
Workshops attended by 4-9 people: $150.00
Workshops attended by 10-19 people: $250.00

(These are not additive – A workshop that has 15 people is billed at $250.00)

Each person over 19 people (20th person): $10.00 (Not to exceed $500.00)
(A workshop that has 28 in attendance is billed at $330.00)

Events

Per event day rate for events 1-4 hours: $200.00
Per event day rate for events over 5 hours: $300.00

Presentations on Conservation

Per speaking engagement: $75.00

1.5 Definitions of Basic Billing Rate Schedules Activity Requirements:

Program Administrative Services:

To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive this monthly fee a contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinate contract-related activities, including but not limited to weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

General Public Workshops:

These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and Sign-in sheets to confirm attendance is a requirement to ensure accurate payment.
Events/ Event Table:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

Presentation on Conservation:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

1.6 Innovative Programming and Special Projects:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPO’s under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

Section 2 - Changes
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.

Section 3 - Method of Payment
Payment may be made to the NPO based upon the following:

3.1 NPO will submit a monthly invoice to Water System for the previous months work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.
Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.
5.2 Invoices shall be submitted using the format and platform provided by the Water System to the NPO.
5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.
5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO’s additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO’s failure to provide adequate documentation for acceptable assignments.
7.2 NPO’s failure to invoice as required in Section 5.
7.3 Errors or mistakes in the NPO’s or other documents prepared by the NPO which are the basis for the payment request.
7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO’s failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. **Program Minimum Monthly Administration Requirements**

The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. **Contacts and Hours of Operation**

NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name:_________, email_____________________, cell phone #__________________) as its representative for contact in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. **Conducting Public Workshops**

NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. **Advertising**

NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. **Events**

Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf. In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.
6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. Commercial Insurance Specifications ("Specifications"):

   a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System ("SAWS") and the City of San Antonio ("the City") and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

      This line of insurance coverage shall:

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

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

      $1,000,000.00 Occurrence Limit
      2,000,000.00 General Aggregate
      2,000,000.00 Products/Completed Operations Aggregate
      1,000,000.00 Personal and Advertising Injury
      1,000,000.00 Contractual Liability

      This line of insurance coverage shall be endorsed:

      • Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and
      • To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the CONSULTANT’s responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT’s liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written as to provide SAWS and the City thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT's performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to which the CONSULTANT may be held responsible for payments for damages to persons or property resulting from the CONSULTANT’s or its sub-consultant's performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of “A- (“A”- minus)” and a Financial Size Category of a “VII” or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

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

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

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

2. **Certificate(s) of Liability Insurance ("Certificate") Requirements**

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful CONSULTANT pursuant to a Request for Proposal selection process, pending Board final approval, and, a request is made for you to submit your Company’s Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance ("Certificate(s)") providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.
b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person’s name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the insurance specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
*SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:

   San Antonio Water System
   Attention: Contract Administration
   P.O. Box 2449
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

3. **SURVIVAL**

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

1. The Term of this Agreement shall commence on the 5th day of June, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1         June 5, 2016 through December 31, 2016
   b. Period 2         January 1, 2017 through December 31, 2017
   c. Period 3         January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1  January 1, 2019 through December 31, 2019
   b. Extension Period 2  January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approval for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in “EXHIBIT B” shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

NPO, its employees, and agents shall obtain a Water System photo identification badge (Contractor's Badge) and parking tag, prior to any work on Water System property, which shall be used only for purposes necessary to perform the work under this Agreement. Water System Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding Water System holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost, damaged badges or parking tags. As a condition of final payment, NPO shall return all badges and parking tags to the Security Office. In the event NPO fails to return all security badges and parking tags, in addition to any other rights or remedies to which Water System may be entitled at law or in equity, Water System may withhold from payment to the NPO the sum of $500.00 dollars per badge or parking tag as liquidated damages. NPO agrees that the actual amount of damages for failure to return the badges and/or parking tags is 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 Water System for failure to return the badges or parking tags.

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

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

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave the Water System site immediately and not return until items are remedied.
EXHIBIT F
LIST OF SUB-CONSULTANTS
TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with the Garden Volunteers of South Texas for a total amount not to exceed $237,500.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $95,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The Garden Volunteers of South Texas, and professional staff, will be responsible for the following:
  
  o Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;

  o Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;

  o Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;

  o Participate in innovative programs and special projects promoting water conservation in the community.

Staff recommends that the Board approve this resolution.
FINANCIAL IMPACT:

Conservation funds will be made available from the System Fund. The total amount is not to exceed $237,500.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 5010000, Total 2016 amount: $47,500.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $237,500.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $95,000.00 for each year.

Karen L. Guz
Director
Conservation

Donovan S. Burton
Vice President
Water Resource and Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A CONTRACT WITH THE GARDEN VOLUNTEERS OF SOUTH TEXAS IN AN AMOUNT NOT TO EXCEED $237,500.00, FOR AN INITIAL TERM ENDING DECEMBER 31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS, TO PROVIDE CONSERVATION OUTREACH AND PROGRAMS FOR THE COMMUNITY AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING SAN ANTONIO WATER SYSTEM CONSERVATION PROGRAMS; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $237,500.00 FROM THE SYSTEM FUND FOR THE REQUIRED SERVICES UNDER THE INITIAL CONTRACT, AND THAT EXPENDITURES FOR SUBSEQUENT YEARS BE MADE PURSUANT TO THE APPROPRIATIONS MADE IN THE ANNUAL BUDGETS APPROVED BY THE BOARD WITH A LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED TO THIS RESOLUTION AS ATTACHMENT I WITH THE GARDEN VOLUNTEERS OF SOUTH TEXAS, AND TO PAY THE GARDEN VOLUNTEERS OF SOUTH TEXAS AN AMOUNT NOT TO EXCEED $237,500.00 FOR THE INITIAL TERM OF THE CONTRACT, AUTHORIZING THAT ANY RENEWAL THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER SAME TERMS BE EXECUTED BY THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM, AND TO MAKE THE EXPENDITURES FOR THE TWO ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM FUND; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost effective approach to managing water resources; and

WHEREAS, the System’s goal is to reduce per capita water consumption; and
WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, the Garden Volunteers of South Texas brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $237,500.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with the Garden Volunteers of South Texas in an amount not to exceed $237,500.00, for the initial term ending December 2018 with two one-year options to extend, to provide conservation outreach and programs for the community and special projects associated with the existing System conservation programs, (ii) to approve the expenditure of funds in an amount not to exceed $237,500.00 for the required services under the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with the Garden Volunteers of South Texas, and to pay the Garden Volunteers of South Texas an amount not to exceed $237,500.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with the Garden Volunteers of South Texas in an amount not to exceed $237,500.00, for the initial term of the contract ending on December 31, 2018 with two one-year options to extend, in substantially the form attached as Attachment I, to provide educational workshops for landscape professionals and the community and special projects associated with the existing System conservation programs is hereby approved.
2. That a total amount not to exceed $237,500.00 for the initial term is hereby made available and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with the Garden Volunteers of South Texas, and to pay the Garden Volunteers of South Texas an amount not to exceed $237,500.00 for the initial term.

4. That the System’s President/Chief Executive Office or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED the 18th day of May, 2016.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT

AGREEMENT FOR

WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)

Contract No. _______________

THIS IS A NON-PROFIT ORGANIZATION PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

GARDEN VOLUNTEERS OF SOUTH TEXAS
a non-profit corporation incorporated in the State of Texas
ADDRESS
San Antonio, Texas 782--

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

1. Program Services

(a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

(b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

(d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this Agreement, the services, and any information obtained by NPO through Water System in connection with the performance of the services shall not be disclosed by NPO to any third party...
unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

The NPO further agrees to make the above requirement apply to any and all sub-consultant agreements in which the NPO has a contractual relationship for the services to be performed under the Agreement. All sub-consultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.
(h) **Equal Employment Opportunity/Minority Business Enterprise.** The NPO agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

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

(b) **Termination For Cause.** The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

(d) **Suspension.** The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the NPO. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the NPO shall have the right to terminate this Agreement by written notice to the Water System. NPO may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives NPO written notice to resume the work. Termination (under this paragraph) by NPO shall be effective immediately upon the Water System’s receipt of said written notice from NPO.
(e) **Winding Up.** Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, NPO shall immediately phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders, programs and contracts, insofar as such orders, programs and contracts are chargeable to the Water System under this Agreement.

3. **Miscellaneous.**

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

   If to Water System:
   
   San Antonio Water System  
   2800 US Hwy 281 North  
   San Antonio, Texas 78212  
   Attn: Project Manager  
   Email:  

   With copy to:
   
   San Antonio Water System  
   2800 US Hwy 281 North  
   San Antonio, Texas 78212  
   Attn: General Counsel  
   Email: Nancy.Belinsky@saws.org  

   If to NPO:
   
   NPO Name  
   Address  
   City, State, Zip  
   Attn: POC Name  
   Email:  

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

   (b) **Interest in Water System Agreements Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of NPO contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.
(c) Gift Policy: Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) Tax Matters. NPO shall be solely responsible for payment of all taxes related to NPO’s provision of the services.

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

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

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

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

(i) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

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

THE WATER SYSTEM:  
San Antonio Water System

By: ________________________________  
Philip C. Campos, Jr., CPA  
Director, Contracting

______________________________  
Date

NPO:

By: ________________________________  
Signature

______________________________  
Title

______________________________  
Date

**LIST OF EXHIBITS:**

Exhibit A: Compensation for Performance Based Services  
Exhibit B: Scope of Services  
Exhibit C: Insurance Specifications  
Exhibit D: Term of Contract  
Exhibit E: Security Procedures  
Exhibit F: List of Sub-Consultants
EXHIBIT A
COMPENSATION FOR PERFORMANCE BASED SERVICES

Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS and no/100 ($237,500.00) (“Maximum Fee”); provided however, only the amount of FOURTY SEVEN THOUSAND FIVE HUNDRED and no/100 ($47,500.00) has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $95,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. Notwithstanding anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are a not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to an contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the initial term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the terms, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be in the annual amount not to exceed amount of NINTY-FIVE THOUSAND DOLLARS AND NO CENTS ($95,000.00). It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($237,500.00).

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:
Program Administration Services

Monthly fee: $1,600.00

General Public Workshops

Workshops attended by 3 or less $ 50.00
Workshops attended by 4-9 people $ 150.00
Workshops attended by 10 -19 people: $ 250.00
(These are not additive – A workshop that has 15 people is billed at $250.00)

Each persons over 19 people (20th person): $10.00 (Not to exceed $50.00)
(A workshop that has 28 in attendance is billed at $330.00)

Events

Per event day rate for events 1-4 hours: $ 200.00
Per event day rate for events over 5 hours: $ 300.00

Presentations on Conservation

Per speaking engagement: $ 75.00

1.5 Definitions of Basic Billing Rate Schedule Activity Requirements:

Program Administrative Services:
To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive this monthly fee a contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinate contract related activities, included but not limited to weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

General Public Workshops:
These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and Sign-in sheets to confirm attendance is a requirement to ensure accurate payment.
Events/ Event Table:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

Presentation on Conservation:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

1.6 Innovative Programming and Special Projects:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPO’s under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services, including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

Section 2 - Changes
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.

Section 3 - Method of Payments
Payment may be made to the NPO based upon the following:

3.1 NPO will submit a monthly invoice to Water System for the previous months work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.
Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.
5.2 Invoices shall be submitted using the format and platform provided by the Water System to the NPO.
5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.
5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO's additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO's failure to provide adequate documentation for acceptable assignments.
7.2 NPO's failure to invoice as required in Section 5.
7.3 Errors or mistakes in the NPO's or other documents prepared by the NPO which are the basis for the payment request.
7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO's failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. **Program Minimum Monthly Administration Requirements**

The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. **Contacts and Hours of Operation**

NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name:_________, email_____________________, cell phone #__________________) as its representative for contact in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. **Conducting Public Workshops**

NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. **Advertising**

NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. **Events**

Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf. In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.
6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. **Commercial Insurance Specifications (“Specifications”):**

   a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

   This line of insurance coverage shall:

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

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

   $ 1,000,000.00 Occurrence Limit
   2,000,000.00 General Aggregate
   2,000,000.00 Products/Completed Operations Aggregate
   1,000,000.00 Personal and Advertising Injury
   1,000,000.00 Contractual Liability

   This line of insurance coverage shall be endorsed:

   • Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and
   • To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the CONSULTANT's responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT's liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written so as to provide SAWS and the City thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT's performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the 
CONSULTANT to stop performing services hereunder and/or withhold any 
payment(s) which become due to the CONSULTANT hereunder until the 
CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to 
which the CONSULTANT may be held responsible for payments for damages to 
persons or property resulting from the CONSULTANT’s or its sub-consultant's 
performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-
contributory with respect to any insurance or self-insurance carried by SAWS, the 
City and their employees and agents for liability arising out of operations under this 
Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these 
Specifications shall be with insurance companies, firms or entities that have an 
A.M. Best rating of “A- (“A”- minus)” and a Financial Size Category of a “VII” or 
better. All lines of insurance coverage shall be of an "Occurrence" type except for 
the Professional Liability line of insurance coverage.

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

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

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

2. Certificate(s) of Liability Insurance ("Certificate") Requirements

Prior to the commencement of any Services under this Contract and once notified by 
SAWS Contracting Official that your Company has been selected as the apparent 
successful CONSULTANT pursuant to a Request for Proposal selection process, pending 
Board final approval, and, a request is made for you to submit your Company’s Certificate 
of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted 
to SAWS Contracting Department within 5 business days, a Certificate(s) of 
Liability Insurance (“Certificate(s)”) providing evidence of the lines of insurance 
coverage pursuant to Section 1.a.1) through 1.a.5) above.
b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person's name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the insurance Specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
*SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:
   San Antonio Water System
   Attention: Contract Administration
   P.O. Box 2449
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

3. **SURVIVAL**

Any and all representations, covenants and warranties made by Consultant under this Contract including, without limitation, the provisions of Section 1.a.2), 1.a.3) and 1.a.4) of these Commercial Insurance Specifications and Certificates of Liability Insurance Requirements are of the essence of this Contract and shall survive the execution and delivery of it, and all statements contained in any document required by SAWS whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.
EXHIBIT D
TERM OF CONTRACT

1. The Term of this Agreement shall commence on the 5th day of June, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1    June 5, 2016 through December 31, 2016
   b. Period 2    January 1, 2017 through December 31, 2017
   c. Period 3    January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1  January 1, 2019 through December 31, 2019
   b. Extension Period 2  January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approval for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in "EXHIBIT B" shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

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

The Water System facilities require a Water System employee to physically escort NPO at all times. The Water System may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of NPO is approved by Water System Security.

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

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave the Water System site immediately and not return until items are remedied.
EXHIBIT F
LIST OF SUB-CONSULTANTS
TO:                  San Antonio Water System Board of Trustees

FROM:               Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH:            Robert R. Puente, President/Chief Executive Officer

SUBJECT:            APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with Green Space Alliance for a total amount not to exceed $100,000.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $40,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The Green Space Alliance, and professional staff, will be responsible for the following:
  
  - Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;
  
  - Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;
  
  - Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;
  
  - Participate in innovative programs and special projects promoting water conservation in the community.

- This contractor brings unique resources both in subject matter expertise and the unique site of the Green Space Alliance. The contractor is in full partnership with the City of San Antonio through the Parks and Recreation Department.
Awarding a Contract
Water Conservation Outreach Programs

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Conservation funds will be made available from the System Fund. The total amount is not to exceed $100,000.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 5010000, Total 2016 amount: $20,000.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $100,000.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $40,000.00 for each year.

Approving:

Kareh L. Guz
Director
Conservation

Donovan S. Burton
Vice President
Water Resource and Governmental Relations

Robert R. Puente
President/Chief Executive Officer
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A CONTRACT WITH GREEN SPACE ALLIANCE IN AN AMOUNT NOT TO EXCEED $100,000.00, FOR AN INITIAL TERM ENDING DECEMBER 31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS, TO PROVIDE CONSERVATION OUTREACH AND PROGRAMS FOR THE COMMUNITY AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING SAN ANTONIO WATER SYSTEM CONSERVATION PROGRAMS; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $100,000.00 FROM THE SYSTEM FUND FOR THE REQUIRED SERVICES UNDER THE INITIAL CONTRACT, AND THAT EXPENDITURES FOR SUBSEQUENT YEARS BE MADE PURSUANT TO THE APPROPRIATIONS MADE IN THE ANNUAL BUDGETS APPROVED BY THE BOARD WITH A LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED TO THIS RESOLUTION AS ATTACHMENT I WITH GREEN SPACE ALLIANCE, AND TO PAY GREEN SPACE ALLIANCE AN AMOUNT NOT TO EXCEED $100,000.00 FOR THE INITIAL TERM OF THE CONTRACT; AUTHORIZING THAT ANY RENEWAL THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER SAME TERMS BE EXECUTED BY THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM, AND TO MAKE THE EXPENDITURES FOR THE TWO ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM FUND; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost effective approach to managing water resources; and

WHEREAS, the System’s goal is to reduce per capita water consumption; and
WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, Green Space Alliance brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $100,000.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with the Green Space Alliance in an amount not to exceed $100,000.00, for the initial term ending December 2018 with two one-year options to extend, to provide conservation outreach and programs for the community and special projects associated with the existing System conservation programs, (ii) to approve the expenditure of funds in an amount not to exceed $100,000.00 for the required services during the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with Green Space Alliance, and to pay Green Space Alliance an amount not to exceed $100,000.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with Green Space Alliance in an amount not to exceed $100,000.00, for the initial term of the contract ending December 31, 2018 with two one-year options to extend, to provide educational workshops for landscape professionals and the community and special projects associated with the existing System conservation programs is hereby approved.

2. That a total amount not to exceed $100,000.00 for the initial term is hereby made available
and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with Green Space Alliance, and to pay Green Space Alliance an amount not to exceed $100,000.00 for the initial term.

4. That the System’s President Chief Executive Officer or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 18th day of May, 2016.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT

AGREEMENT FOR

WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)

Contract No. _______________

THIS IS A NON-PROFILE ORGANIZATION
PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

GREEN SPACES ALLIANCE
a non-profit corporation incorporated in the State of Texas
ADDRESS
San Antonio, Texas 782--

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

1. Program Services

(a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

(b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

(d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this Agreement, the services, and any information obtained by NPO through Water System in connection with the performance of the services shall not be disclosed by NPO to any third party...
unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

The NPO further agrees to make the above requirement apply to any and all sub-consultant agreements in which the NPO has a contractual relationship for the services to be performed under the Agreement. All sub-consultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.
(h) Equal Employment Opportunity/Minority Business Enterprise. The NPO agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

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

   (b) **Termination For Cause.** The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

   (d) **Suspension.** The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the NPO. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the NPO shall have the right to terminate this Agreement by written notice to the Water System. NPO may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives NPO written notice to resume the work. Termination (under this paragraph) by NPO shall be effective immediately upon the Water System’s receipt of said written notice from NPO.
(e) **Winding Up.** Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, NPO shall immediately phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders, programs and contracts, insofar as such orders, programs and contracts are chargeable to the Water System under this Agreement.

3. **Miscellaneous.**

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

If to Water System:
San Antonio Water System
2800 US Hwy 281 North
San Antonio, Texas 78212
Attn: Project Manager
Email: [Email]

With copy to:
San Antonio Water System
2800 US Hwy 281 North
San Antonio, Texas 78212
Attn: General Counsel
Email: Nancy.Belinsky@saws.org

If to NPO:
NPO Name
Address
City, State, Zip
Attn: POC Name
Email:

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

(b) **Interest in Water System Agreements Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of NPO contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.
(c) **Gift Policy:** Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) **Tax Matters.** NPO shall be solely responsible for payment of all taxes related to NPO's provision of the services.

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

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

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

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

(i) **Governing Law; Jurisdiction.** This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

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

**THE WATER SYSTEM:**
San Antonio Water System

**By:** ________________________________
Philip C. Campos, Jr., CPA
Director, Contracting

______________________________
Date

**NPO:**

By: ________________________________
Signature

______________________________
Title

______________________________
Date

**LIST OF EXHIBITS:**
Exhibit A: Compensation for Performance Based Services
Exhibit B: Scope of Services
Exhibit C: Insurance Specifications
Exhibit D: Term of Contract
Exhibit E: Security Procedures
Exhibit F: List of Sub-Consultants
Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed **ONE HUNDRED THOUSAND DOLLARS AND NO/100 ($100,000.00)** ("Maximum Fee"); provided however, only the amount of **TWENTY THOUSAND AND NO/100 ($20,000.00)** has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $40,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. Notwithstanding anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are a not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to an contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the Initial term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the term, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be at the annual amount not to exceed amount of **FOURTY THOUSAND DOLLARS AND NO CENTS ($40,000.00)**. It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 **Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of ** **ONE HUNDRED THOUSAND DOLLARS AND NO CENTS ($100,000.00)**.

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:
Program Administration Services

Monthly fee: $1,600.00

General Public Workshops

Workshops attended by 3 or less: $50.00
Workshops attended by 4-9 people: $150.00
Workshops attended by 10-19 people: $250.00

(These are not additive – A workshop that has 15 people is billed at $250.00)

Each persons over 19 people (20th person): $10.00 (Not to exceed $500.00)

(A workshop that has 28 in attendance is billed at $330.00)

Events

Per event day rate for events 1-4 hours: $200.00
Per event day rate for events over 5 hours: $300.00

Presentations on Conservation

Per speaking engagement: $75.00

1.5 Definitions of Basic Billing Rate Schedule Activity Requirements:

Program Administrative Services:
To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive this monthly fee a contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinated contract related activities, included but not limited to weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

General Public Workshops:
These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and Sign-in sheets to confirm attendance is a requirement to ensure accurate payment.
Events/ Event Table:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

Presentation on Conservation:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

1.6 Innovative Programming and Special Projects:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPO’s under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

Section 2 - Changes
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.

Section 3 - Method of Payments
Payment may be made to the NPO based upon the following:

3.1 NPO will submit a monthly invoice to Water System for the previous months work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.
Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.
5.2 Invoices shall be submitted using the format and platform provided by the Water System to the NPO.
5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.
5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO's additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO's failure to provide adequate documentation for acceptable assignments.
7.2 NPO's failure to invoice as required in Section 5.
7.3 Errors or mistakes in the NPO's or other documents prepared by the NPO which are the basis for the payment request.
7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO’s failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. **Program Minimum Monthly Administration Requirements**

The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. **Contacts and Hours of Operation**

NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name:_________, email_____________________, cell phone #__________________) as its representative for contact in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. **Conducting Public Workshops**

NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. **Advertising**

NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. **Events**

Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf. In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.
6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. **Commercial Insurance Specifications (“Specifications”):**

   a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

   This line of insurance coverage shall:

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

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

   - $1,000,000.00 Occurrence Limit
   - 2,000,000.00 General Aggregate
   - 2,000,000.00 Products/Completed Operations Aggregate
   - 1,000,000.00 Personal and Advertising Injury
   - 1,000,000.00 Contractual Liability

   This line of insurance coverage shall be endorsed:

   - Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and
   - To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY, and it shall be the CONSULTANT’s responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT's liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, do not relieve the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written so as to provide SAWS and the City thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT’s performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT’s failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to which the CONSULTANT may be held responsible for payments for damages to persons or property resulting from the CONSULTANT’s or its sub-consultant’s performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of “A- (“A” minus)” and a Financial Size Category of a “VII” or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

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

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

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

2. Certificate(s) of Liability Insurance (“Certificate”) Requirements

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful CONSULTANT pursuant to a Request for Proposal selection process, pending Board final approval, and, a request is made for you to submit your Company’s Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance (“Certificate(s)”) providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.
b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person’s name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the insurance Specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/Contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:

   San Antonio Water System  
   Attention: Contract Administration  
   P.O. Box 2449  
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

3. **SURVIVAL**

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

1. The Term of this Agreement shall commence on the 5th day of June, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1    June 5, 2016 through December 31, 2016
   b. Period 2    January 1, 2017 through December 31, 2017
   c. Period 3    January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1  January 1, 2019 through December 31, 2019
   b. Extension Period 2  January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approval for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in “EXHIBIT B” shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

NPO, its employees, and agents shall obtain a Water System photo identification badge (Contractor's Badge) and parking tag, prior to any work on Water System property, which shall be used only for purposes necessary to perform the work under this Agreement. Water System Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding Water System holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost, damaged badges or parking tags. As a condition of final payment, NPO shall return all badges and parking tags to the Security Office. In the event NPO fails to return all security badges and parking tags, in addition to any other rights or remedies to which Water System may be entitled at law or in equity, Water System may withhold from payment to the NPO the sum of $500.00 dollars per badge or parking tag as liquidated damages. NPO agrees that the actual amount of damages for failure to return the badges and/or parking tags is 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 Water System for failure to return the badges or parking tags.

The Water System facilities require a Water System employee to physically escort NPO at all times. The Water System may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of NPO and approved by Water System Security.

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

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave the Water System site immediately and not return until items are remedied.
AGENDA ITEM NO. 11

TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with the National Audubon Society, Inc. Mitchell Lake Audubon Center for a total amount not to exceed $150,000.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $60,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The National Audubon Society, Inc. Mitchell Lake Audubon Center, and professional staff, will be responsible for the following:
  
  - Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;
  
  - Maintain the unique SAWS sponsored public wildscape demonstration gardens surrounding the Leaper House at Mitchell Lake Audubon Center with appropriate landscaping examples for our region that benefit both water conservation and migratory birds protected by the International Migratory Bird Treaty celebrating its 100th anniversary;
  
  - Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;
  
  - Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;
Participate in innovative programs and special projects promoting water conservation in the community.

This contractor brings unique resources both in subject matter expertise and the unique site of Mitchel Lake, owned by SAWS and managed by Nation Audubon Society as the Mitchell Lake Audubon Center.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Conservation funds will be made available from the System Fund. The total amount is not to exceed $150,000.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 5010000, Total 2016 amount: $30,000.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $150,000.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $60,000.00 for each year.

Karen L. Guz
Director
Conservation

Donovan S. Burton
Vice President
Water Resource and Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF
TRUSTEES APPROVING A CONTRACT WITH THE
NATIONAL AUDUBON SOCIETY, INC. MITCHELL LAKE
AUDUBON CENTER IN AN AMOUNT NOT TO EXCEED
$150,000.00, FOR AN INITIAL TERM ENDING DECEMBER
31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS,
TO PROVIDE CONSERVATION OUTREACH AND
PROGRAMS FOR THE COMMUNITY AND SPECIAL
PROJECTS ASSOCIATED WITH THE EXISTING SAN
ANTONIO WATER SYSTEM CONSERVATION
PROGRAMS; APPROVING THE EXPENDITURE OF
FUNDS IN AN AMOUNT NOT TO EXCEED $150,000.00
FROM THE SYSTEM FUND FOR THE REQUIRED
SERVICES UNDER THE INITIAL CONTRACT, AND THAT
EXPENDITURES FOR SUBSEQUENT YEARS BE MADE
PURSUANT TO THE APPROPRIATIONS MADE IN THE
ANNUAL BUDGETS APPROVED BY THE BOARD WITH A
LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING
THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS
DULY APPOINTED DESIGNEE TO EXECUTE THE
CONTRACT IN SUBSTANTIALLY THE FORM
ATTACHED TO THIS RESOLUTION AS ATTACHMENT I
WITH THE NATIONAL AUDUBON SOCIETY, INC.
MITCHELL LAKE AUDUBON CENTER, AND TO PAY THE
NATIONAL AUDUBON SOCIETY, INC. MITCHELL LAKE
AUDUBON CENTER AN AMOUNT NOT TO EXCEED
$150,000.00 FOR THE INITIAL TERM OF THE
CONTRACT; AUTHORIZING THAT ANY RENEWAL
THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER
SAME TERMS BE EXECUTED BY THE
PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY
APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS
PRIOR TO THE EXPIRATION OF THE CURRENT TERM,
AND TO MAKE THE EXPENDITURES FOR THE TWO
ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM
FUND; FINDING THE RESOLUTION TO HAVE BEEN
CONSIDERED PURSUANT TO THE LAWS GOVERNING
OPEN MEETINGS; PROVIDING A SEVERABILITY
CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by
the San Antonio Water System (the “System”) as a cost effective approach to managing water
resources; and
WHEREAS, the System’s goal is to reduce per capita water consumption; and

WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, the National Audubon Society, Inc. Mitchell Lake Audubon Center brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $150,000.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with the National Audubon Society, Inc. Mitchell Lake Audubon Center in an amount not to exceed $150,000.00, for the initial term ending December 31, 2018 with two one-year options to extend, to provide education and programs for the community and special projects associated with the existing System conservation programs, (ii) to approve the expenditure of funds in an amount not to exceed $150,000.00 for the required services under the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with the National Audubon Society, Inc. Mitchell Lake Audubon Center, and to pay the National Audubon Society, Inc. Mitchell Lake Audubon Center an amount not to exceed $150,000.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with the National Audubon Society, Inc. Mitchell Lake Audubon Center in an amount not to exceed $150,000.00, for the initial term of the contract ending on December 31, 2018 with two one-year options to extend, in substantially the form attached as Attachment I, to provide educational workshops for landscape professionals and the community and special
projects associated with the existing System conservation programs is hereby approved.

2. That a total amount not to exceed $150,000.00 for the initial term is hereby made available and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with the National Audubon Society, Inc. Mitchell Lake Audubon Center, and to pay the National Audubon Society, Inc. Mitchell Lake Audubon Center an amount not to exceed $150,000.00 for the initial term.

4. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 18th day of May, 2016.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT
AGREEMENT FOR
WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)

Contract No. ______________

THIS IS A NON-PROFIT ORGANIZATION
PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

NATIONAL AUDUBON SOCIETY, INC.
MITCHELL LAKE AUDUBON CENTER
a non-profit corporation incorporated in the State of Texas
ADDRESS
San Antonio, Texas 782--

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

1. Program Services.

(a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

(b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

(d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this
Agreement, the services, and any information obtained by NPO through Water System in connection with the performance of the services shall not be disclosed by NPO to any third party unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

The NPO further agrees to make the above requirement apply to any and all sub-consultant agreements in which the NPO has a contractual relationship for the services to be performed under the Agreement. All sub-consultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.
(h) **Equal Employment Opportunity/Minority Business Enterprise.** The NPO agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

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

   (b) **Termination For Cause.** The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

   (d) **Suspension.** The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the NPO. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the NPO shall have the right to terminate this Agreement by written notice to the Water System. NPO may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives NPO written notice to resume the work. Termination (under this paragraph) by NPO shall be effective immediately upon the Water System’s receipt of said written notice from NPO.
(e) **Winding Up.** Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, NPO shall immediately phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders, programs and contracts, insofar as such orders, programs and contracts are chargeable to the Water System under this Agreement.

3. **Miscellaneous.**

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

If to Water System:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: Project Manager  
Email:  

With copy to:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: General Counsel  
Email: Nancy.Belinsky@saws.org  

If to NPO:  
NPO Name  
Address  
City, State, Zip  
Attn: POC Name  
Email:  

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

(b) **Interest in Water System Agreements Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of NPO contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.
(c) Gift Policy: Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) Tax Matters. NPO shall be solely responsible for payment of all taxes related to NPO's provision of the services.

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

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

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

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

(i) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

THE WATER SYSTEM: San Antonio Water System

By: ________________________________  
Philip C. Campos, Jr., CPA  
Director, Contracting

____________________________________  Date

NPO:

By: ________________________________  
Signature

____________________________________  Title

____________________________________  Date

LIST OF EXHIBITS:

Exhibit A: Compensation for Performance Based Services  
Exhibit B: Scope of Services  
Exhibit C: Insurance Specifications  
Exhibit D: Term of Contract  
Exhibit E: Security Procedures  
Exhibit F: List of Sub-Consultants
EXHIBIT A
COMPENSATION FOR PERFORMANCE BASED SERVICES

Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed **ONE HUNDRED FIFTY THOUSAND DOLLARS and no/100 ($150,000.00)** (“Maximum Fee”); provided however, only the amount of THIRTY THOUSAND and no/100 ($30,000.00) has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $60,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. **Notwithstanding anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are a not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to an contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.**

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the Initial term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the term, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be in the annual amount not to exceed amount of **SIXTY THOUSAND DOLLARS AND NO CENTS ($60,000.00)**. It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($150,000.00)**.

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:

**Program Administration Services**

| Monthly fee: | $2,400.00 |
General Public Workshops

Workshops attended by 3 or less $ 50.00
Workshops attended by 4-9 people $ 150.00
Workshops attended by 10-19 people: $ 250.00
(These are not additive – A workshop that has 15 people is billed at $250.00)

Each persons over 19 people (20th person): $10.00 (Not to exceed $500.00)
(A workshop that has 28 in attendance is billed at $330.00)

Events

Per event day rate for events 1-4 hours: $ 200.00
Per event day rate for events over 5 hours: $ 300.00

Presentations on Conservation

Per speaking engagement: $ 75.00

1.5 Definitions of Basic Billing Rate Schedule Activity Requirements:

Program Administrative Services:
To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive this monthly fee a contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinated contract related activities, included but not limited to weekly coordination with Water System staff on activities ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

As a sole source Site-Based NPO the Mitchell Lake Audubon Center is expected to maintain certain site based activities and features available to the public in support of the water conservation mission for the duration of the contract. This includes maintaining the Leaper House Wildscape demonstration gardens and native areas that promote water conservation in the landscape. In addition, occasionally and when convenient to both parties, where is does not interfere with standard programming or rentals, the site will be made available at no additional cost to the Water System for meetings and gatherings not to exceed 200 at no additional cost other than is described as part of the Program Administration fee. Except any supplemental costs of catering, security, clean-up will be borne by SAWS.
General Public Workshops:
These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and Sign-in sheets to confirm attendance is a requirement to ensure accurate payment.

Events/ Event Table:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

Presentation on Conservation:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

Coordination and Joint Events or Activities:
Unless otherwise agreed to in advance through the payment approval process by the Water System and all parties involved, where a joint event between NPO partner organizations occurs, the payment for the joint event or activities will default to the site-based organization. Site and non-site based NPO partners may have separate agreements between themselves regarding payments or responsibilities for joint events as desired and deemed appropriate. These arrangements between NPO partners does not constitute a sub-contractor relationship.

1.6 Innovative Programming and Special Projects:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPO’s under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

Section 2 - Changes
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.
Section 3 - Method of Payments

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

3.1 NPO will submit a monthly invoice to Water System for the previous months work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.

Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.
5.2 Invoices shall be submitted using the format and platform provided by the Water System to the NPO.
5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.
5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO's additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO's failure to provide adequate documentation for acceptable assignments.
7.2 NPO's failure to invoice as required in Section 5.
7.3 Errors or mistakes in the NPO's or other documents prepared by the NPO which are the basis for the payment request.
7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO’s failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. **Program Minimum Monthly Administration Requirements**

The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities and shall submit a minimum of four (4) IPSP proposals annually for consideration. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. **Contacts and Hours of Operation**

NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name:_________, email_____________________, cell phone #__________________) as its representative for contact in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. **Conducting Public Workshops**

NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops unless otherwise agreed to through and IPSP agreement. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. **Advertising**

NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. **Events**

Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf.
In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.

6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement, general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. Commercial Insurance Specifications (“Specifications”):

   a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

   This line of insurance coverage shall:

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

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

   $ 1,000,000.00  Occurrence Limit
   2,000,000.00  General Aggregate
   2,000,000.00  Products/Completed Operations Aggregate
   1,000,000.00  Personal and Advertising Injury
   1,000,000.00  Contractual Liability

   This line of insurance coverage shall be endorsed:

   • Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and
   • To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the CONSULTANT’s responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT’s liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written as to provide SAWS and the City thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT’s performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to which the CONSULTANT may be held responsible for payments for damages to persons or property resulting from the CONSULTANT’s or its sub-consultant's performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of “A- (“A”- minus)” and a Financial Size Category of a “VII” or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

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

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

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

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

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful CONSULTANT pursuant to a Request for Proposal selection process, pending Board final approval, and, a request is made for you to submit your Company’s Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance (“Certificate(s)”) providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.

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b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person's name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the insurance Specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/Contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:
   San Antonio Water System
   Attention: Contract Administration
   P.O. Box 2449
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

3. **SURVIVAL**

Any and all representations, conditions and warranties made by Consultant under this Contract including, without limitation, the provisions of Section 1.a.2), 1.a.3) and 1.a.4) of these Commercial Insurance Specifications and Certificates of Liability Insurance Requirements are of the essence of this Contract and shall survive the execution and delivery of it, and all statements contained in any document required by SAWS whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.
1. The Term of this Agreement shall commence on the__________, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1    ________, 2016 through December 31, 2016
   b. Period 2    January 1, 2017 through December 31, 2017
   c. Period 3    January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1    January 1, 2019 through December 31, 2019
   b. Extension Period 2    January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approval for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in “EXHIBIT B” shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

NPO, its employees, and agents shall obtain a Water System photo identification badge (Contractor's Badge) and parking tag, prior to any work on Water System property, which shall be used only for purposes necessary to perform the work under this Agreement. Water System Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding Water System holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost, damaged badges or parking tags. As a condition of final payment, NPO shall return all badges and parking tags to the Security Office. In the event NPO fails to return all security badges and parking tags, in addition to any other rights or remedies to which Water System may be entitled at law or in equity, Water System may withhold from payment to the NPO the sum of $500.00 dollars per badge or parking tag as liquidated damages. NPO agrees that the actual amount of damages for failure to return the badges and/or parking tags is 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 Water System for failure to return the badges or parking tags.

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

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

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave the Water System site immediately and not return until items are remedied.
AGENDA ITEM NO. 12

TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with the San Antonio Botanical Society for a total amount not to exceed $212,500.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $85,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The San Antonio Botanical Society, in close consultation and partnership with the San Antonio Botanical Garden professional staff, will be responsible for the following:
  - Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;
  - Maintain the popular and unique SAWS sponsored public demonstration gardens, WaterSaver Lane and WaterSaver Garden, along with appropriate landscaping examples for our region found in the native gardens uniquely located at the San Antonio Botanical Garden, 555 Funston, San Antonio Texas, 78209;
  - Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;
  - Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;
Awarding a Contract
Water Conservation Outreach Programs

- Participate in innovative programs and special projects promoting water conservation in the community.

- This contractor brings unique resources both in subject matter expertise and the unique site of the San Antonio Botanical Garden. The contractor is in full partnership with the City of San Antonio through the Parks and Recreation Department.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Conservation funds will be made available from the System Fund. The total amount is not to exceed $212,500.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 501000, Total 2016 amount: $42,500.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $212,500.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $85,000.00 for each year.

Karen L. Guz
Director
Conservation

Donovan S. Burton
Vice President
Water Resource and Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A CONTRACT WITH THE SAN ANTONIO BOTANICAL SOCIETY IN AN AMOUNT NOT TO EXCEED $212,500.00, FOR AN INITIAL TERM ENDING DECEMBER 31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS, TO PROVIDE CONSERVATION OUTREACH AND PROGRAMS FOR THE COMMUNITY AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING SAN ANTONIO WATER SYSTEM CONSERVATION PROGRAMS; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $212,500.00 FROM THE SYSTEM FUND FOR THE REQUIRED SERVICES UNDER THE INITIAL CONTRACT, AND THAT EXPENDITURES FOR SUBSEQUENT YEARS BE MADE PURSUANT TO THE APPROPRIATIONS MADE IN THE ANNUAL BUDGETS APPROVED BY THE BOARD WITH A LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED TO THIS RESOLUTION AS ATTACHMENT I WITH THE SAN ANTONIO BOTANICAL SOCIETY, AND TO PAY THE SAN ANTONIO BOTANICAL SOCIETY AN AMOUNT NOT TO EXCEED $212,500.00 FOR THE INITIAL TERM OF THE CONTRACT; AUTHORIZING THAT ANY RENEWAL THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER SAME TERMS BE EXECUTED BY THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM, AND TO MAKE THE EXPENDITURES FOR THE TWO ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM FUND; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost effective approach to managing water resources; and

WHEREAS, the System’s goal is to reduce per capita water consumption; and
WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, the San Antonio Botanical Society brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $212,500.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with the San Antonio Botanical Society in an amount not to exceed $212,500.00, for the initial term ending December 31, 2018 with two one-year options to extend, to provide conservation outreach and programs for the community and special projects associated with the existing System conservation programs, (ii) to approve the expenditure of funds in an amount not to exceed $212,500.00 for the required services under the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with the San Antonio Botanical Society, and to pay the San Antonio Botanical Society an amount not to exceed $212,500.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with the San Antonio Botanical Society in an amount not to exceed $212,500.00, for the initial term of the contract ending December 31, 2018 with two one-year options to extend, in substantially the form attached as Attachment I, to provide educational workshops for landscape professionals and the community and special projects associated with the existing System conservation programs is hereby approved.

2. That a total amount not to exceed $212,500.00 for the initial term is hereby made available
and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with the San Antonio Botanical Society, and to pay the San Antonio Botanical Society an amount not to exceed $212,500.00 for the initial term.

4. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 18th day of May, 2016.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT
AGREEMENT FOR
WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)
Contract No. ______________

THIS IS A NON-PROFILE ORGANIZATION PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

SAN ANTONIO BOTANICAL SOCIETY
a non-profit corporation incorporated in the State of Texas
555 Funston
San Antonio, Texas 78209

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

1. Program Services

(a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

(b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

(d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this Agreement, the services, and any information obtained by NPO through Water System in
connection with the performance of the services shall not be disclosed by NPO to any third party unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

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

(h) **Equal Employment Opportunity/Minority Business Enterprise.** The NPO agrees not to engage in employment practices which have the effect of discriminating against any
employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

2. Term, Termination and Suspension.
(a) **Term.** The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D.

(b) **Termination For Cause.** The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

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

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

3. Miscellaneous.

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

If to Water System: San Antonio Water System
2800 US Hwy 281 North
San Antonio, Texas 78212
Attn: Project Manager
Email:

With copy to: San Antonio Water System
2800 US Hwy 281 North
San Antonio, Texas 78212
Attn: General Counsel
Email: Nancy.Belinsky@saws.org

If to NPO: NPO Name
Address
City, State, Zip
Attn: POC Name
Email:

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

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

(c) Gift Policy: Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M. – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code
of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) **Tax Matters.** NPO shall be solely responsible for payment of all taxes related to NPO's provision of the services.

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

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

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

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

(i) **Governing Law; Jurisdiction.** This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

THE WATER SYSTEM:   San Antonio Water System

By: ________________________________
    Philip C. Campos, Jr., CPA
    Director, Contracting

______________________________
Date

NPO:

By: ________________________________
    Signature

______________________________
Title

______________________________
Date

LIST OF EXHIBITS:

Exhibit A:  Compensation for Performance Based Services
Exhibit B:  Scope of Services
Exhibit C:  Insurance Specifications
Exhibit D:  Term of Contract
Exhibit E:  Security Procedures
Exhibit F:  List of Sub-Consultants
EXHIBIT A
COMPENSATION FOR PERFORMANCE BASED SERVICES

Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed TWO HUNDRED TWELVE THOUSAND FIVE HUNDRED DOLLARS and no/100 ($212,500.00) (“Maximum Fee”); provided however, only the amount of FOURTY TWO THOUSAND FIVE HUNDRED and no/100 ($42,500.00) has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $85,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. Notwithstanding anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are a not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to an contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the Initial Term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the term, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be in the annual amount not to exceed amount of EIGHTY FIVE THOUSAND DOLLARS AND NO CENTS ($85,000.00). It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of TWO HUNDRED TWELVE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($212,500.00).

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:

Program Administration Services

Monthly fee: $2,400.00
**General Public Workshops**

Workshops attended by 3 or less $ 50.00  
Workshops attended by 4-9 people $ 150.00  
Workshops attended by 10 -19 people: $ 250.00  
*(These are not additive – A workshop that has 15 people is billed at $250.00)*

Each persons over 19 people (20th person): $10.00 (Not to exceed $500.00)  
*(A workshop that has 28 in attendance is billed at $330.00)*

**Events**

Per event day rate for events 1-4 hours: $ 200.00  
Per event day rate for events over 5 hours: $ 300.00

**Presentations on Conservation**

Per speaking engagement: $ 75.00

1.5 **Definitions of Basic Billing Rate Schedule Activity Requirements:**

**Program Administrative Services:**

To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive this monthly fee a contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinate contract related activities, included but not limited to weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

As a sole source Site-Based NPO the San Antonio Botanical Society is expected to maintain certain site based activities and features available to the public in support of the water conservation mission for the duration of the contract. This includes WaterSaver Lane, WaterSaver Garden, and native areas that promote water conservation in the landscape. In addition, occasionally and when convenient to both parties, where is does not interfere with standard programming or rentals, the site will be made available at no additional cost to the Water System for meetings and gatherings not to exceed 200 at no additional cost other than is described as part of the Program Administration fee. Except any supplemental costs of catering, security, clean-up will be borne by SAWS.
General Public Workshops:
These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and sign-in sheets to confirm attendance is a requirement to ensure accurate payment.

Events/Event Table:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

Presentation on Conservation:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

Coordination and Joint Events or Activities:
Unless otherwise agreed to in advance through the payment approval process by the Water System and all parties involved, where a joint event between NPO partner organizations occurs, the payment for the joint event or activities will default to the site-based organization. Site and non-site based NPO partners may have separate agreements between themselves regarding payments or responsibilities for joint events as desired and deem between the parties as appropriate. These arrangements between NPO partners do not constitute a sub-contractor relationship.

1.6 Innovative Programming and Special Projects:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPO’s under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

Section 2 - Changes
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.
Section 3 - Method of Payments

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

3.1 NPO will submit a monthly invoice to Water System for the previous month's work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.

Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.
5.2 Invoices shall be submitted using the formatted platform provided by the Water System to the NPO.
5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.
5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO's additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO’s failure to provide adequate documentation for acceptable assignments.
7.2 NPO’s failure to invoice as required in Section 5.
7.3 Errors or mistakes in the NPO’s or other documents prepared by the NPO which are the basis for the payment request.
7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO’s failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. Program Minimum Monthly Administration Requirements

The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities annually and shall submit a minimum of four (4) IPSP proposals annually for consideration. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. Contacts and Hours of Operation

NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name:_________, email_____________________, cell phone #__________________) as its representative for contact in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. Conducting Public Workshops

NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops unless otherwise agreed to through an IPSP agreement. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. Advertising

NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. Events

Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf.
In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.

6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement, general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. Commercial Insurance Specifications (“Specifications”):

   a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

   This line of insurance coverage shall:

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

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

   
   $ 1,000,000.00   Occurrence Limit  
   2,000,000.00   General Aggregate  
   2,000,000.00   Products/Completed Operations Aggregate  
   1,000,000.00   Personal and Advertising Injury  
   1,000,000.00   Contractual Liability

   This line of insurance coverage shall be endorsed:

   • Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and
   • To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the CONSULTANT’s responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT’s liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, does not release the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written as to provide SAWS and the City thirty (30) calendar days advance written notice directly of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT’s performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT’s failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to which the CONSULTANT may be held responsible for payments for damages to persons or property resulting from the CONSULTANT’s or its sub-consultant's performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of “A- (“A”- minus)” and a Financial Size Category of a “VII” or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

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

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

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

2. Certificate(s) of Liability Insurance (“Certificate”) Requirements

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful CONSULTANT pursuant to a Request for Proposal selection process, pending Board final approval, and, a request is made for you to submit your Company’s Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance (“Certificate(s)”) providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.
b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person’s name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the Insurance Specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:
   San Antonio Water System
   Attention: Contract Administration
   P.O. Box 2449
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant, and upon request furnish copies to SAWS.

3. **SURVIVAL**

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

1. The Term of this Agreement shall commence on the 5th day of June, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1 ______, 2016 through December 31, 2016
   b. Period 2 January 1, 2017 through December 31, 2017
   c. Period 3 January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1 January 1, 2019 through December 31, 2019
   b. Extension Period 2 January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approval for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in “EXHIBIT B” shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

NPO, its employees, and agents shall obtain a Water System photo identification badge (Contractor's Badge) and parking tag, prior to any work on Water System property, which shall be used only for purposes necessary to perform the work under this Agreement. Water System Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding Water System holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost, damaged badges or parking tags. As a condition of final payment, NPO shall return all badges and parking tags to the Security Office. In the event NPO fails to return all security badges and parking tags, in addition to any other rights or remedies to which Water System may be entitled at law or in equity, Water System may withhold from payment to the NPO the sum of $500.00 dollars per badge or parking tag as liquidated damages. NPO 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 Water System for failure to return the badges or parking tags.

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

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

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

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

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

NPO 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 Water System for failure to return the badges or parking tags.
TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING A CONTRACT TO PROVIDE CONSERVATION OUTREACH FOR LANDSCAPE PROFESSIONALS AND THE COMMUNITY, AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING WATER CONSERVATION PROGRAMS

Board Action Date: May 18, 2016

SUMMARY AND RECOMMENDATION:

The attached resolution approves a contract with William R. Sinkin Eco Centro for a total amount not to exceed $137,500.00, for the initial contract term ending December 31, 2018, one-year optional terms for a total not to exceed $55,000.00 per each of the two one-year options, to provide conservation outreach to landscape professionals and the community, and special projects associated with the San Antonio Water System (SAWS) water conservation programs.

- The William R. Sinkin Eco Centro, and professional staff, will be responsible for the following:
  - Designate a Conservation Coordinator that will work closely with SAWS staff on SAWS conservation programming efforts including, but not limited to events, rebate programs, education programs, workshops and special projects;
  - Maintain the unique SAWS sponsored public demonstration gardens and rainwater catchment structures at the William R. Sinkin Eco Centro for the benefit of the community and educational activities;
  - Develop public education programs on topics such as proper irrigation system installation and maintenance, landscape design, plant selection and installation, and proper horticultural practices for low-water-use gardening through workshops and educational outreach promoting low-water-use landscaping to the general public;
  - Partner with other landscape professional and community organizations in the San Antonio area to provide conservation education and outreach to the San Antonio community;
  - Participate in innovative programs and special projects promoting water conservation in the community.
Awarding a Contract
Water Conservation Outreach Programs

- This contractor brings unique resources both in subject matter expertise and the unique site of William R. Sinkin Eco Centro located on the San Antonio Community College campus in full partnership with Alamo Community Colleges District.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Conservation funds will be made available from the System Fund. The total amount is not to exceed $137,500.00 over the initial term ending December 31, 2018. For the first year, the services will be paid from the System Funds budgeted in the 2016 budget (Account Code: 511219, Account Unit: 5010000, Total 2016 amount: $27,500.00). Expenditures for subsequent Fiscal Years (2017 and beyond) will be included in those Fiscal Years’ budgets with a line item for such expenditures and are contingent upon the Board’s approval of each Fiscal Year’s Budget.

Total contract cost is not to exceed $137,500.00 over the initial term ending December 31, 2018.

If determined that an extension is favorable to SAWS, price and service considered, the award includes the availability of the two one-year options to extend as provided for and approved in future year’s budgets for a total not to exceed $55,000.00 for each year.

Karen L. Guz
Director
Conservation

Donovan S. Burton
Vice President
Water Resource and Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A CONTRACT WITH WILLIAM R. SINKIN ECO CENTRO IN AN AMOUNT NOT TO EXCEED $137,500.00, FOR AN INITIAL TERM ENDING DECEMBER 31, 2018 WITH TWO ONE-YEAR EXTENSION OPTIONS, TO PROVIDE CONSERVATION OUTREACH AND PROGRAMS FOR THE COMMUNITY AND SPECIAL PROJECTS ASSOCIATED WITH THE EXISTING SAN ANTONIO WATER SYSTEM CONSERVATION PROGRAMS; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $137,500.00 FROM THE SYSTEM FUND FOR THE REQUIRED SERVICES UNDER THE INITIAL CONTRACT, AND THAT EXPENDITURES FOR SUBSEQUENT YEARS BE MADE PURSUANT TO THE APPROPRIATIONS MADE IN THE ANNUAL BUDGETS APPROVED BY THE BOARD WITH A LINE ITEM FOR SUCH EXPENDITURES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT IN SUBSTANTIALLY THE FORM ATTACHED TO THIS RESOLUTION AS ATTACHMENT I WITH WILLIAM R. SINKIN ECO CENTRO, AND TO PAY WILLIAM R. SINKIN ECO CENTRO AN AMOUNT NOT TO EXCEED $137,500.00 FOR THE INITIAL TERM OF THE CONTRACT; AUTHORIZING THAT ANY RENEWAL THROUGH THE TWO ONE-YEAR OPTIONS IF UNDER SAME TERMS BE EXECUTED BY THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE BY NOTICE OF INTENT 30 DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM, AND TO MAKE THE EXPENDITURES FOR THE TWO ONE-YEAR OPTIONS AVAILABLE FROM THE SYSTEM FUND; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost effective approach to managing water resources; and

WHEREAS, the System’s goal is to reduce per capita water consumption; and
WHEREAS, the San Antonio City Council has adopted water conservation as a goal in the City of San Antonio’s Master Plan; and

WHEREAS, it is beneficial for the System to promote sound water conservation practices well into the future; and

WHEREAS, the System benefits through the expansion of the Conservation Team in promoting water conservation to the community; and

WHEREAS, the effectiveness of conservation programming can be increased through partnerships with community organizations; and

WHEREAS, William R. Sinkin Eco Centro brings unique and invaluable knowledge and assistance in facilitating community outreach, programming and research for water conservation; and

WHEREAS, the required amount of $137,500.00 for the required services for the initial term is available from the System Fund, and that expenditures for subsequent years be pursuant to and contingent upon Board approval of subsequent year’s budgets with a line item for such expenditures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a contract with the William R. Sinkin Eco Centro in an amount not to exceed $137,500.00, for the initial term ending December 31, 2018 with two one-year options to extend, to provide conservation outreach and programs for the community and special projects associated with the existing System conservation programs, (ii) to approve the expenditure of funds in an amount not to exceed $137,500.00 for the required services under the initial term, and that the expenditures for subsequent years be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract in substantially the form attached to this resolution as Attachment I, with William R. Sinkin Eco Centro, and to pay William R. Sinkin Eco Centro an amount not to exceed $137,500.00 for the initial term, and (iv) to authorize that any renewal through the two one-year options if under same terms be executed by the President/Chief Executive Officer or his duly appointed designee by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a contract with William R. Sinkin Eco Centro in an amount not to exceed $137,500.00, for the initial term of the contract ending on December 31, 2018 with two one-year options to extend, in substantially the form attached as Attachment I, to provide educational workshops for landscape professionals and the community and special projects associated with the existing
System conservation programs is hereby approved.

2. That a total amount not to exceed $137,500.00 for the initial term is hereby made available and is to be expended from the System Fund for these services, and that expenditures for subsequent years shall be made pursuant to the appropriations made in the annual budgets approved by the Board with a line item for such expenditures.

3. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to further negotiate and execute the contract with William R. Sinkin Eco Centro, and to pay William R. Sinkin Eco Centro an amount not to exceed $137,500.00 for the initial term.

4. That the System’s President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute any renewal through the two one-year options, if under same terms, by notice of intent 30 days prior to the expiration of the current term, and to make the expenditures for the two one-year options available from the System Fund.

5. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Titles 1, Chapter 551, Government Code.

6. If any part, section, paragraph, sentence, clause, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 18th day of May, 2016.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
SAN ANTONIO WATER SYSTEM
WATER CONSERVATION AGREEMENT

AGREEMENT FOR
WATER CONSERVATION PROGRAM ADMINISTRATION SERVICES
(The “Project”)

Contract No. _______________

THIS IS A NON-PROFIT ORGANIZATION PERFORMANCE BASED AGREEMENT (this “Agreement”) by and between

William R. Sinkin ECO CENTRO
ALAMO COMMUNITY COLLEGE DISTRICT
a non-profit Texas junior college and local governmental unit of the State of Texas
1802 N. Main
San Antonio, Texas 78212

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

1. Program Services.

(a) Program Services. During the term of this Agreement, the NPO will provide services to the Water System in accordance with the highest professional standards. NPO shall perform the services described on Exhibit B attached hereto and incorporated herein. The NPO shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E.

(b) Compensation. The Water System shall pay NPO as set forth on the attached Exhibit A for activities performed to the specifications stated on Exhibit B, as determined by Water System.

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

(d) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the services provided by NPO associated with this contract. Accordingly, this
Agreement, the services, and any information obtained by NPO through Water System in connection with the performance of the services shall not be disclosed by NPO to any third party unless directly related to the approved services of this Agreement. However, the Water System is subject to the Texas Public Information Act, and therefore, the NPO shall, upon receipt of a request for any information obtained by NPO in the performance of this Agreement, provide notice to Water System of the request within 24 business hours along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by NPO. In no event shall NPO provide or participate in any public presentations or prepare or present any papers for public dissemination concerning specific information obtained in connection with this contract, without receiving the prior approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

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

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

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

The NPO further agrees to make the above requirement apply to any and all sub-consultant agreements in which the NPO has a contractual relationship for the services to be performed under the Agreement. All sub-consultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the sub-consultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.
(h) **Equal Employment Opportunity/Minority Business Enterprise.** The NPO agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

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

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

(a) Term. The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D.

(b) Termination For Cause. The Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by the Water System of this Agreement for "Cause" shall mean termination upon (i) the neglect, breach or inattention by NPO of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by the Water System to NPO, (ii) the engaging by NPO in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by NPO to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by the Water System to NPO. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the NPO shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by NPO in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(j) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

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

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

(d) Suspension. The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the NPO. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the NPO shall have the right to terminate this Agreement by written notice to the Water System. NPO may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives NPO written notice to resume the work. Termination (under this paragraph) by NPO shall be effective immediately upon the Water System’s receipt of said written notice from NPO.
(e) **Winding Up.** Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, NPO shall immediately phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders, programs and contracts, insofar as such orders, programs and contracts are chargeable to the Water System under this Agreement.

3. **Miscellaneous.**

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

If to Water System:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: Project Manager  
Email:  

With copy to:  
San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: General Counsel  
Email: Nancy.Belinsky@saws.org  

If to NPO:  
San Antonio College Eco Centro  
1819 N. Main Ave. Box 635  
San Antonio, Texas 78212  
Attn: Julie Cornelius  
Email: jcornelius19@alamo.edu  

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

(b) **Interest in Water System Agreements Prohibited.** No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of NPO contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.
(c) Gift Policy: Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources; please see Section M – Gifts or Benefits of the Water System’s Code of Ethical Standards. Section M of the Water System’s Code of Ethical Standards regarding Gifts or Benefits is available on the SAWS Business Center website.

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

(d) Tax Matters. NPO shall be solely responsible for payment of all taxes related to NPO's provision of the services.

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

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

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

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

(i) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.
(j) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

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

THE WATER SYSTEM: San Antonio Water System

By: ________________________________
   Philip C. Campos, Jr., CPA
   Director, Contracting

__________________________________
Date

NPO:

By: ________________________________
   Signature
   Title

__________________________________
Date

LIST OF EXHIBITS:
Exhibit A: Compensation for Performance Based Services
Exhibit B: Scope of Services
Exhibit C: Insurance Specifications
Exhibit D: Term of Contract
Exhibit E: Security Procedures
Exhibit F: List of Sub-Consultants
EXHIBIT A
COMPENSATION FOR PERFORMANCE BASED SERVICES

Section 1 – Basis for Compensation

1.1 The total fee for all services and expenses when earned under this Agreement (Initial Term) shall not exceed **ONE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS and no/100 ($137,500.00)** ("Maximum Fee"); provided however, only the amount of FIFTY THOUSAND and no/100 ($27,500.00) has been approved and appropriated by the San Antonio Water System for expenditure under this Agreement for the remaining of fiscal year 2016. The total fee for each subsequent fiscal year during the term of this Agreement is anticipated to be $55,000.00, but such amount is subject to and contingent upon approval by the Board of Trustees of the Water System of a budget with a line item for such expenditure. **Notwithstanding anything herein to the contrary, nothing herein shall constitute a right of NPO to earn the Maximum Fee Amount; it being agreed and acknowledged by NPO that the fees herein are a not to exceed amount only, and that there is no guaranty that the NPO will earn all or any portion of the Maximum Fee Amount and all such fees are subject to an contingent upon appropriation of the funds for the fees by the San Antonio Water System Board of Trustees.**

1.2 Water System shall have the option (the “Option Term[s]”) to renew and extend the Agreement, upon the expiration of the Initial Term or a subsequent term hereunder, on the same terms and conditions for up to two additional one year terms as provided for in Exhibit D, unless terminated sooner in accordance with the Agreement. Should Water System desire to renew the terms, it will provide the NPO notice of its intent thirty days prior to the expiration of the then current term. The compensation, when earned, for the Options Terms, if authorized, shall be in the annual amount not to exceed amount of **FIFTY-FIVE THOUSAND DOLLARS AND NO CENTS ($55,000.00)**. It is agreed and understood that these subsequent annual amounts will constitute full compensation for those services during each subsequent authorized Option Term, conditioned upon Water System Board of Trustees approving the appropriation of funds in subsequent year’s budgets with a line item for such expenditures.

1.3 **Total compensation for all services paid for the Initial Term (if authorized) shall not exceed the cumulative sum of ONE HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($137,500.00).**

1.4 For the purpose of establishing costs to the Water System, the following Basic Billing Rate Schedule of fees shall apply:

**Program Administration Services**

Monthly fee: $2,400.00
General Public Workshops

Workshops attended by 3 or less $ 50.00
Workshops attended by 4-9 people $ 150.00
Workshops attended by 10-19 people: $ 250.00
(These are not additive – A workshop that has 15 people is billed at $250.00)

Each persons over 19 people (20th person): $10.00 (Not to exceed $500.00)
(A workshop that has 28 in attendance is billed at $330.00)

Events

Per event day rate for events 1-4 hours: $ 200.00
Per event day rate for events over 5 hours: $ 300.00

Presentations on Conservation

Per speaking engagement: $ 75.00

1.5 Definitions of Basic Billing Rate Schedule Activity Requirements:

Program Administrative Services:
To receive this monthly fee the NPO must be scheduled to complete a minimum of 30 pre-approved workshops, events, presentations and/or activities approved by Water System.

In addition, to receive the monthly fee, the contractor must have a Conservation Coordinator (CC) identified at all times. The CC primary function in the NPO shall be to coordinate contract related activities, included but not limited to weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back-up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities.

As a sole source Site-Based NPO Eco Centro is expected to maintain certain site based activities and features available to the public in support of the water conservation mission for the duration of the contract. This includes maintaining the rain water catchment, rain gardens, and WaterSaver landscape demonstration gardens on site. In addition, occasionally and when convenient to both parties, where is does not interfere with standard programming or rentals, the site will be made available at no additional cost to the Water System for meetings and gatherings not to exceed 200 at no additional cost other than is described as part of the Program Administration fee. Except any supplemental costs of catering, security, clean-up will be borne by SAWS.
General Public Workshops:
These programs are generally conducted on a single topic that has been pre-approved with a start time and an ending time, less than four (4) hours long. General workshops will be advertised by NPO in the most effective ways possible. Registration is required and Sign-in sheets to confirm attendance is a requirement to ensure accurate payment.

Events/ Event Table:
Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water system on its behalf. Events must be pre-approved to be eligible for payment.

Presentation on Conservation:
These are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These presentations must be pre-approved to be eligible for payment.

Coordination and Joint Events or Activities:
Unless otherwise agreed to in advance through the payment approval process by the Water System and all parties involved, where a joint event between NPO partner organizations occurs, the payment for the joint event or activities will default to the site-based organization. Site and non-site based NPO partners may have separate agreements between themselves regarding payments or responsibilities for joint events as desired and deem between the parties as appropriate. These arrangements between NPO partners does not constitute a sub-contractor relationship.

1.6 Innovative Programming and Special Projects:
The NPO selected organization(s) may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all NPO’s under contract. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be pre-approved and documented in writing. Program Administrative Services fees may be directly tied to the deliverables and outcomes of any IPSP and will be negotiated as these services are needed.

Section 2 - Changes
The NPO and the Water System acknowledge the fact that the Maximum Fee Amount contained in paragraph 1.1 above has been established predicated upon the activities and services approved and is the total potential cost of services that can be rendered under the Agreement. For additional services or if the scope of services are changed materially, compensation shall be as set forth in a written agreement between NPO and Water System.
Section 3 - Method of Payments

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

3.1 NPO will submit a monthly invoice to Water System for the previous months work based on administrative milestones achieved for administrative cost and any performance based fees as described in Section 1 of this Contract.

3.2 All work will be preceded by approval by Water System Project Manager or designee. Water System Project Manager or designee will determine an appropriate use of billing items in advance of commencement of work.

3.3 NPO shall invoice for services at completion of each IPSP assignment in accordance with the fees negotiated and acceptance by Water System Project Manager.

Section 4 - Reimbursable Expenses

There are no Reimbursable Expenses allowed under this Agreement.

Section 5 - Payment for Services

5.1 No initial payment shall be paid to the NPO prior to rendering services.

5.2 Invoices shall be submitted using the formatted platform provided by the Water System to the NPO.

5.3 Invoices shall be submitted monthly and generally itemized as indicated in the “Invoice Format” provided by the Water System.

5.4 Invoices shall be presented on a monthly basis to the Water System designee identified in Section 3(a) - Notices.

Section 6 - Payment for Additional Services including Innovative Programs and Special Projects

Payments for NPO’s additional services and Innovative Programs and Special Projects (IPSP) must be approved in writing in advance by the Water System and shall be documented as required through the advanced approval process.

Section 7 - Payments Withheld

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

7.1 NPO’s failure to provide adequate documentation for acceptable assignments.

7.2 NPO's failure to invoice as required in Section 5.

7.3 Errors or mistakes in the NPO’s or other documents prepared by the NPO which are the basis for the payment request.

7.4 Failure to receive pre-approval for a workshop, event, or presentation.
7.5 NPO’s failure of not having thirty (30) pre-approved scheduled workshops, events, or presentations.
EXHIBIT B
SCOPE OF SERVICES

The NPO shall perform the following Scope of Services in accordance with the terms and conditions of the Agreement:

1. **Program Minimum Monthly Administration Requirements**

   The NPO will be responsible for conducting a minimum of thirty (30) workshops and/or activities and shall submit a minimum of four (4) IPSP proposals annually for consideration. These workshops and/or activities are subject to inspections, program verification, analysis and other activities at a frequency determined by the Water System.

2. **Contacts and Hours of Operation**

   NPO will be expected to have a contact person available during regular business hours to facilitate communication between the Water System and the NPO. The NPO hereby designates (name: __________, email: ____________________, cell phone: ________________________) as its representative for contact in case of emergency, who can be contacted after hours at the number provided to Water System. NPO shall notify the Water System within 3 days in writing of any changes to the person or number to use for emergency contact.

3. **Conducting Public Workshops**

   NPO shall conduct a minimum of thirty (30) special workshops annually that are water conservation related workshops unless otherwise agreed to through an IPSP agreement. Programs should be scheduled for times determined jointly between the contracted organization and the Water System. Topics must be pre-approved in writing by the Water System for Water System payment. The NPO is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from the Water System Conservation Department.

4. **Advertising**

   NPO will publicize all scheduled Workshops in any NPO-generated publications, media calendars, website, and social media as appropriate to the activity. NPO will notify the Water System Conservation staff of such advertising placements and include the Water System as a participating partner. During the activity the Contractor will explicitly indicate that the activity is in conjunction with the Water System in a way appropriate to the activity.

5. **Events**

   Events are generally initiated by a third party that is requesting information be made available to anticipate attendees on topics related to water conservation. The NPO may be contacted directly by the third party event organizer or may be requested to attend by the Water System on its behalf.
In either case and as with workshop topics, any event must be pre-approved in writing by SAWS to be eligible for payment.

6. **Presentations**

These presentations are generally 15 minute to 1 hour speaking engagements to a specific community group such as a community service group or community association. These Presentations must also be pre-approved in writing by SAWS to be eligible for payment.

7. **Innovative Programming or Special Projects**

The NPO may at any time submit proposals in writing for Innovative Programming or Special Projects (IPSP) to the Water System in connection with Water System water conservation programs and goals. Conversely the Water System may solicit proposals from any and/or all other NPO’s contracted. Approval of IPSP lies solely at the discretion of the Water System. Specific activities and any associated payments by the Water System for such services including specific protocols, deliverables, expected outcomes and budget must be approved in advance and documented in writing.

8. **Partnerships and Joint Activities**

NPO’s will coordinate and work with other Water System partners, employees, and NPO’s when appropriate. Payments for activities where more than one NPO contractor is participating will go to the NPO tasked with representing the Water System through the activity approval process.

9. **Audience**

For the purposes of this Agreement, general workshops, events, and presentations and other activities should be developed for adult audiences who live in the Water System service area. Exceptions to this can only be made with prior Water System approval specifically addressing alternative audiences.

10. **Conservation Coordinator**

The NPO shall be responsible for designating a Conservation Coordinator that will work closely with Water System staff on Water System conservation programming efforts, coordinating contract related activities, included but not limited to, weekly coordination with Water System staff on activities, ensuring all approvals are secured, invoices and back–up materials are submitted, ensuring activities are completed as needed to fulfill the contract, coordinating outreach efforts, submitting Innovative Programming and Special Projects for additional conservation outreach activities, and educational proposals, advertising, and evaluation of activities, planning outreach events, promoting rebate programs, creating education programs and workshops, initiating and/or assisting in research projects. Designated Conservation Coordinator will coordinate and work with other Water System partners, employees, and NPOs when appropriate and should be prepared to attend mandatory monthly meetings at the Water System.
EXHIBIT C
INSURANCE & CERTIFICATE OF LIABILITY INSURANCE REQUIREMENTS

1. **Commercial Insurance Specifications (“Specifications”):**

   a. Commencing on the date of this Contract, the CONSULTANT shall, at his own expense, purchase, maintain and keep in force such lines of insurance coverage as will protect him and the San Antonio Water System (“SAWS”) and the City of San Antonio (“the City”) and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, supplier or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following lines of insurance coverage:

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

      This line of insurance coverage shall:

      • Cover independent contractors;

      • Not include any exclusions relating to blasting, explosion, collapse of buildings or damage to underground property;

      • Afford coverage for Products Liability and/or Completed Operations and Contractual Liability.

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

      $ 1,000,000.00 Occurrence Limit
      2,000,000.00 General Aggregate
      2,000,000.00 Products/Completed Operations Aggregate
      1,000,000.00 Personal and Advertising Injury
      1,000,000.00 Contractual Liability

      This line of insurance coverage shall be endorsed:

      • Naming SAWS, and the City as an Additional Insured for both ongoing and completed operations; and

      • To provide a Waiver of Subrogation in favor of SAWS and the City.
b. CONSULTANT shall require all Sub-consultants to carry lines of insurance coverage appropriate to their scope of Work and submit copies of Sub-consultants’ Certificates of Liability Insurance upon request by SAWS.

c. CONSULTANT agrees that with respect to the above required lines of insurance, all insurance policies are to contain or be endorsed to the extent, not inconsistent with the requirements of the issuing insurance carrier, to provide for an endorsement that the "other insurance" clause shall not apply where SAWS and the CITY are an Additional Insured shown on the policy if such endorsement is permitted by law and regulations.

d. CONSULTANT shall, upon request of SAWS, provide copies of all insurance policies and endorsements required under Contract.

e. CONSULTANT is responsible for the deductibles under all lines of insurance coverage required by these Specifications.

f. The stated policy limits of each line of insurance coverage required by these Specifications are MINIMUM ONLY and it shall be the CONSULTANT's responsibility to determine what policy limits are adequate and the length of time each line of insurance coverage shall be maintained; insurance policy limits are not a limit of the CONSULTANT's liability.

g. These minimum limits required of each line of insurance coverage may be either basic policy limits of the WC, EL, CGL and AL or any combination of basic limits or umbrella (Umbrella form) or excess (Other Than Umbrella form) limits.

h. SAWS acceptance of Certificate(s) that in any respect, do not comply with these Specifications, do not relieve the CONSULTANT from compliance herewith.

i. Each line of insurance coverage that is specified under these Requirements shall be so written as to provide SAWS and the City thirty (30) calendar days advance written notice of cancellation or non-renewal of coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

j. Within five (5) calendar days of cancellation or non-renewal of any required line of insurance coverage, the CONSULTANT shall provide SAWS a replacement Certificate with all applicable endorsements included. SAWS shall have the option to suspend the CONSULTANT's performance should there be a lapse in coverage at any time during this Contract.

k. Failure to provide and to maintain the required lines of insurance coverage shall constitute a material breach of this contract.

l. In addition to any other remedies, SAWS may have, upon the CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent
and within the time herein required, SAWS shall have the right to order the CONSULTANT to stop performing services hereunder and/or withhold any payment(s) which become due to the CONSULTANT hereunder until the CONSULTANT demonstrates compliance with the Specifications hereof.

m. Nothing herein contained shall be construed as limiting, in any way, the extent to which the CONSULTANT may be held responsible for payments for damages to persons or property resulting from the CONSULTANT’s or its sub-consultant's performance of the services covered under this Contract.

n. It is agreed that the CONSULTANT’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by SAWS, the City and their employees and agents for liability arising out of operations under this Contract.

o. CONSULTANT agrees that all lines of insurance coverage required by these Specifications shall be with insurance companies, firms or entities that have an A.M. Best rating of “A- (“A” minus)” and a Financial Size Category of a “VII” or better. All lines of insurance coverage shall be of an "Occurrence" type except for the Professional Liability line of insurance coverage.

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

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

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

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

Prior to the commencement of any Services under this Contract and once notified by SAWS Contracting Official that your Company has been selected as the apparent successful CONSULTANT pursuant to a Request for Proposal selection process, pending Board final approval, and, a request is made for you to submit your Company’s Certificate of Liability Insurance, that Certificate must meet all of the following requirements:

a. The CONSULTANT shall have completed by its insurance agent(s), and submitted to SAWS Contracting Department within 5 business days, a Certificate(s) of Liability Insurance (“Certificate(s)”) providing evidence of the lines of insurance coverage pursuant to Section 1.a.1) through 1.a.5) above.
b. The original Certificate(s) or form must include the agent's original signature, including the signer's company affiliation, mailing address, Office and FAX phone numbers, email address, and contact person’s name; and, be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative in strictly compliance with sections 2.g. (Certificate Holder) and 2.h. (Distribution of Completed Certificates) below.

c. The Texas Legislature passed and Governor Perry signed Senate Bill 425 to become effective January 1, 2012. This law will require all certificates of insurance forms to be filed with and approved by the Texas Department of Insurance before they can be used after the effective date of the law. In addition, the law codifies current Texas Department of Insurance rules that a certificate of insurance must not obscure or misrepresent the coverage provided by the insurance policies.

d. SAWS will not accept Memorandum of Insurance or Binders as proof of insurance.

e. SAWS shall have no duty to pay or perform under Consulting Services Agreement until such certificate(s) and applicable endorsements have been received, reviewed and deemed 100% compliant with the insurance Specifications contained herein by SAWS’ Risk Management/Contract Services Department. No one other than SAWS Risk Manager shall have authority to waive any part of these requirements.

f. Additional Insured:

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

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

EITHER use,

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

OR use,

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

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

g. Waiver of Subrogation:

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

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

EITHER use,

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

OR use,

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

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

h. The SAWS Project/contract number(s) along with its Descriptor Caption must be included in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

i. Certificate Holder - SAWS shall be shown as the Certificate Holder in the Certificate Holder section located in the bottom half of the standard ACORD Certificate forms and formatted as follows:

San Antonio Water System
c/o Ebix BPO
PO Box 12010
Ref. # (Lawson Acct’s Payable Vendor #)-(SAWS Contract/Project #)*
Hemet, CA 92543
*SAWS Contracting Official will include in the above address, the correct, complete Ref# in the written confirmation of your selection as a CONSULTANT pending final Board approval.

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

j. Distribution of Completed Certificates - Completed Certificates shall be distributed by the Consultant as follows:

1) Send Original:
   a) By E-Mail: saws@ebix.com
   b) By Fax: 1-770-325-6502

2) Send Copy to the following:

   San Antonio Water System
   Attention: Contract Administration
   P.O. Box 2449
   San Antonio, TX 78298-2449

k. CONSULTANT shall be responsible for obtaining Certificates of Insurance from the first tier Sub-consultant and upon request furnish copies to SAWS.

3. **SURVIVAL**

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

1. The Term of this Agreement shall commence on the__________, 2016, and automatically expire on 31st day of December, 2018, unless extensions periods are exercised.

2. Time Frame for Deliverables:
   a. Period 1 ________ , 2016 through December 31, 2016
   b. Period 2 January 1, 2017 through December 31, 2017
   c. Period 3 January 1, 2018 through December 31, 2018

   Extension Periods:
   a. Extension Period 1 January 1, 2019 through December 31, 2019
   b. Extension Period 2 January 1, 2020 through December 31, 2020

3. Authorization for payment of AGREEMENT for years 2017 & 2018 and extension periods 1 & 2 are contingent on SAN ANTONIO WATER SYSTEM BOARD approval of subsequent year’s budgets, with budget approvals for such expenditures as provided for pursuant to Section 3 (k) of the Agreement.

4. The Scope of Services listed in “EXHIBIT B” shall be performed for each of the Periods.
EXHIBIT E
SECURITY PROCEDURES

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

NPO, its employees, and agents shall obtain a Water System photo identification badge (Contractor’s Badge) and parking tag, prior to any work on Water System property, which shall be used only for purposes necessary to perform the work under this Agreement. Water System Badge Office hours are Monday, Wednesday and Friday 8:00am to 12:00pm excluding Water System holidays (hours are subject to change). Security staff can be contacted at (210) 233-3177 or (210) 233-3338. A replacement fee may be charged for lost, damaged badges or parking tags. As a condition of final payment, NPO shall return all badges and parking tags to the Security Office. In the event NPO fails to return all security badges and parking tags, in addition to any other rights or remedies to which Water System may be entitled at law or in equity, Water System may withhold from payment the sum of $500.00 dollars per badge or parking tag as liquidated damages. NPO 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 Water System for failure to return the badges or parking tags.

The Water System facilities require a Water System employee to physically escort NPO at all times. The Water System may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of the NPO and approved by Water System Security.

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

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave the Water System site immediately and not return until items are remedied.
EXHIBIT F
LIST OF SUB-CONSULTANTS