AGENDA

MEETING OF THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES
April 4, 2017, 9:00 A.M.
6th Floor Board Room #609
Administrative Offices
2800 U. S. Hwy 281 North, San Antonio, Texas 78212

1. MEETING CALLED TO ORDER.

2. Announcements.
   A. The San Antonio Water System Board of Trustees will, during the Meeting, close the Meeting and hold an Executive Session pursuant to and in accordance with Chapter 551 of the Texas Open Meetings Act. The 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. Minutes.
   A. Approval of the Minutes of the San Antonio Water System Board of Trustees Regular Board Meeting of February 7, 2017.


5. Public Comment.
CONSENT AGENDA ITEMS

ITEMS CONCERNING THE PURCHASE OF EQUIPMENT, MATERIALS AND SUPPLIES

6. A Resolution accepting recommendations regarding the contracting for certain services, equipment, materials, and supplies, and authorizing the acceptance of bids as follows: (DOUG EVANSON – YVONNE TORRES)

A. Award of New One Time Purchases of Materials, Equipment and Services.
   1. Approving a one-time purchase from Grande Truck Center to provide: six each 25,000 GVWR cab-chassis, 84” CA truck with installed aluminum utility body and 2,000 lb. crane, Bid No. 17-17013, Group A, for a total of $746,526.00.
   2. Approving a one-time purchase from Santex Truck Center to provide: five each 50,000 GVWR cab-chassis (single cab) with installed 10 cubic yard minimum water level dump body, Bid No. 17-17013, Group A, for a total of $473,167.40.
   3. Approving a one-time purchase from Grande Truck Center to provide: two each 19,000 GVWR (minimum) 84” CA, 4x2 regular cab with installed reinforced utility body and a 6,000 lb. corner mounted crane, Bid No. 17-17013, Group C, for a total of $171,382.00.
   4. Approving a one-time purchase from United Rentals Trench Safety to provide: steel road plates and trench boxes, Bid No. 17-17004, for a total of $96,962.86.
   5. Approving a one-time purchase from AG-Pro to provide: one each tractor loader with enclosed canopy and detachable tiller attachment, Bid No. 17-17012, Group A, for a total of $40,606.47.
   6. Approving a one-time purchase from Equipment Depot to provide: seventeen each tractor, two-wheel drive with ROPS/FOPS canopy, front-mounted extendible backhoe (platform type), Bid No. 17-17012, Group B, for a total of $1,009,783.00.
   7. Approving a one-time purchase from Equipment Depot to provide: one each compact track loader, Bid No. 17-17012, Group C, for a total of $54,564.00.
   8. Approving a one-time purchase from Equipment Depot to provide: two each rubber track zero turn swing mini excavator with attachment, Bid No. 17-17012, Group D, for a total of $78,638.00.
   9. Approving a one-time sole source purchase from Hahn & Clay to provide: repair of two Siemens/Flender gearboxes, Bid No. 17-17025, for a total of $60,000.00.
   10. Approving a one-time purchase from Green Equipment Co. to provide: radio pipe locators, Bid No. 17-17010, for a total of $60,214.00.
11. Approving a one-time purchase from Silsbee Toyota to provide: ten each 5,200 GVWR 4x2 double cap (Toyota Tacoma), BuyBoard #521-16, Bid No. 17-17030, for a total of $233,040.00.

B. Award of New and Renewal Annual Goods & Services Requirement Contract and Maintenance Agreements. Estimated annual purchases are based on unit prices bid. Actual totals and quantities may vary from the estimate.

1. Authorizing the extension of an existing contract of Wesco Distribution, Inc. to provide: annual contract for personal waste disposal products, Bid No. 16-6021, for a total of $66,190.00.

2. Authorizing the extension of an existing contract of Safety Supply, Inc. to provide: annual contract for safety eyewear, Bid No. 15-0627, for a total of $58,048.33.

3. Acceptance of the bid of Adorama, Inc. to provide: annual contract for headsets, webcams and accessories, Bid No. 17-1556, for a total of $57,659.60.

4. Acceptance of the bid of Sunbelt Mill Supply to provide: annual contract for spray paints, Bid No. 17-3073, Group 1, for a total of $75,814.20.

5. Acceptance of the bid of Blackburn Manufacturing to provide: annual contract for survey stakes and flags, Bid No. 17-3073, Group 2, for a total of $23,828.00.

6. Acceptance of the bid of HD Supply Waterworks, Ltd. to provide: annual contract for fire hydrant repair parts, Bid No. 17-0012, Groups 1 – 7, for a total of $110,966.36.

7. Acceptance of the bid of Fortiline Waterworks to provide: annual contract for fire hydrant repair parts, Bid No. 17-0012, Group 8, for a total of $13,295.00.

8. Acceptance of the bid of Ameri-Form, Inc. to provide: annual contract for work uniforms, Bid No. 17-5050, for a total of $424,943.84.

9. Authorizing the extension of an existing contract of Independent Hardware, Inc. to provide: annual contract for locks and padlocks, Bid No. 16-0068, for a total of $68,585.00.

CAPITAL IMPROVEMENT CONTRACTS
PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY
Production, Transmission and Treatment Improvements

7. A Resolution approving Change Order No. 2 in the amount not to exceed $231,903.67 to the construction contract with Archer Western Construction, LLC in connection with the Leon Creek Water Recycling Center Rehabilitation and Process Improvements Project. (GENOVEVA GOMEZ – MICHAEL MYERS)
8. A Resolution approving Recapitulation Change Order No. 8 in the decreased amount of $163,000.00 to be credited to the construction contract with MGC Contractors, Inc. in connection with the Evans PZ 11A Booster Station Improvements Project; authorizing the return of funds in the amount of $163,000.00 and the construction contingency balance of $94,383.47 for a total amount of $257,383.47. (GENOVEVA GOMEZ – MICHAEL MYERS)

9. A Resolution approving Contract Amendment No. 3 in the amount not to exceed $156,451.00 to the professional services contract with CH2MHill, Inc. in connection with the Water Resources Integration Program Phase 1: Construction Management and Inspection Services Project. (GENOVEVA GOMEZ – MICHAEL MYERS)

REPLACEMENT AND ADJUSTMENT PROJECTS

Governmental Relocations and Replacements

10. A Resolution approving an Interlocal Agreement with the City of Balcones Heights; authorizing the expenditure of funds in the amount not to exceed $139,291.45 for the replacement of water facilities by the City of Balcones Heights in connection with the Leisure Drive Reconstruction – Phase II Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

11. A Resolution approving an Interlocal Agreement with the City of Kirby; authorizing the expenditure of funds in the amount not to exceed $43,954.87 for the adjustment of sewer facilities by the City of Kirby in connection with the Binz-Engleman Street Reconstruction Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

EALEMANT AND REAL PROPERTY

12. A Resolution approving the execution of a Joint Use Agreement with the City of San Antonio for twenty four tracts for sewer line purposes, approximately 2.911 acres in the aggregate and located along Apache Creek and Colima Street and W. Houston Street and Landa Ave. along Zarzamora Creek, in connection with the C5 Culebra-Castrovile to Laredo & C28 Zarzamora Creek, San Gabriel Project in a total amount not to exceed $279,500.00. (NANCY BELINSKY – BRUCE HABY)

13. A Resolution declaring a public necessity for public use, the acquisition of certain real property in the City of San Antonio being permanent sewer easements, the project consisting of sewer main starting at W. Houston Street, going northwest and terminating at Culebra Road, also Landa Ave. from Matyear Street to N. General McMullen following Zarzamora Creek and terminating at N. San Gabriel in the southwest quadrant of Bexar County, Texas, for the public use of the expansion and operation of the System through the construction of Phase 3 of the C5 Culebra-Castrovile to Laredo & C28 Zarzamora Creek, San Gabriel Project; requesting that the City Council of the City of San Antonio adopt an ordinance authorizing the System to take all appropriate action to acquire the easements by negotiation and/or condemnation. Property located in: NCB: 3640, 3628, 8288, 8898, 8895, 8893, 8891, 8887. (NANCY BELINSKY – BRUCE HABY)
14. A Resolution declaring a public necessity for public use, the acquisition of certain real property in the City of San Antonio being temporary construction easements, the project consisting of sewer main along Rossillo Creek, in the southeast quadrant of Bexar County Texas, for the public use of the expansion and operation of the System through the construction of the East Sewershed Package 3 – Rossillo Creek Outfall Project; requesting that the City Council of the City of San Antonio adopt an ordinance authorizing the System to take all appropriate action to acquire the easements by negotiation and/or condemnation. Property located in: NCB: 10881, 10846, 18239, 10852, 10615, 12887, 10780, 10849. (NANCY BELINSKY – BRUCE HABY)

15. A Resolution declaring a public necessity for public use, the acquisition of certain real property in the City of San Antonio being permanent sewer easements and temporary construction easements, the project consisting of sewer main along Salado Creek from a point just north of Rittiman Road running north along Salado Creek to a point just north of NE Loop 410, in the northeast quadrant of Bexar County, Texas, for the public use of the expansion and operation of the System through the construction of the E19 Segment II: Seguin Road to Nacogdoches Road Project; requesting that the City Council of the City of San Antonio adopt an ordinance authorizing the System to take all appropriate action to acquire the easements by negotiation and/or condemnation. Property located in: NCB: 12163, 12523, 13500, 13569, 14326 and CB: 11220, 11230, 14540, 14930, 22170, 98561. (NANCY BELINSKY – BRUCE HABY)

16. A Resolution declaring a public necessity for public use, the acquisition of certain real property in the City Of San Antonio being permanent sewer easements and temporary construction easements, the project consisting of sewer main beginning at a point near Nacogdoches Road running north along Salado Creek and Wurzbach Parkway to the intersection of Wurzbach Parkway and Jones Maltsberger Road in the northeast quadrant of Bexar County, Texas, for the public use of the expansion and operation of the System through the construction of the E20 Wurzbach Parkway: Jones Maltsberger to Nacogdoches Project; requesting that the City Council of the City of San Antonio adopt an ordinance authorizing the System to take all appropriate action to acquire the easements by negotiation and/or condemnation. Property located in: NCB: 8644, 11964, 13733, 13748, 13752, 13753, 17285, 17440 and CB: 5013. (NANCY BELINSKY – BRUCE HABY)

17. A Resolution declaring a public necessity for public use, the acquisition of certain real property in the City of San Antonio being permanent sewer easements and temporary construction easements, the project consisting of the replacement of sewer main along Leon Creek from a point approximately 3,200 linear feet north of Hwy 151 on Leon Creek to a point approximately 4,000 linear feet south of Hwy 151 on Leon Creek, in the southwest quadrant of Bexar County, Texas, for the public use of the expansion and operation of the System through the construction of the W1 Leon Creek – Hwy 151 to Hwy 90 Project; requesting that the City Council of the City of San Antonio adopt an ordinance authorizing the System to take all appropriate action to acquire the easements by negotiation and/or condemnation. Property located in: NCB: 11493, 15330, 15331. (NANCY BELINSKY – BRUCE HABY)
WATER RESOURCES ITEMS

18. A Resolution appointing new members to the Citizens Advisory Panel for a two-year term expiring December 31, 2018 to serve out term of unexpired vacancies. (DONOVAN BURTON – DARREN THOMPSON)

MISCELLANEOUS ITEMS

19. A Resolution approving an Interlocal Agreement with the Leon Springs Utility Company for sewer billing services. (AGNES BARARD – DANIEL CROWLEY)

20. A Resolution approving an Interlocal Agreement with the University of Texas Health Science Center at San Antonio for professional development training services. (DOUG EVANSON – YVONNE TORRES)

21. A Resolution ratifying the actions of the Vice President of Communication and External Affairs in approving expenditures in an amount not to exceed $59,382.55 for decorating, audio visual and electrical support for Confluence 2017. (GAVINO RAMOS)

22. A Resolution ratifying the actions of the Vice President of Distribution & Collection Operations in approving the award of an emergency purchase order to Y&S Technologies in the amount not to exceed $65,447.37 for the replacement of an Uninterruptible Power System at SAWS Environmental Laboratory. (MICHAEL BRINKMANN – CARLOS MENDOZA)

23. A Resolution ratifying the actions of the Vice President of Distribution & Collection Operations in approving the award of an emergency purchase order to Daikin Applied Americas, Inc. in the amount not to exceed $94,690.00 for the replacement of a 120 ton air cooled chiller at SAWS Environmental Laboratory. (MICHAEL BRINKMANN – CARLOS MENDOZA)

24. A Resolution approving the execution of a Full and Final Compromise and Settlement Agreement with CDM Smith, Inc. concerning claims made between the System and CDM Smith, Inc. in connection with the System’s Dos Rios Water Recycling Center Re-Rating Headworks Improvements and Process Enhancements Phase I Project; authorizing the System to pay the sum of $300,000.00 to CDM Smith, Inc.; and authorizing the President/Chief Executive Officer to execute a Full and Final Compromise and Settlement Agreement with CDM Smith, Inc. (NANCY BELINSKY – STEVE CLOUSE)

25. A Resolution approving the filing of a lawsuit against WW Drilling Co., Inc. a/k/a WW Foundation Drilling, LTD and Hill Country Bridge, Inc. in connection with damage caused to a water main at or near the Olmos Basin Golf Course in San Antonio, Texas; further authorizing the System’s General Counsel to take all necessary action relating to such lawsuit. (NANCY BELINSKY)

26. A Resolution approving Change Order No. 2 in the amount not to exceed $245,501.97 to the construction contract with Taplin Group, LLC in connection with the Sanitary
ITEMS FOR INDIVIDUAL CONSIDERATION

27. A Resolution of the San Antonio Water System Board of Trustees consenting to and approving amendments to the Water Transmission And Purchase Agreement between the City of San Antonio, Texas, acting by and through the San Antonio Water System, and Vista Ridge LLC; delegating to the President/Chief Executive Officer of the System the authority to accept the conveyance and dedication by Vista Ridge LLC of certain real property interests in the Water Transmission Pipeline Terminus Site; authorizing the execution of agreements and documentation related to the foregoing, including the First Amendment to the Project Real Property Conveyance Agreement between City of San Antonio, Texas, acting by and through the San Antonio Water System, and the Central Texas Regional Water Supply Corporation; and providing for an effective date. (DONOVAN BURTON)

CAPITAL IMPROVEMENT CONTRACTS
PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Water and Sewer Line Improvements

28. A Resolution awarding a construction contract to PM Construction & Rehab, LLC in the amount not to exceed $1,279,712.40 in connection with the 2016 Large Diameter CIPP Construction Contract. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

29. A Resolution ratifying the actions of the Vice President of Engineering and Construction in approving Change Order No. 1 in the amount of $1,320,329.57, Change Order No. 2 in the amount of $174,849.76, and Change Order No. 3 in the amount of $1,743,632.36 to the construction contract with Spiess Construction Co., Inc. in connection with the W6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project. Total expenditures: $3,238,811.69. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

Production, Transmission and Treatment Improvements

30. A Resolution awarding a professional services contract to Gupta and Associates, Inc. in the amount not to exceed $1,644,043.00 in connection with the Dos Rios Water Recycling Center Electrical System Improvements – Phase 2 Project. (GENOVEVA GOMEZ – MICHAEL MYERS)

MISCELLANEOUS PROJECTS

31. A Resolution awarding a design build contract to Teal Construction Company in the amount not to exceed $17,710,927.00 in connection with Phase 2 of the Service Center Project. (GENOVEVA GOMEZ – JULIE VALADEZ)
32. A Resolution approving Contract Amendment No. 1 in the amount not to exceed $958,465.00 to the professional services contract with APSI Construction Management for additional Program Management Services in connection with Phase 2 of the Service Center Project. (GENOVEVA GOMEZ – JULIE VALADEZ)

33. A Resolution awarding a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $1,961,575.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract – Package 1. (MICHAEL BRINKMANN – ALISSA LOCKETT)

34. A Resolution awarding a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $1,961,575.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract – Package 2. (MICHAEL BRINKMANN – ALISSA LOCKETT)

35. A Resolution awarding a construction contract to D. Guerra Construction, LLC in an amount not to exceed $1,913,675.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract – Package 3. (MICHAEL BRINKMANN – ALISSA LOCKETT)

36. A Resolution awarding a construction contract to D. Guerra Construction, LLC in an amount not to exceed $1,905,675.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract – Package 4. (MICHAEL BRINKMANN – ALISSA LOCKETT)

37. BRIEFING SESSION.
   A. Briefing and deliberation regarding the 2017 Water Management Plan

38. President/Chief Executive Officer’s Report.
   A. Olmos Basin Contractor Water Main Hit
   B. Multi-Year CIP Projects - Dos Rios Electrical System Improvements and Service Center

39. Inquiries of the Board of Trustees for future briefings and/or follow-up action.

40. The Regular Session of the April 4, 2017, Regular Board Meeting is hereby recessed to hold an Executive Session and discuss the matters listed below pursuant to Sections §551.071 and §551.074 of the Texas Open Meetings Act.
41. EXECUTIVE SESSION.

A. Consultation with attorneys regarding legal matters related to the filing of a Civil Declaratory Judgement Action to confirm actions of the San Antonio Water System related to the expenditure of public securities proceeds for construction of the Vista Ridge Integration Project, pursuant to Tex. Gov’t Code §551.071 (consultation with attorneys).

B. Consultation with attorneys regarding legal matters 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 Vista Ridge, LLC, pursuant to Tex. Gov’t Code §551.071 (consultation with attorneys).

C. Consultation with attorneys regarding legal matters related to the emergency sewer project on Quintana Road, San Antonio, Texas, pursuant to Tex. Gov’t Code §551.071 (consultation with attorneys).

D. Deliberation regarding the annual evaluation, performance objectives and duties of the President/Chief Executive Officer; and consultation with attorneys concerning legal matters regarding the annual evaluation, performance objectives and duties of the President/Chief Executive Officer, pursuant to Tex. Gov’t Code §551.074 (personnel matters) and §551.071 (consultation with attorneys), respectively.

42. The Regular Session of the Regular Board Meeting of April 4, 2017, is hereby reconvened.

43. A Resolution authorizing the Filing of a Civil Declaratory Judgement Action to confirm actions of the San Antonio Water System related to the expenditure of public securities proceeds for construction of the Vista Ridge Integration Project.

(NANCY BELINSKY)

44. Adjournment. THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES MEETING OF APRIL 4, 2017, IS HEREBY ADJOURNED.
A quorum of the San Antonio Water System Board of Trustees will attend Confluence 2017 to be held at the Henry B. González Convention Center, 900 East Market Street, Hemisphere Ballroom from 9:00 a.m. to 2:00 p.m. Although a quorum of the Board will be present, no action will be taken by the Board on any business outside of the scheduled meeting of the Board beginning at 9:00 a.m. in Room #225 located on the Meeting Level.

Board Members Present:
Berto Guerra, Jr., Chairman
Pat Jasso, Vice Chair
Ernesto Arrellano, Jr., Secretary
Louis E. Rowe, Assistant Secretary
Pat Merritt, Trustee
David P. McGee, Trustee

Board Members Absent:
Ivy R. Taylor, Mayor

1. MEETING CALLED TO ORDER.

The meeting of the San Antonio Water System Board of Trustees was held on February 7, 2017, and called to order at 9:35 a.m. by Chairman Berto Guerra.

2. Announcements.

A. 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. Minutes.
   A. Approval of the Minutes of the San Antonio Water System Board of Trustees
      Regular Board Meeting of December 14, 2016.

   Chairman Guerra asked if there were any corrections to the minutes. Hearing none, he stated
   the minutes were approved as presented.


   Mr. Puente thanked Gene Powell for his efforts to raise additional funds for Confluence. With
   these additional contributions, staff was able to expand the activities for the students
   that the Board would see at the event.

   Gregg Wukasch provided details regarding Confluence 2017 and the theme, The Value of
   Water. The event included almost 900 students from 18 high schools around San Antonio. In
   the history of Confluence, SAWS had over 3,000 students participate in the program that
   started roughly 18 years ago. The Impact Program was through the Education Department
   at SAWS, and involved high school students in the community through a number of different
   projects that started on the first day of school. Confluence provided an opportunity for all of
   the students to learn more about water and showcase their projects. Confluence also brought
   the community together with partners who sponsored and others who participated in the
   event by setting up displays. He invited the Board and others to attend the Confluence and
   visit with the students on their individual projects.

   Brandon Leister introduced one of the activities that would be part of the Confluence, the
   Water Geek Olympics. Heather Ginsburg and Adolph Garcia explained the game show and
   provide instructions for the Board Members.

   Chairman Guerra congratulated the winners and thanked staff for all the work at Confluence.

5. Public Comment.

   Gary Schraer stated he owned a construction business, and lived in the Country Bend
   subdivision. He discussed a water main break on Boerne Stage Road in January and the
   effect to the families along the water main. Some of the issues included backed up septic
   systems, and water in some of the homes. He spoke about his next-door neighbors’ home
   that was affected the most, and how he and other neighbors had helped. He referenced videos
   that showed the water going through the home and through the neighborhood. He discussed
   the response by SAWS and SERVPRO immediately after the water main break. He asked
   the Board to take a look at the situation, and discussed the importance to get the Allison’s
   back in their home.

   Lavoin Keith Allison stated he also lived in the Country Bend subdivision. He presented his
   concerns regarding the water main break on January 14. A SAWS claims coordinator did
   come out to his home, and witnessed the work of SERVPRO to extract the water. He
   discussed his claim with SAWS and the loss of use of the home. Mr. Allison stated his
   insurance company would not cover the incident since it was considered water off premise.
   He asked the Board for help to resolve the issue.
Barbara Stevens stated she came to support Mr. Allison and lived two doors down from the Allison’s. She discussed the damage to her property, and stated she was waiting to make repairs until she heard back from SAWS. She expressed her concern that the claims may not be covered due to the response that SAWS had governmental immunity. She discussed the claim received from the insurance adjustor, and stated she wanted her house put back in order. This was the second break in the water main, and she did not know if it would happen again.

Chairman Guerra thanked the individuals who came to speak to the Board. He also recognized former City Councilman Bob Marbut and his students from Alamo College, who came to observe the board meeting.

CONSENT AGENDA ITEMS

Items 6 – 21

ITEMS CONCERNING THE PURCHASE OF EQUIPMENT, MATERIALS AND SUPPLIES

6. A Resolution accepting recommendations regarding the contracting for certain services, equipment, materials, and supplies, and authorizing the acceptance of bids as follows: (DOUG EVANSON – YVONNE TORRES)

A. Award of New One Time Purchases of Materials, Equipment and Services.

No items for this Meeting.

B. Award of New and Renewal Annual Goods & Services Requirement Contract and Maintenance Agreements. Estimated annual purchases are based on unit prices bid. Actual totals and quantities may vary from the estimate.

1. Authorizing the extension of an existing contract of Lone Star Brush Co. to provide: annual contract for brooms, brushes and accessories, Bid No. 14-6037, for a total of $51,711.30.

2. Acceptance of the bid of Mueller Water Conditioning, Inc. to provide: annual contract for service of automatic water conditioning system for Laboratory and Water Treatment Services for SAWS Service Centers, Bid No. 16-9008, for a total of $55,382.62.

3. Acceptance of the bid of Fortiline to provide: annual contract for manhole rings, covers and ring risers, Bid No. 16-0153, Items 1, 2, 4, 6, 7, 8, 9, 10 & 11, for a total of $883,071.00.

4. Acceptance of the bid of Ferguson Water Works to provide: annual contract for standard/wide range repair clamps, tap clamps & coupling, Bid No. 16-0019, Items 1, 2, 3, 4, 5, 7 & 8, for a total of $105,162.98.

5. Acceptance of the bid of HD Supply Waterworks, Ltd. to provide: annual contract for standard/wide range repair clamps, tap clamps & coupling, Bid No. 16-0019, Items 6, 9, 10 & 14, for a total of $78,386.01.
6. Acceptance of the bid of Act Pipe & Supply to provide: annual contract for standard/wide range repair clamps, tap clamps & coupling, Bid No. 16-0019, Items 11 & 16, for a total of $836,914.00.

7. Acceptance of the bid of Total Piping Solutions, Inc. to provide: annual contract for standard/wide range repair clamps, tap clamps & coupling, Bid No. 16-0019, Items 12 & 13, for a total of $1,099,254.90.

8. Acceptance of the bid of Fortiline to provide: annual contract for standard/wide range repair clamps, tap clamps & coupling, Bid No. 16-0019, Item 15, for a total of $75,202.75.

CAPITAL IMPROVEMENT CONTRACTS

PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Developer Customer Contracts

7. A Resolution approving Utility Service Agreements to provide water and/or wastewater service to the tracts listed below requiring potential oversizing of mains (OVR), and/or are located outside the San Antonio Water System water and/or wastewater Certificate of Convenience and Necessity (CCN). (GENOVEVA GOMEZ – SAM MILLS)

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Totals 52.5 260 260

Production, Transmission and Treatment Improvements

8. A Resolution awarding a professional services contract to Maestas & Associates, Inc. in the amount not to exceed $500,000.00 in connection with the Production Facilities Design Engineering Work Order Contract. (GENOVEVA GOMEZ – MICHAEL MYERS)

REPLACEMENT AND ADJUSTMENT PROJECTS

Governmental Relocations and Replacements

9. A Resolution approving the expenditure of funds in the amount of $510,077.93 for the replacement of water and sewer facilities by the City of San Antonio in connection with the Frio Street: Cesar Chavez to Houston Street Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

10. A Resolution ratifying the actions of the Vice President of Engineering and Construction in approving Change Order No. 1 in the amount of $65,715.58 and Change Order No. 2 in the amount of $14,983.63; authorizing the expenditure of additional Funds to Bexar County in the amount not to exceed $80,699.21 for the
adjustment of water and sewer facilities by Bexar County Public Works in connection
with the Potranco Rd (FM 1957): Loop 1604 to Hwy 211 Project.
(GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

11. A Resolution approving an Interlocal Agreement with Bexar County; authorizing
the expenditure of funds in the amount not to exceed $611,528.50 for the adjustment of
water facilities by Bexar County Public Works in connection with the Borgfeld Road
Phase II: Timberline to Blanco Road Project.
(GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

MISCELLANEOUS PROJECTS

12. A Resolution awarding a construction contract to L.C. Mosel Company, Ltd. in an
amount not to exceed $1,047,837.00 in connection with the Port San Antonio Plant 325
and 356 Loop Interconnect Project. (JEFF HABY – DANIEL MYERS)

13. A Resolution awarding a construction contract to The Anchor Group, Inc. in
an amount not to exceed $270,827.88 in connection with the Future North East
Operations Center Fence Installation Project.
(MICHAEL BRINKMANN – CARLOS MENDOZA)

EASEMENT AND REAL PROPERTY

14. A Resolution awarding a services contract to Contract Land Staff, LLC in an amount
not to exceed $500,000.00 for a three-year period with the option of two, one-year
renewals for real estate property acquisition services.
(NANCY BELINSKY – BRUCE HABY)

WATER RESOURCES ITEMS

15. A Resolution approving a First Amendment to the Mutual Regional Water Supply
Contract between Schertz Seguin Local Government Corporation, the City of Schertz,
the City of Seguin, and San Antonio Water System.
(DONOVAN BURTON – DARREN THOMPSON)

16. A Resolution approving the Growdon Road Well Operating Agreement between the
City of San Antonio and the San Antonio Water System to provide non-potable water
service to the Growdon Facility; authorizing the reimbursement of funds by the City of
San Antonio for costs incurred by the System in accordance with the terms of the
agreement. (DONOVAN BURTON – DARREN THOMPSON)

MISCELLANEOUS ITEMS

17. A Resolution awarding a construction contract to D. Guerra Construction, LLC in an
amount not to exceed $823,875.00 in connection with the 2017 Sanitary Sewer Laterals
Renewal and Repair Construction Contract Package 1.
(JEFF HABY – TAMSEN MCNARIE)
18. **A Resolution awarding a construction contract to Texas Pride Utilities, LLC in an amount not to exceed $764,000.00 in connection with the 2017 Sanitary Sewer Laterals Renewal and Repair Construction Contract Package 2.**
   (JEFF HABY – TAMSEN MCNARIE)


20. **A Resolution authorizing expenditures in an amount not to exceed $742,208.72 for Fiscal Year 2017 true up costs and for the first year of a three-year agreement with SHI Software for a Microsoft Enterprise Agreement and add-on software products.** (DOUG EVANSON – SRINIVAS PULAPAKA)

21. **A Resolution awarding professional service contracts to ATS Communications, Inc. for the period beginning March 1, 2017 through March 1, 2019 and Serna & Serna P.L.L.C. for the period beginning February 16, 2017 through March 1, 2019 for a total amount not to exceed $240,000.00 in connection with Federal Legislative Advocacy Consultant Services.** (DONOVAN BURTON)

Chairman Guerra asked if there were any items in the Consent Agenda that should be pulled for individual discussion or consideration.

Ms. Jasso made a motion to approve the Consent Agenda Items, Nos. 6 – 21. Mr. McGee seconded the motion.

Consent Agenda Items, Nos. 6 – 21 were unanimously approved. Verbal voting.

**ITEMS FOR INDIVIDUAL CONSIDERATION**

**CAPITAL IMPROVEMENT CONTRACTS**

**PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY**

**Water and Sewer Line Improvements**

22. **A Resolution awarding a construction contract to Southland/Renda Joint Venture in the amount not to exceed $35,049,906.50 in connection with the E19: Seguin Road to Nacogdoches Road, Segment 1 Project; authorizing additional expenditures in the amount not to exceed $450,600.00 to Kimley-Horn and Associates, Inc. for construction phase services in connection with the project work. Total expenditures: $35,500,506.50.** (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

Lee Perry presented Item 22, the award of a construction contract for the E19: Seguin Road to Nacogdoches Road, Segment 1 Project. This project was the largest and one of the most important sewer projects related to the Consent Decree. He gave an overview of the sewersheds that included the eastern, central and western sewersheds, and the projects located in the eastern sewershed. A previous project, the E3 Project, was four miles of pipe that was an upgrade of a 54-inch sewer main to an 84-inch main. The E3 Project was about
$23 million and had already been completed. The E19 Segment 1 Project was three miles of 48-inch to 78-inch main at a cost of $35 million. Future projects included the E19 Segment 2 Project and the E20 Project. The total cost for all the projects was about $120 million, and approximately 14 miles of pipe would be installed between the E3 and E20 projects.

The E19 Project would extend six miles from Seguin Road to Nacogdoches Road and Loop 410. The project would upsize the existing 48-inch main to 66-inch to 78-inch mains. This was one of the areas that had the most significant SSO impacts along Holbrook Road. In the summer of 2016, Mr. Puente promised the City Council that construction work would start in the spring of 2017. The total construction time frame was approximately three years for the E19 Project. The first segment would extend from Seguin Road through Fort Sam Houston just north of Rittiman Road and was approximately three miles of 78-inch pipe. The existing pipe was concrete and installed in the 70's. The existing concrete pipe would be replaced with fiberglass pipe through approximately 1.2 miles of tunneling and approximately 1.8 miles of open cut.

He reviewed some of the project challenges. About a mile of the project was within Fort Sam Houston, and there was a lot of coordination between SAWS staff and the design team working with Fort Sam Houston to submit the needed approvals. There were multiple meetings with CPS Energy regarding the installation of the proposed main within the proximity of a power transmission main and a distribution line. The pipe was centered between the two with about 25 feet of space to work. Staff also worked with CoSA Parks and Union Pacific Railroad. Public meetings with homeowners were held and a few temporary construction easements were obtained.

Four bids were received. The low bidder was Southland/Renda Joint Venture, also known as Oscar Renda, with a bid of $35 million. The design engineer was Kimley-Horn and Associates, Inc. The engineer’s estimate was $43.5 million and the low bid was 19.5 percent lower than the estimate. The total SMWB participation was 13.71 percent. The construction duration was two years. Staff met with Southland/Renda Joint Venture to go over the bid to make sure they understood the plans and specs. Due to the complex construction depth for the tunneling portion, staff proposed to amend the existing engineering contract with Kimley-Horn and Associates, Inc. to include additional construction phase services. This would include more site visits, daily coordination with Fort Sam Houston, and construction administration and inspection services for the specialized tunneling expert.

Staff recommended the award of a construction contract to Southland/Renda Joint Venture, approval of funds in the amount of $35,049,906.50 for Segment 1 of the construction contract, and approval of funds in the amount of $450,600.00 for construction phase services to Kimley-Horn and Associates, Inc.

Mr. Rowe made a motion to approve Item 22. Mr. Arrellano seconded the motion.

Ms. Jasso asked if the additional work for Kimley-Horn and Associates, Inc. was part of the request for Item 22. Mr. Perry confirmed. There were two items. One was the approval for the construction contract of $35 million, and the second item was the approval for the additional consultant services for $450,600.00.

Mr. McGee inquired about Oscar Renda’s prior experience on SAWS projects. Mr. Perry
replied that Oscar Renda had completed a project last year, was currently wrapping up the San Antonio River Outfall Project Phase I, and had two other projects under construction.

Mr. McGee inquired about the low bid being $7 million less than the other bid, and whether staff was satisfied the contractor could do the work. Mr. Perry confirmed and responded that staff met with Southland/Renda Joint Venture to make sure they understood the plans and specs and the time frame of the project. The items that were low included $2.6 million of open cut that was lower than the average of the other bidders. The tunneling part was half a million lower, and the mobilization and preparation was about $2 million lower.

Mr. Puente added another reason the contractor was lower was they were experienced in tunneling work, and there was a lot of tunneling work because of the site in Fort Sam Houston. The contractor had just finished some jobs; therefore, the mobilization cost was not going to be as big.

Chairman Guerra asked if most of the work was sewer main, and when the entire area would be completed. Mr. Perry replied there was some water main that would need to be moved, but the majority would replace sewer main. Each segment would take two years, but the second segment would begin about a year after the first segment so overall about three years.

Ms. Jasso asked Jeff Haby to speak to the project as part of the SSO Program. Mr. Haby responded that in 2016, there were 13 public notices along the Holbrook/Ira Lee area. This was one of the most challenging projects and probably one of the most critical for the Consent Decree. This sewershed carried sewage from way past Bulverde Road on the north side through the far east side and then all the way down to the Dos Rios facility.

Chairman Guerra asked about the size of the sewer pipeline. Mr. Haby replied it was a 48-inch and would go to a 72-inch main.

Mr. McGee asked if these projects would fix the SSO problem in the area. Mr. Haby confirmed. When all phases were done, the overflows in this area along the main trunk would be eliminated. Other challenges included the reduction of inflow during rain events, and this would be addressed through contracts like the manhole contract approved by the Board at the last meeting.

Ms. Merritt inquired about the life expectancy of concrete pipe versus fiberglass pipe. Mr. Haby responded the current concrete pipe was put in in the early 70's and was in pretty poor condition. The fiberglass pipe was expected to span 100 years plus.

After no further discussion, Item 22 was unanimously approved. Verbal voting.

23. A Resolution approving an Interlocal Agreement with the City of Denton for cooperative purchasing to be used as a procurement tool between the San Antonio Water System and the City of Denton. (DOUG EVANSON – YVONNE TORRES)

Yvonne Torres presented Item 23, an Interlocal Agreement with the City of Denton. She provided an introduction to the purchasing and supply departments. Contracting and purchasing specialists were responsible for assisting end-users with creating the bid document, managing the solicitation and award process, and administering the contract. The
contracting technician performed administrative duties to include the tabulation of bids. The business data analyst supported the purchasing and supply system, and worked with IS to troubleshoot issues. Purchasing was responsible for the purchase of all goods and non-professional services. Supply was responsible for stocking warehouses to make sure all the items needed in the field were available. She reviewed examples of the items that were contracted for different groups within SAWS, and the department’s 2016 activity.

She discussed the use of cooperatives as a tool to help improve efficiencies. Purchasing was governed by Chapter 252 of the Texas Local Government Code. Chapter 271 allowed the use of cooperative purchasing, and Chapter 791 covered interlocal cooperative contracts with other local governmental entities. Cooperatives eliminated the cost and staff time for competitive bidding, and provided access to competitively procured contracts by other either governmental entities or cooperatives. Cooperatives provided access to better prices and greater economies of scale. She discussed how cooperatives were selected, and reviewed examples of other cooperatives approved by the Board such as the City of San Antonio’s fuel contract, the City of Ft. Worth’s water conservation audits contract, and the Local Government Purchasing Cooperative, or BuyBoard. On the same token, other entities have taken advantage of SAWS contracts. For example, the City of San Marcos participated in a cooperative with SAWS for the SmartCover and valve preventative maintenance contracts.

An interlocal agreement with the City of Denton would begin the formal process of establishing the intent to either participate on a joint venture or an existing contract. The interlocal did not commit any funds, but would open the door to begin discussions. Staff was exploring fleet parts contracts as well as a contract for irrigation parts and supplies. Staff recommended the approval of an interlocal agreement for cooperative purchasing with the City of Denton.

Ms. Jasso made a motion to approve Item 23. Mr. McGee seconded the motion.

Mr. Rowe inquired about how and why the City of Denton was selected. Ms. Torres replied the City of Denton was pretty progressive in the way they had done some of the contracts specifically for fleet parts that was of interest to SAWS.

After no further discussion, Item 23 was unanimously approved. Verbal voting.

24. BRIEFING SESSION.

A. Briefing and deliberation regarding the Vista Ridge Project

Donovan Burton gave a brief update on the Vista Ridge Project. The project continued to gain attention nationwide, in fact, internationally. Vista Ridge was one of the largest water P3s in the nation, and everyone was talking about it, particularly the project finance world and the engineering world. Mr. Puente had been invited to speak internationally on the project. Not only would the project secure the city’s water future for the next generations, but it also served as an international model of success on water P3.

Work was ongoing on the integration portion that would save the project a little bit of money and eliminate some inefficiencies. Staff would bring that to the Board probably over the next couple of months. The project was moving forward and construction had started.
B. Briefing and deliberation regarding the 4th Quarter Investment Report and Debt Transaction Report

Phyllis Garcia briefed the Quarterly Investment Report and the recent debt transactions, as required by the Public Funds Investment Act. At the end of the fourth quarter, SAWS had total investments of $897 million. Earnings for the quarter totaled $1.1 million, and the overall portfolio yield was 60 basis points. The majority of the portfolio was invested in U.S. Agency Securities in the form of Discount Notes and Coupon Notes, with the remaining funds invested in Money Market Funds and Treasury Notes. The portfolio was invested in a diverse number of issuers.

The short and intermediate rates on the yield curve rose during the fourth quarter, and rates continued to increase. The Fed raised the interest rate 25 basis points in December. Although the Fed did not increase rates at the February meeting, there were still expectations that rates would continue to rise throughout 2017. The portfolio benchmark was the six-month and one-year treasury. As of the end of December, the portfolio was unfavorable to those benchmarks. The rates prepared for the benchmark were as of a certain point in time, whereas the SAWS portfolio was based on its entire holdings. In a rising interest rate environment, the portfolio would lag in performance, but in a decreasing interest rate environment, it would increase. As required by SAWS Investment Policy, bank deposits were required to be collateralized. As of December 31, all deposits were collateralized. SAWS continued to utilize its earning credits at the general depository bank to offset fees with the earnings credit being 70 basis points. Overall, SAWS portfolio was in compliance with the SAWS Investment Policy. All transactions were in accordance with the SAWS strategies. The portfolio was invested per its objectives in order of priority of legality, safety, liquidity, diversification, and finally, yield.

She reviewed the Debt Transaction Report, as required by City Ordinance. In October 2016, SAWS priced approximately $305 million in revenue refunding bonds to refund outstanding debt for savings and to provide cash funding for capital projects. SAWS refunded a portion of the 2007 Bonds and 2009 Bonds. The cash savings from that transaction was $45 million through 2039 after a net present value of $33 million or 16.4 percent. She discussed the new money component where SAWS received funding for the 2016 capital program. The refunding over the years for those bonds averaged approximately $1.9 million a year through 2031. She outlined the underwriting syndicate for the transaction. In the investment portfolio, interest rates had been rising throughout the last quarter, and it was a fairly volatile market. The week that this transaction priced, the price was very heavy with approximately $12.9 billion pricing that week. Due to SAWS high credit rating and SAWS being an essential credit, SAWS deal was well received in the market. For the $305 million bonds, SAWS received $952 million in orders. SAWS was oversubscribed, which allowed adjustments in years one through six between one and five basis points and provided additional savings. Overall, the underwriters did a great job in a fairly volatile market.

In December, SAWS closed on two loans through the Texas Water Development Board. The first was a drinking water loan to fund the 34th Street Pump Station of about $12.5 million; the subsidy was 1.2 percent on that loan. The overall cost for the 30-year loan was 1.42 percent. The second was a clean water loan of about $14.4 million to fund the Dos Rios electrical project. The subsidy was 1.2 percent, and the true interest cost was 1.44 percent.
for that loan for 30 years. Also in November 2013, SAWS issued some variable rate bonds to take advantage of low interest rates. On the short end of the yield curb, SAWS issued $100 million in bonds that were within a SIFMA Index Mode. SAWS priced those bonds based on that index, plus 68 basis points for a three-year period. The three-year period expired on October 31, and the bonds were repriced. She reviewed a graph of the interest rates over the three-year period. For the first part of 2016, the average rate for the bonds was 72 basis points. Since March, the rate had gone up to as high as 1.55 percent. Although these were short-term rates, the volatility had increased. Staff worked with the financial advisors to reduce that volatility, but still take advantage of the low interest rate end of the yield curve. SAWS remarketed bonds for five years at a fixed rate of two percent with a yield of 1.63 percent. For the $99 million in bonds, SAWS had over $187 million in orders.

Another transaction finished refunding the remaining 2007 Bonds and refunded some Junior Lien 2007A Bonds. SAWS issued $90.9 million of bonds, and received cash savings of almost $10 million with a net present value savings of $7.5 million or 7.5 percent. These bonds were priced last week, and would close on February 28. There was approximately $472 million average annual savings over the life of the bonds through 2037. She outlined the underwriters for this transaction. Again, interest rates had been increasing over the last couple of weeks. This issue was again well received. For the $90 million of bonds, SAWS received over $369 million in orders. SAWS was able to reduce rates between one and five basis points across the yield curb.

Chairman Guerra thanked Ms. Garcia and everyone involved with the refunding and the savings of millions of dollars.

25. Inquiries of the Board of Trustees for future briefings and/or follow-up action.

None


The San Antonio Water System Board of Trustees Meeting of February 7, 2017, adjourned at 10:52 a.m.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_________________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees  
FROM: Robert R. Puente, President/Chief Executive Officer  
SUBJECT: Acceptance of Bids for Services, Equipment, Materials and Supplies

Board Action Date: April 4, 2017

The attached resolution accepts bids and awards contracts for services, equipment and supplies as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>This Board Meeting</th>
<th>Year-to-Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Contracts (SMWB)</td>
<td>Estimated Amount (SMWB)</td>
</tr>
<tr>
<td>A. Award of New One Time Purchases of Materials, Equipment or Services</td>
<td>11 0</td>
<td>3,024,883.73 0.00</td>
</tr>
<tr>
<td>B. Award of New and Renewal of Annual Goods &amp; Services Requirements Contracts and Maintenance Agreements</td>
<td>9 3</td>
<td>899,330.33 558,806.37</td>
</tr>
<tr>
<td></td>
<td>20 3</td>
<td>$3,924,214.06 558,806.37</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SMWB Purchasing Contracts (percentage)</th>
<th>15.00%</th>
<th>14.24%</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMWB Purchasing Contracts (percentage)</td>
<td>29.63%</td>
<td>22.59%</td>
</tr>
</tbody>
</table>

Approved: Robert R. Puente  
President/Chief Executive Officer

Reviewed: Marisol V. Robles  
SMWB Program Manager
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING BIDS AND AWARDED CONTRACTS FOR THE PROCUREMENT OF CERTAIN SERVICES, EQUIPMENT, MATERIALS AND SUPPLIES; AUTHORIZING EXPENDITURES TO PROCE THE SAID SERVICES, EQUIPMENT, MATERIALS AND SUPPLIES; AUTHORIZING THE DIRECTOR OF THE PURCHASING DIVISION, OR HER DESIGNEE, TO EXECUTE DOCUMENTS RELATED THERETO; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Director of the Purchasing Division of the San Antonio Water System (the "System") has recommended certain bids be accepted, that certain contracts be awarded, and that certain other actions be taken to procure services, equipment, materials and supplies which are necessary for the operation of the System; and

WHEREAS, the said recommendations are fully set out in "Attachment I" which is attached hereto and made a part hereof, and said recommendations have been approved by the System's President/Chief Executive Officer; and

WHEREAS, the appropriate bidding procedures regarding the procurement of goods and services have been adhered to in the compiling of the attached recommendations, as reflected in administrative records supporting this resolution; and

WHEREAS, funds are available in the System's budget to pay for the required services, equipment, materials and supplies; and

WHEREAS, the Board of Trustees of the San Antonio Water System desires (i) to accept the bids and award the contracts as recommended, (ii) to authorize from available funds of the System the expenditures necessary to carry out the recommended procurements, and (iii) to authorize the Director of the Purchasing Division or her designee to execute all contracts and other documents necessary to carry out the recommended procurements; now, therefore:

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

1. That the bids are accepted and the contracts are awarded for procurement of the services, equipment, materials and supplies listed in Attachment I, as recommended by the Director of the Purchasing Division.

2. That the expenditure of the necessary funds from the appropriate budget fund of the System for the procurement of the said services, equipment, materials and supplies is hereby authorized.
3. That the Director of the Purchasing Division, or her designee, is hereby authorized to notify bidders of the acceptance of bids, to execute contracts and other documents, and to carry out all other actions necessary to procure the said services, equipment, materials and supplies.

4. 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.

5. 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.

6. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this the 4th day of April, 2017

Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary
Award of New One Time Purchases of Materials, Equipment or Services

A. The following items will establish price and delivery for the one time purchase of Materials, Equipment and Services. These items are included in the current budget. Payment will be made from the applicable fund.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>DESCRIPTION</th>
<th>ITEM NO(s.)</th>
<th>ESTIMATED TOTAL PURCHASES</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Grande Truck Center</td>
<td>Six (6) each 25,000 GVWR cab-chassis, 84&quot; CA truck with installed aluminum utility body and 2,000 lb. crane</td>
<td>A</td>
<td>$ 746,526.00</td>
<td>These units are part of the vehicle equipment replacement program and will be assigned to System locations.</td>
</tr>
<tr>
<td>2. Santex Truck Center</td>
<td>Five (5) each 50,000 GVWR cab-chassis, (single cab) with installed 10 cubic yard minimum water level dump body</td>
<td>B</td>
<td>$ 473,167.40</td>
<td>(Same as above)</td>
</tr>
<tr>
<td>3. Grande Truck Center</td>
<td>Two (2) each 19,000 GVWR (minimum) 84&quot; CA, 4x2 regular cab with installed reinforced utility body and a 6,000 lb. corner mounted crane</td>
<td>C</td>
<td>$ 171,382.00</td>
<td>(Same as above)</td>
</tr>
<tr>
<td>4. United Rentals Trench Safety</td>
<td>One Time Purchase of Steel Road Plates and Trench Boxes</td>
<td>All</td>
<td>$ 96,962.86</td>
<td>This is a one time purchase of road plates and shoring boxes for the Distribution and Collections crews.</td>
</tr>
<tr>
<td>5. AG-Pro</td>
<td>One (1) each Tractor Loader, with enclosed canopy with detachable tiller attachment</td>
<td>A</td>
<td>$ 40,606.47</td>
<td>These units are part of the vehicle equipment replacement program and will be assigned to System locations.</td>
</tr>
<tr>
<td>6. Equipment Depot</td>
<td>Seventeen (17) each Tractor, two-wheel drive with ROPS/FOPS canopy, front-mounted extendible backhoe, (platform type)</td>
<td>B</td>
<td>$ 1,009,783.00</td>
<td>(Same as above)</td>
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Board Date: April 4, 2017
### Award of New One Time Purchases of Materials, Equipment or Services

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<tr>
<td>7. Equipment Depot</td>
<td>One (1) each Compact Track Loader Bid No. 17-17012</td>
<td>C</td>
<td>$54,564.00</td>
<td>(Same as above)</td>
</tr>
<tr>
<td>8. Equipment Depot</td>
<td>Two (2) each Rubber Track Zero turn swing mini excavator with attachment Bid No. 17-17012</td>
<td>D</td>
<td>$78,638.00</td>
<td>(Same as above)</td>
</tr>
<tr>
<td>9. Hahn &amp; Clay</td>
<td>Repair of Two Siemens/ Flender Gearboxes Bid No. 17-17025</td>
<td>All</td>
<td>$60,000.00</td>
<td>This is a sole source, one-time service to repair two Siemens/ Flender gearboxes for the Carousel Mixers at the Medio Creek WRC aeration system. These mixers are a vital component of the aeration system and are needed to produce adequate dissolved oxygen in the treatment process. Hahn &amp; Clay is the only Factory Authorized Service Center for Siemens/ Flender gearboxes within the state of Texas, and utilizes OEM parts.</td>
</tr>
<tr>
<td>10. Green Equipment Co.</td>
<td>One Time Purchase of Radio Pipe Locators Bid No. 17-17010</td>
<td>All</td>
<td>$60,214.00</td>
<td>This is a one time purchase of Radio Pipe Locators for the Distribution and Collections Department. This will provide Field Coordinators additional equipment to more accurately locate our infrastructure.</td>
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Award of New One Time Purchases of Materials, Equipment or Services

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<tbody>
<tr>
<td>Silsbee Toyota</td>
<td>Ten (10) each 5200 GVWR 4X2 Double Cab (Toyota Tacoma)</td>
<td>All</td>
<td>$ 233,040.00</td>
<td>The Radio Detection Pipe Locators and accessories will be used by Distribution and Collection crews to detect underground infrastructure made from cast iron, plastic, clay, fiber, concrete and brick. SAWS crews will move ahead of contractors to mark our asset locations so that contractors can avoid damaging those assets. Recommend award.</td>
</tr>
<tr>
<td></td>
<td><strong>BuyBoard # 521-16</strong></td>
<td></td>
<td></td>
<td>These trucks are part of a vehicle decision package, number 54 for the Dead End Main Flushing Program and will be assigned to System locations. These units are being purchased through the Local Government Purchasing Cooperative (Buy Board).</td>
</tr>
</tbody>
</table>
**Award of New and Renewal Annual Goods & Services Requirement Contracts and Maintenance Agreements**

B. The following items will establish estimated quantities, unit price and delivery for the Service and Supply Contracts and their extensions. These items are included in the current budget. Payment will be made from the applicable fund. Estimated annual purchase is based on unit price bid; actual total and quantities, may vary from the estimate.

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<tbody>
<tr>
<td>1. Wesco Distribution, Inc.</td>
<td>Annual Contract for Personal Waste Disposal Products</td>
<td>All</td>
<td>$ 66,190.00</td>
<td>This is an extension of an existing contract. This contract will be utilized by System to purchase Personal Waste Disposal and related products used by System employees. Wesco Distribution Center, Inc. has performed well during the contract period and System has determined pricing is favorable. Base year and first extension total $66,190.00. This contract extension will be effective June 1, 2017 through May 31, 2018. If determined that an extension is favorable to System, price and service considered, the award includes the availability of two (2) additional one-year options to extend as provided for and approved in future year's budgets.</td>
</tr>
<tr>
<td>2. Safety Supply, Inc. (SBE)</td>
<td>Annual Contract for Safety Eyewear</td>
<td>All</td>
<td>$ 58,048.33</td>
<td>This is an extension of an existing contract. This contract will be utilized by System to purchase Safety Eyewear on an as needed basis. Safety Supply, Inc. has performed well during the contract period and System has determined pricing is favorable. Base bid first and second year extension total $58,048.33. This contract extension will be effective June 1, 2017 through May 31, 2018. If determined that an extension is favorable to System, price and service considered, the award includes the availability of one (1) additional one-year options to extend as provided for and approved in future year's budgets.</td>
</tr>
</tbody>
</table>

**DIRECTOR COMMENTS:**

American Innotek BriefRelief Personal Waste Disposal Products are used by System employees when working in remote areas. Their products are safe, disposable in the garbage, and have over a 10 year shelf life. Pricing provided by Wesco ranges from 10% to 23% lower than list price. Recommend award.
Award of New and Renewal Annual Goods & Services Requirement Contracts and Maintenance Agreements

B. The following items will establish estimated quantities, unit price and delivery for the Service and Supply Contracts and their extensions. These items are included in the current budget. Payment will be made from the applicable fund. Estimated annual purchase is based on unit price bid; actual total and quantities, may vary from the estimate.

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<th>NO(s.)</th>
<th>PURCHASES</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Adorama, Inc.</td>
<td>Annual Contract for Headsets, Webcams and Accessories Bid No. 17-1556</td>
<td>All</td>
<td>$57,659.60</td>
<td>This is a new contract. This contract will be utilized to provide System with headsets, webcams and screen-sharing equipment that is utilized throughout the company with phones, Jabber and WebEx for audio/video calls and in conference rooms for higher quality presentations. This contract will be effective Date of Award (April 4, 2017) through February 14, 2018. If determined that an extension is favorable to System, price and service considered, the award includes the availability of four (4) additional one-year options to extend as provided for and approved in future year’s budgets.</td>
</tr>
<tr>
<td>4. Sunbelt Mill Supply (SBE)</td>
<td>Annual Contract for Spray Paints NO. 17-3073</td>
<td>Group 1</td>
<td>$75,814.20</td>
<td>This is a new contract. This contract will be utilized to provide System to purchase OSHA Spray Paints, Inverted Marking Paint (Solvent and Water-Based), interior/exterior industrial maintenance paints, acrylic alkyd enamels, farm and implement paints and metallic paints as well as survey stakes and survey flags. This contract will be effective Date of Award (April 4, 2017) through December 31, 2017. If determined that an extension is favorable to System, price and service considered, the award includes the availability of three (3) additional one-year options to extend as provided for and approved in future year’s budgets.</td>
</tr>
<tr>
<td>5. Blackburn Manufacturing</td>
<td>Annual Contract for Spray Paints NO. 17-3073</td>
<td>Group 2</td>
<td>$23,828.00</td>
<td>(Same as above)</td>
</tr>
<tr>
<td>6. HD Supply Waterworks, Ltd.</td>
<td>Annual Contract for Fire Hydrant Repair Parts NO. 17-0012</td>
<td>Groups 1-7</td>
<td>$110,966.36</td>
<td>This is a new contract. This contract will be utilized for the purchase of various manufacturer fire hydrant repairs parts on an as needed basis. This contract will be effective Date of Award (April 4, 2017) through December 31, 2017. If determined that an extension is favorable to System, price and service considered, the award includes the availability of four (4) additional one-year options to extend as provided for and approved in future year’s budgets.</td>
</tr>
</tbody>
</table>

*Indicates vendor is an SMWB unless otherwise noted vendor is non minority.  
Board Date: April 4, 2017
Award of New and Renewal Annual Goods & Services Requirement Contracts and Maintenance Agreements

B. The following items will establish estimated quantities, unit price and delivery for the Service and Supply Contracts and their extensions. These items are included in the current budget. Payment will be made from the applicable fund. Estimated annual purchase is based on unit price bid; actual total and quantities, may vary from the estimate.

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>DESCRIPTION</th>
<th>NO(s).</th>
<th>PURCHASES</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Fortiline Waterworks</td>
<td>Annual Contract for Fire Hydrant</td>
<td>Group 8</td>
<td>$13,295.00</td>
<td>(Same as above)</td>
</tr>
<tr>
<td></td>
<td>Repair Parts</td>
<td></td>
<td></td>
<td>This is a new contract. This contract will be utilized by the System for the purchase of work uniforms for System employees. This contract will be effective Date of Award (April 4, 2017) through May 31, 2018. If determined that an extension is favorable to System, price and service considered, the award includes the availability of four (4) additional one-year options to extend as provided for and approved in future year's budgets.</td>
</tr>
<tr>
<td></td>
<td>Bid No. 17-0012</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Ameri-Form, Inc. (MBE, SBE)</td>
<td>Annual Contract for Work Uniforms</td>
<td>All</td>
<td>$424,943.84</td>
<td>This is an extension of an existing contract. This contract will be utilized by System for the purchase of Locks and Padlocks on an as needed basis for securing System properties and facilities. Independent Hardware, Inc. has performed well during the contract period and System has determined pricing is favorable. Base year and first year extension total $68,585.00. This contract extension will be effective Date of Award (April 4, 2017) through May 31, 2018. If determined that an extension is favorable to System, price and service considered, the award includes the availability of two (2) additional one-year options to extend as provided for and approved in future year's budgets.</td>
</tr>
<tr>
<td></td>
<td>Bid No. 17-5050</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Independent Hardware, Inc.</td>
<td>Annual Contract for Locks and</td>
<td>All</td>
<td>$68,585.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Padlocks</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bid No. 16-0068</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$899,330.33</td>
<td></td>
</tr>
</tbody>
</table>

*Indicates vendor is an SMWB unless otherwise noted vendor is non minority.
## SAN ANTONIO WATER SYSTEM
**P. O. BOX 2449**
**SAN ANTONIO, TEXAS 78298-2449**

### TABULATION OF BIDS

#### PURCHASE OF VARIOUS TYPES OF TRUCKS

**DATE:** 3:00 p.m., February 20, 2017

**SITE:** 1380 Ackerman Rd.
San Antonio, TX 78219

**TIME:** 2:30 p.m., February 20, 2017

**STREET:** 1380 Ackerman Rd.
San Antonio, TX 78219

## TABULATION OF BIDS

### A. MANUFACTURER MAKE AND MODEL

<table>
<thead>
<tr>
<th>Model</th>
<th>Make</th>
<th>GVWR</th>
<th>Delivery Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>6960</td>
<td>International</td>
<td>25,000</td>
<td>150-180 days</td>
</tr>
<tr>
<td>6960</td>
<td>Peterbilt</td>
<td>25,000</td>
<td>120 days</td>
</tr>
</tbody>
</table>

### B. STATE MAKE AND MODEL

<table>
<thead>
<tr>
<th>Model</th>
<th>Make</th>
<th>GVWR</th>
<th>Delivery Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>6960</td>
<td>International</td>
<td>25,000</td>
<td>150-180 days</td>
</tr>
<tr>
<td>6960</td>
<td>Peterbilt</td>
<td>25,000</td>
<td>120 days</td>
</tr>
</tbody>
</table>

### C. TERMS

<table>
<thead>
<tr>
<th>Make</th>
<th>Delivery Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ford F550</td>
<td>90-120 days</td>
</tr>
<tr>
<td>Ford F530 A/C Regular</td>
<td>100-120 days</td>
</tr>
</tbody>
</table>

### BID INVITATIONS WERE E-MAILED TO AND OR PICKED UP BY

<table>
<thead>
<tr>
<th>Company</th>
<th>Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancira Motor Co.</td>
<td>Dermandate</td>
</tr>
<tr>
<td>Daigre Freightliner of South TX</td>
<td></td>
</tr>
<tr>
<td>Freightliner of SA</td>
<td></td>
</tr>
<tr>
<td>Grandy Ford</td>
<td></td>
</tr>
<tr>
<td>Grumman Truck Center</td>
<td></td>
</tr>
<tr>
<td>Kenworth French Ellison Truck Center</td>
<td></td>
</tr>
<tr>
<td>Rockdale Country Ford</td>
<td></td>
</tr>
<tr>
<td>Rush Truck Center</td>
<td></td>
</tr>
<tr>
<td>Santex Truck Center</td>
<td></td>
</tr>
<tr>
<td>Silsbee Ford</td>
<td></td>
</tr>
</tbody>
</table>

### REMARKS

- LOW BIDDER

---

**BID INVITATIONS WERE E-MAILED TO AND OR PICKED UP BY**

**Ancira Motor Co.**
**Dermandate**

**Daigre Freightliner of South TX**
**SAWS Website**

**Freightliner of SA**

**Grundy Ford**

**Grumman Truck Center**

**Kenworth French Ellison Truck Center**

**Rockdale Country Ford**

**Rush Truck Center**

**Santex Truck Center**

**Silsbee Ford**
SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449
TABULATION OF BIDS
Purchase of Steel Road Plates and Trench Boxes
3:00 p.m., February 23, 2017

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>New Road Plate 8' x 20' x 1&quot;</td>
<td>3,071.30</td>
<td>30,713.00</td>
</tr>
<tr>
<td></td>
<td>New Road Plate 8' x 10' x 1&quot;</td>
<td>1,562.47</td>
<td>12,499.76</td>
</tr>
<tr>
<td>1</td>
<td>New Road Plate 6' x 10' x 1&quot;</td>
<td>1,221.47</td>
<td>12,214.70</td>
</tr>
<tr>
<td></td>
<td>Trench Box feet x 12 feet with 4 inch wall</td>
<td>3,071.30</td>
<td>30,713.00</td>
</tr>
<tr>
<td>4</td>
<td>One set of 4 - 8 foot spreader</td>
<td>24,594.84</td>
<td>221,187.60</td>
</tr>
<tr>
<td></td>
<td>One set of 4 - 12 foot spreader</td>
<td>5,148.71</td>
<td>41,188.88</td>
</tr>
<tr>
<td></td>
<td>One set of 4 - 16 foot spreader</td>
<td>24,594.84</td>
<td>196,758.72</td>
</tr>
<tr>
<td>8</td>
<td>8 high strength steel spreader pins per trench box</td>
<td>146.00</td>
<td>1,177.60</td>
</tr>
<tr>
<td>4</td>
<td>8 stacking pins per trench box</td>
<td>184.00</td>
<td>1,472.00</td>
</tr>
</tbody>
</table>

**TOTAL**

Net: 96,962.86

Net: 107,732.00

Net: 108,806.00

Net: 109,104.48

Net: 110,294.00

30 days 10 days 10 days 30 days

30 days 10 days 10 days 30 days

30 days 10 days 10 days 30 days

30 days 10 days 10 days 30 days

*LOW BIDDER*

BID INVITATIONS WERE E-MAILED TO AND/OR PICKED UP BY:

- American Shoring, Inc.
- BakerCorp
- ICM of America
- NTS Milchkin, LLC dba National Trench Safety
- Road Runner Plate and Shoring
- Sunbelt Rentals
- The Plate Guy
- United Rentals Trench Safety

For more information, please visit the SAWS Website.
### SAN ANTONIO WATER SYSTEM
#### TABULATION OF BIDS

**PURCHASE OF STEEL ROAD PLATES AND TRENCH BOXES**

**DATE:** 3:00 p.m., February 23, 2017

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10 ea. New Road Plate 8' x 20' x 1&quot;</td>
<td>3,071.30</td>
<td>30,713.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2,903.00</td>
<td>29,030.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,228.00</td>
<td>32,280.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3,101.80</td>
<td>31,018.00</td>
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<tr>
<td></td>
<td></td>
<td>3,995.00</td>
<td>39,950.00</td>
</tr>
<tr>
<td>2</td>
<td>8 ea. New Road Plate 8' x 10' x 1&quot;</td>
<td>1,562.47</td>
<td>12,499.76</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,568.00</td>
<td>12,544.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,612.00</td>
<td>12,896.00</td>
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<tr>
<td></td>
<td></td>
<td>1,644.10</td>
<td>13,152.80</td>
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<tr>
<td></td>
<td></td>
<td>2,025.00</td>
<td>16,200.00</td>
</tr>
<tr>
<td>3</td>
<td>10 ea. New Road Plate 6' x 10' x 1&quot;</td>
<td>1,221.47</td>
<td>12,214.70</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,235.00</td>
<td>12,350.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,215.00</td>
<td>12,150.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,205.90</td>
<td>12,059.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1,524.00</td>
<td>15,240.00</td>
</tr>
<tr>
<td>4</td>
<td>4 ca. Trench Box feet x 12 feet with 4 inch wall</td>
<td>6,148.71</td>
<td>24,594.84</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7,742.00</td>
<td>30,972.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8,758.00</td>
<td>34,988.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8,202.65</td>
<td>32,810.60</td>
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<tr>
<td></td>
<td></td>
<td>5,650.00</td>
<td>22,600.00</td>
</tr>
<tr>
<td>5</td>
<td>4 ca. One set of 4 - 8 foot spreader</td>
<td>3,764.48</td>
<td>941.12</td>
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<tr>
<td></td>
<td></td>
<td>1,308.00</td>
<td>3,924.00</td>
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<tr>
<td></td>
<td></td>
<td>896.00</td>
<td>3,571.20</td>
</tr>
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<td></td>
<td></td>
<td>892.80</td>
<td>3,571.20</td>
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<tr>
<td></td>
<td></td>
<td>2,700.00</td>
<td>10,800.00</td>
</tr>
<tr>
<td>6</td>
<td>4 ca. One set of 4 - 12 foot spreader</td>
<td>5,646.72</td>
<td>1,411.68</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7,088.00</td>
<td>2,840.00</td>
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<tr>
<td></td>
<td></td>
<td>5,376.00</td>
<td>21,504.00</td>
</tr>
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<td></td>
<td>5,356.80</td>
<td>21,528.80</td>
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<td>15,600.00</td>
<td>62,400.00</td>
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<tr>
<td>7</td>
<td>4 ca. One set of 4 - 16 foot spreader</td>
<td>7,529.36</td>
<td>1,882.34</td>
</tr>
<tr>
<td></td>
<td></td>
<td>9,308.00</td>
<td>3,771.20</td>
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<td></td>
<td>7,168.00</td>
<td>28,672.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>7,142.40</td>
<td>28,569.60</td>
</tr>
<tr>
<td></td>
<td></td>
<td>19,200.00</td>
<td>76,800.00</td>
</tr>
<tr>
<td>8</td>
<td>4 ca. 8 high strength steel spreader pins per trench box</td>
<td>N/C</td>
<td>46.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>584.00</td>
<td>2,680.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>N/C</td>
<td>1,177.28</td>
</tr>
<tr>
<td></td>
<td></td>
<td>80.00</td>
<td>320.00</td>
</tr>
<tr>
<td>9</td>
<td>4 ca. 8 stacking pins per trench box</td>
<td>N/C</td>
<td>180.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>236.00</td>
<td>944.00</td>
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<td>230.00</td>
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</tr>
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<td></td>
<td></td>
<td>384.00</td>
<td>1,536.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>96,962.86</td>
<td>107,732.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>108,806.00</td>
<td>110,148.48</td>
</tr>
<tr>
<td></td>
<td></td>
<td>140,294.00</td>
<td>144,000.00</td>
</tr>
</tbody>
</table>

**TERMS**

- Net 30 days
- 5% 10 days
- 1% 30 days

**Delivery Days**

- 10 days
- 45 days
- 45 days
- 30 days

**LOW BIDDER**

**BID INVITATIONS WERE E-MAILED TO AND/OR PICKED UP BY**

- American Shoring, Inc.
- BakerCorp
- Houston Trench and Steel Plate
- ICM of America
- NTS Mikeden, LLC dba National Trench Safety
- Road Runner Plate and Shoring
- Sunbelt Rentals
- The Plate Guy
- United Rentals Trench Safety

**AWARDS**

- American Shoring, Inc.
- BakerCorp
- Houston Trench and Steel Plate
- ICM of America
- NTS Mikeden, LLC dba National Trench Safety
- Road Runner Plate and Shoring
- Sunbelt Rentals
- The Plate Guy
- United Rentals Trench Safety
<table>
<thead>
<tr>
<th>Description</th>
<th>Requirement</th>
<th>Equipment</th>
<th>Delivery Date</th>
<th>Delivery Date</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ea. Tractor, Loader, enclosed canopy, with detachable tiller attachments, per specifications</td>
<td>No Bid</td>
<td></td>
<td>John Doerr 9033</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 ea. Tractor, 3-point hitch with ROPS canopy, front and rear mounted hyd. bucket, and one case of concrete blocks, for specifications</td>
<td>No Bid</td>
<td></td>
<td>John Doerr 935</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 ea. Compact Track Loader, complete, per specifications</td>
<td>No Bid</td>
<td></td>
<td>John Doerr 903</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 ea. Rubber track, mini excavator, mini excavator, complete, per specifications</td>
<td>No Bid</td>
<td></td>
<td>John Doerr 935</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 ea. Rubber track, mini excavator, mini excavator, complete, per specifications</td>
<td>No Bid</td>
<td></td>
<td>John Doerr 935</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Terms</td>
<td>Net</td>
<td>Net</td>
<td>Net</td>
<td>Net</td>
<td>Net</td>
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<tr>
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<td>30 days</td>
<td>30 days</td>
<td>30 days</td>
<td>30 days</td>
<td>30 days</td>
</tr>
</tbody>
</table>

**LOW BIDDER**

**BID INVITATIONS WERE E-MAILED TO AND OR PICKED UP BY**

AG PRO
Associated Supply Co
Boll Tractors
Bobcat of SA
Equipment Depot
Evadale Dakota
Hire Rentals
Hitachi Equipment
Hoff Texas

**JCB of South TX**

**Roustabout**

**SAWS Website**

**Waddell & Reed, Inc.**

**Waddell & Reed, Inc. New Braunfels, TX 78130-9777**
Repair of Two Siemens/ Flender Gearboxes
SOLE SOURCE

This is a new sole-source, one time service to repair two Siemens/ Flender gearboxes for the Carousel Mixers at the Medio Creek WRC aeration system. These mixers are a vital component of the aeration system and are needed to produce adequate dissolved oxygen in the treatment process. Hahn & Clay is the only Factory Authorized Service Center for Siemens/ Flender gearboxes within the state of Texas, and utilizes OEM parts.

Estimated cost is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Teardown</th>
<th>Estimated Parts and Labor</th>
<th>Estimated Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt; Flender H3BV Gearbox</td>
<td>$2,800.00</td>
<td>$23,225.00</td>
<td>$26,025.00</td>
</tr>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt; Flender H3BV Gearbox</td>
<td>$3,650.00</td>
<td>$30,325.00 **</td>
<td>$33,975.00</td>
</tr>
</tbody>
</table>

** Waiting on an estimate for the repair of the 2<sup>nd</sup> Gearbox. Total to repair both is estimated to be $60,000.
SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS  78298-2449
TABULATION OF BIDS

**PROPOSAL FOR:**
One Time Purchase of Pipe Locators

**TIME & DATE:**
3:00 p.m., March 2, 2017

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>11 ea. Radio Detector, SPX RD7100 or approved equivalent</td>
<td>$1,994.50</td>
<td>$21,939.50</td>
</tr>
<tr>
<td>2</td>
<td>11 ea. High Power Transmitter SPX TX-10 or approved equivalent</td>
<td>$2,554.50</td>
<td>$28,099.50</td>
</tr>
<tr>
<td>3</td>
<td>11 ea. 4-inch signal clamp</td>
<td>$379.00</td>
<td>$1,619.00</td>
</tr>
<tr>
<td>4</td>
<td>11 ea. Rechargeable lithium ion battery</td>
<td>$546.00</td>
<td>$6,006.00</td>
</tr>
<tr>
<td>5</td>
<td>120 volt battery charger</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>6</td>
<td>12 volt battery charger</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td>$60,214.90</td>
<td></td>
</tr>
</tbody>
</table>

**Terms:**
Net 30 days

*LOW BIDDER*

**BID INVITATIONS WERE E-MAILED TO AND/OR PICKED UP BY**

- Amazing Machinery
- Bayshore Surveying Instrument
- Baytech Supply Inc
- Bullchase
- Rexel USA
- C&S Solutions
- Carlton Bases
- Crawford Electric Supply
- Delectars Electric
- Ditch Witch of Central TX
- Easy Drive
- Engineers Supply
- G4Special
- GEO Special Experts
- Geomatic Resource
- Green Equipment Co.
- Lewis and Lewis
- Mapa
- Martin Instrument
- Mansen Engineering
- Lone Star Int'l
- Rigid Tool Co
- RJM Equipment
- Schonstedt
- SPX
- Subsurface Solutions
- Surveying Equipment
- Tiger Supplies
- Transit and Level Clinic
- Tri County Transit
- Underground Safety Equipment
- Utility Tool Co.
ITEM
BID 17-17010
ONE TIME PURCHASE OF PIPE LOCATORS
SINGLE SOURCE

Bid No. 17-17010 solicited bids to purchase eleven (11) radio detection pipe locators, radio transmitters, and accessories for the Distribution and Collections Department.

Green Equipment Company is the single responsible bidder for the pipe locators.

This is for the System's one time purchase of eleven (11) radio detection pipe locators, radio transmitters, and associated accessories. These items will be used by the Distribution & Collection crews to locate the System's underground infrastructure in order to mark asset locations so that contractors can avoid damaging those assets. These SPX radio detection pipe locators are designed to detect active and passive frequencies as well as four (4) different sonde signals. These sonde signals allow for the locator to locate pipes made from a variety of materials including cast iron, plastic (PE), clay, fiber, concrete and brick.

Thirty five (35) utility suppliers were invited to bid on or provide for “Approved Equal” products. Bidders were requested to submit approved equal requests 1 week prior to the bid opening date. None of the invited suppliers submitted a request for an approved equal product. We received one (1) responsible bid submission from Green Equipment Company. Green Equipment Company is a manufacturer's representative for SPX Radio Detection.

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Radio Detector SPX RD7100</td>
<td>11</td>
<td>$1,994.50</td>
<td>$21,939.50</td>
</tr>
<tr>
<td>High Power Transmitter SPX TX-10</td>
<td>11</td>
<td>$2,554.50</td>
<td>$28,099.50</td>
</tr>
<tr>
<td>4-inch signal clamp</td>
<td>11</td>
<td>$379.00</td>
<td>$4,169.00</td>
</tr>
<tr>
<td>Rechargeable lithium ion battery</td>
<td>11</td>
<td>$546.00</td>
<td>$6,006.00</td>
</tr>
<tr>
<td>120 volt battery charger</td>
<td>11</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>12 volt battery charger</td>
<td>11</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

TOTAL $60,214.00

- The award amount is $60,214.00
BID 17-17030  
Purchase of Light Duty Trucks  
Local Government Purchasing Cooperative (BuyBoard) #521-16

This is a new one-time purchase awarded utilizing the Local Government Purchasing Cooperative, or BuyBoard #521-16. This purchase will be for ten 5200 GVWR 4X2 Double Cab Toyota Tacoma’s.

The Local Government Purchasing Cooperative solicited Request for Proposals (RFP) to include the purchase of various types of Trucks. Specifically, the RFP stated “Because individual members require different equipment, supplies, and/or services, the Proposal Invitation was a request for the base price of each vehicle plus associated fees, a discount off of catalog or pricelist for all options and upgrades, not-to-exceed hourly labor rates for installation and repair and per mile delivery fees.” The contract allows for purchases to be made by a Cooperative member at any time during the contract term of December 1, 2016 through November 30, 2017. Awarded vendors had to be approved by the manufacturer to sell, install, and service the brand of equipment submitted, and had to support this with an approval letter from each manufacturer. Specifically, in the state of Texas, an awarded vendor must have a Franchise Motor Vehicle Dealer Certificate for the Texas Department of Motor Vehicles. Additionally, awarded vendors had to meet multiple other criteria as defined in the RFP. As a Cooperative member we were allowed to request for a better price than the Base Price proposed, however, Silsbee Toyota was not able to provide further discounts on the Tacoma due to the low margin. The prices received are as follows:

<table>
<thead>
<tr>
<th>Toyota Tacoma</th>
<th>A. Base Price</th>
<th>$23,541.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>B. Published Options [Itemize each below]</td>
<td>Bid Price</td>
<td>Options</td>
</tr>
<tr>
<td>Toyota Tacoma Double Cab</td>
<td></td>
<td>Exterior - White</td>
</tr>
<tr>
<td>2.7L 4cyl Engine</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Power Windows / Locks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rear View Camera</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility Package</td>
<td>$1,441.00</td>
<td>(Deletes Rear Seats)</td>
</tr>
<tr>
<td>Total of B. Published Options</td>
<td>$ (1,441.00)</td>
<td></td>
</tr>
<tr>
<td>C. Unpublished Options [Itemize each below, not to exceed 25%]</td>
<td>$639.00</td>
<td></td>
</tr>
<tr>
<td>Canoeiver</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total of C. Unpublished Options</td>
<td>$639.00</td>
<td></td>
</tr>
<tr>
<td>D. Additional delivery charge (300 miles @ $1.75/mile)</td>
<td>$525.00</td>
<td></td>
</tr>
<tr>
<td>E. Subtotal Per Vehicle</td>
<td>$23,264.00</td>
<td></td>
</tr>
<tr>
<td>F. Quantity Ordered - 10</td>
<td>$232,640.00</td>
<td></td>
</tr>
<tr>
<td>G. BUYBOARD Administrative Fee ($400 per purchase order)</td>
<td>$400.00</td>
<td></td>
</tr>
<tr>
<td>H. Total Purchase Price Including BuyBoard Fee</td>
<td>$233,040.00</td>
<td></td>
</tr>
</tbody>
</table>
## SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS  78298-2449**  

**TABULATION OF BIDS**

**FOR**  
**PERSONAL WASTE DISPOSAL PRODUCTS**  

**TIME & DATE:**  
Jan 1, 2016 through May 31, 2017  
3:00 p.m., February 16, 2016  

**DESCRIPTION AND APPROXIMATE QUANTITY:**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>MFG</th>
<th>PART NO.</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Urinal Bag, MFG American Innotek BR608</td>
<td>Lawson #9331</td>
<td></td>
<td>UNIT</td>
<td>1.73</td>
<td>17,300.00</td>
</tr>
<tr>
<td></td>
<td>Mfg / Part No</td>
<td></td>
<td></td>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Disposable Solid Waste Bag, MFG American Innotek BR50C</td>
<td>Lawson #9322</td>
<td></td>
<td>UNIT</td>
<td>2.82</td>
<td>2,820.00</td>
</tr>
<tr>
<td></td>
<td>Mfg / Part No</td>
<td></td>
<td></td>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Porta Commode five gallons w/disposal, MFG American Innotek, Part No. CES10</td>
<td>Lawson #10545</td>
<td></td>
<td>UNIT</td>
<td>59.00</td>
<td>1,475.00</td>
</tr>
<tr>
<td></td>
<td>Mfg / Part No</td>
<td></td>
<td></td>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Privacy Tent, MFG American Innotek, Part No. PQ50C</td>
<td>Lawson #16681</td>
<td></td>
<td>UNIT</td>
<td>115.00</td>
<td>11,500.00</td>
</tr>
<tr>
<td></td>
<td>Mfg / Part No</td>
<td></td>
<td></td>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL EXTENSION 1**  
**TOTAL EXTENSION 2**  
**TOTAL EXTENSION 3**

**Terms:**  
Net  
30 days

**Delivery Days:**  
3-4 days

**LOW BIDDER**

**BID INVITATIONS E-MAILED TO AND/OR PICKED UP BY**

- Baytech  
- Border States  
- Environmental Safety Services  
- Hagemeier  
- Safety Supplies  
- Selrico Services  
- The EMS Store  
- Travel John  
- WESCO Dist  

**Demandstar**  
**SAWS Website**
Bid No. 16-6021 solicited bids for the purchase of Personal Waste Disposal Products and related products used by System employees.

Wesco Distribution Inc. is the single responsible bidder for the purchase of Personal Waste Disposal Products.

Fifteen vendors were invited to bid, but only one bid was received from Wesco Distribution Inc. Cited reasons as to why some of the vendors did not bid are as follows: “cannot be competitive”, “do not offer the products requested”, “not able to hold the pricing for the duration of the contract period”, and “could not find a vendor source for an approved equal”.

The bid submitted by Wesco Distribution Inc. meets all the requirements of the specification.

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>URINAL BAG MFG AMERICAN INNOTEK PART No. BR608 LAWSON No. 9331</td>
<td>10,000 each</td>
<td>$1.73</td>
<td>$17,300.00</td>
</tr>
<tr>
<td>DISPOSABLE SOLID WASTE BAG MFG AMERICAN INNOTEK PART No. BR500 LAWSON No. 9322</td>
<td>1,000 each</td>
<td>$2.82</td>
<td>$2,820.00</td>
</tr>
<tr>
<td>PORTA COMMODE FIVE GALLONS W/DISPOSAL JOHN KITS MFG AMERICAN INNOTEK PART No. CE510 LAWSON No. 10545</td>
<td>25 each</td>
<td>$59.00</td>
<td>$1,475.00</td>
</tr>
<tr>
<td>PRIVACY TENT MFG AMERICAN INNOTEK PART No. PQ500 LAWSON No. 16681</td>
<td>100 each</td>
<td>$115.00</td>
<td>$11,500.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>TOTAL $33,095.00</td>
</tr>
</tbody>
</table>

- The award amount is $33,095.00/ year
- The base year and first extension period total is $66,190.00.
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Rate</th>
<th>Net</th>
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<tbody>
<tr>
<td>Total</td>
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</tbody>
</table>

**FLOW METER S的眼睛:**
- **Flow Meter A:**
- **Flow Meter B:**
- **Flow Meter C:**
- **Flow Meter D:**
- **Flow Meter E:**

**Flow Meter Specifications:**
- Model: FM-300
- Range: 0-300 GPM
- Accuracy: ±1.0%
- Calibration: NIST-certified

**Flow Meter Installation:**
- Installed in the main water supply line
- Located on the first floor of the building
- Accessed through the service entry door

**Flow Meter Maintenance:**
- Conducted annually by a certified technician
- Records maintained for future reference

**Flow Meter Safety:**
- Access controlled for unauthorized personnel
- Security cameras installed around the meter area

**Flow Meter Replacement:**
- Replacement parts and tools available upon request
- Emergency service available 24/7

**Flow Meter Purchase:**
- Cost: $5,000
- Supplier: Flow Meter Supply Co.

**Flow Meter Warranty:**
- Warranty period: 1 year
- Coverage: Parts and labor

**Flow Meter Service:**
- Service contracts available
- Regular maintenance agreements

**Flow Meter Training:**
- Training provided for all personnel
- OSHA compliance

**Flow Meter Compliance:**
- Meets all local and national regulations
- Compliant with the National Fire Protection Association (NFPA) standards

**Flow Meter Future:**
- Expansion planning underway
- Water conservation initiatives in development

**Flow Meter Contact:**
- Technical Support: flowmeter.support@company.com
- Sales: sales@flowmeter.com
- Service: service@flowmeter.com
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
SAN ANTONIO, TEXAS 78298-2449  

**TABULATION OF BIDS**

**PROPOSAL**  
**NO.**  
**DATE:** 3:00 p.m., February 13, 2017  

**DESCRIPTION AND QUANTITY**  

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>BIZ 2300 USB Single-Ear, Part No. JBR-2393-829-109-005</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>84.69</td>
<td>423.45</td>
</tr>
<tr>
<td>2.</td>
<td>BIZ 2300 USB Dual-Ear, Part No. JBR-2399-829-109-005</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>89.85</td>
<td>4,495.00</td>
</tr>
<tr>
<td>3.</td>
<td>BIZ 2300 QD Single-Ear, Part No. JBR-2304-820-105-003</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>65.99</td>
<td>329.95</td>
</tr>
<tr>
<td>4.</td>
<td>BIZ 2300 QD Dual Ear, Part No. JBR-2309-820-105-003</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>81.25</td>
<td>406.25</td>
</tr>
<tr>
<td>5.</td>
<td>PRO 9450 Single Ear, Part No. JBR-9450-65-507-105-002</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>188.55</td>
<td>9,427.50</td>
</tr>
<tr>
<td>6.</td>
<td>PRO 9450 Dual Ear, Part No. JBR-9450-69-707-105</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>219.75</td>
<td>1,098.75</td>
</tr>
<tr>
<td>7.</td>
<td>PRO 9465 Dual Ear, Part No. JBR-9465-65-804-105-002</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>252.33</td>
<td>1,261.65</td>
</tr>
<tr>
<td>8.</td>
<td>PRO 9470 Single Ear, Part No. JBR-9470-66-904-105-002</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>241.00</td>
<td>1,205.00</td>
</tr>
<tr>
<td>9.</td>
<td>Logitech Conference Cam Connect, Part No. LOG-960-001013-014</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>472.09</td>
<td>2,360.45</td>
</tr>
<tr>
<td>10.</td>
<td>Logitech PTZ Pro Camera, Part No. LOG-960-001021-014</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>888.65</td>
<td>4,443.25</td>
</tr>
<tr>
<td>11.</td>
<td>Logitech HD Pro Webcam C920, Part No. LOG-960-000764-012</td>
<td>25 ea.</td>
<td>UNIT</td>
<td>80.65</td>
<td>2,016.25</td>
</tr>
<tr>
<td>12.</td>
<td>Logitech HD Webcam C310, Part No. LOG-960-000585-012</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>44.55</td>
<td>2,227.50</td>
</tr>
<tr>
<td>13.</td>
<td>OD Y-Training USB Adapter, Part No. JBR-265-09-004</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>83.95</td>
<td>419.75</td>
</tr>
<tr>
<td>14.</td>
<td>EHS Cable for 7900-8800 Series phones, Phone No. JBR-14201-22-004</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>23.50</td>
<td>1,175.00</td>
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<tr>
<td>15.</td>
<td>Jabra UC Motions+, Part No JBR-6640-906-105-005</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>129.45</td>
<td>647.25</td>
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<tr>
<td>16.</td>
<td>Barco Clickshare, Part No. CSC-1</td>
<td>10 ea.</td>
<td>UNIT</td>
<td>2,572.50</td>
<td>25,725.00</td>
</tr>
</tbody>
</table>

**BASE YEAR TOTAL**: $57,659.60 (February 15, 2017 through February 14, 2018)

**EXTENSION 1**: February 15, 2018 - February 14, 2019

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>BIZ 2300 USB Single-Ear, Part No. JBR-2393-829-109-005</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>84.69</td>
<td>423.45</td>
</tr>
<tr>
<td>2.</td>
<td>BIZ 2300 USB Dual-Ear, Part No. JBR-2399-829-109-005</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>89.85</td>
<td>4,495.00</td>
</tr>
<tr>
<td>3.</td>
<td>BIZ 2300 QD Single-Ear, Part No. JBR-2303-820-105-003</td>
<td>5 ea.</td>
<td>UNIT</td>
<td>65.99</td>
<td>329.95</td>
</tr>
<tr>
<td>4.</td>
<td>BIZ 2300 QD Dual Ear, Part No. JBR-2309-820-105-003</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>81.25</td>
<td>4,062.50</td>
</tr>
<tr>
<td>5.</td>
<td>PRO 9450 Single Ear, Part No. JBR-9450-65-507-105-002</td>
<td>50 ea.</td>
<td>UNIT</td>
<td>188.55</td>
<td>9,427.50</td>
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</tbody>
</table>

**BASE YEAR TOTAL**: $58,940.00 (February 15, 2018 through February 14, 2019)

**TOTAL BASE YEAR**: $116,609.60

**TOTAL EXTENSION 1**: $116,609.60

**TOTAL**: $233,219.20 (February 15, 2017 through February 14, 2019)
## SAN ANTONIO WATER SYSTEM
### P. O. BOX 2449
### SAN ANTONIO, TEXAS 78298-2449

#### TABULATION OF BIDS

**FOR:**
Annual Contract for Headsets, Webcams and Accessories

**Time & Date:**
3:00 p.m., February 13, 2017

### HEADSETS UNIT

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION AND APPARENT QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>PRO 9450 Deal Ear, Part No JBR-9450-69-707-105</td>
<td>UNIT</td>
<td>$219.75</td>
<td>$1,098.75</td>
</tr>
<tr>
<td>7.</td>
<td>PRO 9465 Deal Ear, Part No JBR-9465-69-804-105-002</td>
<td>UNIT</td>
<td>$252.35</td>
<td>$1,261.75</td>
</tr>
<tr>
<td>8.</td>
<td>PRO 9470 Single Ear, Part No JBR-9470-66-904-105-005</td>
<td>UNIT</td>
<td>$241.00</td>
<td>$1,205.00</td>
</tr>
<tr>
<td>9.</td>
<td>Logitech Conference Cam Connect, Part No. LOG-960-001013-014</td>
<td>UNIT</td>
<td>$472.00</td>
<td>$2,360.45</td>
</tr>
<tr>
<td>10.</td>
<td>Logitech PTZ Pro Camera, Part No. LOG-960-001021-014</td>
<td>UNIT</td>
<td>$888.65</td>
<td>$4,443.25</td>
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<tr>
<td>11.</td>
<td>Logitech HD Pro Webcam C920, Part No. LOG-960-000761-012</td>
<td>UNIT</td>
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<tr>
<td>12.</td>
<td>Logitech Webcam C310, Part No. LOG-960-000585-012</td>
<td>UNIT</td>
<td>$44.55</td>
<td>$222.70</td>
</tr>
<tr>
<td>13.</td>
<td>OD Y-Training USB Adapter, Part No. JBR-265-09-004</td>
<td>UNIT</td>
<td>$83.95</td>
<td>$419.75</td>
</tr>
<tr>
<td>14.</td>
<td>EHS Cable for 7900-8800 Series phones, Phone No JBR-14201-22-004</td>
<td>UNIT</td>
<td>$23.50</td>
<td>$117.50</td>
</tr>
<tr>
<td>15.</td>
<td>Jabra UC Motion+, Part No. JBR-6640-906-105-005</td>
<td>UNIT</td>
<td>$129.45</td>
<td>$647.25</td>
</tr>
<tr>
<td>16.</td>
<td>Barco Clickshare, Part No. CSC-1</td>
<td>UNIT</td>
<td>$2,572.50</td>
<td>$12,862.50</td>
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**EXTENSION 1 YEAR TOTAL**

<table>
<thead>
<tr>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$57,659.60</td>
<td>$58,940.00</td>
</tr>
<tr>
<td></td>
<td>$59,350.00</td>
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**EXTENSION 2: February 15, 2019 - February 14, 2020**

### HEADSETS

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<th>UNIT</th>
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<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>BIZ 2300 USB Single-Ear, Part No JBR-2393-829-109-005</td>
<td>UNIT</td>
<td>$84.69</td>
<td>$423.45</td>
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<tr>
<td>2.</td>
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<td>UNIT</td>
<td>$89.85</td>
<td>$449.25</td>
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<tr>
<td>3.</td>
<td>BIZ 2300 QD Single-Ear, Part No JBR-2303-820-105-003</td>
<td>UNIT</td>
<td>$65.99</td>
<td>$329.95</td>
</tr>
<tr>
<td>4.</td>
<td>BIZ 2300 QD Dual Ear, Part No JBR-2309-820-105-003</td>
<td>UNIT</td>
<td>$81.25</td>
<td>$406.25</td>
</tr>
<tr>
<td>5.</td>
<td>PRO 9450 Single Ear, Part No JBR-9450-65-507-105-002</td>
<td>UNIT</td>
<td>$188.55</td>
<td>$9,427.50</td>
</tr>
<tr>
<td>6.</td>
<td>PRO 9450 Dual Ear, Part No JBR-9450-69-707-105</td>
<td>UNIT</td>
<td>$219.75</td>
<td>$1,098.75</td>
</tr>
<tr>
<td>7.</td>
<td>PRO 9465 Dual Ear, Part No JBR-9465-69-804-105-002</td>
<td>UNIT</td>
<td>$252.35</td>
<td>$1,261.75</td>
</tr>
<tr>
<td>8.</td>
<td>PRO 9470 Single Ear, Part No JBR-9470-66-904-105-002</td>
<td>UNIT</td>
<td>$241.00</td>
<td>$1,205.00</td>
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</table>

### WEB CAMS

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION AND APPARENT QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>Logitech Conference Cam Connect, Part No. LOG-960-001013-014</td>
<td>UNIT</td>
<td>$472.00</td>
<td>$2,360.45</td>
</tr>
<tr>
<td>10.</td>
<td>Logitech PTZ Pro Camera, Part No. LOG-960-001021-014</td>
<td>UNIT</td>
<td>$888.65</td>
<td>$4,443.25</td>
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</tbody>
</table>

**ACCESSORIES**

<table>
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<tr>
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<th>DESCRIPTION AND APPARENT QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>PRO 9455 Single Ear, Part No JBR-9455-65-507-105-002</td>
<td>UNIT</td>
<td>$188.55</td>
<td>$9,427.50</td>
</tr>
<tr>
<td>8.</td>
<td>PRO 9455 Dual Ear, Part No JBR-9455-69-707-105</td>
<td>UNIT</td>
<td>$219.75</td>
<td>$1,098.75</td>
</tr>
<tr>
<td>9.</td>
<td>PRO 9465 Dual Ear, Part No JBR-9465-69-804-105-002</td>
<td>UNIT</td>
<td>$252.35</td>
<td>$1,261.75</td>
</tr>
<tr>
<td>10.</td>
<td>PRO 9470 Single Ear, Part No JBR-9470-66-904-105-002</td>
<td>UNIT</td>
<td>$241.00</td>
<td>$1,205.00</td>
</tr>
</tbody>
</table>

**EXTENSION 1 YEAR TOTAL**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION AND APPARENT QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>TOTAL</td>
<td>$57,659.60</td>
<td>$58,940.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>TOTAL</td>
<td>$59,350.00</td>
<td></td>
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</table>
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

SAN ANTONIO, TEXAS 78298-2449

**TABULATION OF BIDS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>11</td>
<td>Logitech HD Pro Webcam C920, Part No. LOG-960-00076-I-012</td>
<td>201,625.00</td>
<td>2,016.25</td>
</tr>
<tr>
<td>12</td>
<td>Logitech HD Webcam C310, Part No. LOG-960-000585-0012</td>
<td>4,550.00</td>
<td>2,227.50</td>
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<tr>
<td>13</td>
<td>ACCESSORIES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>QD Y-Training USB Adapter, Part No. JBR-265-09-004</td>
<td>81.95</td>
<td>341.75</td>
</tr>
<tr>
<td>15</td>
<td>EHS Cable for 7900-8800 Series phones, Phone No. JBR-14201-22-004</td>
<td>23.50</td>
<td>1,175.00</td>
</tr>
<tr>
<td>16</td>
<td>Jabra UC Motion+, Part No. JBR-6640-906-105-005</td>
<td>129.45</td>
<td>647.25</td>
</tr>
<tr>
<td>17</td>
<td>Barco Clickshare, Part No. CSC-1</td>
<td>2,572.50</td>
<td>25,725.00</td>
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**EXTENSION 2 YEAR TOTAL**

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Headsets 5 ca. BIZ 2300 USB Single-Ear, Part No. JBR-2393-829-109-005</td>
<td>84.69</td>
<td>423.45</td>
</tr>
<tr>
<td>Headsets 5 ca. BIZ 2300 USB Dual-Ear, Part No. JBR-2399-829-109-005</td>
<td>89.85</td>
<td>4,492.50</td>
</tr>
<tr>
<td>Headsets 5 ca. BIZ 2300 QD Single-Ear, Part No. JBR-2303-820-105-003</td>
<td>65.99</td>
<td>329.95</td>
</tr>
<tr>
<td>Headsets 5 ca. BIZ 2300 QD Dual Ear, Part No. JBR-2309-820-105-003</td>
<td>81.25</td>
<td>406.25</td>
</tr>
<tr>
<td>Headsets 5 ca. PRO 9450 Single Ear, Part No. JBR-9450-65-507-105-002</td>
<td>188.55</td>
<td>942.75</td>
</tr>
<tr>
<td>Headsets 5 ca. PRO 9450 Dual Ear, Part No. JBR-9450-69-707-105</td>
<td>219.75</td>
<td>1,098.75</td>
</tr>
<tr>
<td>Headsets 5 ca. PRO 9465 Dual Ear, Part No. JBR-9465-69-804-105-002</td>
<td>252.35</td>
<td>1,261.75</td>
</tr>
<tr>
<td>Headsets 5 ca. PRO 9470 Single Ear, Part No. JBR-9470-66-904-105-002</td>
<td>241.00</td>
<td>1,205.00</td>
</tr>
<tr>
<td>Webcams</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Logitech Conference Cam Connect, Part No. LOG-960-001013-014</td>
<td>472.99</td>
<td>2,360.45</td>
</tr>
<tr>
<td>Logitech PTZ Pro Camera, Part No. LOG-960-001021-014</td>
<td>888.65</td>
<td>4,443.25</td>
</tr>
<tr>
<td>Logitech HD Pro Webcam C920, Part No. LOG-960-000764-012</td>
<td>44.55</td>
<td>222.75</td>
</tr>
<tr>
<td>Logitech HD Webcam C310, Part No. LOG-960-000585-012</td>
<td>83.95</td>
<td>419.75</td>
</tr>
<tr>
<td>QD Y-Training USB Adapter, Part No. JBR-265-09-004</td>
<td>23.50</td>
<td>1,175.00</td>
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<tr>
<td>EHS Cable for 7900-8800 Series phones, Phone No. JBR-14201-22-004</td>
<td>129.45</td>
<td>647.25</td>
</tr>
</tbody>
</table>

**Call One, Inc.**

400 Imperial Blvd.
Cape Coral, FL 33920

**Dates of Delivery:**

- **February 15, 2017**
- **February 14, 2018**

**Contractor:**

SAN ANTONIO, TEXAS 78298-2449

**P.O. Box 2449**

**Call One, Inc.**

400 Imperial Blvd.
Cape Coral, FL 33920
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>BIZ 2300 Single-Ear, Part No. JBR-2393-829-109-005</td>
<td>5 ea.</td>
<td>200 ea.</td>
<td>1,016.25</td>
</tr>
<tr>
<td>2.</td>
<td>BIZ 2300 Single-Ear, Part No. JBR-2399-829-109-005</td>
<td>50 ea.</td>
<td>500 ea.</td>
<td>2,047.50</td>
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<tr>
<td>3.</td>
<td>BIZ 2300 QD Single-Ear, Part No. JBR-2303-820-105-003</td>
<td>5 ea.</td>
<td>250 ea.</td>
<td>1,250.00</td>
</tr>
<tr>
<td>4.</td>
<td>BIZ 2300 QD Dual Ear, Part No. JBR-2309-820-105-003</td>
<td>50 ea.</td>
<td>500 ea.</td>
<td>2,595.00</td>
</tr>
<tr>
<td>5.</td>
<td>PRO 9450 Single Ear, Part No. JBR-9450-65-507-105-002</td>
<td>5 ea.</td>
<td>250 ea.</td>
<td>1,250.00</td>
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<td>6.</td>
<td>PRO 9450 Dual Ear, Part No. JBR-9450-69-707-105</td>
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<td>250 ea.</td>
<td>1,250.00</td>
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<td>7.</td>
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<td>1,250.00</td>
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<tr>
<td>8.</td>
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<td>9.</td>
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<td>250 ea.</td>
<td>1,250.00</td>
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<tr>
<td>11.</td>
<td>Logitech HD Pro Webcam C920, Part No. LOG-960-000764-012</td>
<td>50 ea.</td>
<td>500 ea.</td>
<td>2,500.00</td>
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<tr>
<td>12.</td>
<td>Logitech HD Webcam C300, Part No. LOG-960-000585-012</td>
<td>50 ea.</td>
<td>500 ea.</td>
<td>2,500.00</td>
</tr>
<tr>
<td>13.</td>
<td>OD Y-Training USB Adapter, Part No JBR-265-09-004</td>
<td>50 ea.</td>
<td>500 ea.</td>
<td>2,500.00</td>
</tr>
<tr>
<td>14.</td>
<td>EHS Cable for 7900-8800 Series phones, Phone No. JBR-14201-22-004</td>
<td>50 ea.</td>
<td>500 ea.</td>
<td>2,500.00</td>
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<tr>
<td>15.</td>
<td>Jabra UC Motiron+, Part No JBR-6640-906-105-005</td>
<td>10 ea.</td>
<td>100 ea.</td>
<td>1,250.00</td>
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<td>16.</td>
<td>Barco Clickshare, Part No CSC+1</td>
<td>10 ea.</td>
<td>100 ea.</td>
<td>1,250.00</td>
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</table>

EXTENSION 4 YEAR TOTAL

GRAND TOTAL (BASE YEAR, EXT 1, EXT 2, EXT 3, EXT 4)

**LOW BIDDER**
SAN ANTONIO WATER SYSTEM  
P. O. BOX 2449  
SAN ANTONIO, TEXAS 78298-2449  
TABULATION OF BIDS

PROPOSAL  
TYPE: Annual Contract for Headsets, Webcams and Accessories  
(February 15, 2017 through February 14, 2018)

DATE: 3:00 p.m., February 13, 2017

DESCRIPTION AND APPROXIMATE QUANTITY

BIDS WERE E-MAILED TO AND/OR PICKED UP BY:

Adorama, Inc.  
Alamo Headsets  
Call One Inc.  
CDW  
CDW-G  
Freidata  
Insight Public Sector  
Jabra  
Knight Office Solutions  
Naxer  
Nolan’s Office Products  
Office Supply America LTJK

OfficeMax  
OM Office Supply  
Pacificlinkinc  
PCM-G  
PCMGroup Inc.  
Prostart  
Quill.com  
Staples  
Supply Technology  
TechDepot  
Telecomm inc

Demandstar  
SAWS Website
## SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

### TABULATION OF BIDS

**Annual Contract for Spray Paints**

(Date of Award through December 31, 2017)

3:00 p.m., February 13, 2017

---

### DESCALating AND APPROXIMATE QUANTITY

#### GROUP I

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description and Approximate Quantity</th>
<th>Price List Catalog Number</th>
<th>Discount Off Price List (%)</th>
<th>Multiplier for Discount</th>
<th>Effective Price List Date</th>
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<tbody>
<tr>
<td></td>
<td>OSHA PAINTS</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>16 oz. cans (12 oz. net wt.)</td>
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<tr>
<td>1.</td>
<td>Safety Orange</td>
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<td>Krylon Part #K02410, Lawson No. 14560</td>
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<td></td>
<td>300 ca.</td>
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<td></td>
<td>Safety Red</td>
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<td>Krylon Part #K02116, Lawson No. 14552</td>
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<td></td>
<td>900 ca.</td>
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<td></td>
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<tr>
<td></td>
<td>Safety Yellow</td>
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<td>Krylon Part #K01813, Lawson No. 14554</td>
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<td>SUB TOTAL FOR GROUP I</td>
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### GROUP II

**INVERTED MARKING PAINT**

Water-Based 20 oz. cans (17 oz. net wt.)

<table>
<thead>
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<th>Item No.</th>
<th>Description and Approximate Quantity</th>
<th>Price List Catalog Number</th>
<th>Discount Off Price List (%)</th>
<th>Multiplier for Discount</th>
<th>Effective Price List Date</th>
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<tbody>
<tr>
<td></td>
<td>INVERTED WHITE KRYLON</td>
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<td></td>
<td>Part #503901, Lawson No. 14546</td>
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<tr>
<td></td>
<td>9,600 ca.</td>
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<tr>
<td></td>
<td>Fluorescent Caution Blue</td>
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<tr>
<td></td>
<td>Krylon Part #503620, Lawson No. 14547</td>
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<tr>
<td></td>
<td>6,000 ca.</td>
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<tr>
<td></td>
<td>Fluorescent Safety Green</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Krylon Part #503630, Lawson No. 14548</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>480 ca.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fluorescent Purple</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Krylon Part #503715, Lawson No. 14565</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

## TABULATION OF BIDS

<table>
<thead>
<tr>
<th>PROPOSAL FOR</th>
<th>Annual Contract for Spray Paints</th>
</tr>
</thead>
<tbody>
<tr>
<td>TIME &amp; DATE</td>
<td>(Date of Award through December 31, 2017) 3:00 p.m., February 13, 2017</td>
</tr>
</tbody>
</table>

### ITEM NO DESCRIPTION AND APPROXIMATE QUANTITY

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>APWA Utility Yellow</td>
<td>UNIT</td>
<td>2.45</td>
<td>147.00</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #503801, Lawson No. 14562</td>
<td>TOTAL</td>
<td>161.40</td>
<td>202.20</td>
</tr>
<tr>
<td>6.</td>
<td>APWA Orange</td>
<td>UNIT</td>
<td>2.45</td>
<td>205.80</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #503905, Lawson No. 14549</td>
<td>TOTAL</td>
<td>225.96</td>
<td>283.08</td>
</tr>
</tbody>
</table>

**SUBTOTAL FOR GROUP 1a**  
TOTAL: 54,448.80

**Price List Catalog Number**

**Discount Off Price List (%)**

**Multiplier for Discount**

**Effective Date of Price List**

### GROUP 1b

**INTERIOR/EXTERIOR INDUSTRIAL MAINTENANCE PAINTS, Spray Paint, Fast Drying**

**16-oz. cans (12 oz. net wt.)**

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Gloss Black</td>
<td>UNIT</td>
<td>3.90</td>
<td>2,340.00</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #K01601, Lawson No. 14555</td>
<td>TOTAL</td>
<td>2,220.00</td>
<td>3,318.00</td>
</tr>
<tr>
<td>2.</td>
<td>Gloss White</td>
<td>UNIT</td>
<td>3.90</td>
<td>2,340.00</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #K01501, Lawson No. 14556</td>
<td>TOTAL</td>
<td>2,220.00</td>
<td>3,318.00</td>
</tr>
<tr>
<td>3.</td>
<td>Regal Blue</td>
<td>UNIT</td>
<td>3.90</td>
<td>2,340.00</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #K01901, Lawson No. 14558</td>
<td>TOTAL</td>
<td>2,160.00</td>
<td>3,318.00</td>
</tr>
</tbody>
</table>

**SUBTOTAL FOR GROUP 1b**
TOTAL: 7,020.00

**Price List Catalog Number**

**Discount Off Price List (%)**
**SAN ANTONIO WATER SYSTEM**

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TOUGH COAT ACRYLIC ALKYD ENAMELS</td>
<td>48 cu. oz.申</td>
<td>3.25</td>
<td>156.00</td>
</tr>
<tr>
<td></td>
<td>OSHA Purple</td>
<td></td>
<td>3.40</td>
<td>162.20</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #501580, Lawson No. 14561</td>
<td></td>
<td>3.67</td>
<td>176.16</td>
</tr>
<tr>
<td></td>
<td>240 ea. Primer Red</td>
<td></td>
<td>4.36</td>
<td>209.28</td>
</tr>
<tr>
<td></td>
<td>Rust-o-lem Part #V2169838, Lawson No. 15020</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SUB TOTAL FOR GROUP 1e</strong></td>
<td></td>
<td></td>
<td>1,536.00</td>
<td>1,267.20</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>FARM &amp; IMPLEMENT PAINTS</td>
<td>240 ea. John Deere/Green</td>
<td>3.99</td>
<td>957.60</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #K01817, Lawson No. 14557</td>
<td></td>
<td>3.80</td>
<td>912.00</td>
</tr>
<tr>
<td></td>
<td>240 ea. School Bus Yellow</td>
<td></td>
<td>4.50</td>
<td>1,080.00</td>
</tr>
<tr>
<td></td>
<td>Krylon Part #K01809, Lawson No. 14563</td>
<td></td>
<td>5.62</td>
<td>1,348.80</td>
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<tr>
<td><strong>SUB TOTAL FOR GROUP 1d</strong></td>
<td></td>
<td></td>
<td>1,915.20</td>
<td>1,824.00</td>
</tr>
</tbody>
</table>

**NOTICE**

- The Sharwin-Williams Co.
- 104 S., Pro St.
- San Antonio, TX 78207

**NOTICE**

- Pyrrtal School Products
- 6510 North 54th Street
- Tampa, FL 33614-5028

**NOTE**

- Bid not tabulated non-responsive

**NOTE**

- Bid not tabulated non-responsive

**NOTE**

- Bid not tabulated non-responsive
### SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

**PROPOSAL FOR**

**Spray Paints**

**TIME & DATE**

(Date of Award through December 31, 2017)

3:00 p.m., February 13, 2017

**ITEM NO.**

**DESCRIPTION AND APPROXIMATE QUANTITY**

---

<table>
<thead>
<tr>
<th>GROUP</th>
<th>METALLIC PAINTS</th>
<th>Spray Paint, Fast Drying</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>960 ea.</td>
<td>16 oz. cans (11 oz. Net wt.)</td>
</tr>
<tr>
<td>1.</td>
<td>Bright Silver</td>
<td>Krylon Part #K01401, Lawson No. 14553</td>
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</table>

<table>
<thead>
<tr>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.99</td>
<td>3,830.40</td>
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<table>
<thead>
<tr>
<th>GROUP TOTAL</th>
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<tbody>
<tr>
<td>3,830.40</td>
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<table>
<thead>
<tr>
<th>GROUP</th>
<th>WAND</th>
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<tbody>
<tr>
<td></td>
<td>120 ea.</td>
</tr>
<tr>
<td></td>
<td>Marking/Stripping Wand</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.60</td>
<td>1,992.00</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>GROUP TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,992.00</td>
</tr>
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</table>

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**BID NOT TABULATED**

**NON-RESPONSIVE**
**SAN ANTONIO WATER SYSTEM**

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

| PROPOSAL | Annual Contract for Spray Paints |
| TIME & DATE | (Date of Award through December 31, 2017) 3:00 p.m., February 13, 2017 |

**SURVEY STAKES AND FLAGS**

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>GRAND TOTAL (GROUPS 1a-1f)</td>
<td></td>
<td>75,814.20</td>
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</table>

**GROUP 2**

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>UNIT PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1,000 ea. Survey Flags-100 Flags per Bundle Flag Marking Blue Logo, 4 IN X 5 IN X 24 IN wire stake blue with white logo, Lawson No. 12346</td>
</tr>
<tr>
<td>2.</td>
<td>800 ea. Survey Flags-100 Flags per Bundle Flag Marking Green Logo, 4 IN X 5 IN X 24 IN wire stake green with black logo, Lawson No. 12347</td>
</tr>
<tr>
<td>3.</td>
<td>500 ea. Survey Flags-100 Flags per Bundle Flag Marking White Logo, 4 IN X 5 IN X 24 IN wire stake white with black logo, Lawson No. 12349</td>
</tr>
<tr>
<td>4.</td>
<td>500 ea. Survey Flags-100 Flags per Bundle Flag Marking Purple Logo, 4 IN X 5 IN X 24 IN wire stake purple with white logo, Lawson No. 46917</td>
</tr>
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</table>

**SUB TOTAL FOR GROUP 2**

<table>
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<tr>
<th>TOTAL</th>
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<tbody>
<tr>
<td>NO BID</td>
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<tr>
<td>NO BID</td>
</tr>
<tr>
<td>252,000.00</td>
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<tr>
<td>23,828.00</td>
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</table>

**GRAND TOTAL (GROUP 2)**

<table>
<thead>
<tr>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO BID</td>
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<tr>
<td>NO BID</td>
</tr>
<tr>
<td>252,000.00</td>
</tr>
<tr>
<td>23,828.00</td>
</tr>
</tbody>
</table>

**EXTENSION 1**

<table>
<thead>
<tr>
<th>TOTAL</th>
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<tbody>
<tr>
<td>75,814.20</td>
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<tr>
<td>23,828.00</td>
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</table>

**EXTENSION 2**

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>75,814.20</td>
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<tr>
<td>23,828.00</td>
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</tbody>
</table>

**EXTENSION 3**

<table>
<thead>
<tr>
<th>TOTAL</th>
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<tbody>
<tr>
<td>75,814.20</td>
</tr>
<tr>
<td>23,828.00</td>
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</tbody>
</table>

**Terms**

<table>
<thead>
<tr>
<th>Delivery Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 days</td>
</tr>
<tr>
<td>1-3 days</td>
</tr>
<tr>
<td>7-10 days</td>
</tr>
</tbody>
</table>

*LOW BIDDER
### SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS 78298-2449**  
**TABULATION OF BIDS**

**PROPOSAL FOR TIME AND DATE**

**ITEM NO.**  
**DESCRIPTION AND APPROXIMATE QUANTITY**

**Bid Invitations Were E-mailed to and/or Picked Up by:**

<table>
<thead>
<tr>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alamo Iron Works</td>
</tr>
<tr>
<td>Baytech Supply</td>
</tr>
<tr>
<td>Blackburn Mfr.</td>
</tr>
<tr>
<td>Bulkhead</td>
</tr>
<tr>
<td>Dobie Supply</td>
</tr>
<tr>
<td>Ferguson</td>
</tr>
<tr>
<td>Grainger</td>
</tr>
<tr>
<td>JP Painting</td>
</tr>
<tr>
<td>MSC Direct</td>
</tr>
<tr>
<td>My Parts Plus</td>
</tr>
<tr>
<td>Pintura Paint Store</td>
</tr>
<tr>
<td>Pyramid School Products</td>
</tr>
<tr>
<td>Roberts Painting</td>
</tr>
<tr>
<td>Royall Matthiasen</td>
</tr>
<tr>
<td>Safety Supply Inc.</td>
</tr>
<tr>
<td>Saf-T-Gloves, Inc.</td>
</tr>
<tr>
<td>Sherwin Williams</td>
</tr>
<tr>
<td>Sunbelt Mill Supply</td>
</tr>
<tr>
<td>Demandstar</td>
</tr>
<tr>
<td>SAWS Website</td>
</tr>
</tbody>
</table>

**Annual Contract for Spray Paints**  
(Date of Award through December 31, 2017)

**DATE:** 3:00 p.m., February 13, 2017
### SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

<table>
<thead>
<tr>
<th>PARTIAL</th>
<th>Annual Contract for Fire Hydrant Repair Parts (March 1, 2017 through December 31, 2017)</th>
<th>TIME &amp; DATE</th>
<th>3:00 p.m. February 15, 2017</th>
</tr>
</thead>
</table>

**GROUP 3 - American Darling Fire Hydrant Parts**

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Part Number</th>
<th>Model</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Coupling, breakable rod, material gray iron, used for 5 1/4&quot;</td>
<td>30.86</td>
<td>308.60</td>
</tr>
<tr>
<td>20 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Coupling, couler pins, size 8&quot; x 15&quot;, Range A 8.50-9.37, material stainless steel used for 5 1/4&quot; &amp; 6&quot;, 2 each set Brand 8628, Part #54-62-29-31, SAWS #11008</td>
<td>11.47</td>
<td>57.35</td>
</tr>
<tr>
<td>5 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Flange, breakable, material cast iron, used for 5 1/4&quot;, brand B-84-B, Part #84-15-15, SAWS #12368</td>
<td>30.86</td>
<td>154.30</td>
</tr>
<tr>
<td>3 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Gasket, turrent, material composition rubber, used for 5 1/4&quot;, Model 8628, Part #54-62-38-1, SAWS #12670</td>
<td>5.88</td>
<td>29.40</td>
</tr>
<tr>
<td>20 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Kit, breakaway 1985 and old, used for 5 1/4&quot; includes 8 bolts, Model B62B, SAWS #13302</td>
<td>109.98</td>
<td>2,199.60</td>
</tr>
<tr>
<td>10 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Kit, extension, size 12&quot;, used for 5 1/4&quot;, Model B62B, SAWS #13325</td>
<td>1.69</td>
<td>16.90</td>
</tr>
<tr>
<td>10 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Kit, extension, size 12&quot;, used for 5 1/4&quot;, Model B84B-250, SAWS #13317</td>
<td>1.4867</td>
<td>14.87</td>
</tr>
<tr>
<td>10 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Kit, extension, size 6&quot;, used for 5 1/4&quot;, Model B84B-250, SAWS #13328</td>
<td>1.2733</td>
<td>12.73</td>
</tr>
<tr>
<td>50 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Kit, fire hydrant, traffic, used for 5 1/4&quot;, includes 8 bolts, Model B84B-250, SAWS #13339</td>
<td>0.9914</td>
<td>49.57</td>
</tr>
<tr>
<td>15 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Kit, traffic repair quick fix, used for 5 1/4&quot;, includes flange, Model B62B, Part #1555204-KIT, SAWS #13386</td>
<td>0.9776</td>
<td>14.66</td>
</tr>
<tr>
<td>20 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Overhaul kit, fire hydrant, used for fire hydrant repair, Model B-84-B, MFG Part #03KIT 1 051, SAWS #13332</td>
<td>1.5920</td>
<td>31.80</td>
</tr>
<tr>
<td>10 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Overhaul kit, fire hydrant, size 5 1/4&quot;, Model B-62-B N.S., Mfg Part #03KIT 1 050, SAWS #13331</td>
<td>0.6800</td>
<td>6.80</td>
</tr>
<tr>
<td>25 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Overhaul kit, fire hydrant, size 5 1/4&quot;, Model B-62-B O.S., Mfg Part #03KIT 1 050, SAWS #13330</td>
<td>0.6800</td>
<td>17.00</td>
</tr>
<tr>
<td>10 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Overhaul kit, free hydrant, size 5 1/4&quot;, Model B-84-B, Mfg Part #03KIT 1 051, SAWS #13333</td>
<td>1.5920</td>
<td>31.80</td>
</tr>
<tr>
<td>15 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Pin, coupling, kit used for 5&quot;, Model B-50-B, A-059621-5 8525 62/1600</td>
<td>0.7778</td>
<td>11.67</td>
</tr>
<tr>
<td>84 F1-1/4 SQ</td>
<td>Material bronze, used for 5 1/4&quot;, Model B84B, Part #84-20-4, SAWS #14149</td>
<td>2.82</td>
<td>28.20</td>
<td></td>
<td></td>
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<tr>
<td>10 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Seal, hydrant seat, material bronze, used for 5 1/4&quot;, Model B-84-B, Part #84-35-02, SAWS #15780</td>
<td>3.1110</td>
<td>31.11</td>
</tr>
<tr>
<td>15 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Seat, hydrant, material bronze, used for 5 1/4&quot;, Model B62B, Part #66-35-OR, SAWS #15875</td>
<td>3.1760</td>
<td>47.64</td>
</tr>
<tr>
<td>5 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Seat, hydrant, material bronze B762 Alloy#44, used for 6&quot;, Model B84B, Part #86-35-02, SAWS #15874</td>
<td>3.3319</td>
<td>16.66</td>
</tr>
<tr>
<td>10 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Valve, hydrant, material rubber, used for 5 1/4&quot;, Model B62B, Part #54-62-31, SAWS #17188</td>
<td>46.02</td>
<td>460.20</td>
</tr>
<tr>
<td>5 ea.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Valve, hydrant, material rubber, used for 6&quot;, Model B84B, Part #60-84-41, SAWS #17189</td>
<td>90.93</td>
<td>454.65</td>
</tr>
<tr>
<td>2 ca.</td>
<td>8628-15</td>
<td>Model B-84-B</td>
<td>Valve, main, used for 5 1/4&quot;, Model B84B, Part #B56637, SAWS #17195</td>
<td>46.02</td>
<td>92.04</td>
</tr>
</tbody>
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## TABULATION OF BIDS

<table>
<thead>
<tr>
<th><strong>PROPOSAL</strong></th>
<th>17-0012</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FOR</strong></td>
<td><strong>BID</strong></td>
</tr>
<tr>
<td><strong>ANNUAL CONTRACT FOR FIRE HYDRANT REPAIR PARTS</strong></td>
<td><strong>SAN ANTONIO WATER SYSTEM</strong></td>
</tr>
<tr>
<td><strong>SAN ANTONIO, TEXAS 78298-2449</strong></td>
<td><strong>P. O. BOX 2449</strong></td>
</tr>
<tr>
<td><strong>TABULATION OF BIDS</strong></td>
<td><strong>SAN ANTONIO, TX 78223</strong></td>
</tr>
<tr>
<td><strong>FOR FIRE HYDRANT REPAIR PARTS</strong></td>
<td><strong>1011 North Pan Am Expwy</strong></td>
</tr>
<tr>
<td><strong>SAN ANTONIO, TX 78219</strong></td>
<td><strong>San Antonio, TX 78223</strong></td>
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<table>
<thead>
<tr>
<th><strong>NOBID</strong></th>
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<table>
<thead>
<tr>
<th><strong>DESCRIPTION</strong></th>
<th><strong>UNIT PRICE</strong></th>
<th><strong>TOTAL PRICE</strong></th>
</tr>
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<tbody>
<tr>
<td><strong>5 ea.</strong></td>
<td><strong>Model B62B, Part #34-62-4-4, SAWS #17431</strong></td>
<td><strong>$7.96 ea.</strong></td>
</tr>
<tr>
<td><strong>TOTAL GROUP 1</strong></td>
<td><strong>$31,125.09</strong></td>
<td><strong>NO BID</strong></td>
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<tr>
<td><strong>GROUP 2 - CLÄW FIRE HYDRANT PARTS</strong></td>
<td><strong>NO BID</strong></td>
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</tr>
<tr>
<td><strong>1.</strong></td>
<td><strong>Coup ling, safety stem, material steel tubing used for 5 1/4&quot;, brand Medallion, Part #M-10/M-220-2349, SAWS #11190</strong></td>
<td><strong>$29.89 ea.</strong></td>
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<tr>
<td><strong>5 ea.</strong></td>
<td><strong>Flange, safety, material ductile iron, used for 5 1/4&quot;, Brand Medallion, Part #M-46/M-160-0808, SAWS #12397</strong></td>
<td><strong>$35.27 ea.</strong></td>
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<tr>
<td><strong>50 ea.</strong></td>
<td><strong>Kit, breakaway, size 5 1/4&quot;, used for break/flare repair, Model F2500, Part R1620545, SAWS #13303</strong></td>
<td><strong>$114.14 ea.</strong></td>
</tr>
<tr>
<td><strong>50 ea.</strong></td>
<td><strong>Kit, extension, size 12&quot;, used for 5 1/4&quot;, Model Medallion, Part #R1620665, SAWS #13324</strong></td>
<td><strong>$262.36 ea.</strong></td>
</tr>
<tr>
<td><strong>50 ea.</strong></td>
<td><strong>Kit, extension, size 6&quot;, used for 5 1/4&quot;, Model Medallion, Part #R1620664, SAWS #13327</strong></td>
<td><strong>$222.00 ea.</strong></td>
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<tr>
<td><strong>75 ea.</strong></td>
<td><strong>Kit, safety flange, used for 5 1/4&quot;, Model Medallion, Part #R16206653, SAWS #13366</strong></td>
<td><strong>$103.09 ea.</strong></td>
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<td><strong>4 ea.</strong></td>
<td><strong>Nut, operating, material bronze, used for 5 1/4&quot;, Model Medallion, Part #M-3, SAWS #14287</strong></td>
<td><strong>$97.71 ea.</strong></td>
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<tr>
<td><strong>100 ea.</strong></td>
<td><strong>Overhaul kit, fire hydrant, size 5 1/4&quot;, Model Medallion, #2KIT, 1051, SAWS #13334</strong></td>
<td><strong>$10.18 ea.</strong></td>
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<tr>
<td><strong>5 ea.</strong></td>
<td><strong>Pin, safety coupling, material stainless steel, used for 5 1/4&quot;, Model Medallion, Part #M-11/TG400891, SAWS #14678</strong></td>
<td><strong>$2.86 ea.</strong></td>
</tr>
<tr>
<td><strong>5 ea.</strong></td>
<td><strong>O-Ring, operating nut, used for 5 1/4&quot;, Model Medallion, Part #M-1/T-240-0815, SAWS #14473</strong></td>
<td><strong>$2.80 ea.</strong></td>
</tr>
<tr>
<td><strong>10 ea.</strong></td>
<td><strong>O-Ring, safety flange, material N B R, used for 5 1/4&quot;, Model Medallion, Part #M-47, SAWS #14477</strong></td>
<td><strong>$2.29 ea.</strong></td>
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<tr>
<td><strong>60 ea.</strong></td>
<td><strong>O-Ring, seat, material bronze, used for 5 1/4&quot;, Model Medallion, Part #M-19/F-1600805, SAWS #15394</strong></td>
<td><strong>$289.96 ea.</strong></td>
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<tr>
<td><strong>30 ea.</strong></td>
<td><strong>O-Ring, seat upper, material NBR, used for 5 1/4&quot;, Model Medallion, Part #M-18/T-240-0722, SAWS #14479</strong></td>
<td><strong>$5.94 ea.</strong></td>
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<td><strong>5 ea.</strong></td>
<td><strong>Stem, upper, used for 5 1/4&quot;, Brand Medallion, Part #M-7, SAWS #16272</strong></td>
<td><strong>$106.89 ea.</strong></td>
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<td><strong>5 ea.</strong></td>
<td><strong>Valve, lower plate, material brass, used for 5 1/4&quot;, Model Medallion, Part #M-24/M1600081, SAWS #17194</strong></td>
<td><strong>$118.93 ea.</strong></td>
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<td><strong>30 ea.</strong></td>
<td><strong>Valve, main, material rubber used for 5 1/4&quot;, Model Medallion, Part #M-21/T-160-0802, SAWS #17309</strong></td>
<td><strong>$47.20 ea.</strong></td>
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<td><strong>25 ea.</strong></td>
<td><strong>Valve, upper plate, material bronze, used for 5 1/4&quot;, Model Medallion, Part #M-17/F-160-0803</strong></td>
<td><strong>$160.53 ea.</strong></td>
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<td><strong>#SAWS #17315</strong></td>
<td><strong>#SAWS #17431</strong></td>
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<td><strong>2 ea.</strong></td>
<td><strong>Washer, lower valve plate lock, material stainless steel, used for 5 1/4&quot;, Model Medallion, Part #M-22, SAWS #17413</strong></td>
<td><strong>$1.73 ea.</strong></td>
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<td><strong>TOTAL GROUP 2</strong></td>
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<tr>
<td><strong>GROUP 3 - MUELLER FIRE HYDRANT PARTS</strong></td>
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<td><strong>40 ea.</strong></td>
<td><strong>Kit, main repair, used for 5-1/4&quot;, Model Improved, SAWS #13350</strong></td>
<td><strong>$426.87 ea.</strong></td>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>SAWS #17431</strong></td>
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<td><strong>SAWS #17473</strong></td>
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<td><strong>SAWS #15394</strong></td>
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<td><strong>SAWS #17479</strong></td>
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<td><strong>SAWS #17194</strong></td>
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<td><strong>SAWS #17309</strong></td>
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<td><strong>SAWS #17315</strong></td>
<td><strong>$4,013.25</strong></td>
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<td><strong>SAWS #17431</strong></td>
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<td>Item</td>
<td>Description</td>
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<td>-------------</td>
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<td>1</td>
<td>Kit, Safety Flange Repair, used for 5-1/4&quot; Model Centurion &amp; Improved NS, Part #A301, SAWS #13367</td>
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<tr>
<td>2</td>
<td>Nut, hold down, used for 5-1/4&quot;, Model Centurion, Part #A-4, SAWS #14234</td>
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<tr>
<td>3</td>
<td>Nut, operating, used for 5-1/4&quot;, brand open right/1988 or later, Model Centurion, Part #A-1/1427814, SAWS #14292</td>
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<tr>
<td>4</td>
<td>Overhaul kit, size 5 1/4&quot;, Model Centurion, Part #01K1 005, SAWS #14497</td>
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<tr>
<td>5</td>
<td>Pin, Center, used for 5-1/4&quot;, Model Centurion, Part #A-29, SAWS #14646</td>
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<tr>
<td>6</td>
<td>Plug, Oil Filler, used for 5-1/4&quot;, Model Centurion, Part #A-7, SAWS #14943</td>
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<tr>
<td>7</td>
<td>O-Ring, Bottom Seat, used for 5-1/4&quot;, Model Centurion, Part #A-44/142893, SAWS #15303</td>
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<td>8</td>
<td>Ring, Seat, Material Bronze, used for 5-1/4&quot;, Model Centurion, Part #A-43/142764, SAWS #15388</td>
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<tr>
<td>9</td>
<td>Valve, Upper Plate, Material Bronze, used for 5-1/4&quot;, Model Centurion, Part #A-36/184055, SAWS #17312</td>
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<tr>
<td>10</td>
<td>Kit, Breakaway, used for 5-1/4&quot;, Model 129, SAWS #13300</td>
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<td></td>
<td>TOTAL GROUP 4</td>
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<tr>
<td>11</td>
<td>Kit, Traffic repair, used for 5 1/4&quot; fire hydrant, Brand Metropolitan, Model 250 M-94</td>
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<tr>
<td>12</td>
<td>Overhaul kit, size 5 1/4&quot;, Model Metropolitan 250, Part #07K1 1525052, SAWS #14502</td>
</tr>
<tr>
<td>13</td>
<td>Ring, seat, material bronze, used for 5 1/4&quot;, Brand Year 1994 and on, Model Metropolitan</td>
</tr>
<tr>
<td>14</td>
<td>Valve, main, material rubber, used for 5 1/4&quot; Year 1994 and on, Model Metropolitan</td>
</tr>
<tr>
<td>15</td>
<td>Valve, main, material rubber, used for 5 1/4&quot; Year 1994 and on, Model Metropolitan, Part #A-44, SAWS #17200</td>
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<td>16</td>
<td>Valve, main, material rubber Buna-S, used for 5 1/4&quot;, Model H-205 USP hydrant, Part #H-44, SAWS #17207</td>
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<td>17</td>
<td>Valve, upper plate, material bronze, used for 5 1/4&quot; Year 1994 and on, Model Metropolitan</td>
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<tr>
<td>18</td>
<td>Facing, drain valve, material Buna N, used for 5 1/4&quot;, Model K81A, Part #K8137, SAWS #11863</td>
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<td>ITEM NO.</td>
<td>DESCRIPTION AND APPARENT QUANTITY</td>
</tr>
<tr>
<td>----------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>1.</td>
<td>Kit, traffic repair, used for 5 1/4&quot;, Model K81A, Part #K528/AFTER June 1980, SAWS #13382</td>
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<tr>
<td>2.</td>
<td>Valve, lower standpipe, Brand Pacer, SAWS #14813</td>
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<td>TOTAL GROUP 7</td>
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<td></td>
<td>GROUP 8 - Watermain Hydrant Parts</td>
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<tr>
<td>10.</td>
<td>Kit, Extention, Size 2&quot;, Model EJ, SBR250/CD250, EJ# £46450, SAWS #46149</td>
</tr>
<tr>
<td>11.</td>
<td>Kit, Extention, Size 12&quot;, Model EJ, SBR250/CD250, EJ# £46452, SAWS #46150</td>
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<tr>
<td>12.</td>
<td>Kit, Main Valve, include rubber interior parts, Model EJ SBR250/CD250, EJ #464450, SAWS #46151</td>
</tr>
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<td>13.</td>
<td>Kit, Break Flange Part # EJ #46345, SAWS #46152</td>
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<tr>
<td>14.</td>
<td>Valve, Main, Model EJ SBR10-C DT NUT EJ #46538, SAWS #46156</td>
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<td>TOTAL GROUP 8</td>
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**SAN ANTONIO WATER SYSTEM**

**P. O. Box 2449**

**San Antonio, Texas 78298-2449**

**TABULATION OF BIDS**

**FEBRUARY**

**Annual Contract for**

**Fire Hydrant Repair Parts**

**T井E: (March 1, 2017 through December 31, 2017)**

**DATE: 3:00 p.m., February 15, 2017**

**ITEM NO.**

**DESCRIPTION AND APPARENT QUANTITY**

**UNIT**

**PRICE**

**TOTAL**

**USP Supply Waterworks, Ltd.**

**Fort Worth Waterworks**

**P.O. Box 3011 North San Antonio**

**San Antonio, TX 78219**

**Quality Hydrant**

**NO BID**
## SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
SAN ANTONIO, TEXAS 78298-2449

### TABULATION OF BIDS

**PROPOSAL FOR:**  
Annual Contract for Fire Hydrant Repair Parts  
(March 1, 2017 through December 31, 2017)

**DATE & TIME:**  
3:00 p.m., February 15, 2017

<table>
<thead>
<tr>
<th>TOTAL AWARD</th>
<th>LOW BIDDER</th>
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<tr>
<td><strong>TOTAL AWARD</strong></td>
<td><strong>110,966.36</strong></td>
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<tr>
<td><strong>EXTENSION 1</strong></td>
<td><strong>110,966.36</strong></td>
</tr>
<tr>
<td><strong>EXTENSION 2</strong></td>
<td><strong>110,966.36</strong></td>
</tr>
<tr>
<td><strong>EXTENSION 3</strong></td>
<td><strong>110,966.36</strong></td>
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<tr>
<td><strong>EXTENSION 4</strong></td>
<td><strong>110,966.36</strong></td>
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<tr>
<td>Terms</td>
<td>Net 30 days</td>
</tr>
<tr>
<td>Delivery Days</td>
<td></td>
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*LOW BIDDER*

**BID INVITATIONS E-MAILED TO AND/OR PICKED UP BY**

- Act Pipe & Supply
- Corix Water Products
- Ferguson Waterworks
- Fortline Waterworks
- HID Supply
- Hydroflo
- Moore Supply
- Morrison Supply
- Quality Hydrant

- Demandstar
- SAWSS Website
**SAN ANTONIO WATER SYSTEM**

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

**PROPOSAL:**
Annual Contract for

**FOR:**
Purchase of Work Uniforms

**(March 7, 2017 through May 31, 2018)**

**DATE:**
3:00 p.m., February 15, 2017

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<th>ITEM NO.</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
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<tbody>
<tr>
<td></td>
<td><strong>GROUP I WORK SHIRTS</strong></td>
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<tr>
<td>A.1</td>
<td><strong>LONG SLEEVE SHIRTS, RED KAP SP90 or approved equal</strong></td>
</tr>
<tr>
<td></td>
<td>Size S-2X, SAWS #23047</td>
</tr>
<tr>
<td></td>
<td>1,800 ea.</td>
</tr>
<tr>
<td></td>
<td>Long sleeve blend work shirt</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
</tr>
<tr>
<td></td>
<td><strong>PRICE</strong></td>
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<tr>
<td></td>
<td>17.75</td>
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<tr>
<td></td>
<td>9.00</td>
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<td></td>
<td>17.75</td>
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<td></td>
<td>27,252.00</td>
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</table>

**SIZE 3XL, SAWS #23050**

|          | **PRICE** | **TOTAL** |
|          | 20.80    | 5,200.00  |
|          | 19.00    | 4,632.50  |

**SIZE 4XL, SAWS #31328**

|          | **PRICE** | **TOTAL** |
|          | 20.80    | 1,040.00  |
|          | 19.66    | 983.00    |

**SIZE 5XL, SAWS #31529**

|          | **PRICE** | **TOTAL** |
|          | 20.80    | 624.00    |
|          | 21.00    | 623.70    |

**SIZE 6XL, SAWS #34627**

|          | **PRICE** | **TOTAL** |
|          | 33.00    | 330.00    |
|          | 21.00    | 210.20    |

**SIZE 7XL, SAWS #40169**

|          | **PRICE** | **TOTAL** |
|          | 17.75    | 266.25    |
|          | 21.00    | 233.70    |

**MEDIUM-XL, SAWS #40169**

|          | **PRICE** | **TOTAL** |
|          | 17.75    | 17.75    |
|          | 21.00    | 21.00    |

**BID NOT TABULATED NON-RESPONSIVE**
## SAN ANTONIO WATER SYSTEM
**P. O. BOX 2449**
**SAN ANTONIO, TEXAS 78298-2449**

### TABULATION OF BIDS

**Annual Contract for**
**Purchase of Work Uniforms**

**Time & Date:**
3:00 p.m., February 15, 2017

**Description and Approximate Quantity**

<table>
<thead>
<tr>
<th>Item No</th>
<th>Description and Add-on Details</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A2.2</td>
<td><strong>GROUP A1</strong> Short Sleeve Shirt, Red Kap SP80 or approved equivalent</td>
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<td></td>
</tr>
<tr>
<td>Size S-2X, SAWS #340170</td>
<td>Long sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>20.80</td>
<td>416.00</td>
</tr>
<tr>
<td>Size 3X, SAWS #34628</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Size 4X, SAWS #31331</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
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<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
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**BID NOT TABULATED NON-RESPONSIVE**

**A2.3** Short Sleeve Shirt, Red Kap SP80 or approved equivalent

<table>
<thead>
<tr>
<th>Item No</th>
<th>Description and Add-on Details</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size S-2X, SAWS #340170</td>
<td>Long sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>20.80</td>
<td>416.00</td>
</tr>
<tr>
<td>Size 3X, SAWS #34628</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Size 4X, SAWS #31331</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Size 5X, SAWS #31332</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
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**BID NOT TABULATED NON-RESPONSIVE**

**A2.4** Short Sleeve Shirt, Red Kap SP80 or approved equivalent

<table>
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<th>Item No</th>
<th>Description and Add-on Details</th>
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<th>Total</th>
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<tbody>
<tr>
<td>Size S-2X, SAWS #340170</td>
<td>Long sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>20.80</td>
<td>416.00</td>
</tr>
<tr>
<td>Size 3X, SAWS #34628</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Size 4X, SAWS #31331</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
</tr>
<tr>
<td>Size 5X, SAWS #31332</td>
<td>Short sleeve blend work shirt, Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>21.00</td>
</tr>
</tbody>
</table>
## SAN ANTONIO WATER SYSTEM

P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449

**TABULATION OF BIDS**

**PROPOSAL**
Annual Contract for Purchase of Work Uniforms

**TIME & DATE**
(March 7, 2017 through May 31, 2018) 3:00 p.m., February 15, 2017

<table>
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<tr>
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<td>San Antonio, TX 78215</td>
<td>Liberty Tech Comm. Rd. Ste. 114</td>
<td>7016 Hwy 90 W, San Antonio, TX 78227</td>
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<tr>
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<td></td>
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</tr>
<tr>
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<td>TOTAL 23.05</td>
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<td>8 ea.</td>
<td>Add on for embroidered logo on back of garment</td>
<td>TOTAL 9.00</td>
<td>TOTAL 21.00</td>
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<td>Total price with add on</td>
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<td>TOTAL 16.25</td>
<td>TOTAL 14.35</td>
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<td>Add on for embroidered logo on back of garment</td>
<td>TOTAL 9.00</td>
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<td>Total price with add on</td>
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<td>TOTAL 415.50</td>
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<td>TOTAL 15,324.86</td>
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<td>B1 Cotton Work Shirts, Long Sleeve Shirts Red Kap SC30</td>
<td>or approved equal</td>
<td>TOTAL 24,965.96</td>
<td>TOTAL 30,750.86</td>
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<td>Size S-2X, SAW#34630</td>
<td>Long sleeve shirt with logo and name patch</td>
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<td>300 ea.</td>
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<td>Total price with add on</td>
<td>TOTAL 5,268.00</td>
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<tr>
<td>Size 3XL, SAW#34631</td>
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TOTAL GROUP A2: $16,361.96 - $15,324.86

TOTAL GROUP A2: $24,965.96 - $30,750.86
**SAN ANTONIO WATER SYSTEM**  
P. O. BOX 2449  
SAN ANTONIO, TEXAS 78298-2449  

**TABULATION OF BIDS**

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<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>PRICE</th>
<th>TOTAL</th>
<th>PRICE</th>
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<tbody>
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<td>10 ea. Long sleeve shirt with logo and name patch Add on for embroidered logo on back of garment Total price with add on</td>
<td>23.04</td>
<td>230.40</td>
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<td>196.60</td>
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**TOTAL GROUP B1**  
TOTAL 7,998.50  
TOTAL 6,867.25
# SAN ANTONIO WATER SYSTEM

## TABULATION OF BIDS

**Annual Contract for**

**FOR**

Purchase of Work Uniforms

**TIME & DATE**

(March 7, 2017 through May 31, 2018)

3:00 p.m., February 15, 2017

### TABULATION OF BIDS

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<th>TOTAL</th>
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**ITEM DELETED**

**ITEM DELETED**

**ITEM DELETED**
## SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS  78298-2449

### TABULATION OF BIDS

**PROPOSAL FOR TIME & DATE**
Annual Contract for Purchase of Work Uniforms
(March 7, 2017 through May 31, 2018)

**DATE**
3:00 p.m., February 15, 2017

### DESCRIPTION AND APPROXIMATE QUANTITY

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<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
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<th>TOTAL</th>
<th>PRICE</th>
<th>TOTAL</th>
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<td>FIRE RETARDANT (FR) LONG SLEEVE SHIRTS, BULWAKR SLU2RB or approved equal</td>
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<td>Long sleeve shirt with logo and name patch</td>
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<td>Total price with add on</td>
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<td>Total price with add on</td>
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<td>Total price with add on</td>
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| TOTAL GROUP B2 | TOTAL | 5,411.99 |
| TOTAL | 7,958.99 |

| TOTAL GROUP IC | TOTAL | 14,814.60 |
| TOTAL | 17,559.60 |
# TABULATION OF BIDS

**PROPOSAL**

Annual Contract for

**FOR**

Purchase of Work Uniforms

**TIME & DATE**

(March 7, 2017 through May 31, 2018)

3:00 p.m., February 15, 2017

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<th>ITEM NO</th>
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<th>DATE 3:00 p.m., February 15, 2017</th>
<th>SAN ANTONIO, TEXAS 78298-2449</th>
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<td>D.</td>
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<td>Men's Polo shirt short sleeve 100% polyester</td>
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<td>Total price with add on</td>
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<td>Men's Polo shirt short sleeve 100% polyester</td>
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<td>Add on for embroidered logo on back of garment</td>
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<td>Total price with add on</td>
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<td>Total price with add on</td>
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<td>Men's Polo shirt short sleeve 100% polyester</td>
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<td>Total price with add on</td>
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<td>TOTAL GROUP D1</td>
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<td>Add on for embroidered logo on back of garment</td>
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**NON-RESPONSIVE**

**TOTAL**

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**PRICE**

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## SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449

### TABULATION OF BIDS

**PROPOSAL FOR TIME DATA,**

**SAN ANTONIO WATER SYSTEM**
P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449

**DESCRIPTION AND APPROXIMATE QUANTITY**

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<td>Women's Polo shirt short sleeve 100% polyester</td>
<td>4XL</td>
<td>5 ca.</td>
<td>33.33</td>
<td>166.65</td>
<td>28.43</td>
<td>142.15</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td></td>
<td></td>
<td>9.00</td>
<td>45.00</td>
<td>21.00</td>
<td>116.15</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td></td>
<td></td>
<td>211.65</td>
<td>211.65</td>
<td>247.15</td>
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<td></td>
<td>Women's Polo shirt short sleeve 100% polyester</td>
<td>5XL</td>
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<td>166.65</td>
<td>28.43</td>
<td>142.15</td>
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<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td></td>
<td></td>
<td>9.00</td>
<td>45.00</td>
<td>21.00</td>
<td>116.15</td>
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<td></td>
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<td></td>
<td>211.65</td>
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<td>Women's Polo shirt short sleeve 100% polyester</td>
<td>6XL</td>
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<td>166.65</td>
<td>28.43</td>
<td>142.15</td>
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<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td></td>
<td></td>
<td>9.00</td>
<td>45.00</td>
<td>21.00</td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td>211.65</td>
<td>211.65</td>
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<td>Women's Polo shirt short sleeve 100% polyester</td>
<td>7XL</td>
<td>5 ca.</td>
<td>33.33</td>
<td>166.65</td>
<td>28.43</td>
<td>142.15</td>
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<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
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<td></td>
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<td>45.00</td>
<td>21.00</td>
<td>116.15</td>
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<td></td>
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**TOTAL D1-2**

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**TOTAL GROUP IA-D**

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**GROUP 2  WORK SHORTS AND JEANS**
# SAN ANTONIO WATER SYSTEM
## P. O. BOX 2449
## SAN ANTONIO, TEXAS  78298-2449

## TABULATION OF BIDS

**PROPOSAL FOR TIME:**

**DATE:** 03:00 p.m., February 15, 2017

## DESCRIPTION AND APPROXIMATE QUANTITY

### A. Men's Cargo Shorts, Red Kap PC86NV or approved equivalent

<table>
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<th>Size</th>
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</tr>
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<tbody>
<tr>
<td>28-46, SAWS#23049</td>
<td>18.99</td>
<td>7,596.00</td>
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<tr>
<td>400 ea.</td>
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<tr>
<td>Men's Cargo Shorts</td>
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<tr>
<td>46 Plus, SAWS#23052</td>
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<td>50 ea.</td>
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<td></td>
<td>18.99</td>
<td>7,596.00</td>
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<td></td>
<td>30.39</td>
<td>1,519.50</td>
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<tr>
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<td>9,115.50</td>
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### B. Women's Work Shorts, Red Kap PT27NV or approved equivalent

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<td>127.70</td>
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<td>Women's Work Shorts</td>
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<td>20-24</td>
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<td>153.20</td>
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<td>Women's Work Shorts</td>
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### C. WORK JEANS 100% COTTON - MENS

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<tr>
<td>2,500 ea.</td>
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<td></td>
</tr>
<tr>
<td>Jeans Men all cotton regular fit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46 Plus, SAWS#23058</td>
<td>18.02</td>
<td>1,802.00</td>
</tr>
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<td></td>
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<tr>
<td>Jeans Men all cotton regular fit</td>
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<td></td>
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<tr>
<td>28-46, SAWS#34638</td>
<td>16.23</td>
<td>32,460.00</td>
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<tr>
<td>2,000 ea.</td>
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<td></td>
</tr>
<tr>
<td>Jeans Men all cotton relaxed fit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46 Plus, SAWS#34639</td>
<td>17.88</td>
<td>2,335.00</td>
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<tr>
<td>125 ea.</td>
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<tr>
<td>Jeans Men all cotton relaxed fit</td>
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**TOTAL GROUP 2C:**

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<td></td>
<td>16.37</td>
<td>40,925.00</td>
</tr>
<tr>
<td></td>
<td>18.02</td>
<td>1,802.00</td>
</tr>
<tr>
<td></td>
<td>16.23</td>
<td>32,460.00</td>
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**BID NOT TABULATED NON-RESPONSIVE**
# SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449

## TABULATION OF BIDS

**PROPOSAL**

Annual Contract for

**FOR**

Purchase of Work Uniforms

**TIME & DATE**

(March 7, 2017 through May 31, 2018)

3:00 p.m., February 15, 2017

**ITEM NO**

DESCRIPTION AND APPROXIMATE QUANTITY

### D. WORK JEANS - WOMEN'S 74% COTTON 25% POLYESTER

1% SPANDEX BLEND

Straight Leg Dickies FD136 or approved equivalent

Boot Cut Dickies FD138 or approved equivalent

<table>
<thead>
<tr>
<th>Size</th>
<th>Jeans Women Straight Leg</th>
<th>Jeans Women Boot Cut</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
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<td>75 ca.</td>
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<td>20 - 24</td>
<td>10 ca.</td>
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<td>230.20</td>
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<tr>
<td>4 - 18</td>
<td>10 ca.</td>
<td></td>
<td>24.18</td>
<td>241.80</td>
</tr>
<tr>
<td>20 - 24</td>
<td>10 ca.</td>
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<td>24.18</td>
<td>241.80</td>
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</table>

**TOTAL GROUP 2D**

TOTAL 2,440.30

### E. FIRE RESISTANT (FR) WORK JEANS - MENS

Bulwark PEJ4JW or approved equivalent

<table>
<thead>
<tr>
<th>Size</th>
<th>Fire Resistant Work Jeans</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>28-46</td>
<td>250 ea.</td>
<td>42.07</td>
<td>10,517.50</td>
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<tr>
<td>44-46</td>
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<tr>
<td>48-50</td>
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<td>504.80</td>
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<tr>
<td>52-54</td>
<td>10 ea.</td>
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<td>568.00</td>
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</table>

**TOTAL GROUP 2E**

TOTAL 12,599.90

**TOTAL GROUP 2A-E**

TOTAL 101,858.60

### BID NOT TABULATED

NON-RESPONSIVE

---

Kol-hoe Uniforms
701 E Ray, 90 W
San Antonio, TX 78227
# SAN ANTONIO WATER SYSTEM
## P. O. BOX 2449
## SAN ANTONIO, TEXAS 78298-2449

### TABULATION OF BIDS

#### PROPOSAL
- **Annual Contract for**
- **Purchase of Work Uniforms**
- **TIME & DATE**
  - 3:00 p.m., February 15, 2017

<table>
<thead>
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<th>ITEM</th>
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<th>PRICE</th>
<th>TOTAL</th>
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<td>GROUP 3 WORK JACKETS</td>
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<td></td>
</tr>
<tr>
<td>A.</td>
<td>Perma-lined Team Jacket Navy stand up knit collar, knit cuffs Red Kap JT38NV or approved equivalent</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Size S-LX, SAWS#34640 200 ea. Perma-lined Team Jacket with knit cuffs/bottom</td>
<td>28.94</td>
<td>5,788.00</td>
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<td>15.00</td>
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<tr>
<td></td>
<td>Total price with add on</td>
<td>7,588.00</td>
<td>7,962.00</td>
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<tr>
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<td>Add on for embroidered logo on back of garment</td>
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<td>19.00</td>
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<td>Add on for embroidered logo on back of garment</td>
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<td>171.15</td>
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<td>Add on for embroidered logo on back of garment</td>
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<td>21.00</td>
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# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS 78298-2449**

## TABULATION OF BIDS

**PROPOSAL**  
Annual Contract for  
Purchase of Work Uniforms  
(March 7, 2017 through May 31, 2018)

**DATE**  
3:00 p.m., February 15, 2017

**ITEM NO.**  
DESCRIPTION AND APPROPRIATE QUANTITY

### B. Perma-lined Team Jacket fold-down collar straight bottom

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<th>S-LX, SAWS#34647</th>
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<td>Perma-lined Team Jacket with button cuffs fold collar</td>
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<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td>Add on for embroidered logo on back of garment</td>
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<td>Add on for embroidered logo on back of garment</td>
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<td>50 ca.</td>
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<tr>
<td>20 ca.</td>
<td>35.54</td>
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<tr>
<td>20 ca.</td>
<td>35.54</td>
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<td>9.00</td>
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<td>5 ca.</td>
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**BID NOT TABULATED**  
NON-RESPONSIVE  
Ko-Hac Uniforms  
7016 Hwy 90 W  
San Antonio, TX 78237
# TABULATION OF BIDS

**SAN ANTONIO WATER SYSTEM**  
P. O. BOX 2449  
SAN ANTONIO, TEXAS 78298-2449  

**PROPOSAL**  
Annual Contract for  
**FOR**  
Purchase of Work Uniforms  
**TIME & DATE**  
(March 7, 2017 through May 31, 2018)  
3:00 p.m., February 15, 2017

### C. SOFT SHELL JACKET

Red Kap JP66 or approved equivalent

<table>
<thead>
<tr>
<th>Size</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>S-LX</td>
<td>300 ea.</td>
<td>50.78</td>
</tr>
<tr>
<td>Soft Shell Jacket</td>
<td>15,234.00</td>
<td>12,846.00</td>
</tr>
<tr>
<td>Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>15.00</td>
</tr>
<tr>
<td>Total price with add on</td>
<td>17,934.00</td>
<td>17,346.00</td>
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<td>2XL</td>
<td>100 ea.</td>
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</tr>
<tr>
<td>Soft Shell Jacket</td>
<td>6,044.00</td>
<td>5,079.00</td>
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<tr>
<td>Add on for embroidered logo on back of garment</td>
<td>9.00</td>
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<tr>
<td>Soft Shell Jacket</td>
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<td>2,539.50</td>
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<tr>
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**TOTAL GROUP 3C**

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<td>12,846.00</td>
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<td>12,846.00</td>
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**TOTAL**

|  | 25,508.80 |
|  | 21,480.30 |

### D. ELECTRICIANS FR JACKET WITH REMOVAL HOOD

Bulwark Jacket JMJ8 Hood HMH2 or approved equal

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<td>Jacket Lined Bomber Bulwark JMJ8 HRC4</td>
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<td>2-3 XL, SAWS #44958</td>
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### SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

**PROPOSAL FOR**  
**Purchase of Work Uniforms**  
**(March 7, 2017 through May 31, 2018)**  
**DATE**  
3:00 p.m., February 15, 2017

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>AMERI-FORM</th>
<th>SAFETY SUPPLY, INC.</th>
<th>KEL-LACE UNIFORMS</th>
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<tr>
<td></td>
<td></td>
<td>614 Broadway, San Antonio, TX 78215</td>
<td>11827 Tech Cen Blvd, Ste. 114, San Antonio, TX 78233</td>
<td>7016 Hwy 90, San Antonio, TX 78227</td>
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<tr>
<td>SAWS #45205</td>
<td>Jacket Lined Bomber Bulwark JM8 HRC4</td>
<td>PRICE 32.46</td>
<td>PRICE 30.77</td>
<td>BID NOT TABULATED</td>
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<tr>
<td>40 ca.</td>
<td>Add on for embroidered logo on back of garment</td>
<td>TOTAL 1,298.40</td>
<td>TOTAL 1,230.80</td>
<td>NON-RESPONSIVE</td>
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<td></td>
<td>Total price with add on</td>
<td>TOTAL 1,298.40</td>
<td>TOTAL 1,230.80</td>
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<td>TOTAL GROUP 3D</td>
<td>TOTAL 6,264.00</td>
<td>TOTAL 5,403.90</td>
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<tr>
<td></td>
<td>TOTAL GROUPS 3A-D</td>
<td>TOTAL 51,110.55</td>
<td>TOTAL 43,406.45</td>
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**GROUP 4**

**T-SHIRTS**

**T-SHIRTS 50/50 BLEND SHORT SLEEVE**  
**GILDAN 8300 or approved equivalent**

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<th>DESCRIPTION</th>
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<th>UNIT PRICE</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>SAWS #34659</td>
<td>T-shirts 50/50 blend short sleeve</td>
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<td>15,540.00</td>
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<tr>
<td>TOTAL GROUP 4A</td>
<td></td>
<td></td>
<td>TOTAL 20,060.00</td>
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**B. MEN'S T-SHIRTS 50/50 BLEND LONG SLEEVE**  
**Gildan G840 or approved equivalent**

<table>
<thead>
<tr>
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<th>DESCRIPTION</th>
<th>QUANTITY</th>
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</tr>
</thead>
<tbody>
<tr>
<td>SAWS #34664</td>
<td>T-shirts 50/50 blend long sleeve</td>
<td>1,500 ca.</td>
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<td>12,315.00</td>
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<td>ITEM DELETED</td>
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<td>TOTAL GROUP 4A</td>
<td></td>
<td></td>
<td>TOTAL 20,060.00</td>
<td>19,860.00</td>
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**TOTAL GROUP 4 | 61,190.55 | 62,236.45 **

**TOTAL GROUPS 3A-D**

**TOTAL 61,190.55 | 62,236.45 **
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

## TABULATION OF BIDS

<table>
<thead>
<tr>
<th>ITEM NO</th>
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<th>UNIT</th>
<th>PRICE</th>
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<td><strong>TOTAL GROUP 4B</strong></td>
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<td><strong>T SHIRTS SHORT SLEEVE COTTON</strong></td>
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<td></td>
<td>Gildan Ultra Cotton 2300 or approved equivalent</td>
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<td>Size S-LX, SAWS#34669 300 ea. T-shirts cotton short sleeve</td>
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<td>8.11</td>
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<td>UNIT</td>
<td>11.59</td>
<td>10.91</td>
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<td>Size 4-XL, SAWS#34672 25 ea. T-shirts cotton short sleeve</td>
<td>UNIT</td>
<td>11.59</td>
<td>10.91</td>
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<td></td>
<td>Size 5-XL, SAWS#34673 10 ea. T-shirts cotton short sleeve</td>
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<td>11.31</td>
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<td><strong>T SHIRTS LONG SLEEVE COTTON</strong></td>
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<td>Gildan 2410 or approved equivalent</td>
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# TABULATION OF BIDS

**Annual Contract for Purchase of Work Uniforms**

**(March 7, 2017 through May 31, 2018)**

**DATE:** 3:00 p.m., February 15, 2017

### E. MEN'S T-SHIRTS DRY FIT/MOISTURE WICKING SHORT SLEEVE

<table>
<thead>
<tr>
<th>Size</th>
<th>COUNT</th>
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<th>TOTAL PRICE</th>
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</thead>
<tbody>
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<td>25 ea.</td>
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**ITEM DELETED**

**ITEM DELETED**

**TOTAL GROUP 4E**

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### F. MEN'S T-SHIRTS DRY FIT/MOISTURE WICKING LONG SLEEVE

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<td>100 ea.</td>
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<td>1,021.00</td>
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<td>3-XL</td>
<td>25 ea.</td>
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**Bid Not Tabulated Non-Responsive**
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**
**SAN ANTONIO, TEXAS 78298-2449**

**TABULATION OF BIDS**

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>Anco Form 611 Broadway San Antonio, TX 78215</th>
<th>Safety Supply, Inc. 14927 Teal Corn Rd. Ste. 114 San Antonio, TX 78233</th>
<th>Ka-Hue Uniforms 7016 Hwy 90 W San Antonio, TX 78227</th>
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<td>3.962.50</td>
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<tr>
<td>G. WOMEN'S T-SHIRTS DRY FIT/MOISTURE WICKING SHORT SLEEVE</td>
<td>Gildan 42000L or approved equivalent</td>
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<td>H. WOMEN'S T-SHIRTS DRY FIT/MOISTURE WICKING LONG SLEEVE</td>
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## SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449

### TABULATION OF BIDS

**Proposal for**
- **Annual Contract for**
  - **Purchase of Work Uniforms**
  - *(March 7, 2017 through May 31, 2018)*

**Date:**
- **3:00 p.m., February 15, 2017**

**Item No.**
- **DESCRIPTION AND APPROXIMATE QUANTITY**

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<th>ITEM</th>
<th>DESCRIPTION AND APPORXIMATE QUANTITY</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
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<td>23.91</td>
<td>1,195.50</td>
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**TOTAL GROUP H**
- **TOTAL** | **3,275.00**
- **TOTAL** | **2,971.00**

**TOTAL GROUP 4 A-H**
- **TOTAL** | **53,747.95**
- **TOTAL** | **52,750.35**

### GROUP 5
**COVERALLS AND OVERALLS**

#### A.
**ELECTRICIANS FLAME RESISTANT NON INSULATED COVERALLS**
- Bulwark CEC2NV or approved equivalent

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<td>9.00</td>
<td>108.00</td>
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</tr>
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<td>Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>54.00</td>
</tr>
<tr>
<td>Total price with add on</td>
<td></td>
<td>360.84</td>
<td>360.84</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>SIZE</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size 48-50</td>
<td>SAWS#30881 Electricians Fire Resistant Coveralls</td>
<td>51.14</td>
<td>102.28</td>
</tr>
<tr>
<td>2 ea.</td>
<td>Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>18.00</td>
</tr>
<tr>
<td>Total price with add on</td>
<td></td>
<td>120.28</td>
<td>120.28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SIZE</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size 52-54</td>
<td>SAWS#30947 Electricians Fire Resistant Coveralls</td>
<td>51.14</td>
<td>102.28</td>
</tr>
<tr>
<td>2 ea.</td>
<td>Add on for embroidered logo on back of garment</td>
<td>9.00</td>
<td>18.00</td>
</tr>
<tr>
<td>Total price with add on</td>
<td></td>
<td>120.28</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>SIZE</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size 56-58</td>
<td>SAWS#30948 Electricians Fire Resistant Coveralls</td>
<td>60.86</td>
<td>121.72</td>
</tr>
<tr>
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<td>9.00</td>
<td>18.00</td>
</tr>
<tr>
<td>Total price with add on</td>
<td></td>
<td>139.72</td>
<td>154.28</td>
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</tbody>
</table>
## SAN ANTONIO WATER SYSTEM
P. O. BOX 2449  
SAN ANTONIO, TEXAS  78298-2449

### TABULATION OF BIDS

**Proposal: Annual Contract for**  
**Purchase of Work Uniforms**  
(March 7, 2017 through May 31, 2018)

**Date:** 3:00 p.m., February 15, 2017

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>PRICE</th>
<th>TOTAL</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size 60-80, SAWS#30949 2 ea.</td>
<td>Electricians Fire Resistant Coveralls Add on for embroidered logo on back of garment</td>
<td>68.16</td>
<td>136.32</td>
<td>9.00</td>
<td>154.32</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>TOTAL GROUPS 5A</strong></td>
<td>1,383.12</td>
<td>1,191.24</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **B. ELECTRICIANS FIRE RESISTANT INSULATED OVERALLS**  
Bulwark CLC8NV or approved equal | | |
| Size 28-42 12 ea. | Electrician Insulated Fire Resistant Coveralls Add on for embroidered logo on back of garment | 222.66 | 2,671.92 | 17.50 | 2,789.42 |
| Size 44-46 6 ea. | Electrician Insulated Fire Resistant Coveralls Add on for embroidered logo on back of garment | 222.66 | 1,335.96 | 20.00 | 1,355.96 |
| **TOTAL** | **TOTAL GROUPS 5B** | 1,617.12 | 1,721.24 |

**BID NOT TABULATED**

**NON-RESPONSIVE**
**SAN ANTONIO WATER SYSTEM**  
P. O. BOX 2449  
SAN ANTONIO, TEXAS  78298-2449  
**TABULATION OF BIDS**

**PROPOSAL FOR TIME**  
**DATE**  
Illino.  
**D.**  

**SAN ANTONIO WATER SYSTEM**  
P. O. BOX 2449  
SAN ANTONIO, TEXAS  78298-2449  
**TABULATION OF BIDS**

**PROPOSAL**  
**FOR**  
Purchase of Work Uniforms  
**TIME & DATE**  
(March 7, 2017 through May 31, 2018)  
3:00 p.m., February 15, 2017

**ITEM NO**  
DESCRIPTION AND APPROXIMATE QUANTITY

<table>
<thead>
<tr>
<th><strong>C.</strong> INSULATED BLENDED DUCK COVERALLS</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Size: 28-42</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50 ea.</td>
<td>Insulated Blended Duck Coveralls</td>
<td>PRICE</td>
<td>92.89</td>
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<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td>TOTAL</td>
<td>5,094.50</td>
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<tr>
<td>Size: 44-46</td>
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<td></td>
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</tr>
<tr>
<td>50 ea.</td>
<td>Insulated Blended Duck Coveralls</td>
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<td>92.89</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td>TOTAL</td>
<td>5,094.50</td>
</tr>
<tr>
<td>Size: 48-50</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>50 ea.</td>
<td>Insulated Blended Duck Coveralls</td>
<td>PRICE</td>
<td>110.98</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td>TOTAL</td>
<td>5,999.00</td>
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<tr>
<td>Size: 52-54</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>50 ea.</td>
<td>Insulated Blended Duck Coveralls</td>
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<td>110.98</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td>TOTAL</td>
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<tr>
<td>Size: 56-58</td>
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<tr>
<td>50 ea.</td>
<td>Insulated Blended Duck Coveralls</td>
<td>PRICE</td>
<td>110.98</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td>TOTAL</td>
<td>5,999.00</td>
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<tr>
<td>Size: 60-60</td>
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<tr>
<td>50 ea.</td>
<td>Insulated Blended Duck Coveralls</td>
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<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
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<tr>
<td></td>
<td>Total price with add on</td>
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<td>9,614.50</td>
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</table>

**TOTAL GROUPS C**

<table>
<thead>
<tr>
<th><strong>D. NON INSULATED ZIP-FRONT COTTON COVERALLS</strong></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Size: 28-42</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50 ea.</td>
<td>Non-Insulated Zip-front coveralls</td>
<td>PRICE</td>
<td>35.37</td>
</tr>
<tr>
<td></td>
<td>Add on for embroidered logo on back of garment</td>
<td>PRICE</td>
<td>9.00</td>
</tr>
<tr>
<td></td>
<td>Total price with add on</td>
<td>TOTAL</td>
<td>2,218.50</td>
</tr>
</tbody>
</table>
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS 78298-2449**

## TABULATION OF BIDS

### Annual Contract for Purchase of Work Uniforms (March 7, 2017 through May 31, 2018)

#### DATE

3:00 p.m., February 15, 2017

#### DESCRIPTION AND APPROXIMATE QUANTITY

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>SIZE</th>
<th>QUANTITY</th>
<th>PRICE</th>
<th>PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>44-46</td>
<td>50 ca.</td>
<td>35.37</td>
<td>1,768.50</td>
<td>2,218.50</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>19.00</td>
<td>24.55</td>
</tr>
<tr>
<td>A.</td>
<td>48-50</td>
<td>50 ca.</td>
<td>35.37</td>
<td>1,768.50</td>
<td>2,218.50</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>19.00</td>
<td>24.55</td>
</tr>
<tr>
<td>A.</td>
<td>52-54</td>
<td>50 ca.</td>
<td>41.94</td>
<td>2,097.00</td>
<td>2,547.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>21.00</td>
<td>26.55</td>
</tr>
<tr>
<td>A.</td>
<td>56-58</td>
<td>50 ca.</td>
<td>41.94</td>
<td>2,097.00</td>
<td>2,547.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>21.00</td>
<td>26.55</td>
</tr>
<tr>
<td>A.</td>
<td>60-64</td>
<td>50 ca.</td>
<td>68.23</td>
<td>3,411.50</td>
<td>3,861.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>21.00</td>
<td>26.55</td>
</tr>
<tr>
<td>A.</td>
<td>66-70</td>
<td>50 ca.</td>
<td>63.23</td>
<td>3,156.00</td>
<td>3,606.00</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>21.00</td>
<td>26.55</td>
</tr>
<tr>
<td>A.</td>
<td>72-74</td>
<td>50 ca.</td>
<td>68.23</td>
<td>3,411.50</td>
<td>3,861.50</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>9.00</td>
<td>21.00</td>
<td>26.55</td>
</tr>
<tr>
<td><strong>TOTAL GROUPS 5 D</strong></td>
<td></td>
<td></td>
<td>12,911.00</td>
<td>15,611.00</td>
<td>19,311.00</td>
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<tr>
<td><strong>TOTAL GROUP 5 A-D</strong></td>
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<td></td>
<td>55,668.14</td>
<td>61,536.14</td>
<td>67,404.14</td>
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</table>

### LAB COATS

**Red Kap KP70**

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>SIZE</th>
<th>QUANTITY</th>
<th>PRICE</th>
<th>PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>S-L</td>
<td>55 ca.</td>
<td>19.90</td>
<td>1,094.50</td>
<td>1,294.45</td>
</tr>
<tr>
<td>A.</td>
<td>X-L</td>
<td>50 ca.</td>
<td>19.90</td>
<td>997.00</td>
<td>1,197.00</td>
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<tr>
<td>A.</td>
<td>2X</td>
<td>15 ca.</td>
<td>24.38</td>
<td>350.70</td>
<td>395.00</td>
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</tbody>
</table>

| BID NOT TABULATED NON-RESPONSIVE | | | | | |
## SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
SAN ANTONIO, TEXAS 78298-2449

### TABULATION OF BIDS

**PROPOSAL FOR**  
Annual Contract for  
Purchase of Work Uniforms  
(March 7, 2017 through May 31, 2018)

**DATE**  
3:00 p.m., February 15, 2017

### ITEM NO

<table>
<thead>
<tr>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard White Lab Coat with embroidered logo and name</td>
<td>23.38</td>
<td>116.90</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>50.29</td>
<td>1,508.70</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>59.85</td>
<td>598.50</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>59.85</td>
<td>598.50</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>59.85</td>
<td>598.50</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>59.85</td>
<td>598.50</td>
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</table>

**TOTAL GROUP 6 A**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard White Lab Coat with embroidered logo and name</td>
<td>5 ca.</td>
<td>23.38</td>
<td>116.90</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>15 ca.</td>
<td>50.29</td>
<td>754.35</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>5 ca.</td>
<td>59.85</td>
<td>299.25</td>
</tr>
</tbody>
</table>

**TOTAL GROUP 6 B**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard White Lab Coat with embroidered logo and name</td>
<td>5 ca.</td>
<td>23.38</td>
<td>116.90</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>15 ca.</td>
<td>50.29</td>
<td>754.35</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>5 ca.</td>
<td>59.85</td>
<td>299.25</td>
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</tbody>
</table>

**TOTAL GROUP 6 A-B**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard White Lab Coat with embroidered logo and name</td>
<td>5 ca.</td>
<td>23.38</td>
<td>116.90</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>15 ca.</td>
<td>50.29</td>
<td>754.35</td>
</tr>
<tr>
<td>Fire Resistant Lab Coat with embroidered logo and name</td>
<td>5 ca.</td>
<td>59.85</td>
<td>299.25</td>
</tr>
</tbody>
</table>

**GROUP 7**  
**KNIT SKULL CAP**  
Port and Company CP94 or approved equal

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knit Skull Cap with Embroidered SAWS logo</td>
<td>1,100 ca.</td>
<td>4.69</td>
<td>5,159.00</td>
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</table>

**TOTAL GROUP 7**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knit Skull Cap with Embroidered SAWS logo</td>
<td>1,100 ca.</td>
<td>4.69</td>
<td>5,159.00</td>
</tr>
</tbody>
</table>

**GRAND TOTAL WITHOUT LOGO ON BACK**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knit Skull Cap with Embroidered SAWS logo</td>
<td>1,100 ca.</td>
<td>4.69</td>
<td>5,159.00</td>
</tr>
</tbody>
</table>

**GRAND TOTAL WITH LOGO ON BACK**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knit Skull Cap with Embroidered SAWS logo</td>
<td>1,100 ca.</td>
<td>4.69</td>
<td>5,159.00</td>
</tr>
</tbody>
</table>

**BID NOT TABULATED**

**NON-RESPONSIVE**
### SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS  78298-2449**

**TABULATION OF BIDS**

**PROPOSAL**

**FOR**

**TIME & DATE**

- **Annual Contract for**  
  - **Purchase of Work Uniforms**  
  - **(March 7, 2017 through May 31, 2018)**  
  - **3:00 p.m., February 15, 2017**

**ITEM NO**

**DESCRIPTION AND APPROXIMATE QUANTITY**

<table>
<thead>
<tr>
<th>Delivery will be completed on uniform package requiring a logo on the back</th>
<th>28 days</th>
<th>14-21 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery will be completed on uniform packages not requiring a logo on back</td>
<td>21 days</td>
<td>7-14 day</td>
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</tbody>
</table>

**EXTENSION 1**

- **424,943.84**

**EXTENSION 2**

- **424,943.84**

**EXTENSION 3**

- **424,943.84**

**Terms**

- **2%**  
  - **10 days**

**Delivery Days**

**BID NOT TABULATED**

**NON-RESPONSIVE**

---

**LOW BIDDER**

**BID INVITATIONS E-MAILED TO AND/OR PICKED UP BY:**

- Amci-Form
- Aramark Uniform Services
- Big Star Branding
- Boot Barn
- G&K Services
- Kel-Lac Uniforms, Inc.
- Prudential Overall Supply
- Safety Supply
- Sunshine Dist.
- Twinhill
- Unifirst
- VF Imagewear

**Demandstar**

**SAWS Website**
## SAN ANTONIO WATER SYSTEM

**P.O. BOX 2449**
**SAN ANTONIO, TEXAS 78299-2449**

**TABULATION OF BIDS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Manufacturer</th>
<th>Model</th>
<th>Color</th>
<th>Status</th>
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</thead>
<tbody>
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<td>1</td>
<td>12&quot; Valve &amp; 4&quot; Valve</td>
<td>Hayes Valve</td>
<td>12SHV-100-50</td>
<td>Black</td>
<td>Installed</td>
</tr>
<tr>
<td>2</td>
<td>12&quot; Valve &amp; 4&quot; Valve</td>
<td>Hayes Valve</td>
<td>12SHV-100-50</td>
<td>Black</td>
<td>Installed</td>
</tr>
<tr>
<td>3</td>
<td>12&quot; Valve &amp; 4&quot; Valve</td>
<td>Hayes Valve</td>
<td>12SHV-100-50</td>
<td>Black</td>
<td>Installed</td>
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**EXTENSION 2 HOURS**

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</tbody>
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**Invoices**

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<th>Item</th>
<th>Vendor</th>
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<tbody>
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<tr>
<td>2</td>
<td>XYZ Corp.</td>
</tr>
<tr>
<td>3</td>
<td>MNO Ltd.</td>
</tr>
</tbody>
</table>

**Notes**

- All invoices must be paid within 30 days.
- Late payments will incur a 2% late fee.
- Invoices over $10,000 require a signed agreement.

---

**Sales Tax:**

- 8.25% applicable to all items.
TO: San Antonio Water System Board of Trustees

FROM: Michael L. Myers, P.E., Director, Plants and Major Projects, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVAL OF CHANGE ORDER NO. 2 IN CONNECTION WITH THE LEON CREEK WATER RECYCLING CENTER (WRC) REHABILITATION AND PROCESS IMPROVEMENTS PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Change Order No. 2 in the amount of $231,903.67 payable to Archer Western Construction, LLC in connection with the Leon Creek Water Recycling Center (WRC) Rehabilitation and Process Improvements Project (the “project”).

- On February 9, 2016, the Board, by Resolution 16-050, authorized a construction contract with Archer Western Construction, LLC (the “contractor”) in the amount of $11,138,000.00 for the project work.

- This project includes:
  - Replacement of the aged membrane diffusers and corroded and leaking air piping in the aeration basins, installation of dissolved oxygen probes in the aeration basins for instant process monitoring and control, and automation of the aeration system based on process dissolved oxygen requirements.
  - Replacement of clarifier mechanisms in four and concrete repairs in two of the south side clarifiers, and resetting of the weirs in all the final clarifiers.
  - Replacement of the chlorination/de-chlorination analyzing systems, and automation of these systems to optimize chemical dosing based on flow pacing.
  - Enclosing the aeration process blowers in a building for environmental protection and noise control.
  - Associated civil, mechanical, structural, electrical, and instrumentation and controls work.

- The contract specifications call for the installation of forty-five dissolved oxygen sensors with a mechanical cleaning system. The dissolved oxygen sensors measure the level of
oxygen in the aeration basins, and are essential instruments for the automation of the aeration system.

- During construction, the contractor’s submittal included dissolved oxygen sensors with an air blast cleaning system instead of the mechanical cleaning system. It was determined the specified dissolved oxygen sensors are no longer provided with a mechanical cleaning system, and an air blast cleaning system was the only option. This system, however, requires additional electrical work that was not included in the contract documents.

- The San Antonio Water System (the “System”) staff requested a proposal from the contractor to include this work as a change order to the project. Negotiations between the staff and the contractor resulted in an additional cost of $231,903.67 to perform the work. Change Order No. 2 provides for this additional work in an amount not to exceed $231,903.67.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the CY 2017 Capital Improvement Program. This work is included in the Wastewater Core Business, Treatment, Leon Creek Water Recycling Center (WRC) Rehabilitation and Process Improvements Project budget line item. Funds will be transferred from the 2017 Owner Controlled Construction Changes line item. The total amount is $231,903.67 under job number 13-6505.

The revised authorizations for this project are as follows:

<table>
<thead>
<tr>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 16-050)</td>
</tr>
<tr>
<td>Change Order No.1</td>
</tr>
<tr>
<td>Proposed Change Order No. 2</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
</tr>
</tbody>
</table>

**SUPPLEMENTARY COMMENTS:**

Change Order No. 2 will not add any days to the project construction duration. Change Order No. 2 reflects a 2.08 percent increase to the original bid amount for the construction contract. The total cost for all change orders is 2.66 percent of the original contract amount.

Change Order No. 2 is a result of a deficiency in the contract documents. The Design Engineer was asked to share in the increased cost to the contract.
Approval of Change Order No. 2 for the Leon Creek WRC Rehabilitation and Process Improvements Project

Michael L. Myers, P.E.
Director
Plants and Major Projects

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Maps
LEON CREEK WATER RECYCLING CENTER (WRC)
REHABILITATION AND PROCESS IMPROVEMENTS PROJECT

LEGEND
■ PROJECT LIMITS
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING CHANGE ORDER NO. 2 IN THE AMOUNT OF $231,903.67 IN CONNECTION WITH THE LEON CREEK WATER RECYCLING CENTER (WRC) REHABILITATION AND PROCESS IMPROVEMENTS PROJECT; APPROVING THE EXPENDITURE OF ADDITIONAL FUNDS IN AN AMOUNT NOT TO EXCEED $231,903.67 FROM THE SYSTEM’S PROJECT FUND PAYABLE TO ARCHER WESTERN CONSTRUCTION, LLC FOR CHANGE ORDER NO. 2; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CHANGE ORDER NO. 2, AND TO PAY ARCHER WESTERN CONSTRUCTION, LLC AN ADDITIONAL AMOUNT NOT TO EXCEED $231,903.67 FOR CHANGE ORDER NO. 2; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on February 9, 2016, the Board, by Resolution 16-050, authorized a construction contract with Archer Western Construction, LLC (the “contractor”) in the amount of $11,138,000.00 for the project work in connection with the Leon Creek Water Recycling Center (WRC) Rehabilitation and Process Improvements Project (the “project”); and

WHEREAS, the project includes replacement of the aged membrane diffusers and corroded and leaking air piping in the aeration basins, installation of dissolved oxygen probes in the aeration basins for instant process monitoring and control, and automation of the aeration system based on process dissolved oxygen requirements; replacement of clarifier mechanisms in four and concrete repairs in two of the south side clarifiers, and resetting of the weirs in all the final clarifiers; replacement of the chlorination/de-chlorination analyzing systems, and automation of these systems to optimize chemical dosing based on flow pacing; enclosing the aeration process blowers in a building for environmental protection and noise control; and associated civil, mechanical, structural, electrical, and instrumentation and controls work; and

WHEREAS, the contract specifications call for the installation of forty-five dissolved oxygen sensors with a mechanical cleaning system; and

WHEREAS, the dissolved oxygen sensors measure the level of oxygen in the aeration basins, and are essential instruments for the automation of the aeration system; and

WHEREAS, during construction, the contractor’s submittal included dissolved oxygen sensors with an air blast cleaning system instead of a mechanical cleaning system; and
WHEREAS, it was determined the specified dissolved oxygen sensors are no longer provided with a mechanical cleaning system, and an air blast cleaning system was the only option and this system requires additional electrical work that was not included in the contract documents; and

WHEREAS, the San Antonio Water System (the “System”) and Archer Western Construction, LLC, have negotiated Change Order No. 2 in an amount not to exceed $231,903.67 to include the additional electrical work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Change Order No. 2 in an amount not to exceed $231,903.67 for the project, (ii) to approve the expenditure of additional funds in an amount not to exceed $231,903.67 from the System’s Project Fund payable to Archer Western Construction, LLC, for Change Order No. 2, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Change Order No. 2, and to pay an additional amount not to exceed $231,903.67 to Archer Western Construction, LLC, for Change Order No. 2; now, therefore:

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

1. That Change Order No. 2 in an amount not to exceed $231,903.67 to the construction contract with Archer Western Construction, LLC, in connection with the Leon Creek Water Recycling Center (WRC) Rehabilitation and Process Improvements Project is hereby approved.

2. That Resolution No. 16-050 is hereby amended by authorizing additional expenditures in the amount not to exceed $231,903.67 from the System’s Project Fund.

3. That the expenditure in the amount not to exceed $231,903.67 to perform the additional project work associated with Change Order No. 2 is hereby authorized to be paid to Archer Western Construction, LLC.

4. That the additional funds in the amount not to exceed $231,903.67 are hereby made available for Change Order No. 2 from the System’s Project Fund.

5. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Change Order No. 2, and to pay Archer Western Construction, LLC an additional amount not to exceed $231,903.67 for Change Order No. 2 in connection with the Project.

6. It is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public, and that the 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.
7. 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.

8. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

ATTEST:

Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Michael L. Myers, P.E., Director, Plants and Major Projects, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVAL OF RECAPITULATION CHANGE ORDER NO. 8 IN CONNECTION WITH THE EVANS PZ 11A BOOSTER STATION IMPROVEMENTS PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Recapitulation Change Order No. 8 in the decreased amount of $163,000.00 to the construction contract with MGC Contractors, Inc., a non-local, non-SMWB contractor, in connection with the Evans PZ 11A Booster Station Improvements Project. It further returns the remaining construction contingency funds in the amount of $94,383.47 for a total amount of $257,383.47 to the Project Fund and closes the contract.

- On November 4, 2014, by Resolution No. 14-300, the San Antonio Water System (the “System”) Board of Trustees awarded a construction contract in the amount of $4,865,548.85 to MGC Contractors, Inc. and $243,300.00 was authorized for construction contingency.

- The Evans PZ 11A Booster Station Improvements Project included the following:
  - Installation of three new 5 MGD high service pumps.
  - Installation of new electrical switchgear.
  - Construction of new canopies over the existing PZ10 and PZ 11A switchgear.
  - Upgrading of Supervisory Controls and Data Acquisition controls to include information for new pumps and other related appurtenances
  - Demolition of the existing temporary booster station and other related appurtenances

- All work on this project has been completed and this final change order is necessary to reflect actual quantities.

- The most significant decreased line items were related to allowances for CPS Energy and startup services.
Change Order No. 8 recapitulates the construction contract quantities in the decreased amount of $163,000.00. It further returns the remaining construction contingency funds in the amount of $94,383.47 for a total amount of $257,383.47 to the Project Fund and closes the contract.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

This is a one-time capital improvement expenditure that was included in the 2014 CIP Water Delivery Core Business, Production R&R category, Evans PZ 11A Booster Station Improvements Project under job number 13-6003.

The authorizations for this project are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract:</strong></td>
<td></td>
</tr>
<tr>
<td>Original Contract Amount (Resolution No. 14-300)</td>
<td>$4,865,548.85</td>
</tr>
<tr>
<td>Change Order Nos. 1 through 7</td>
<td>148,916.53</td>
</tr>
<tr>
<td>Proposed Recapitulation Change Order No. 8</td>
<td>(163,000.00)</td>
</tr>
<tr>
<td>Revised Contract Amount:</td>
<td>$4,851,465.38</td>
</tr>
<tr>
<td><strong>Contingency:</strong></td>
<td></td>
</tr>
<tr>
<td>Original Contingency Amount (Resolution No. 14-300)</td>
<td>$243,300.00</td>
</tr>
<tr>
<td>Change Order Nos. 1 through 7</td>
<td>(148,916.53)</td>
</tr>
<tr>
<td>Remaining Contingency Balance</td>
<td>$94,383.47</td>
</tr>
<tr>
<td><strong>Balance Returned:</strong></td>
<td></td>
</tr>
<tr>
<td>Proposed Recapitulation Change Order No. 8</td>
<td>$163,000.00</td>
</tr>
<tr>
<td>Remaining Contingency Balance</td>
<td>94,383.47</td>
</tr>
<tr>
<td>Total Remaining Balance Returned</td>
<td>$257,383.47</td>
</tr>
</tbody>
</table>

**SUPPLEMENTARY COMMENTS:**

Change Order No. 1 in the amount of $24,557.71 provided for replacing CSC pipe with steel pipe.

Change Order No. 2 in the amount of $7,870.69 provided for relocation of duct banks to accommodate site piping.

Change Order No. 3 in the amount of $15,177.58 provided for the addition of anti-cavitation equipment and a limit switch to the PRV to prolong the life of the PRV and allow remote monitoring.

Change Order No. 4 in the amount of $34,360.20 provided for additional work to re-fabricate pipe sections to conform to AWWA and SAWS standards.

Change Order No. 5 in the amount of $17,253.77 provided for additional work to replace 2 gate valves on an existing pipeline that were no longer working as intended.
Change Order No. 6 in the amount of $40,431.25 provided for additional work to modify SCADA software and graphics to control the PRV and also provided for the purchase and installation of a 5kV circuit breaker.

Change Order No. 7 in the amount of $9,265.33 provided for additional work to upgrade the existing discharge pressure transducer to a model capable of measuring pressures up to 800 psi.

Change Order No. 8 reflects a 3.35 percent decrease in the original contract cost for the project. The total cost for all change orders is -0.29 percent of the original contract amount.

Michael L. Myers, P.E.  
Director  
Plants and Major Projects

Genoveva G. Gomez, P.E.  
Vice President  
Engineering and Construction

Robert R. Puente  
President/Chief Executive Officer

Attachments:  
1. Project Area Map  
2. Project Site Map
SAN ANTONIO WATER SYSTEM
PROJECT SITE MAP
ATTACHMENT II

EVANS PZ 11A BOOSTER STATION
IMPROVEMENTS PROJECT

LEGEND
trash PROJECT LIMITS
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING RECAPITULATION CHANGE ORDER NO. 8 IN THE DECREASED AMOUNT OF $163,000.00 TO THE CONSTRUCTION CONTRACT WITH MGC CONTRACTORS, INC., IN CONNECTION WITH THE EVANS PZ 11A BOOSTER STATION IMPROVEMENTS PROJECT; AUTHORIZING THE RETURN OF FUNDS IN THE AMOUNT OF $163,000.00 AND THE REMAINING CONSTRUCTION CONTINGENCY FUNDS IN THE AMOUNT OF $94,383.47 FOR A TOTAL AMOUNT OF $257,383.47 TO THE SYSTEM'S PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE RECAPITULATION CHANGE ORDER NO. 8 AND CLOSE THE CONTRACT WITH MGC CONTRACTORS, INC.; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) has completed the project work under the Evans PZ 11A Booster Station Improvements Project as part of its Capital Improvement Program; and

WHEREAS, funds in the amount of $4,865,548.85 for the construction contract with MGC Contractors, Inc., and $243,300.00 for construction contingency expenses were authorized for the project by Resolution 14-300, adopted November 4, 2014; and

WHEREAS, the Evans PZ 11A Booster Station Improvements Project constructed three new 5 MGD high service pumps, electrical switchgear, new canopies over the existing PZ10 and PZ 11A switchgear, and remodeled the existing SCADA system to include information for new pumps and other related appurtenances, and demolished the existing temporary booster station and other related appurtenances; and

WHEREAS, the construction of this project is complete; and

WHEREAS, Change Order No. 8 recapitulates the construction contract quantities in the decreased amount of $163,000.00, and it further returns the remaining construction contingency funds in the amount of $94,383.47 for a total amount of $257,383.47; and

WHEREAS, funds in the amount of $257,383.47 are to be returned to the System’s Project Fund; and
WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Recapitulation Change Order No. 8 in the decreased amount of $163,000.00 in connection with the Evans PZ 11A Booster Station Improvements Project, (ii) to return the amount of $163,000.00 and the construction contingency balance of $94,383.47 for a total returned amount of $257,383.47 to the System’s Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Recapitulation Change Order No. 8 and to close the contract; now, therefore:

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

1. That Recapitulation Change Order No. 8 in the decreased amount of $163,000.00 in connection with the Evans PZ 11A Booster Station Improvements Project is hereby approved.

2. That the amount of $163,000.00 and the construction contingency balance of $94,383.47 for the total amount of $257,383.47 is hereby returned to the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Recapitulation Change Order No. 8 to the construction contract between the System and MGC Contracting, Inc., in connection with the Evans PZ 11A Booster Station Improvements Project and to close the contract.

4. It is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public, and that the 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.

5. 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.

6. This resolution becomes effective immediately upon its passage.
PASSED AND APPROVED this 4th day of April, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. 9

TO: San Antonio Water System Board of Trustees

FROM: Michael L. Myers, P.E., Director, Plants and Major Projects, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVAL OF CONTRACT AMENDMENT NO. 3 AND AUTHORIZATION FOR ADDITIONAL FUNDS FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE WATER RESOURCES INTEGRATION PROGRAM PHASE 1: CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Contract Amendment No. 3 and amends Resolution No. 13-325 by authorizing additional funds to an existing professional services contract with CH2MHill, Inc., a local, non-SMWB firm, in the amount not to exceed $156,451.00 for professional services in connection with the Water Resources Integration Program Phase 1: Construction Management and Inspection Services Project (the “project”).

- The Water Resources Integration Program (WRIP) was identified in the 2009 Water Management Plan Update. The WRIP will deliver water from the San Antonio Water System’s (the “System”) Aquifer Storage and Recovery Facility, Local Carrizo, Expanded Carrizo and Brackish Desalination Programs to new and existing facilities in southwestern, western and northwestern Bexar County.

- The WRIP consists of approximately 45 miles of transmission main beginning at the Twin Oaks West Pump Station, located at the H2Oaks Facility in south Bexar County, to the Old Pearsall Road Pump Station located in southwest San Antonio and will ultimately terminate at the existing Anderson Pump Station in northwest San Antonio.

- Phase 1 of the WRIP is currently completing construction and includes the construction of the Twin Oaks West Pump Station, the Old Pearsall Road Pump Station and approximately 28 miles of water transmission main between the two pump stations. Phase 2 will consist of an additional 17 miles of transmission main beginning at the Old Pearsall Road Pump Station and terminating at the existing Anderson Pump Station and will include the required pump station upgrades to complete the Program.

- On August 13, 2013, by Resolution No. 13-325, the System’s Board of Trustees authorized a professional services contract in the amount of $3,681,855.00 with CH2MHill, Inc., in connection with the project.
Contract Amendment No. 3 is required to fund additional construction management services to final completion of the project expected by April 2017.

Additional funding in the amount of $156,451.00 is available from the System’s Project Fund and can be added to the current contract with CH2M Hill, Inc.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure, included in the CY 2015 Capital Improvement Program. This additional work is to be funded through a transfer from the Water Supply Core Business, Water Resources Category, WRIP Integration Mains - Somerset PS & Medina WTP budget line item. The amount is $156,451.00 for the additional professional services work. The job number is 13-8607.

The revised authorization for this project is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 13-325)</td>
<td>$3,681,855.00</td>
</tr>
<tr>
<td>Contract Amendment No. 1</td>
<td>0.00</td>
</tr>
<tr>
<td>Contract Amendment No. 2 (Resolution No. 16-187)</td>
<td>397,144.00</td>
</tr>
<tr>
<td>Proposed Contract Amendment No. 3 (this Resolution)</td>
<td>156,451.00</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$4,235,450.00</td>
</tr>
</tbody>
</table>

As a result of Contract Amendment No. 3, the new contract amount is $4,235,450.00. This represents a 15.0 percent increase in the System’s original contract amount.

**SUPPLEMENTARY COMMENTS:**

The contract was amended with no cost Contract Amendment No. 1 on October 8, 2015 to clarify the Program Quality Assurance Services scope of work.

Resolution No. 16-187, adopted on August 2, 2016, was for Contract Amendment No. 2 and authorized additional funds in the amount of $397,144.00 for the extension of construction management and inspection services from the original contract end date of May 2016 to a revised end date of October 2016.
Approving Contract Amendment No. 3 and Additional Funds
Water Resources Integration Program Phase 1: Construction
Management and Inspection Services Project

Michael L. Myers, P.E.
Director
Plants and Major Projects

APPROVED:

Genoveva G. Gomez, P.E.
Vice President
Engineering and Construction

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
RESOLUTION NO. OF THE SAN ANTONIO WATER SYSTEM BOARD OF
TRUSTEES APPROVING CONTRACT AMENDMENT NO. 3 TO PROVIDE FOR ADDITIONAL SERVICES TO THE
EXISTING PROFESSIONAL SERVICES CONTRACT WITH CH2MHILL, INC., IN AN AMOUNT NOT TO EXCEED
$156,451.00 IN CONNECTION WITH THE WATER RESOURCES INTEGRATION PROGRAM, PHASE 1: CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES PROJECT CONTRACT; AMENDING RESOLUTION NO. 13-325, AS PREVIOUSLY AMENDED BY RESOLUTION NO. 16-187, TO APPROVE ADDITIONAL EXPENDITURES IN AN AMOUNT NOT TO EXCEED $156,451.00 FOR A TOTAL AUTHORIZATION AMOUNT NOT TO EXCEED $4,235,450.00 FROM THE SYSTEM’S PROJECT FUND FOR ADDITIONAL SERVICES IN CONNECTION WITH THE CONTRACT; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE AN AMENDMENT TO THE EXISTING PROFESSIONAL SERVICES CONTRACT WITH CH2MHILL, INC., AND TO PAY CH2MHILL, INC., AN ADDITIONAL AMOUNT NOT TO EXCEED $156,451.00 FOR ADDITIONAL SERVICES; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) is developing the Water Resources Integration Program (WRIP) as part of its Long Range Water Resources Plan; and

WHEREAS, the WRIP consists of approximately 45 miles of transmission main beginning at the Twin Oaks West Pump Station located at the H2Oaks Facility in south Bexar County, to the Old Pearsall Road Pump Station, and then terminating at the Anderson Pump Station; and

WHEREAS, the WRIP will require two new pump stations, the Twin Oaks West and Old Pearsall Road Pump Stations, and upgrades at the existing Anderson Pump Station; and

WHEREAS, on August 13, 2013, by Resolution No. 13-325, the System’s Board of Trustees authorized a professional services contract with CH2M Hill, Inc., and provided funds in the amount of $3,681,855.00 for professional services in connection with the Water Resources Integration Program Phase 1: Construction Management and Inspection Services Contract; and
WHEREAS, Contract Amendment No. 3 includes additional professional services needed for additional construction management services through the final completion of the project expected to be completed by April 2017; and

WHEREAS, an additional amount to complete the additional professional services associated with the project work is $156,451.00 for Contract Amendment No. 3 for a revised contract amount not to exceed $4,235,450.00; and

WHEREAS, the required amount not to exceed $156,451.00 is available from the System’s Project Fund; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Contract Amendment No. 3 to the existing professional services contract with CH2MHIll, Inc., for additional services in an amount not to exceed $156,451.00 in connection with the Water Resources Integration Program Phase 1: Construction Management and Inspection Services Contract, (ii) to amend Resolution No. 13-325, as amended by Resolution No. 16-187, by approving the expenditure of System funds in an amount not to exceed $156,451.00 to CH2MHIll, Inc. for a total authorization not to exceed $4,235,450.00 for the additional professional services related to the project work, (iii) to make available the total amount not to exceed $156,451.00 from the System’s Project Fund, and (iv) to authorize the System’s President/Chief Executive Officer or his duly appointed designee to execute an amendment to the professional services agreement with CH2MHIll, Inc., and pay an amount not to exceed $156,451.00 to CH2MHIll, Inc., for the additional professional services; now, therefore:

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

1. That Contract Amendment No. 3 is hereby approved to provide additional professional services related to the existing professional services contract with CH2MHIll, Inc., in an amount not to exceed $156,451.00 in connection with the Water Resources Integration Program Phase 1: Construction Management and Inspection Services Contract.

2. That Resolution No. 13-325, as amended by Resolution No. 16-187, is hereby amended by providing additional professional services in an amount not to exceed $156,451.00 from the previous total amount of $4,078,999.00 to a revised total amount of $4,235,450.00.

3. That an amount not to exceed $156,451.00 is hereby made available and is to be expended from the System’s Project Fund for the additional professional services.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute an amendment to the professional services contract with CH2MHIll, Inc., and to pay CH2MHIll, Inc., an amount not to exceed $156,451.00 for the additional professional services work.

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 a 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. That this resolution shall become effective upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Gail A. Hamrick-Pigg, P.E., Director, Pipelines, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING AN INTERLOCAL AGREEMENT AND AUTHORIZING EXPENDITURES TO THE CITY OF BALCONES HEIGHTS IN CONNECTION WITH THE LEISURE DRIVE RECONSTRUCTION – PHASE II PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the President/Chief Executive Officer to execute an Interlocal Agreement with the City of Balcones Heights (the “City”) and authorizes expenditures to the City in an amount not to exceed $139,291.45 for the joint construction of water facility replacements in connection with the Leisure Drive Reconstruction – Phase II Project.

- The City proposes to construct street and sewer improvements in the area illustrated on the attached maps. The City’s improvement work is estimated to cost $449,876.00.

- Due to the street improvements of the Leisure Drive Reconstruction – Phase II Project, the existing water mains installed in 1964 require replacement to meet current San Antonio Water System (the “System”) standards.

- The existing sewer mains that were constructed between 1954 through 1962 are maintained by the City and will be replaced per the City’s current standards.

- The water replacement work will consist of approximately 594 feet of 8-inch main.

- The City approved the bid of R.L. Jones, LP for construction of this project on March 27, 2017 as the low bid contractor. As part of the joint bidding, advanced approval for funding and for the execution of an Interlocal Agreement is required by the City prior to issuing a notice to proceed on construction.

- Funds, as determined by the amount bid, will be transferred to the City following the execution of the Interlocal Agreement.

Staff recommends that the Board approve this resolution.
Approval of an Interlocal Agreement and Authorization for Expenditure of Funds to the City of Balcones Heights for the Leisure Drive Reconstruction – Phase II Project

FINANCIAL IMPACT:

The project fund will finance this expenditure included in the CY 2017 Capital Improvement Program. The water work is included in the Water Delivery Core Business, Governmental – Water Category, and Governmental Water Replacements budget line item. The amount is $139,291.45 for water work. The job number is 16-5017-000.

Gail A. Hamrick-Pigg, P.E.  
Director  
Pipelines

Genoveva G. Gomez, P.E.  
Vice President  
Engineering and Construction

Robert R. Puente  
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
LEISURE DRIVE RECONSTRUCTION
PROJECT - PHASE II

LEGEND

★ PROJECT SITE

EDWARDS AQUIFER RECHARGE ZONE
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF BALCONES HEIGHTS AND AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE INTERLOCAL AGREEMENT FOR THE REPLACEMENT OF WATER FACILITIES BY THE CITY OF BALCONES HEIGHTS IN CONNECTION WITH THE LEISURE DRIVE RECONSTRUCTION – PHASE II PROJECT; AUTHORIZING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $139,291.45 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Balcones Heights (the “City”) proposes to construct the Leisure Drive Reconstruction – Phase II Project; and

WHEREAS, the Leisure Drive Reconstruction – Phase II Project will require the replacement of certain water facilities (the “project work”) of the San Antonio Water System (the “System”); and

WHEREAS, the project work will consist of water replacement work of approximately 594 feet of 8-inch water main; and

WHEREAS, the City has requested that the System execute an Interlocal Agreement and pay for the System’s share of the project work costs; and

WHEREAS, System funds in an amount not to exceed $139,291.45 are required for the project work; and

WHEREAS, the amount of $139,291.45 is available from the System’s Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve an Interlocal Agreement with the City for the replacement of water facilities by the City in connection with the Leisure Drive Reconstruction – Phase II Project and to authorize the President/Chief Executive Officer or his duly appointed designee to execute the Interlocal Agreement, and (ii) to authorize the expenditure of funds in an amount not to exceed $139,291.45 for the System’s share of the project work; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That an Interlocal Agreement with the City of Balcones Heights substantially in the form of the agreement attached hereto is hereby approved and the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute the Interlocal Agreement with the City in connection with the Leisure Drive Reconstruction – Phase II Project.

2. That the expenditure of funds in an amount of $139,291.45 for the replacement of water facilities by the City in connection with the Leisure Drive Reconstruction – Phase II Project is hereby approved.

3. 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.

4. 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.

5. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_________________________________
Ernesto Arrellano, Jr., Secretary
This Interlocal Agreement is made and entered into this __ day of ____________, 2017, by and between the CITY OF BALCONES HEIGHTS, a political subdivision of the State of Texas (“CITY”), and SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, a political subdivision of the State of Texas (“SAWS”) (also, individually, a “Party” or, collectively, the “Parties), pursuant to the Interlocal Cooperation Act, Chapter 791 of the Government Code.

PURPOSE

1.01 The purpose of this Agreement is to facilitate CITY’s improvement of the Leisure Drive Reconstruction – Phase II Project (the “Project”) by including certain necessary SAWS replacements in CITY’s Specifications for the Project, thus assuring the coordination of CITY’s road improvement with SAWS’s adjustments and installations.

SERVICES

2.01 CITY agrees to include in the City of Balcones Heights Public Works Specifications for the Project the plans and specifications for SAWS Water Job No. 16-5017 which SAWS prepared and delivered to CITY and is incorporated by reference herein, and to contract for the performance of SAWS Water Job No. 16-5017 (the “SAWS Work”).

2.02 Immediately after tabulating all of the bids received for the Project, CITY will notify SAWS in writing of the name of the contractor selected by CITY for the Project (the “Contractor”) and bid amount (Original Bid) for the SAWS Work.

2.03 CITY agrees to use its best efforts to enforce all of its rights and remedies against the Contractor for the SAWS Work.

2.04 CITY agrees to allow SAWS access to the Project site to (i) inspect and witness testing of the SAWS Work and to determine if the SAWS Work is in conformity with the plans, specifications and special provisions applicable thereto and is in good working order, and (ii) verify all quantities used in connection with the SAWS Work.

FEE

3.01 Within three (3) weeks of the approval and appropriation of funds by the SAWS’ Board of Trustees, SAWS shall conditionally deliver to CITY good and sufficient funds (the “Funds”) for the bid amount and shall have provided two signed copies of this Interlocal Agreement to the CITY. CITY will return one fully executed original to SAWS. Any and all control and/or beneficial use of the funds by the CITY pursuant to the delivery of the Funds by SAWS, will be contingent on SAWS receiving a fully executed original of this Interlocal Agreement from the CITY.
3.02 For materials and construction used in the SAWS Work, SAWS agrees to pay to CITY the amount of One Hundred Thirty-Nine Thousand, Two Hundred Ninety-One Dollars and Forty-Five Cents ($139,291.45), receipt of which is hereby acknowledged.

3.03 If the cost of performing the SAWS Work exceeds the Original Bid, the following provisions shall apply:

(a) **Change Orders.** If change orders are requested by SAWS or required for SAWS Work under this Agreement, SAWS will make a change order request and SAWS’s staff or SAWS’s Consultant shall prepare the change order. If CITY requires a change order that affects the SAWS Work, the change order will be submitted to SAWS staff for approval. SAWS staff agrees to use good faith efforts to respond to change orders within five business days after SAWS staff’s receipt of request, or such additional period of time as may be reasonably necessary under the circumstances based on the complexity of the change order. In no event will SAWS’s deliberative process be allowed to jeopardize CITY’s timely completion of CITY’s Project, as determined by CITY. SAWS staff is under no obligation to approve any change orders, and in no event shall SAWS be responsible for costs or expenses under change orders that are not approved by SAWS staff. If a change order results in total costs exceeding the amount stated in §3.02, CITY will send copies of invoices covering the additional amounts authorized by the change order approved by SAWS staff, and SAWS shall pay CITY the additional amounts in the approved change order within 15 days, unless further time is required for Board action to appropriate funds.

3.04 If the cost of performing the SAWS Work is less than the amount stated in §3.02 CITY agrees to refund the overpayment to SAWS within 15 days of determination of same.

**SAWS’ RESPONSIBILITY**

4.01 SAWS agrees to accept full responsibility for inspection and acceptance of work performed as the SAWS Work.

**ENTIRE AGREEMENT**

5.01 This Agreement, along with the specifications for the SAWS Work, supersedes any and all other agreements, either oral or in writing, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

**ATTORNEY’S FEES**

6.01 If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, to the extent allowed by law, the prevailing Party shall be entitled to reasonable attorney’s fees in addition to any other relief to which the prevailing Party may be entitled.

**TEXAS LAW TO APPLY**

7.01 This Agreement is performable in Bexar County, Texas and the validity of any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas and venue for all disputes shall be exclusively in Bexar County.
SEVERABILITY

8.01 If any one or more of the provisions contained in the Agreement is for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

AMENDMENT

9.01 No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the Parties.

THIRD PARTY BENEFICIARY

10.01 SAWS shall be considered a third party beneficiary under CITY’s contract for the Project; provided, however, that prior to final completion of the work under the contract for the Project, SAWS shall not enforce any remedies against the Contractor without the prior written consent of CITY, which consent may be withheld if CITY reasonably believes that enforcement would have an adverse effect on final completion of the Project. Prior to final completion of the work under the contract for the Project, CITY shall cooperate in the prosecution of any action against the Contractor, to the extent consistent with the terms of the Project Contract Documents, which SAWS may reasonably determine to be necessary to undertake in connection with the SAWS Work done by the Contractor or its subcontractors.

INDEMNIFICATION

11.01 CITY agrees to include SAWS in the list of parties being indemnified by the CITY contractors under contract documents, so that SAWS receives the benefit of all indemnities under the contract documents.

INSURANCE

12.01 In all contracts entered into by CITY for SAWS Work, City shall include provisions reflecting:

(a) With regard to insurance coverage during the construction phase of the Project, CITY shall require all consultants, contractors, subcontractors and suppliers to maintain insurance coverage limits that are sufficient to compensate CITY and SAWS for their respective interests in the Project with regard to any liability a third party may have due to the services, equipment, or materials provided for construction of the Project. SAWS shall be named as an additional insured on all policies naming CITY as an additional insured. CITY shall provide SAWS’s Designated Representative with copies of the completed Certificates of Insurance which Certificates shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. SAWS reserves the right to review the insurance requirements during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverage and limits when deemed necessary and prudent by SAWS’s Risk Manager based upon changes in statutory law or court decisions. CITY will not allow any modifications to the insurance coverage through which SAWS may incur increased risks.
(b) CITY shall require all contractors and service providers to maintain statutory worker’s compensation insurance for all of their employees with a waiver of subrogation in favor of CITY and SAWS.

(c) CITY will require the consultants, contractors, and any subcontractors to provide all statutorily-required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, CITY shall determine whether to require performance bonds.

**MISCELLANEOUS PROVISIONS**

13.01 **Records Retention and Review.** The Parties are required to maintain all records relating to this Agreement and the Project as required by law, but not less than a period of three (3) years upon the acceptance of final completion of the Project. Each Party shall have the right to examine such records of the other Party during normal business hours. Such right shall survive the expiration of the term or earlier termination of this Agreement.

13.02 **Assignment and Binding Effect.** No assignment of this Agreement in whole or in part for any purpose shall be made by either Party without prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the successors and permitted and assigns of the Parties.

13.03 **Notices.** All written notices required by the terms of this Agreement shall be in writing and deposited in the United States mail addressed to such Party at the address set forth below:

If to City:

City of Balcones Heights
Suzanne de Leon, Mayor
3300 Hillcrest Drive
Balcones Heights, Texas 78211

If to SAWS:

San Antonio Water System
Robert R. Puente, President/Chief Executive Officer
P.O. Box 2449
San Antonio, Texas 78298-2449

13.04 **Interpretation of Agreement.** This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon a Party’s authorship of the Agreement or any portion thereof.

13.05 **Authority to Contract.** The undersigned City Manager acting on behalf of City hereby affirms that it has the authority to enter into this Agreement pursuant to a duly adopted Resolution, and he has the authority to execute this Agreement. The undersigned President/Chief Executive Officer of
SAWS hereby affirms that it has the authority to enter into this Agreement pursuant to a duly adopted resolution of its Board of Trustees and that he has the authority to execute this Agreement.

13.06 Effective Date. The effective date of this Agreement shall be the later date in time of the signatory dates set out below.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE FULL FORCE AND EFFECT ON THIS _______ DAY OF ______________________, 2017.

SAN ANTONIO WATER SYSTEM

By: ___________________________________________________________________
    Robert R. Puente
    President and CEO

Date: ___________________________________________________________________

CITY OF BALCONES HEIGHTS

By: ___________________________________________________________________
    Suzanne de Leon
    Mayor

Date: ___________________________________________________________________
ACKNOWLEDGEMENTS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____________, 2017 by Robert R. Puente, President and CEO of the San Antonio Water System, a Texas municipal corporation, on behalf of said corporation.

________________________________
NOTARY PUBLIC

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____________, 2017 by Suzanne de Leon, Mayor of the City of Balcones Heights, a general law, type A municipality and political subdivision of the State of Texas, on behalf of said corporation.

________________________________
NOTARY PUBLIC
TO: San Antonio Water System Board of Trustees

FROM: Gail A. Hamrick-Pigg, P.E., Director, Pipelines, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING AN INTERLOCAL AGREEMENT AND AUTHORIZING EXPENDITURES TO THE CITY OF KIRBY IN CONNECTION WITH THE BINZ-ENGLERMAN STREET RECONSTRUCTION PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the President/Chief Executive Officer to execute an Interlocal Agreement with the City of Kirby (the “City”) and authorizes expenditures to the City in an amount not to exceed $43,954.87 for the joint construction of sewer facility adjustments in connection with the Binz-Engleman Street Reconstruction Project.

- The City proposes to construct street and drainage improvements in the area illustrated on the attached maps. The City’s improvement work is estimated to cost $2,119,072.00.

- Due to the street improvements of the Binz-Engleman Street Reconstruction Project, the existing sewer manholes installed between 1971 and 1991 require adjustment and reconstruction to meet current San Antonio Water System (the “System”) standards.

- The City owns and operates the sewer collection system within the City. The System provides wholesale sewer service to the City of Kirby and owns an outfall main which passes through the city.

- The existing water mains are owned and maintained by the City.

- The sewer work adjustment work will consist of approximately one sewer manhole adjustment and four manhole reconstructions.

- The City is scheduled to advertise the project in June 2017. As part of the joint bidding, advanced approval for funding and for the execution of an Interlocal Agreement is required by the City prior to issuing a notice to proceed on construction.

- Funds, as determined by the amount bid, will be transferred to the City following the completion of the System’s work per the terms of the Interlocal Agreement.

Staff recommends that the Board approve this resolution.
Approval of an Interlocal Agreement and Authorization for Expenditure of Funds to the City of Kirby for the Binz-Engleman Street Reconstruction Project

FINANCIAL IMPACT:

The project fund will finance this expenditure included in the CY 2017 Capital Improvement Program. The sewer work is included in the Wastewater Core Business, Governmental - Wastewater Category, and Governmental Wastewater Replacements budget line item. The amount is $43,954.87 for sewer work. The job number is 16-5532-000.

Gail A. Hamrick-Pigg, P.E.  
Director  
Pipelines

Genoveva G. Gomez, P.E.  
Vice President  
Engineering and Construction

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
SAN ANTONIO WATER SYSTEM
PROJECT SITE MAP
ATTACHMENT II

BINZ-ENGLEMAN STREET
RECONSTRUCTION PROJECT

LEGEND

PROJECT LIMITS
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING AN INTERLOCAL AGREEMENT WITH THE CITY OF KIRBY AND AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE INTERLOCAL AGREEMENT FOR THE ADJUSTMENT OF SEWER FACILITIES BY THE CITY OF KIRBY IN CONNECTION WITH THE BINZ-ENGLEMAN STREET RECONSTRUCTION PROJECT; AUTHORIZING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $43,954.87 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Kirby (the “City”) proposes to construct the Binz-Engleman Street Reconstruction Project; and

WHEREAS, the Binz-Engleman Street Reconstruction Project will require the adjustment of certain sewer facilities (the “project work”) of the San Antonio Water System (the “System”); and

WHEREAS, the project work will consist of sewer adjustment work of approximately one sewer manhole adjustment and four sewer manholes reconstructions; and

WHEREAS, the City has requested that the System execute an Interlocal Agreement and pay for the System’s share of the project work costs; and

WHEREAS, System funds in an amount not to exceed $43,954.87 are required for the project work; and

WHEREAS, the amount of $43,954.87 is available from the System’s Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve an Interlocal Agreement with the City for the adjustment of sewer facilities by the City in connection with the Binz-Engleman Street Reconstruction Project and to authorize the President/Chief Executive Officer or his duly appointed designee to execute the Interlocal Agreement, and (ii) to authorize the expenditure of funds in an amount not to exceed $43,954.87 for the System’s share of the project work; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF
TRUSTEES:

1. That an Interlocal Agreement with the City of Kirby substantially in the form of the agreement attached hereto is hereby approved and the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute the Interlocal Agreement with the City in connection with the Binz-Engleman Street Reconstruction Project.

2. That the expenditure of funds in an amount of $43,954.87 for the adjustment of sewer facilities by the City in connection with the Binz-Engleman Street Reconstruction Project is hereby approved.

3. 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 the resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

4. 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.

5. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_________________________________
Ernesto Arrellano, Jr., Secretary
This Interlocal Agreement is made and entered into this ___ day of ____________, 2017, by and between the CITY OF KIRBY, TEXAS, a home-rule municipality existing in the State of Texas (“CITY”), and SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, a political subdivision of the State of Texas (“SAWS”) (also, individually, a “Party” or, collectively, the “Parties), pursuant to the Interlocal Cooperation Act, Chapter 791 of the Government Code.

**PURPOSE**

1.01 The purpose of this Agreement is to facilitate the CITY’s improvement of the Kirby MPO Binz-Engleman Road Reconstruction Sanitary Sewer Adjustments (TxDOT CSJ 0915-12-545) (the “Project”) by including certain necessary SAWS installations and adjustments in CITY’s Specifications for the Project, thus facilitating the coordination of CITY’s road and drainage improvements with SAWS’s adjustments and installations.

**SERVICES**

2.01 CITY agrees to include in the City Specifications of the Project the plans and specifications for SAWS Sewer Job No. 16-5532 (the “SAWS Work”) which SAWS shall prepare and deliver to CITY and is incorporated by reference herein and the contract for the performance of the SAWS Work.

2.02 Immediately after tabulating all of the bids received for the Project, CITY will notify SAWS in writing the name of the contractor selected by CITY for the Project (the “Contractor”) and the bid amount (“Original Bid”) for the SAWS Work.

2.03 CITY agrees to use its best efforts to enforce all of its rights and remedies against the Contractor for the SAWS Work.

2.04 CITY agrees to allow SAWS access to the Project site to (i) inspect and witness testing of the SAWS Work and to determine if the SAWS Work is in conformity with the plans, specifications and special provisions applicable thereto and is in good working order, and (ii) verify all quantities used in connection with the SAWS Work.

**FEE**

3.01 CITY acknowledges that SAWS has provided the CITY with two signed copies of this Interlocal Agreement. CITY will return one fully executed original to SAWS upon CITY’s approval. Additionally, CITY acknowledges that SAWS has set aside and will deliver to CITY good and sufficient funds (the “Funds”) for the estimated bid amount (See Exhibit A) plus Fifteen percent (15%) contingency. Any and all control and beneficial use of the funds by the CITY, will be contingent on SAWS receiving a fully executed original of this Interlocal Agreement from the CITY.
3.02 For materials and construction used in the SAWS Work, SAWS agrees to pay to CITY, in advance of receiving bid returns, an amount not to exceed Forty-Three Thousand, Nine Hundred Fifty-Four Dollars and Eighty-Seven Cents ($43,954.87), which includes the Bid Estimate and Fifteen percent (15%) contingency. Such Funds when earned, will be delivered by SAWS to CITY upon request by CITY for reimbursement of SAWS Work. Reimbursement requests shall be sent to SAWS with all required backup information to process the request, who, subject to reviewing the request and determining that the required backup is provided, will approve reimbursement and deliver funds to CITY within thirty (30) days of receipt of request.

3.03 If the cost of performing the SAWS Work exceeds the Bid Estimate, the following provisions shall apply:

(a) Costs exceed Bid Estimate but do not exceed the Bid Estimate plus Fifteen percent (15%) contingency already paid to the City. Once CITY receives notice from the Contractor that additional funds will be needed for SAWS Work, CITY will notify SAWS in writing of the change order. Unless SAWS objects within five (5) business days of receipt of the written notification of the change order, CITY will proceed with SAWS Work and utilize the contingency amount for payment to the Contractor.

(b) Change Orders. If change orders are requested by SAWS or required for SAWS Work under this Agreement, SAWS will make a change order request and SAWS staff or SAWS’s Consultant shall prepare the change order. If CITY requires a change order that affects the SAWS Work, the change order will be submitted to SAWS staff for approval. SAWS staff agrees to use good faith efforts to respond to change orders within five (5) business days after SAWS staff’s receipt of request, or such additional period of time as may be reasonably necessary under the circumstances, based on the complexity of the change order. No event will SAWS’s deliberative process be allowed to jeopardize CITY’s timely completion of CITY’s Project, as determined by CITY. SAWS staff is under no obligation to approve any change orders, and in no event shall SAWS be responsible for costs or expenses under change orders that are not approved by SAWS staff.

(c) If a change order results in total costs exceeding the amount stated in Section 3.02 of this Agreement, CITY will send copies of invoices covering the additional amounts authorized by a change order approved by SAWS staff, and SAWS shall pay CITY the additional amounts in the approved change order within fifteen (15) days, unless further time is required for Board action to appropriate funds.

3.04 If the cost of performing the SAWS Work is less than the amount stated in Section 3.02 of this Agreement, CITY agrees to refund the overpayment to SAWS within fifteen (15) days of determination of same. Said determination is to be conducted after the completion of all SAWS Work.

3.05 After CITY’s final recapitulation with the Contractor, CITY will refund SAWS for Funds previously paid by SAWS for SAWS Work, but unused.

3.06 The Parties acknowledge that the financial commitments stated in this Agreement are independent of the necessary operating and maintenance expenses that are SAWS’s responsibilities.
SAWS’S RESPONSIBILITY

4.01 SAWS agrees to accept full responsibility for inspection and acceptance of work performed as the SAWS Work.

4.02 Following Substantial Completion of SAWS Work, SAWS shall be responsible for all costs associated with operating and maintaining SAWS Work. Substantial Completion is the date, certified by CITY, the CITY’s design professional and SAWS (including SAWS design professional) that the Contractor has reached the stage of completion when SAWS and CITY accept use of SAWS Work for its intended purposes.

ENTIRE AGREEMENT

5.01 This Agreement, along with the specifications for the SAWS Work, supersedes any and all other agreements, either oral or in writing, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

ATTORNEY’S FEES

6.01 If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, to the extent allowed by law, the prevailing Party shall be entitled to reasonable attorney’s fees in addition to any other relief to which the prevailing Party may be entitled.

TEXAS LAW TO APPLY

7.01 This Agreement is performable in Bexar County, Texas and the validity of any of its terms or provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas with the proper venue of jurisdiction being Bexar County.

SEVERABILITY

8.01 If any one or more of the provisions contained in the Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

AMENDMENT

9.01 No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the Parties.

THIRD-PARTY BENEFICIARY

10.01 SAWS shall be considered a third-party beneficiary under CITY’s contract for the Project; provided, however, that prior to final completion of the work under the contract for the Project, SAWS shall not enforce any remedies against the Contractor without the prior written consent of CITY, which consent may be withheld if CITY reasonably believes that enforcement would have an adverse effect on final completion of the Project. Prior to final completion of the work under the contract for
the Project, CITY shall cooperate in the prosecution of any action against the Contractor, to the extent consistent with the terms of the Project Contract Documents, which SAWS may reasonably determine to be necessary to undertake in connection with the SAWS Work done by the Contractor or its subcontractors.

**INDEMNIFICATION**

11.01 CITY agrees to include SAWS in the list of parties being indemnified by the CITY contractors under contract documents, so that SAWS receives the benefit of all indemnities under the contract documents.

**INSURANCE**

12.01 In all contracts entered into by CITY for SAWS Work, CITY shall include provisions reflecting:

(a) With regard to insurance coverage during the construction phase of the Project, CITY shall require all consultants, contractors, subcontractors, and suppliers to maintain insurance coverage limits that are sufficient to compensate CITY and SAWS for their respective interests in the Project with regard to any liability a third-party may have due to the services, equipment, or materials provided for construction of the Project. SAWS shall be named as an additional insured on all policies naming CITY as an additional insured. CITY shall provide SAWS’s Designated Representative with copies of the completed Certificates of Insurance. The Certificates of which shall be completed by an agent authorized to bind the named underwriters and their companies to the coverage limits and termination provisions shown thereon. SAWS reserves the right to review the insurance requirements during the effective period of this Agreement, and any extension or renewal hereof, and to modify insurance coverage and limits when deemed necessary and prudent by SAWS’s Risk Manager based upon changes in statutory law or court decisions. If SAWS requests a coverage modification which results in an increased cost, SAWS shall be responsible for the increased cost and CITY shall have no obligation to request a coverage modification until SAWS submits payment to cover the increased cost. CITY will not allow any modifications to the insurance coverage through which SAWS may incur increased risks.

(b) CITY shall require all contractors and service providers to maintain statutory worker’s compensation insurance for all of their employees with a waiver of subrogation in favor of CITY and SAWS.

(c) CITY will require the consultants, contractors, and any subcontractors to provide all statutorily-required payment and performance bonds at no additional cost to the Parties. On services for which performance bonds are not statutorily required, CITY shall determine whether to require performance bonds.

**CURRENT REVENUES**

13.01 In accordance with § 791.011(d)(3) of the Texas Government Code, the party paying for the performance of governmental functions or services, if any, must make those payments from current revenues available to the paying party.
EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE FULL FORCE AND EFFECT ON THIS _____ DAY OF ______________________, 2017.

CITY OF KIRBY, TEXAS

By: ______________________________________
    Monique Vernon
    City Manager
    City of Kirby, Texas

SAN ANTONIO WATER SYSTEM

By: ______________________________________
    Robert R. Puente
    President/Chief Executive Officer

ATTEST:

By: ______________________________________
    Patty Cox
    City Secretary
    City of Kirby, Texas

APPROVED AS TO LEGAL FORM:

By: ______________________________________
    Ryan S. Henry
    Legal Counsel
    City of Kirby, Texas

APPROVED AS TO FINANCIAL FORM:

By: ______________________________________
    Tina Ynfante
    City Finance Manager

APPROVED:

By: ______________________________________
    Miles Stanley
    City Engineer
    City of Kirby, Texas
Exhibit “A”
Estimated Bid Amount and Funds Committed by SAWS

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Main Relocation</td>
<td>$ 0.00</td>
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<tr>
<td>Sanitary Sewer Estimate</td>
<td>$38,221.63</td>
</tr>
<tr>
<td>Contingency (15% of Construction)</td>
<td>$5,733.24</td>
</tr>
<tr>
<td><strong>Total SAWS Contribution =</strong></td>
<td>$43,954.87</td>
</tr>
</tbody>
</table>
TO: San Antonio Water System Board of Trustees

FROM: Bruce A. Haby, Manager, Corporate Real Estate, and Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AUTHORIZATION TO EXECUTE A JOINT USE AGREEMENT WITH THE CITY OF SAN ANTONIO FOR THE C5 CULEBRA-CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK, SAN GABRIEL – PHASE 3 PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes San Antonio Water System (SAWS) to execute a Joint Use Agreement (“JUA”) with the City of San Antonio. The JUA relates to 19 tracts containing approximately 2.911 acres along Apache Creek for Phase 3 of the C5 Culebra-Castroville to Laredo & C28 Zarzamora Creek, San Gabriel Project (the “Project”). It also authorizes the expenditure of $279,500.00 for the JUA.

- The Project was identified in the Comprehensive Wastewater Master Plan developed by SAWS Master Planning Division. The mains are in poor condition due to deterioration, and lack sufficient capacity to handle future sewer flows due to growth and inflow and infiltration during peak storm events.

- This Project will construct approximately 7,000 feet of 12-inch, 30-inch and 36-inch sewer main along Nueva Leon Street starting at Chihuahua Street. The alignment will follow Apache Creek and will terminate just west of 19th Street. Construction will also take place along Colima Street from Nueva Leon Street to Barclay Street. The estimated construction cost for this Project is $5,300,000.00.

- The Project will also construct approximately 11,000 feet of 24-inch, 27-inch, 30-inch, and 33-inch sewer main starting at W. Houston Street, going northwest and terminating at Culebra Road. Construction will also take place along Landa Ave. from Matyear Street to N. General McMullen. The alignment will follow Zarzamora Creek and terminate at N. San Gabriel. The estimated construction cost of this project is $6,400,000.00.

- The properties on which the JUA is located are owned by the City of San Antonio.
SAWS initial offer of $279,500.00 was based on an appraisal reports dated January 12, 2017. SAWS and the City of San Antonio have agreed on the purchase amount of $279,500.00 for the JUA.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will incur the acquisition costs associated with the acquisition of the land rights necessary for this Project. Funding for these land rights are found in the 2017 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

The total expenditure is $279,500.00 for the JUA.

Bruce A. Haby
Manager, Corporate Real Estate

Nancy Belinsky
Vice President and General Counsel

Robert R. Puente
President/Chief Executive Officer

Attachments:
I Project Area Map
II Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES APPROVING THE EXECUTION OF JOINT USE AGREEMENT (THE “JUA”) WITH THE CITY OF SAN ANTONIO RELATING TO APPROXIMATELY 2.911 ACRES IN THE AGGREGATE AND LOCATED ALONG APACHE CREEK AND COLIMA STREET AND W. HOUSTON STREET AND LANDA AVE. ALONG ZARZAMORA CREEK, IN THE SOUTHWEST QUADRANT OF BEXAR COUNTY, TEXAS IN CONNECTION WITH THE C5 CULEBRA-CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK, SAN GABRIEL PROJECT (THE “PROJECT”) IN THE AMOUNT OF $279,500.00; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the System has determined that the JUA, which allows for construction of sewer lines along nineteen parcels, being more particularly described and depicted in Attachments I and II, attached hereto and incorporated herein for all purposes, is necessary for the C5 Culebra-Castroville to Laredo & C28 Zarzamora Creek, San Gabriel Project; and

WHEREAS, the properties on which the sewer line parcels are located are owned by the City of San Antonio (the “City”); and

WHEREAS, the City has agreed to execute the JUA with the System for the sum of $279,500.00; and

WHEREAS, funds in the amount of $279,500.00 are available in the Project Fund for the JUA; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) approve the execution of the JUA for the C5 Culebra-Castroville to Laredo & C28 Zarzamora Creek, San Gabriel Project as herein described, and (ii) authorize the expenditure of funds in the amount of $279,500.00 for the JUA; now, therefore:

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

1. That the execution of the JUA, in substantially the form attached as Attachment I hereto, for the C5 Culebra-Castroville to Laredo & C28 Zarzamora Creek, San Gabriel Project, is hereby approved.
2. That the expenditure from the Project Fund in the 2017 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category budget in a total amount not to exceed $279,500.00 for the JUA is hereby approved, made available and is to be expended from the Project Fund.

3. That the System's President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute all documents necessary to effectuate the execution of the JUA and any ancillary documents, and to pay an amount not to exceed $279,500.00 to the City in connection with the JUA.

4. 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.

5. 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.

6. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

________________________________________
Berto Guerra, Jr., Chairman

ATTEST:

________________________________________
Ernesto Arrellano, Jr., Secretary

Attachment:
I Joint Use Agreement – Phase 3
SEWER JUA

The City of San Antonio, hereinafter referred to as “City”, issues this Joint Use Agreement (“JUA”) to the San Antonio Water System, hereinafter referred to as “SAWS” or “Joint User”, acting by and through their duly authorized representatives.

1. FACILITIES/ACTIVITIES. Joint User may utilize and/or occupy during the term, the City drainage areas (collectively, the “Joint Use Area”) listed in and shown on Exhibit A, which is incorporated herein for all purposes as if fully set forth.

2. USE. Joint User and/or its agents, employees and contractors may enter the Joint Use Area for the purpose of utilizing the Joint Use Area for any and all things necessary for constructing, operating, replacing, repairing, adding, removing, inspecting, maintaining and realigning sewer facilities as indicated in Exhibit A (being part of SAWS’ EPA Consent Decree C5/C28 project), together with all necessary and desirable improvements and appurtenances associated therewith (the “Improvements”).

3. TERM. The term of this JUA shall be of indefinite duration subject to rights of termination set out in this JUA.

4. CONDITIONS. As a condition of receiving the JUA, Joint User shall comply with each of the following conditions. Failure to comply with the conditions of this JUA is grounds for termination of this JUA.

   a. CPS Energy – Area of 1’ to 3’ from property line is for pole placement only, only other facilities in this area should be service attachments to property owners. No digging, trenching or crane operation within 10’ of any CPS equipment (poles or anchors). Edge to edge clearance from gas pipe shall be, at minimum, 18” plus 1/2 the gas pipe diameter. Additionally, no mechanized equipment shall be used for excavation within this clearance zone. Supply pressure gas mains must be exposed during any bore crossings and maintain a 3 separation. Any conflicts that may occur, CPSE Gas Engineering must be notified. Any conflicts to the existing Gas Facilities will be evaluated by CPSE Gas Engineering and will require compensation for any offsets adjustments and or reroutes.

   b. TCI Storm Water - A Floodplain Development Permit will be required for the proposed work. All required studies, permits and fees must be submitted to and approved by all applicable local (city and/or county), state and federal governing bodies. Furthermore, all local (city and/or county), state and federal regulations must be complied with.

   c. Joint User shall retain ownership of the Improvements on the Joint Use Area and will operate and maintain said Improvements. NOTWITHSTANDING THE FOREGOING, City reserves for City, and City’s successors and assigns, the right to continue to use and enjoy said Joint Use Area for all purposes which do not materially interfere with or interrupt its use by Joint User (but not buildings, which City agrees not to construct in the Joint Use Area.)
d. This JUA cannot be assigned by Joint User except to a certificated utility provider succeeding to SAWS’ wastewater utility service in the area in which the Joint Use Area is located.

e. Within thirty (30) days following Joint User’s completion of construction, maintenance or repairs to its project or infrastructure on the City’s Joint Use Area, Joint User will repair any construction related damages within the Joint Use Area and Temporary Construction Area and restore the Joint Use Area and Temporary Construction Area to substantially the same or better condition as existed prior to Joint User’s maintenance or repairs, including, without limitation, compacting, grading and seeding, for the purposes of establishing and restoring grass or vegetation. Joint User’s repair and restoration plans shall be subject to prior review and approval by City.

f. SAWS assumes all risk of, and relieves City of, any and all liability for loss or damage to property or facilities installed by SAWS and any other financial loss sustained by SAWS, except to the extent caused by City;

g. Joint User is solely responsible for obtaining any necessary permission from other owners or interest holders whose property will be used or impacted by Joint User’s activities under this JUA.

h. This JUA is subject to all generally applicable conditions and restrictions of Chapter 37 of the City Code of the City of San Antonio related to Joint Use Agreements.

5. FEES. JUA fees and charges shall be in accordance with City of San Antonio Chapter 37 fee schedule. If another JUA is required, those fees are separate.

6. INCOMPATIBLE FACILITIES. This JUA is issued by City and accepted by SAWS with the mutual belief that the facilities of each can exist at the Joint Use Area in the form contemplated when this JUA was issued without disruption to the other. If at any time, for any reason, SAWS’s facilities are determined in City’s judgment to be incompatible with City’s existing or proposed facilities, SAWS agrees to cure any such incompatibility by modifying its facilities, by removing its facilities or by taking whatever other action which in City’s judgment is necessary. With respect to any request by the City to remove or relocate its facilities, Joint User shall have up to 365 days to comply, or such longer period as may be reasonably necessary provided Joint User is diligently pursuing such relocation or removal, including any necessary corresponding re-route of Joint User’s facilities.

7. INSURANCE. Prior to the commencement of any construction activity by SAWS, SAWS shall cause its general contractor, if a contractor is utilized, to provide the City executed certificates of insurance naming the City, its officers, agents and employees as an additional insured on its commercial general liability insurance policy.

8. NO CONVEYANCE OF PROPERTY. Neither SAWS nor the City by execution of this JUA, waive or relinquish any right which they may have under the law or constitution, state or federal. This JUA does not constitute a conveyance or release of any real property rights held by the City. The parties are acting herein for their own benefit and no benefit shall accrue to any third party.

9. RIGHT OF TERMINATION FOR BREACH. In the event, after written warning by authorized City personnel and reasonable opportunity to cure by Joint User, Joint User fails to perform any requirement of this JUA, City shall have the right to terminate this JUA by written notice to Joint User, whereupon Joint User shall immediately terminate its use and promptly remove any equipment or other property owned by
Joint User. Joint User shall pay all costs of removal. SAWS may terminate this JUA at any time upon 30 days written notice to the City.

10. CONTACT. Prior to the commencement of any construction activities by City or SAWS on the Joint Use Area, including use for staging or storage of equipment, City and SAWS and/or their respective contractors shall coordinate with one another in order to ensure such construction will not conflict with any ongoing or scheduled projects and/or activities of the other. For purposes of this section, the initial City contact is Mary Fors, City of San Antonio Transportation and Capital Improvements Department, 207-4083, Mary.Fors@sanantonio.gov. The initial SAWS contact is Sunny Burlew, Corporate Real Estate, 233-2954, Sunny.Burlew@saws.org.

11. NOTICE. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth below. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

CITY
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283
Attn: Real Estate Manager, TCI

JOIN USER
San Antonio Water System
207 Highway 281 North
P.O. Box 2449
San Antonio, TX 78298
Attn: Manager Corporate Real Estate

Accepting this JUA shall constitute acceptance and agreement to all conditions and requirements of this JUA and the ordinances and specifications authorizing issuance of such JUA.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures effective this _____ day of __________, 2017.

CITY OF SAN ANTONIO, a municipal corporation

SAN ANTONIO WATER SYSTEM, a Texas
a municipally owned utility of the
City of San Antonio

______________________   _____________________________
Steve Hodges, Real Estate Manager   Nancy Belinsky
Department of Transportation and   Vice President and General Counsel
Capital Improvements

Approved as to Form:

_______________________________
City Attorney
STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this ___ day of ___________, 2017, by Steve Hodges, Real Estate Manager for the City of San Antonio, on its behalf.

____________________________
Notary Public

My commission expires:___________

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this ___ day of ___________, 2017, by Nancy Belinsky, Vice President and General Counsel of the San Antonio Water System, a municipally owned utility of the City of San Antonio, on behalf of said entity.

____________________________
Notary Public

My commission expires:___________
EXHIBIT A

P14-094 Part 1 – 0.1411 acre (6,148.4 sq. ft.) in NCB 3655, Block 55, Lot 8 includes approximately 158 LF of 30-inch sanitary sewer main.

P14-094 Part 2 – 0.1411 acre (6,148.4 sq. ft.) in NCB 3655, Block 55, Lot 3 includes approximately 154 LF of 30-inch sanitary sewer main.

P14-095 Part 1 – 0.1467 acre (6,391.6 sq. ft.) in NCB 3643, Block 44, Lot 12 includes approximately 160 LF of 30-inch sanitary sewer main.

P14-095 Part 2 – 0.1468 acre (6,392.8 sq. ft.) in NCB 3643, Block 44, Lot 3 includes approximately 160 LF of 30-inch sanitary sewer main.

P14-096 Part 1 – 0.2104 acre (9,163.3 sq. ft.) in NCB 3640, Block 41, Lots 12 and 13 includes approximately 233 LF of 30-inch sanitary sewer main, 62 LF of 8-inch sanitary sewer main, and 2 manholes.

P14-096 Part 2 – 0.1101 acres (4,797.8 sq. ft) in NCB 3640, Block 41, Lot 1 includes approximately 129 LF of 30-inch sanitary sewer main.

P14-097 – 0.2442 acres (10,638.6 sq. ft.) in NCB 3628, Block 29, Lots 7 – 12 includes approximately 49 LF of 15-inch, 253 LF of 27-inch, 55 LF of 30-inch sanitary sewer main, and 2 manholes.

P14-098 Part 2 – 0.1392 acres (6,064.7 sq. ft.) in NCB 3628, Block 5, Lots 47-52 includes approximately 150 LF of 27-inch sanitary sewer main.

P14-099 Part 1 – 0.1400 acres (6,098.1 sq. ft.) of NCB 8898, Block 18, Lots 20-22 includes approximately 175 LF of 27-inch sewer main and one (1) manhole.

P14-099 Part 2 – 0.1937 acres (8,437.3 sq. ft) in NCB 8898, Block 18, Lots 3-7 includes approximately 221 LF of 27-inch sanitary sewer main, 127 LF of 36-inch sanitary sewer casing, and one (1) manhole.

P14-100 – 0.1002 acres (4,366.3 sq. ft.) in NCB 8896, Block 16, Lots 26-28 includes approximately 110 LF of 27-inch sanitary sewer main.

P14-101 Part 2 – 0.1696 acres (7,385.6 sq. ft.) in NCB 8895, Block 15, Lots 11-13 includes approximately 185 LF of 24-inch sanitary sewer main and one (1) manhole.

P14-102 Part 1 – 0.1411 acres (6,147.5 sq. ft.) in NCB 8893, Block 13, Lots 16-17 includes approximately 163 LF of 24-inch sanitary sewer main and one (1) manhole.

P14-102 Part 2 – 0.1572 acres (6,848.6 sq. ft.) in NCB 8893, Block 13, Lots 8-11 includes approximately 182 LF of 24-inch sanitary sewer main.
P14-103 Part 1 - 0.1463 acres (6,370.9 sq. ft.) in NCB 8891, Block 11, Lots 19-21 includes approximately 182 LF of 24-inch sanitary sewer main.

P14-103 Part 2 - 0.1656 acres (7,215.1 sq. ft.) in NCB 8891, Block 11, Lots 4-6 includes approximately 161 LF of 24-inch sanitary sewer main and 18 LF of sanitary sewer main casing.

P14-104 Part 1 - 0.1348 acres (5,873.4 sq. ft.) in NCB 8889, Block 9, Lots 23-25 includes approximately 139 LF of 24-inch sanitary sewer main, 10 LF of 36-inch casing, and one (1) manhole.

P14-104 Part 2 - 0.1224 acres (5,329.8 sq. ft.) in NCB 8889, Block 9, Lots 1-2 includes approximately 134 LF of 24-inch sanitary sewer main.

P14-105 - 0.1605 acres (6,989.9 sq. ft.) in NCB 8887, Block 7, Lots 24-26 includes approximately 162 LF of 24-inch sanitary sewer main, 62 LF of 15-inch sanitary sewer main, and two (2) manholes.
FIELD NOTES DESCRIPTION
0.1411 ACRES (6,148.4 sq. ft.)
Joint Use Agreement

A 0.1411 acre (6,148.4 sq. ft.) joint use agreement, being a portion of Lot 8, Block 55, N.C.B. 3655 – Lakeview Addition as shown on a plat recorded in Volume 105, Page 190 of the Deed and Plat Records of Bexar County, Texas and being a portion of the certain property conveyed to the City of San Antonio in Volume 4545, Page 601 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

 Beg.: at a point (N = 13,707,994.722, E = 2,114,351.942) on the Southern line of a 20 foot alley as shown on the said Lakeview Addition, the Northern line of said Lot 8, for the Northwestern corner of this joint use agreement, from which a steel rod with punch mark found for the Northwestern corner of Lot 1, N.C.B. 3655 – the said Lakeview Addition at the intersection of N.W. 26th Street and Morales Street both at 84°16’37” W – 109.4 feet and N 05°43’23” E – 173.71 feet;

 Thence: S 84°16’37” E – 40.00 feet along the Southern line of the said 20 foot alley, the Northern line of said Lot 8 to a point for the Northwestern corner of said Lot 8, the Northwestern corner of Lot 7, N.C.B. 3655 – the said Lakeview Addition, for the Northwestern corner of this joint use agreement;

 Thence: S 05°43’23” W – 153.71 feet along the Western line of said Lot 8, the Western line of said Lot 7 to a point (N = 87,789.143, E = 2,114,376.419) on the Northern line of W. Martin Street, the Southern line of said Lot 7 for the Southeastern corner of said Lot 8, the Southwestern corner of said Lot 7 for the Southeastern corner of this joint use agreement;

 Thence: N 84°16’37” W – 100.00 feet along the Southern line of said Lot 8, the Northern line of said W. Martin Street to a point for the Southwestern corner of this joint use agreement;

 Thence: S 05°43’23” E – 153.71 feet across said Lot 8 to the POINT OF BEGINNING and continuing 0.1411 acres (6,148.4 sq. ft.) of land, according to a survey made on the ground under the supervision.
Corresponding plat prepared.
8025.00 P14-094 Part 1.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
A 0.1411 acre (6,148.4 sq. ft.) joint use agreement, being a portion of Lot 3, Block 55, N.C.B. 3655 – Lakeview Addition as shown on a plat recorded in Volume 105, Page 190 of the Deed and Plat Records of Bexar County, Texas and being a portion of the certain property conveyed to the City of San Antonio in Volume 4499, Page 33 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,708,010.633, E = 2,114,393.737) on the southern line of said Lot 3, the Southern line of Morales Street for the Northwestern corner of said joint use agreement, from which a 1 inch iron rod with punch mark found at the Northwestern corner of Lot 1, N.C.B. 3655 of the said Lakeview Addition at the intersection of N.W. 20th Street and Morales Street bears N 84°16′37″ W - 109.44 feet; 

THENCE: S 84°16′37″ E - 40.00 feet along the Southern line of Morales Street, the Northern line of said Lot 3 to a point for the calculated Northwestern corner of said Lot 3, the Northwestern corner of Lot 4, N.C.B. 3655 of the said Lakeview Addition, for the Northwestern corner of this joint use agreement;

THENCE: S 05°43′23″ W - 153.71 feet along the Eastern line of said Lot 3, the Western line of said Lot 4 to a point (N = 13,708,010.633, E = 2,114,393.737) on the Northern line of a 20 foot alley as shown on the said Lakeview Addition, for the calculated Southeastern corner of said Lot 3, the Southeastern corner of said Lot 4, the Southeastern corner of this joint use agreement;

THENCE: N 84°16′37″ W - 109.44 feet along the Southern line of said Lot 3, the Northern line of the said 20 foot alley to a point for the Southwestern corner of this joint use agreement;

THENCE: S 05°43′23″ E - 153.71 feet across said Lot 3 to the POINT OF BEGINNING and contains 0.1411 acres (6,148.4 sq. ft.) of land, according to a survey made on the ground under the supervision
Corresponding plat prepared.
8005.00 P14-094 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573

STATE OF TEXAS
REGISTRATIONS
REX HACKETT
PLS
1973

10927 WYE DRIVE
1-800-332-3109
SUITE 104
SAN ANTONIO, TX 78217
www.fordengineering.com
F. (210) 590-4777
PBPE No. P-1162
F. (210) 590-4040
TWP No. 16018400

2
FIELD NOTES DESCRIPTION
0.1467 ACRES (6,391.6 sq. ft.)

Joint Use Agreement

A 0.1467 acre (6,391.6 sq. ft.) joint use agreement, being a portion of Lot 12, Block 44, N.C.B. 3643 – Lakeview Addition as shown on a plat recorded in Volume 105, Page 190 of the Deed and Plat Records of Bexar County, Texas and being a portion of the land property conveyed to the City of San Antonio in Volume 4331, Page 552 of the Deed and Plat Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,708,218.343, E = 2,114,414.427) on the Northeast corner of Morales Street, for the calculated Northeast corner of said Lot 12, the Southwestern corner of Lot 11, N.C.B. 3643 of the said Lakeview Addition, by the Southeast corner of this joint use agreement, from which a ½ iron pipe found for the Southern corner of Lot 8, N.C.B. 3643 at the intersection of Morales Street and N.W. 2nd Street bears S 84°16'37" E – 200.70 feet;

THENCE: N 84°16'37" W – 40.00 feet along the Southern line of Morales Street, the Southern line of said Lot 12 to a point for the Southwestern corner of this joint use agreement;

THENCE: N 05°43'23" E – 159.79 feet across said Lot 12, to a point on the Northern line of said Lot 12, the Southern line of a 20 foot alley as shown on the said Lakeview Addition, for the Northwestern corner of this joint use agreement;

THENCE: S 84°16'37" E – 100.00 feet along the Southern line of said Lot 12, the Southern line of the said 20 foot alley to a point (N = 13,708,377.331, E = 2,114,430.459) for the calculated Northwestern corner of said Lot 12, the Northwestern corner of said Lot 11, for the Northwestern corner of this joint use agreement;

THENCE: S 05°43'23" W – 159.79 feet along the Eastern line of said Lot 12, the Western line of said Lot 11, to the POINT OF BEGINNING and containing 0.1467 acres (6,391.6 sq. ft.) of land, according to a survey made on the ground under my supervision.
BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
DRAFT
FIELD NOTES DESCRIPTION
0.1468 ACRES (6,392.8 sq ft.)
Joint Use Agreement

A 0.1468 acre (6,392.8 sq ft.) joint use agreement, being a portion of Lot 3, Block 44, N.C.B. 3643 – Lakeview Addition as shown on a plat recorded in Volume 105, Page 190 of the Deed and Plat Records of Bexar County, Texas and being a portion of the certain property conveyed to the City of San Antonio in Volume 4503, Page 380 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,708,397.237, E = 2,114,432.396) on the Northern line of a 20 foot alley as shown on said Lakeview Addition, for the calculated Southern corner of said Lot 3, the Southwestern corner of Lot 4, for the Southeastern corner of this joint use agreement, from which a ¾ inch pipe found for the Southeastern corner of Lot 8, N.C.B. 3643 at the intersection of Morales Street and N.W. 24th street bears S 05° 43' 23" W = 179.7 feet and S 84° 16' 37" E = 200.70 feet;

THENCE: N 84° 16' 37" W = 40.00 feet along the Northern line of the said 20 foot alley, the Southern line of said Lot 3 to a point for the Southwestern corner of this joint use agreement;

THENCE: N 05° 43' 23" E = 159.82 feet across said road to a point on the Northern line of said Lot 3, the Southern line of a Perez Street, for the Northeastern corner of this joint use agreement;

THENCE: S 84° 16' 37" E = 200.00 feet along the Northern line of said Lot 3, the Southern line of said Perez Street to a point (N = 17,088,556.26, E = 2,114,448.33) for the calculated Northeastern corner of said Lot 3, the Northwest corner of said Lot 4, for the Northeastern corner of this joint use agreement;

THENCE: S 05° 43' 23" W = 159.82 feet along the Eastern line of said Lot 3, the Western line of said Lot 4 to the POINT OF BEGINNING and containing 0.1468 acres (6,392.8 sq ft.) of land according to a survey made on the ground under my supervision.
Corresponding plat prepared.
8005.00 P14-095 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
A 0.2104 acre (9,163.3 sq. ft.) joint use agreement, being a portion of Lots 12 and 13, Block 41, N.C.B. 3640 of the Lakeview Addition as shown on a plat recorded in Volume 105, Page 190 of the Deed and Plat Records of Bexar County, Texas, conveyed to the City of San Antonio in Volume 4501, Page 103 of the Deed Records, a portion of Lot 14 of the said Block 41 conveyed to Antonio Ibarra and Esther Ibarra in Volume 11391, Page 1415 of the Official Public Records of Real Property of Bexar County, Texas, also being a portion of a Storm drainage easement out of said Lot 14 conveyed to the City of San Antonio in Volume 4533, Page 274 of the Deed Records of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a point (N = 13,708,611.460, E = 2,114,461.628) on the Northern line of Perez Street, for the calculated Southeastern corner of said Lot 12, the Southwestern corner of Lot 11, Block 41, for the Southeastern corner of this joint use agreement, from which a ½ inch iron pipe found for the Southeastern corner of Lot 9, the Southwestern corner of Lot 8, Block 41 bears S 84°16'34" E = 150.00 feet;

THENCE: N 84°16'37" W = 40.00 feet along the Southern line of said Lot 12, the Northern line of said Perez Street to a point for the Southwestern corner of this joint use agreement;

THENCE: N 05°43'23" E = 82.50 feet across said Lot 12 to a point for corner;

THENCE: N 85°54'30" W = 62.22 feet across said Lots 12 and 13 to a point on the Western line of the said Storm drainage easement of Lot 14, for a corner of this joint use agreement;

THENCE: N 06°31'50" W = 6.696 feet along the Western line of the said Storm drainage easement and across said Lot 14 to a point (N = 13,708,781.529, E = 2,114,352.376) on the Northern line of said Lot 14, the Southern line of a 20 foot alley as shown on said Lakeview Addition, for the Northern corner of this joint use agreement;

THENCE: S 06°16'37" E = 79.95 feet along the Southern line of the said 20 foot alley, the Northern line of said Lots 12 and 14 to a point for corner;

THENCE: S 06°25'20" E = 38.42 feet across said Lot 13 to a point for corner;
THENCE: S 85°54'30"E - 45.48 feet across said Lots 12 and 13 to a point for corner;

THENCE: N 15°37'22"W - 38.93 feet across said Lots 12 and 13 to a point on the Northern line of said Lot 13, the Southern line of the said 20 foot alley, for a corner of this joint use agreement;

THENCE: S 84°16'57"E - 21.47 feet along the Northern line of said Lots 12 and 13, the Southern line of the said 20 foot alley to a point for corner;

THENCE: S 15°37'22"E - 38.28 feet across said Lot 12 to a point for corner;

THENCE: S 85°54'30"E - 22.98 feet across said Lot 12 to a point on the Eastern line of said Lot 12, the Western line of said Lot 11, for a corner of this joint use agreement;

THENCE: S 05°43'23"W - 124.02 feet along the Eastern line of said Lot 12, the Western line of said Lot 11 to the POINT OF BEGINNING and containing 0.23 acres (9,163.3 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared.
8035.00 P14-096 Part 1.docx

BEARINGS AND COORDINATES ARE BASED ON U.S. GRS, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD83, COORDINATES SHOWN HEREOF HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

[Signature]
Registered Professional Land Surveyor
License Number 5573
A 0.1101 acres (4,797.8 sq. ft.) joint use agreement, being a portion of Lots 1, Block 41, N.C.B. 3640 of the Lakeview Addition as shown on a plat recorded in Volume 105, Page 190 of the Deed and Plat Records of Bexar County, Texas, conveyed to the City of San Antonio in Volume 4513, Page 97 of the Deed Records of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a point (N = 13,708,840.394, E = 2,114,326.111) on the Eastern line of N.W. 25th Street, the Western line of said Lot 1, for a corner of this joint use agreement, from which a ½ inch iron pipe found for the Southeastern corner of Lot 8, Block 41 bears S 05°43'23" W = 214.93 feet and S 88°43'37" E = 300.70 feet.

THENCE: N 05°43'23" E = 123.91 feet along the Eastern line of said N.W. 25th Street, the Western line of said Lot 1 to a point (N = 13,708,963.994, E = 2,114,338.468) for the calculated Northwestern corner of said Lot 1, for the Northeastern corner of this joint use agreement;

THENCE: S 84°16'37" E = 10.57 feet along the Northeastern line of said Lot 1, the Southern line of Leal Street to a point for the Northeastern corner of this joint use agreement;

THENCE: S 10°13'02" E = 56.27 feet across said Lot 1 to a point for corner;

THENCE: S 06°21'26" E = 108.19 feet continuing across said Lot 1 to a point on the Southern line of said Lot 1, the Northeastern line of the 20 foot alley as shown on said Lakeview Addition, for the Southeastern corner of this joint use agreement;

THENCE: N 16°37'13" E = 40.5 feet along the Southern line of said Lot 1, the Northern line of the 20 foot alley to a point for corner, from which a calculated point for the Southwestern corner of said Lot 1 bears N 84°16'37" W = 7.73 feet;

THENCE: N 05°52'20" W = 57.73 feet across said Lot 1 to the POINT OF BEGINNING and containing 0.1101 acres (4,797.8 sq. ft.) of land, according to a survey made on the ground under my supervision.

FORD ENGINEERING, INC

Date: April 7, 2016
Project No: 8005.00
P14-096 Part 2

Project: C5 Culebra-Castrovile to Laredo & C-28 Zarzamora Creek, San Gabriel
SAWS Parcel No: P14-096 Part 2

FIELD NOTES DESCRIPTION
0.1101 ACRES (4,797.8 sq. ft.)
Joint Use Agreement
Corresponding plat prepared.
8005.00 P14-096 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

[Signature]
Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
A 0.2442 acres (10,638.6 sq. ft.) joint use agreement, being a portion of Lots 12, Block 29, N.C.B. 3628 of the Lakeview Addition as shown on a plat recorded in Volume 368, Page 81 of the Deed and Plat Records of Bexar County, Texas, being a portion of that certain drainage easement conveyed to the City of San Antonio (Lot 7) in Volume 453, Page 273 of the Deed Records, a portion of Lot 7 conveyed to Gino F. Mondini in Volume 451, Page 1270 of the Official Public Records of Real Property, a portion of that certain tract of land conveyed to the City of San Antonio (Lot 8) (Ordinance No. 29840) in Volume 479, Page 252, Deed Records, the remaining portions of Lots 9 & 10 conveyed to San Antonio River Authority in Volume 3964, Page 481, Deed Records, a portion of that certain drainage easement conveyed to the City of San Antonio (Lot 11) in Volume 4531, Page 154, Deed Records, a portion of Lot 11 conveyed to Edward L. Rodriguez in Volume 15198, Page 1119 of the Official Public Records of Real Property, a portion of that certain drainage easement conveyed to the City of San Antonio (Lot 12) in Volume 4695, Page 481, Deed Records and a portion of Lot 12 conveyed to Natividad Diaz Villarreal in Volume 7338, Page 974 of the Official Public Records of Real Property of Bexar County, Texas, being more particularly described as follows:

**BEGINNING:** at a ½ inch iron rod (N - 3,709,080.13, E - 2,114,294.053) found on the Eastern line of said Lot 7, Block 29, the Western line of that certain tract of land conveyed to Gino F. Mondini in Volume 451, Page 1270 of the Official Public Records of Real Property of Bexar County, Texas, the West side of N.W. 25th Street, for the Southeast corner of the said drainage easement conveyed to the City of San Antonio in Volume 4533, Page 273, for the Southeast corner of this joint use agreement;

**THENCE:** 47°34’04” West 26 feet across said Lot 7 and the along the Southwestern line of the said drainage easement in Volume 4533, Page 273 to a ½ inch iron rod found on the Western line of said Lot 7, the Eastern line of said Lot 8, for the Southwestern corner of the said drainage easement in Volume 4533, Page 273, the Southeastern corner of the said tract of land conveyed to the City of San Antonio (Ordinance No. 29840) in Volume 4797, Page 252, the Northeastern corner of that certain tract of land conveyed to Edward Rodriguez in Volume 12836, Page 2186 of the Official Public Records of Real Property of Bexar County, Texas, for a corner of this joint use agreement;
THENCE: N 55°32'42" W – 57.18 feet across said Lot 8 and along a line of the said Edward Rodriguez tract and the said City of San Antonio tract (Ordinance No. 29840), Volume 4797, Page 252 to a point on the common line of said Lots 8 and 9, for the Northwestern corner of the said Edward Rodriguez tract, the Southwestern corner of the said City of San Antonio Tract (Ordinance No. 29840), the Northeastern corner of that certain tract of land conveyed to Edward Rodriguez in Volume 4802, Page 1265 of the Official Public Records of Real Property of Bexar County, Texas, and the Southwestern corner of the remainder of the certain tract of land conveyed to the San Antonio River Authority in Volume 3961, Page 481 of the Deed Records of Bexar County, Texas, for a corner of this joint use agreement;

THENCE: N 75°03'49" W – 50.77 feet across said Lot 9 to a ¼ inch iron rod found on the common line of said Lots 9 and 10, for the Northwestern corner of the said Edward Rodriguez tract in Volume 4802, Page 1265, a corner of the remainder of the said San Antonio River Authority tract, the Northeastern corner of that certain tract of land conveyed to Gregory Rodriguez in Volume 9425, Page 1113 of the Official Public Records of Real Property of Bexar County, Texas, for a corner of this joint use agreement;

THENCE: N 84°55'06" W – 49.89 feet across said Lot 10 to a ¼ inch iron rod found on the Eastern line of that certain tract of land conveyed to Edward Rodriguez in Volume 3198, Page 1119 of the Official Public Records of Real Property of Bexar County, Texas, being the common line of said Lots 10 and 11, for the Northwestern corner of the said Gregory Rodriguez tract, the Southwestern corner of the remainder of the said San Antonio River Authority tract, the Southeastern corner of the said Drainage easement conveyed to the City of San Antonio in Volume 4531, Page 154, for a corner of this joint use agreement;

THENCE: N 84°16'37" W – 49.74 feet across said Lot 11 to a point on the Western line of the said Edward L. Rodriguez tract, the Eastern line of the said drainage tract of land conveyed to Natividad Diaz Villegas in Volume 7838, Page 944 of the Official Public Records of Real Property of Bexar County, Texas, being the common line of said Lots 11 and 12, said corner being the Southwestern corner of the said City of San Antonio Drainage easement in Volume 4531, Page 154, and the Southeastern corner of the said Drainage easement conveyed to the City of San Antonio in Volume 4065, Page 69, for a corner of this joint use agreement, from which a ¼ inch iron rod (N = 13,709,049.793, E = 2,114,035.922) found on the Northern line of East Street, at the Southwestern corner of said Lot 11, the Southeastern corner of said Lots 11 and 12, and 50°30'09" W – 131.39 feet;

THENCE: N 71°35'52" W – 100.06 feet across said Lot 12 to a point on the Western line of said Lot 12, the Western line of the said Natividad Diaz Villegas tract, the Eastern line of N.W. 26th Street for the Southwestern corner of the said City of San Antonio Drainage easement in Volume 4965, Page 69, for the Westermost Southwestern corner of this joint use agreement;
THENCE: N 05°43'23" E - 14.00 feet along the Western line of said Lot 12, the Western line of the said Natividad Diaz Villegas tract, the Western line of the said City of San Antonio Drainage easement in Volume 4695, Page 69 to a point for the Northwestern corner of said Lot 12, the Northwestern corner of the said Natividad Diaz Villegas tract, the Northwestern corner of the said City of San Antonio Drainage easement in Volume 4695, Page 69, the same being the Southwestern corner of 20 foot alley as shown on said plat of Lakeview Addition, for the Northwestern corner of this joint use agreement;

THENCE: S 84°16'37" E - 177.29 feet along the Northern line of said Lots 9 - 12, the Southern line of the said 20 foot alley to a point for a corner of this joint use agreement;

THENCE: S 81°52'30" E - 7.90 feet deviating from said Alley and across said Lot 9, the same being the remainder of the said San Antonio River Authority property in Volume 3961, page 481 to a point for a corner of this joint use agreement;

THENCE: Across said Lot 7 - 9 with a non-tangent curve straight having a Delta angle of 26°46'37", a Radius of 215.46 feet, an Arc length of 100.34 feet and a Chord bearing of S 66°07'35" E - 99.78 feet to a point in Lot 7, for a corner of this joint use agreement;

THENCE: N 56°05'07" E - 47.50 feet to a point on the Western line of said Lot 7, the Western line of said N.W. 25th Street, the Eastern line of the said City of San Antonio Drainage easement in Volume 4353, Page 273, for a corner of this joint use agreement, from which a bent ½ inch iron rod found for the Southeastern corner of Lot 7 of the said Lakeview Addition bears N 05°52'42" E - 21.11 feet;

THENCE: S 05°52'42" W - 26.26 feet along the Southern line of said Lot 7, the Eastern line of the said City of San Antonio Drainage easement, the Western line of said N.W. 25th Street to a point for a corner of this joint use agreement;

THENCE: S 56°05'07" W - 208.83 feet across said Lot 7, across the said City of San Antonio Drainage easement in Volume 4353, Page 273 to a point for a corner of this joint use agreement;

THENCE: Continuing across said Lot 7, a non-tangent curve to the Southeast having a Delta angle of 06°44'31", a Radius of 25.46 feet, an Arc length of 25.28 feet and a Chord bearing of S 43°50'25" E - 25.26 feet to a point on the Eastern line of said Lot 7, the Eastern line of the said City of San Antonio Drainage easement, the Western line of said N.W. 25th Street, for a corner of this joint use agreement;

THENCE: S 05°52'42" W - 43.79 feet along the Eastern line of said Lot 7, the Eastern line of the said City of San Antonio Drainage easement, the Western line of said N.W. 25th Street to the POINT OF BEGINNING and containing 0.2442 acres (10,638.6 sq. ft.) of land, according to a survey made on the ground under my supervision.
Corresponding plat prepared.
80'05.00 P14-097.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
FIELD NOTES DESCRIPTION

0.1392 ACRES (6,064.7 sq. ft.)

Joint Use Agreement

A 0.1392 acres (6,064.7 sq. ft.) joint use agreement, being a portion of Lots 47 - 52, Block 5, N.C.B. 8288 of the Rosedale Park Subdivision as shown on a plat recorded in Volume 105, Page 12 of the Deed and Plat Records of Bexar County, Texas, being a portion of those certain tracts of land conveyed to the City of San Antonio in Volume 4533, Page 278 and Volume 4689, Page 421 of the Deed Records, also being a portion of that certain Drainage easement conveyed to the City of San Antonio in Volume 4621, Page 581 of the Deed Records of Bexar County, Texas and a portion of that certain property conveyed to Maria del Rosario Rodriguez in Volume 14280, Page 135 of the Official Public Records of Real Property of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a point (N = 13,709.432, 581, E = 2,113.372, 906) on the Northern line of said Lot 48, the Northern line of the said City of San Antonio property in Volume 4533, Page 278, and the Southern line of Ruiz Street, from which a ¼ mile thence (N = 13,709.410, 806, E = 2,113.058, 798) found at the intersection of N.W. 26th and Ruiz Street for the Northeastern corner of Lot 56, Block 5 of the said Rosedale Park Subdivision bears S 84°15'47" E – 220.84 feet;

THENCE: S 21°08'13" E – 7.57 feet across said Lot 48, and thence the said City of San Antonio property in Volume 4533, Page 278 to a point for a corner of this joint use agreement;

THENCE: Continuing across the said Lot 48 – 51 and across the said City of San Antonio property in Volume 4533, Page 278 and Volume 4689, Page 421 with a non-tangent curve to the left (Southeasternly) having a Delta angle of 08°27'04", a Radius of 284.59 feet, an Arc length of 41.98 feet and a Chord bearing of S 50°28'39" E –
41.94 feet to a point on the Southern line of said Lot 52, the Southern line of the said City of San Antonio Drainage easement in Volume 4621, Page 581, the Southern line of the said Maria De Lourdes Rodriguez property and the Northern line of a 12 foot alley as shown on said plat of Rosedale Park Subdivision, for the Southeastern corner of this joint use agreement;

THENCE: N 84°15'47" W - 69.19 feet along the Southern line of the said City of San Antonio Drainage easement in Volume 4621, Page 581, the Southern line of the said City of San Antonio property in Volume 4689, Page 421, the Southern line of the said Maria De Lourdes Rodriguez property and the Northern line of the said 12 foot alley to a point for the Southwestern corner of this joint use agreement;

THENCE: Across the said City of San Antonio property in Volume 4689, Page 421 and Volume 4533, Page 278, with a non-tangent curve to the right (Northwesterly), having a Delta angle of 19°53'14", a Radius of 335.056 feet, an Arc length of 116.30 feet and a chord bearing of N 33°35'38" W - 115.72 feet to a point on the Western line of said Lot 46, the Western line of the said City of San Antonio Property in Volume 4533, Page 278 to the Eastern line of Lot 46 of the said Rosedale Park Subdivision, for a corner of this joint use agreement;

THENCE: N 08°44'13" E - 30.49 feet along the Western line of said Lot 47, the Western line of said Lot 46 and the Western line of the said City of San Antonio property in Volume 4533, Page 278 to a calculated point on the Southern line of said Ruiz Street, for the Northwestern corner of said Lot 47, the Northwestern corner of said Lot 46 and the Northwestern corner of the said City of San Antonio property in Volume 4533, Page 278, for the Northwestern corner of this joint use agreement;

THENCE: S 84°15'47" E - 29.16 feet along the Southern line of said Ruiz Street, the Northern line of the said City of San Antonio property in Volume 4533, Page 278 to the POINT OF BEGINNING and containing 0.1392 acres (584.7 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared
8005.00 PL14-098 Part Zedo.

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREIN HAVE BEEN ADJUSTED SURFACE SCALE FACTOR OF 1.00017.

Rex J. Hackett
Registered Professional Land Surveyor
License Number 5573

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TBPE No. F-1162
TIBPLS No. 10018490
DRAFT
A 0.1400 acres (6,098.1 sq. ft.) joint use agreement, being a portion of Lots 20 - 22, Block 18, N.C.B. 8898 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, being a portion of those certain tracts of land (Lots 19 - 21) conveyed to the City of San Antonio in Volume 4507, Page 598 of the Deed Records and a portion of that certain Drainage easement conveyed to the City of San Antonio in Volume 4541, Page 530 of the Deed Records of Bexar County, Texas and that certain Lot 22 conveyed to Ricky (Enrique) Villar in Volume 2425, Page 1060 of the Official Public Records of Real Property of Bexar County, Texas being more particularly described as follows:

BEGINNING: at a point (N = 13,709,499.045, E = 2,113,368.469) on the Southern line of the said City of San Antonio property in Volume 4507, Page 598, the Southern line of said Lot 20 and the Northern line of Raiz Street, from which a pinch iron rod (N = 13,709,530.370, E = 2,113,368.090) found for the Southwesterly corner of Lot 26, the Southwestern corner of Lot 27 of the said Cenizo Park Subdivision, thence N 84°00'27" W at 50.05 feet pass a calculated point for the Southwestern corner of said Lot 21, the Southwestern corner of the said City of San Antonio property in Volume 4507, Page 598, the Southwestern corner of said Lot 22, a distance in all of 300.06 feet to the Western corner rod;

THENCE: N 24°22'24" W at 50.05 feet across the said City of San Antonio property in Volume 4507, Page 598 and across said Lots 20 and 21 to a point for a corner of this joint use agreement;

THENCE: Continuing across the said City of San Antonio property in Volume 4507, Page 598 and across said Lots 20 and 21, with a tangent curve to the left (Northwesterly) having a Delta angle of 14°29'17" a Radius of 2200 feet, an Arc length of 50.74 feet and a Chord bearing of N 33°05'26" W at 50.60 feet, a point on the Western line of said Lot 21, the Western line of the said City of San Antonio property in Volume 4507, Page 598, the Eastern line of said Lot 22, for a corner of this joint use agreement;

THENCE: N 06°24'43" E at 50.64 feet along the Western line of said Lot 21, the Western line of the said City of San Antonio property in Volume 4507, Page 598, the Eastern line of said Lot 22 to a point for a corner of this joint use agreement;
THEN: N 38°35'12" W = 70.73 feet across said Lot 22 to a calculated corner (N = 13,709.644.079, E = 2,113,582.061) on the Southern line of a 20 foot alley as shown said plat of Cenizo Park, for the Northwestern corner of said Lot 22, the Northwestern corner of the said City of San Antonio Drainage easement in Volume 4541, Page 530, the Northwestern corner of Lot 23 of the said Cenizo Park Subdivision, for the Northwestern corner of this joint use agreement;

THEN: S 83°34'27" E = 40.88 feet along the Northern line of said Lot 22, the Southern line of the said 20 foot alley, the Northern line of the said City of San Antonio Drainage easement in Volume 4541, Page 530 to a point for a corner of this joint use agreement;

THEN: S 83°27'47" E = 48.18 feet across said Lot 21 and 22, across the said City of San Antonio Drainage easement in Volume 4541, Page 530 and the said City of San Antonio property in Volume 4507, Page 598 to a point for a corner of this joint use agreement;

THEN: Continuing across said Lot 20 and 21 and across the said City of San Antonio property in Volume 4507, Page 598, with a non-tangent curve to the right (Southeast) having a Delta angle of 15°26'21", a Radius of 240.70 feet, an Arc length of 64.86 feet and a Chord bearing of S 33°26'25" E = 64.67 feet to a point for a corner of this joint use agreement;

THEN: S 24°22'24" E = 58.86 feet continuing across said Lot 20 and across the said City of San Antonio property in Volume 4507, Page 598 to a point in the Southern line of said Lot 20 the Southern line of the said City of San Antonio property, the Northern line of the said Ruiz Street, for the Southeastern corner of this joint use agreement.

THEN: N 84°00'27" W = 46.36 feet along the Southern line of said Lot 20, the Southern line of the said City of San Antonio property in Volume 4507, Page 598, the Northern line of said Ruiz Street to the POINT OF BEGINNING, containing 0.1400 acres (6,098.1 sq. ft.) of land, according to a survey made on the ground under my supervision;

Corresponding plat prepared 8005.00 P14-099 Part 1.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/95; COORDINATES SHOWN HEREIN HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
FIELD NOTES DESCRIPTION
0.1937 ACRES (8,437.3 sq. ft.)
Joint Use Agreement

A 0.1937 acres (8,437.3 sq. ft.) joint use agreement, being a portion of Lots 3 - 7, Block 18, N.C.B. 8989 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, being a portion of Lot 3 conveyed to Maria De Los Angeles Garcia in Volume 1226, Page 1738 of the Official Public Records of Real Property, those certain tracts of land (Lots 4 - 5) conveyed to the City of San Antonio in Volume 4267, Page 65, (Lot 6) conveyed to the City of San Antonio in Volume 4421, Page 260 of the Deed Records, a portion of Lot 7 conveyed to SAWS Investments, Inc. in Volume 17599, Page 1585 of the Official Public Records of Real Property, a portion of that certain Drainage easement conveyed to the City of San Antonio in Volume 4563, Page 593 of the Deed Records and that certain Drainage easement conveyed to the City of San Antonio in Volume 4541, Page 312 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,709,840.656, E = 2,113,333.282) for the Westernmost corner of the said City of San Antonio Drainage easement in Volume 4563, Page 593 on the Northern line of said Lot 3, the Southern line of the Abell Place road, for the Northwestern corner of this joint use agreement, from which a West North West line (N = 13,709,848.568, E = 2,113,333.276) found for the Northwestern corner of said Lots 4 & 5, Northwestern corner of the said Maria De Los Angeles Garcia property between S 83°34′27″ W - 70.70 feet;

THENCE: S 83°34′27″ E - 66.64 feet along the Southern line of said Arbor Place, the Northern line of said Lot 3, the Northern line of said Lot 4, the Northern line of the said City of San Antonio Drainage easement in Volume 4267, Page 65 to a point for a corner of this joint use agreement;

THENCE: E 83°26′03″ E - 122.34 feet across said Lots 4 - 7, to a point on the Southern line of the SAWS investments property, the Southern line of said Lot 7, the Southern line of the said City of San Antonio Drainage easement in Volume 4541, Page 328, and the Northern line of 30 foot alley as shown on said plat of Cenizo Park Subdivision, for the Southeastern corner of this joint use agreement;
THENCE: N 83°34'27" W – 56.43 feet along the Southern line of said Lots 6 and 7, the Northern line of the said 20 foot alley to a point for the Southwestern corner of this joint use agreement;

THENCE: N 38°26'03" W – 162.08 feet across said Lots 4 – 6 to a point on the Western line of said Lot 4, the Western line of the said City of San Antonio property in Volume 4267, Page 65, the Eastern line of said Lot 3 and the Eastern line of the said Maria De Los Angeles Garcia property, for a corner of this joint use agreement;

THENCE: N 06°24'03" E – 12.33 feet along the Eastern line of said Lot 3, the Western of said Lot 4 to a ½ inch iron rod found for the Southeastern corner of the said City of San Antonio Drainage easement in Volume 4563, Page 593, for a corner of this joint use agreement;

THENCE: N 37°55'57" W – across said Lot 3 and along the Southwest line of the said City of San Antonio Drainage easement at 41.98 feet pass a ½ inch iron rod and, a distance in all of 42.49 feet to the POINT OF BEGINNING and containing 0.037 acres, 2,437.3 sq. ft.) of land, according to a survey made on the ground under my supervision;

Corresponding plat prepared:
8005.00 P14-099 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83. COORDINATES SHOWN HEREON HAVE AN APPLIED SURVEY SCALE FACTOR OF 1.00017.

Rex A. Hackett
Registered Professional Land Surveyor
License Number 5573
A 0.1002 acres (4,366.3 sq. ft.) joint use agreement, being a portion of Lots 26 - 28, Block 16, N.C.B. 8896 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, conveyed to the City of San Antonio in Volume 4267, Page 65 of the Deed Records of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a point (N = 13,709,901.188, E = 2,113,415.414) on the Southern line of said Lot 26, the Northern line of Arbor Place road, for the Southeastern corner of this joint use agreement, from which a 1/2 inch iron rod (N = 13,709,890.595, E = 2,113,505.996) is found for the Southeastern corner of Lot 25 of the said Cenizo Park Subdivision bears S 86°59'27" W at 44.17 feet past the calculated Southeastern corner of said Lot 26, the Southwestern corner of said Lot 25, a distance in all of 94.65 feet;

THENCE: N 83°34'27" W – 56.52 feet along the Northern line of said Arbor Place, the Southern line of said Lot 3, the Northern line of said Lots 26 – 28, to a point for the Southwestern corner of this joint use agreement, from which a calculated point for the Southwestern corner of said Lot 28 on the Eastern line of N.W. 27th Street bears N 83°34'27" W – 48.83 feet;

THENCE: N 38°31'43" W – 69.18 feet across said Lots 26 – 28 to a point on the Western line of said Lot 28, the Eastern line of N.W. 27th Street, the corner of this joint use agreement;

THENCE: N 06°24'03" E – 86.64 feet along the Western line of said Lot 28, the Eastern line of said N.W. 27th Street to a point of the Northernmost corner of this joint use agreement;

THENCE: S 35°11'14" E – 149.18 feet across said Lots 26 – 28 to the POINT OF BEGINNING, containing 0.1002 acres (4,366.3 sq. ft.) of land, according to a survey made on the ground under my supervision.
Corresponding plat prepared.
8005.00 P14-100.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREBON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
Date: April 7, 2016
Project No: 8005.00
P14-101 Part 2

PROJECT: C5 Culebra-Castroville to Laredo & C-28 Zarzamora Creek, San Gabriel
SAWS Parcel No: P14-101 Part 2

FIELD NOTES DESCRIPTION
0.1696 ACRES (7,385.6 sq. ft.)
Joint Use Agreement

A 0.1696 acres (7,385.6 sq. ft.) joint use agreement, being a portion of Lots 11 - 13, Block 15, N.C.B. 8895 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, being a portion of that certain tract (Lot 11) conveyed to the City of San Antonio in Volume 999, Page 36 of the Deed Records and a portion of those certain tracts (Lots 12 & 13) conveyed to the City of San Antonio in Volume 4499, Page 58 of the Deed Records of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a point (N = 13,710,106,779, E = 2,113,190.282) on the Southern line of said Lot 12, the Northern line of a 20 foot alley as shown on said plat of Cenizo Park Subdivision from which a ¾ inch iron rod (N 13,710,113,761, E = 2,113,132,025) found for the Southwestern corner of Lot 11, the Southwestern corner of Lot 10 and the said Cenizo Park Subdivision bears N 83°34'27" W – 59.11 feet;

THENCE: N 42°05'01" W – 65.60 feet across said Lots 11 and 10 to a point for a corner of this joint use agreement;

THENCE: N 03°41'44" E – 114.27 feet across said Lot 11 to a point on the Northern line of said Lot 11, the Southern line of Delgado Street and the Northwestern corner of this joint use agreement, from which a calculated point for the Northwestern corner of said Lot 11, the Northeastern corner of said Lot 10, and the S 83°34'27" E – 105.36 feet;

THENCE: S 83°34'27" E – 105.36 feet along the Southern line of said Lot 11, the Southern line of Delgado Street and the Northern corner of this joint use agreement, from which a calculated point for the Northern corner of Lot 13 at the intersection of Delgado Street and N.W. 2nd Street and N 83°34'27" E – 105.36 feet;

THENCE: S 83°41'44" W – 9.48 feet across said Lot 11 to a point for a corner of this joint use agreement;

THENCE: S 42°05'01" E – 13.93 feet across said Lots 11 – 13 to a point on the Southern line of said Lot 13, the Southern line of the said 20 foot alley, for the Southeastern corner of this joint use agreement, from which a calculated point for the Southeastern corner of said Lot 13 bears S 83°34'27" E – 30.52 feet;
THENCE: N 83°34'27" W – 60.38 feet along the Southern line of said Lots 12 and 13 and the Northern line of the said 20 foot alley to the POINT OF BEGINNING and containing 0.1696 acres (7,385.6 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared.
8035.00 P14-101 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

[Signature]
Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
A 0.1411 acres (6,147.5 sq. ft.) joint use agreement, being a portion of Lots 15, 16, Block 13, N.C.B. 8893 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, being a portion of those certain tracts of land (Lots 15 & 16) conveyed to the City of San Antonio in Volume 4267, Page 65 of the Deed Records and a portion of that certain tract of land (Lot 16) conveyed to Richard Chavez in Volume 7556, Page 730 of the Official Public Records of Real Property of Bexar County, Texas and being all of that certain Drainage easement conveyed to the City of San Antonio in Volume 4555, Page 116 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,710,325.020, E = 2,113,116.423) on the Southern line of said Lot 16, the Northern line of Delgado Street, for the Southwestern corner of this joint use agreement, from which a ½ inch iron rod (N = 13,710,320.709, E = 2,113,304.632) found at the intersection of Delgado Street and N.W. 27th Street is the Southwestern corner of Lot 14 of the said Cenizo Park Subdivision bears S 83°34'27" W 49.60 ft.;

THENCE: N 83°34'27" W 49.60 ft. along the Southern line of said Lot 16, the Northern line of Delgado Street to a calculated point for the Southwestern corner of said Lot 16, the Southeastern corner of said Lot 17, the Southwestern corner of the said City of San Antonio property in Volume 4267, Page 116, for the Southeastern corner of the said Richard Chavez tract, for the Southwestern corner of this joint use agreement;

THENCE: N 83°34'27" W 117.60 ft. along the Western line of said Lot 16, the Eastern line of said Lot 17 to a point for the Southernmost corner of the said City of San Antonio Drainage easement in Volume 4555, Page 116, for a corner of this joint use agreement;

THENCE: N 83°34'27" W 573 feet across said Lot 17 and along the Southwestern line of the said City of San Antonio Drainage easement in Volume 4555, Page 116 to a point on the Northern line of said Lot 17, the Southern line of a 20 foot alley as shown on said Cenizo Park Subdivision, for the Northwestern corner of the said City of San Antonio Drainage easement in Volume 4555, Page 116, for the Northwestern corner of this joint use agreement;

THENCE: S 83°34'27" E along the Southern line of the said 20 foot alley, at 20.00 feet past a calculated point for the Northeastern corner of said Lot 17, the Northeastern corner of
the said City of San Antonio Drainage easement in Volume 4555, Page 116, the Northwestern corner of said Lot 16, a distance in all of 39.17 feet to a point for the Northeastern corner of this joint use agreement;

THENCE: Across said Lot 16 with a non-tangent curve to the right (Southeasterly) having a Delta angle of 04°10′36″, a Radius of 215.72 feet, an Arc length of 15.73 feet and a Chord bearing of S 21°04′19″ E – 15.72 feet to a point for a corner of this joint use agreement;

THENCE: S 09°45′33″ E – 48.78 feet continuing across said Lot 16 to a point for a corner of this joint use agreement;

THENCE: S 06°24′03″ W – 96.80 feet continuing across said Lot 16 to the POINT OF BEGINNING and containing 0.1411 acres (6,147.5 sq. ft.) of land, according to a survey made on the ground under my supervision;

Corresponding plat prepared.
8005.00 P14-102 Part I.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

10927 WYE DRIVE
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www.fordengineering.com
TBPE No. F-1162
TBPLS No. 13018490

DRAFT
FIELD NOTES DESCRIPTION
0.1572 ACRES (6,848.6 sq. ft.)
Joint Use Agreement

A 0.1572 acres (6,848.6 sq. ft.) joint use agreement, being a portion of Lots 8 - 11, Block 13, N.C.B. 8893 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, being a portion of that certain tract of land (Lot 8) conveyed to Junita G. Lozano in Volume 3264, Page 206 of the Official Public Records of Real Property, a portion of those certain tracts of land (Lots 9 & 10) conveyed to the City of San Antonio in Volume 4267, Page 65 of the Deed Records, a portion of that certain tract of land (Lot 11) conveyed to Jose Fernando Ortin in Volume 15283, Page 998 of the Official Public Records of Real Property, all of that certain Drainage easement conveyed to the City of San Antonio in Volume 4567, Page 40 of the Deed Records, and a portion of that certain Drainage easement conveyed to the City of San Antonio in Volume 4495, Page 252 of the Deed Records of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a point (N = 13,710,671.982, E = 2,113,116.413) on the Northern line of said Lot 9, the Southern line of River Street, on the Northeastern corner of this joint use agreement, from which a ¾ inch iron rod (N = 13,710,671.982, E = 2,113,243.083) found for the Northeastern corner of said Lot 11 bears S 23°31'37" W 81.98 feet past a calculated point for the Northeastern corner of said Lot 10, the Northeast corner of said Lot 11, a distance in all of 133.59 feet;

THENCE: S 23°31'37" E 81.98 feet across said Lots 9 - 11 to a point on the Southern line of said Lot 11, the Southern line of the said City of San Antonio Drainage easement in Volume 4495, Page 252, the Southern line of the said Drainage easement as shown on said plat of Cenizo Park Subdivision, for the Southern corner of this joint use agreement;

THENCE: N 34°27' W 123.25 feet along the Southern line of said Lots 10 & 11, the Northern line of the said Drainage easement, at 7.9 feet past a calculated point for the Southwestern corner of said Lot 10, a distance in all of 46.17 feet to a point for the Southwestern corner of said Lot 11, a corner of this joint use agreement;

THENCE: N 23°31'37" W 123.25 feet across said Lots 9 & 10 to a point on the Western line of said Lot 9, the Eastern line of said Lot 8, for a corner of this joint use agreement;
DRAFT

FORD ENGINEERING, INC

THENCE: N 06°24'03" E – 17.81 feet along the Western line of said Lot 9, the Eastern line of said Lot 8 to a point for the Southermost corner of the said City of San Antonio Drainage easement in Volume 4567, Page 408, for a corner of the joint use agreement;

THENCE: N 23°31'28" W – 38.17 feet across said Lot 8 and along the Southwestern line of the said City of San Antonio Drainage easement in Volume 4567, Page 408 to a point on the Northern line of said Lot 8, the Southern line of said Rivas Street, for the Northwestern corner of the said City of San Antonio Drainage easement in Volume 4567, Page 408, for the Northwestern corner of the joint use agreement;

THENCE: S 83°34'27" E – along the Southern line of said Rivas Street at 19.04 feet pass the calculated point for the Northeastern corner of said Lot 8, the Northwestern corner of said Lot 9, a distance in all of 35.91 feet to the POINT OF BEGINNING and containing 0.1572 acres (6,848.6 sq. ft.) of land, according to a survey made on the ground under my supervision;

Corresponding plat prepared.
8005.00 P14-102 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS SATE PLANE COORDINATES, SOUTH CENTRAL ZONE, AND 8393 COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

FX L. Vickers
Licensed Professional Land Surveyor
License Number 5573

10027 WYE DRIVE SUITE 104 SAN ANTONIO, TX 78217 P. (210) 596-4777 E. (210) 590-8600
www.fordengineering.com TXPE No. F-1162 TBLS No. 10016400
FIELD NOTES DESCRIPTION
0.1463 ACRES (6,370.9 sq. ft.)
Joint Use Agreement

A 0.1463 acres (6,370.9 sq. ft.) joint use agreement, being a portion of Lots 19, 21, Block 11, B.C.B. 8891 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, being a portion of those certain tracts of land (Lots 18 - 20) conveyed to the City of San Antonio in Volume 4267, Page 65 of the Deed Records and a portion of that certain tract of land (Lot 21) conveyed to Arnulfo & Rosa Ayala in Volume 5925, Page 211 of the Deed Records of Bexar County, Texas and being a portion of that certain Drainage easement conveyed to the City of San Antonio in Volume 4541, Page 327 of the Deed Records of Bexar County, Texas being more particularly described as follows:

BEGINNING: at a point (N = 13,710,734.721, E = 2,113,082.547) on the Southern line of said Lot 19, the Northern line of Rivas Street, for the Southeastern corner of this joint use agreement, from which a ½ inch iron rod (N = 13,710,731.606, E = 2,113,199.357) with cap marked “RPLS 5464” found for the Southeastern corner of Lot 17 of the Cenizo Park Subdivision bears S 83°34'27" E = 117.19 feet;

THENCE: N 83°34'27" W = 46.04 feet along the Southern line of said Lots 19 & 20 to a point for the Southwestern corner of this joint use agreement;

THENCE: N 23°31'14" W = 46 feet to the Southwestern corner of said Lot 20 to a point on the Western line of said Lot 20, the Eastern line of said Lot 21, for a corner of this joint use agreement;

THENCE: N 00°47'03" E = 117.14 feet along the Western line of said Lot 20, the Eastern line of said Lot 21 to a point in the Southwestern corner of the said City of San Antonio Drainage easement in Volume 4541, Page 327, for a corner of this joint use agreement;

THENCE: N 22°48'00" W = 81.84 feet across said Lot 21 and along the Southwestern line of the said City of San Antonio Drainage easement in 4541, Page 327 to a bent ½ inch iron rod found on the Southern line of a 20 foot alley as shown on said plat of Cenizo Park, for the Northern corner of the said City of San Antonio Drainage easement, for the Northwestern corner of this joint use agreement;

THENCE: S 83°34'27" E = 33.92 feet along the Northern line of said Lot 21, the Southern line of the said 20 foot alley to a point for the Northeastern corner of this joint use agreement;
THENCE: S 23°31'14" E - 182.84 feet across said Lots 19 - 21 to the POINT OF BEGINNING and containing 0.1463 acres (6,370.9 sq. ft.) of land, according to a survey made on the ground under my supervision;

Corresponding plat prepared.
8005.00 P14-103 Part 1.docex

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573

FORD ENGINEERING, INC
Project: C5 Culebra-Castroville to Laredo &
C-24 Zarzamora Creek, San Gabriel
SAWS Parcel No: P14-103 Part 2

FIELD NOTES DESCRIPTION
0.1656 ACRES (7,215.1 sq. ft.)
Joint Use Agreement

A 0.1656 acres (7,215.1 sq. ft.) joint use agreement, being a portion of Lots 4 & 6, Block 11, N.C.B. 8891 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, said Lot 6 conveyed to the City of San Antonio in Volume 4501, Page 618 of the Deed Records, and said 6 conveyed to the City of San Antonio in Volume 4553, Page 391 of the Deed Records and said Lot 6 conveyed to the City of San Antonio in Volume 4503, Page 295 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,711,080,746, E = 2,113,236,775) found for the Northeastern corner of Lot 10 of the said Cenizo Park Subdivision bears S 83°34'27" W = 310.77 feet;

T Thence: S 23°36'54" E = 181.43 feet across said Lot 7 to a point on the Southern line of said Lot 6, the Northern line of said Lot 10, a point on which a half-inch iron rod (N = 13,711,054,906, E = 2,113,236,775) found for the Northeastern corner of Lot 10 of the said Cenizo Park Subdivision bears S 83°34'27" W = 310.77 feet;

T Thence: N 83°34'27" W = 20.01 feet along the Southern line of said Lot 5 & 6, the Northern line of said Lot 10, to a point for the Southwestern corner of this joint use agreement;

T Thence: S 23°36'54" W = 12.07 feet along the Western line of said Lot 4 & 5 to a point on the Eastern line of Lot 3 of the said Cenizo Park Subdivision, for a corner of this joint use agreement;

T Thence: N 66°24'45" E = 12.07 feet along the Western line of said Lot 4, the Eastern line of said Lot 10, a calculated point for the Northwest corner of said Lot 4, the Northeastern corner of said Lot 3 on the Southern line of said W. Poplar Street, for the Northwestern corner of this joint use agreement;
THENCE: S 83°34'27" E = 39.23 feet along the Northern line of said Lot 4, the Southern line of said W. Poplar Street to the POINT OF BEGINNING and containing 0.1656 acres (7,215.1 sq. ft.) of land, according to a survey made on the ground under my supervision;

Corresponding plat prepared.
8C05.00 P14-103 Part 2.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
TO: SAN ANTONIO WATER SYSTEM, THE CITY OF SAN ANTONIO

THIS SURVEY SUBSTANTIALLY COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 2 CONDITION 2 SURVEY.

NICK L. HACHECK
R.P.L., W.S. #1897
DATE: 04/27/2015
PROJECT NO. 0003.00 - P14-16 PART I
DRAWN BY: RLH

DRAFT
FIELD NOTES DESCRIPTION
0.1348 ACRES (5,873.4 sq. ft.)
Joint Use Agreement

A 0.1348 acres (5,873.4 sq. ft.) joint use agreement, being a portion of Lots 23 - 25, Block 9, N.C.B. 8889 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, said Lot 23, conveyed to the City of San Antonio in Volume 4625, Page 62 of the Deed Records, said Lot 24 conveyed to the City of San Antonio in Volume 4267, Page 65 of the Deed Records and said Lot 25 conveyed to the City of San Antonio in Volume 4291, Page 573 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,711,154.267, E = 2,113,166.638) on the Southern line of said Lot 23, the Northern line of W. Poplar Street, for the Southerly corner of this joint use agreement, from which a 1" iron bar (N = 13,711,131.894, E = 2,113,165.292) found for the Southeaster corner of Lot 20 of the said Cenizo Park Subdivision bears S 83°34'27" E = 199.31 feet;

THENCE: N 83°34'27" W = 45.38 feet along the Southern edge of said Lots 23 & 24, the Northern line of said W. Poplar Street to a point for the Southwestern corner of this joint use agreement;

THENCE: N 21°45'12" W = 109.41 feet across said Lot 24 & 25 to a point for a corner of this joint use agreement;

THENCE: N 03°44'14" E = 308.5 feet continuing across said Lot 25 to a point on the Northern line of the lot 26 of the Southern edge of a 15 foot alley as shown on said Cenizo Park Subdivision, for the Northwestern corner of this joint use agreement, from which a calculated point for the Northwestern corner of Lot 26 of the said Cenizo Park Subdivision bears N 83°34'27" W = 169 feet;

THENCE: S 83°34'27" E = 294 feet along the Northern line of said Lot 25, the Southern line of the said 15 foot alley to a point for the Northeastern corner of this joint use agreement;

THENCE: S 03°44'41" W = 25.77 feet across said Lot 25 to a point for a corner of this joint use agreement;
THENCE: S 21° 45’ 12” E – 121.79 feet across said Lots 23 - 25 to the POINT OF BEGINNING and containing 0.1348 acres (5,873.4 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared.

8065.00 P14-104 Part 1.docx

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

[Signature]
Rex L. Hackett
Registered Professional Land Surveyor
License Number 5576
FIELD NOTES DESCRIPTION

A 0.1224 acres (5,329.8 sq. ft.) joint use agreement, being a portion of Lots 1 - 2, Block 9, N.C.B. 8889 of the Cenizo Park Subdivision as shown on a plat recorded in Volume 1625, Page 226 of the Deed and Plat Records of Bexar County, Texas, said Lot 1 conveyed to the City of San Antonio in Volume 7087, Page 330 of the Deed Records and said Lots conveyed to the City of San Antonio in Volume 4501, Page 106 of the Deed Records of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a point (N = 13,711,445.530, E = 2,112,823.075) on the Northern line of said Lot 1, the Southern line of Menchuca Street, from which a calculated point for the Northwestern corner of said Lot 1 bears N 83°34'27" W = 371.84 feet and a ½ inch in said (N = 13,711,493.740, E = 2,112,834.443) found for the Southwestern corner of Lot 25, Block 7, N.C.B. 8887 of the Cenizo Park Subdivision recorded in Volume 1625, Page 226 of the Deed and Plat Records conveyed to the City of San Antonio in Volume 4511, Page 64 of the Deed Records of Bexar County, Texas bears N 13°16'04" E = 40.04 feet;

THENCE: S 83°34'27" E = 40.04 feet along the Southern line of said Lots 1 & 2, the Southern line of said Menchuca Street to a point in the Northwestern corner of this joint use agreement;

THENCE: S 08°44'41" W = 133.90 feet along said 2 to a point on the Southern line of said Lot 2, the Northern line of 15 foot back lot Surveyed on said plat of Cenizo Park Subdivision, for the Northwestern corner of this joint use agreement;

THENCE: N 83°34'27" W = 43.99 feet along the Southern line of said Lot 2, the Northern line of the said 15 foot back lot a point for the Southwestern corner of this joint use agreement, from which a calculated point for the Northwestern corner of said Lot 1 bears N 83°34'27" W = 43.99 feet;

THENCE: N 08°44'41" E = 13.25 feet across said Lots 1 & 2 to the POINT OF BEGINNING and containing 0.1224 acres (5,329.8 sq. ft.) of land, according to a survey made on the ground in the possession;
BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83-93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573
FIELD NOTES DESCRIPTION
0.1605 ACRES (6,989.9 sq. ft.)

Joint Use Agreement

A 0.1605 acres (6,989.9 sq. ft.) joint use agreement, being a portion of Lots 24, 25, Block 7, N.C.B. 8887 of the Centex Park Subdivision as shown on a plat recorded in Volume 1623, Page 226 of the Deed and Plat Records of Bexar County, Texas, said Lot 25 conveyed to the City of San Antonio in Volume 4501, Page 472 of the Deed Records, said Lot 25 conveyed to the City of San Antonio in Volume 4511, Page 64 of the Deed Records, said Lot 26 conveyed to Jesse Bustamante in Volume 14875, Page 15 of the Official Public Records of Real Property of Bexar County, Texas and being all of that certain Drainage easement Lot 26 conveyed to the City of San Antonio in Volume 4505, Page 110 of the Deed Records of Bexar County, Texas, being more particularly described as follows:

BEGINNING: at a ½ inch iron rod (N = 13,711, 493, 740, E = 12,834.443) found on the Northern line of Menchaca Street, for the Southwestern corner of said Lot 25, for the Southwestern corner of said joint use agreement;

THENCE: N 06°24'03" E = 79.71 feet along the Western line of said Lot 25, the Eastern line of said Lot 26 to a point for the South Eastern corner of the said City of San Antonio Drainage easement in Volume 4505, Page 110, for a corner of this joint use agreement;

THENCE: N 58°19'07" W = 48.15 feet along said Lot 26 and along the Southwestern line of the said City of San Antonio Drainage easement in Volume 4505, Page 110 to a ½ inch iron rod (N = 13,711, 398, 293, E = 12,802.361) found on the Western line of said Lot 26, the Eastern line of 11th Street, for the South Western corner of the said City of San Antonio Drainage easement for a corner of this joint use agreement;

THENCE: N 06°24'03" E = 30.66 feet along the Western line of said Lot 26, the Western line of the said City of San Antonio Drainage easement in Volume 4505, Page 110, the Eastern line of said 28th Street to a point on the Southern line of a 15 foot alley as shown on said Centex Park, for the South Western corner of said Lot 26, the North Western corner of this joint use agreement;

THENCE: S 83°34'27" E = 43.54 feet along the Southern line of the said 15 foot alley to a point for the Northeastern corner of said Lot 26, the Northeastern corner of said Lot 25, for a corner of this joint use agreement;
THENCE: S 06°24'03" W – 18.36 feet along the Eastern line of said Lot 25, the Western line of said Lot 25 to a point for a corner of this joint use agreement.

THENCE: Across said Lot 25, a non-tangent curve to the right (Southesterly), having a Delta angle of 08°51'17", a Radius of 126.90 feet, an Arc length of 19.61 feet and a Chord bearing of S 50°26'19" E – 19.59 feet, to a point for a corner of this joint use agreement.

THENCE: N 46°46'52" E – 38.15 feet across said Lot 25 to a point on the Northern line of said Lot 25, the Southern line of a 15 foot alley as shown on said plat of Cenizo Park Subdivision, for a corner of this joint use agreement.

THENCE: S 83°34'27" E – 26.25 feet along the Northern line of said Lots 24 & 25, the Southern line of the said 15 foot alley to a point for the Northeastern corner of this joint use agreement, from which a calculated point for the Northeastern corner of said Lot 24 bears S 83°34'27" E – 32.23 feet.

THENCE: S 46°46'52" W – 56.73 feet across said Lot 24 & 25 to a point for a corner of this joint use agreement.

THENCE: Across said Lot 25 with a non-tangent curve to the left (Southeasterly), having a Delta angle of 09°37'18", a Radius of 108.39 feet, an Arc length of 18.49 feet and a Chord bearing of S 25°32'29" E – 18.46 feet to a point for a corner of this joint use agreement.

THENCE: S 03°44'41" W – 74.90 feet continuing across said Lot 25 to a point on the Southern line of said Lot 25, the Northern line of the Mesachaca Street, for the Southeasterly corner of this joint use agreement.

THENCE: N 83°34'27" W – 68.83 feet along the Southern line of said Lot 25, the Northern line of said Mesachaca Street, the POINT OF BEGINNING and containing 0.1605 acres (6,980.9 sq. ft.) of land, according to a survey made on the ground under my supervision;
Corresponding plat prepared.
8095.00 P14-165.docx.
REVISED 06-23-2016

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE
PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES
SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573

DRAFT
SEWER JUA

The City of San Antonio, hereinafter referred to as “City”, issues this Joint Use Agreement (“JUA”) to the San Antonio Water System, hereinafter referred to as “SAWS” or “Joint User”, acting by and through their duly authorized representatives.

1. FACILITIES/ACTIVITIES. Joint User may utilize and/or occupy during the term, the City drainage areas (collectively, the “Joint Use Area”) listed in and shown on Exhibit A, which is incorporated herein for all purposes as if fully set forth.

2. USE. Joint User and/or its agents, employees and contractors may enter the Joint Use Area for the purpose of utilizing the Joint Use Area for any and all things necessary for constructing, operating, replacing, repairing, adding, removing, inspecting, maintaining and realigning sewer facilities as indicated in Exhibit A (being part of SAWS’ EPA Consent Decree C5/C28 project), together with all necessary and desirable improvements and appurtenances associated therewith (the “Improvements”).

3. TERM. The term of this JUA shall be of indefinite duration subject to rights of termination set out in this JUA.

4. CONDITIONS. As a condition of receiving the JUA, Joint User shall comply with each of the following conditions. Failure to comply with the conditions of this JUA is grounds for termination of this JUA.

   a. CPS Energy – Edge to edge clearance from gas pipe shall be, at minimum, 18” plus 1/2 the gas pipe diameter. Additionally, no mechanized equipment shall be used for excavation within this clearance zone. Supply pressure gas mains must be exposed during any bore crossings and maintain a 3’ separation. Any conflicts occur, CPSE Gas Engineering must be notified. Any conflicts to the existing gas facilities will be evaluated by CPSE Gas Engineering and will require compensation for any offsets adjustments and or reroutes.

   b. TCI Storm Water – A Floodplain Development Permit will be required for approval of proposed work. All required studies, permits and fees must be submitted to and approved by all applicable local (city and/or county), state and federal governing bodies. Furthermore, all local (city and/or county), state and federal regulations must be complied with.

   c. Joint User shall retain ownership of the Improvements on the Joint Use Area and will operate and maintain said Improvements. NOTWITHSTANDING THE FOREGOING, City reserves for City, and City’s successors and assigns, the right to continue to use and enjoy said Joint Use Area for all purposes which do not materially interfere with or interrupt its use by Joint User (but not buildings, which City agrees not to construct in the Joint Use Area).

   d. This JUA cannot be assigned by Joint User except to a certificated utility provider succeeding to SAWS’ wastewater utility service in the area in which the Joint Use Area is located.

   e. Within thirty (30) days following Joint User’s completion of construction, maintenance or repairs to its project or infrastructure on the City’s Joint Use Area, Joint User will repair any construction related damages within the Joint Use Area and Temporary Construction Area and restore the Joint Use Area and Temporary Construction Area to substantially the same or better...
condition as existed prior to Joint User’s maintenance or repairs, including, without limitation, compacting, grading and seeding, for the purposes of establishing and restoring grass or vegetation. Joint User’s repair and restoration plans shall be subject to prior review and approval by City.

f. SAWS assumes all risk of, and relieves City of, any and all liability for loss or damage to property or facilities installed by SAWS and any other financial loss sustained by SAWS, except to the extent caused by City;

g. Joint User is solely responsible for obtaining any necessary permission from other owners or interest holders whose property will be used or impacted by Joint User’s activities under this JUA.

h. This JUA is subject to all generally applicable conditions and restrictions of Chapter 37 of the City Code of the City of San Antonio related to Joint Use Agreements.

5. FEES. JUA fees and charges shall be in accordance with City of San Antonio Chapter 37 fee schedule. If another JUA is required, those fees are separate.

6. INCOMPATIBLE FACILITIES. This JUA is issued by City and accepted by SAWS with the mutual belief that the facilities of each can exist at the Joint Use Area in the form contemplated when this JUA was issued without disruption to the other. If at any time, for any reason, SAWS’s facilities are determined in City’s judgment to be incompatible with City’s existing or proposed facilities, SAWS agrees to cure any such incompatibility by modifying its facilities, by removing its facilities or by taking whatever other action which in City’s judgment is necessary. With respect to any request by the City to remove or relocate its facilities, Joint User shall have up to 365 days to comply, or such longer period as may be reasonably necessary provided Joint User is diligently pursuing such relocation or removal, including any necessary corresponding re-route of Joint User’s facilities.

7. INSURANCE. Prior to the commencement of any construction activity by SAWS, SAWS shall cause its general contractor, if a contractor is utilized, to provide the City executed certificates of insurance naming the City, its officers, agents and employees as an additional insured on its commercial general liability insurance policy.

8. NO CONVEYANCE OF PROPERTY. Neither SAWS nor the City by execution of this JUA, waive or relinquish any right which they may have under the law or constitution, state or federal. This JUA does not constitute a conveyance or release of any real property rights held by the City. The parties are acting herein for their own benefit and no benefit shall accrue to any third party.

9. RIGHT OF TERMINATION FOR BREACH. In the event, after written warning by authorized City personnel and reasonable opportunity to cure by Joint User, Joint User fails to perform any requirement of this JUA, City shall have the right to terminate this JUA by written notice to Joint User, whereupon Joint User shall immediately terminate its use and promptly remove any equipment or other property owned by Joint User. Joint User shall pay all costs of removal. SAWS may terminate this JUA at any time upon 30 days written notice to the City.

10. CONTACT. Prior to the commencement of any construction activities by City or SAWS on the Joint Use Area, including use for staging or storage of equipment, City and SAWS and/or their respective contractors shall coordinate with one another in order to ensure such construction will not conflict with any ongoing or scheduled projects and/or activities of the other. For purposes of this section, the initial City
contact is Mary Fors, City of San Antonio Transportation and Capital Improvements Department, 207-4083, Mary.Fors@sanantonio.gov. The initial SAWS contact is Sunny Burlew, Corporate Real Estate, 233-2954, Sunny.Burlew@saws.org.

11. **NOTICE.** Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth below. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

<table>
<thead>
<tr>
<th>CITY</th>
<th>JOINT USER</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of San Antonio</td>
<td>San Antonio Water System</td>
</tr>
<tr>
<td>P.O. Box 839966</td>
<td>2800 Highway 281 North</td>
</tr>
<tr>
<td>San Antonio, TX 78283</td>
<td>P.O. Box 2449</td>
</tr>
<tr>
<td>Attn: Real Estate Manager, TCI</td>
<td>San Antonio, TX 78298</td>
</tr>
<tr>
<td></td>
<td>Attn: Manager Corporate Real Estate</td>
</tr>
</tbody>
</table>

Accepting this JUA shall constitute acceptance and agreement to all conditions and requirements of this JUA and the ordinances and specifications authorizing issuance of such JUA.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures effective this _____ day of __________, 2017.

CITY OF SAN ANTONIO, a municipal corporation

**Steve Hodges, Real Estate Manager**
Department of Transportation and Capital Improvements

SAN ANTONIO WATER SYSTEM, a Texas municipally owned utility of the City of San Antonio

**Nancy Belinsky**
Vice President and General Counsel

Approved as to Form:

______________________________
City Attorney
STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on this ___ day of ____________, 2017, by Steve Hodges, Real Estate Manager for the City of San Antonio, on its behalf.

____________________________
Notary Public

My commission expires:___________

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on this ___ day of ____________, 2017, by Nancy Belinsky, Vice President and General Counsel of the San Antonio Water System, a municipally owned utility of the City of San Antonio, on behalf of said entity.

____________________________
Notary Public

My commission expires:___________
EXHIBIT A

P14-084 – 0.0075 acres (327.9 sq. feet) in NCB 3896, Lot 75, as described and depicted on the following pages, includes approximately 69 LF of 36-inch sanitary sewer main.

P14-086 – 0.3337 acre (14,536.8 sq. ft.) in NCB 6495, Block 6 and NCB 6492, Block 3 of Zarzamora Heights Subdivision, as described and depicted on the following pages, includes approximately 418 LF of 30-inch sanitary sewer main along with one (1) manhole.

P14-088 – 0.1295 acre (5,640.6 sq. ft.) in original NCB 7365 within the area designated as Urban Renewal Agency Property as shown on maps named U.S.C.E. and U.R.A. Apache Creek ROW, as described and depicted on the following pages, includes approximately 182 LF of 30-inch sanitary sewer main along with one (1) manhole.

P14-091 – 0.2598 acre (11,315.3 sq. ft.) within the area designated as Urban Renewal Agency Property as shown on maps named U.S.C.E. and U.R.A. Apache Creek ROW, as described and depicted on the following pages, includes approximately 387 LF of 30-inch sanitary sewer main along with one (1) manhole.

P14-092 – 0.0593 acre (2,583.3 sq. ft.) being a portion of a 3.8629 acre tract of land as described in City of San Antonio Ordinance 42051, NCBs 8354, 3402, A-5 and A-6, as described and depicted on the following pages, includes approximately 33 LF of 12-inch sanitary sewer main, 87 LF of 30-inch sanitary sewer main, and one (1) manhole.
FIELD NOTES DESCRIPTION

0.0075 ACRES (327.9 sq. ft.)

Joint Use Agreement

A 0.0075 acre (327.9 sq. ft.) joint use agreement being a portion of Lot 75, N.O.B. 3896 of the Colonia Buenas Alturas Subdivision as shown on a plat recorded in Volume 642, Page 157 of the Deed and Plat Records, also being a portion of the certain parcels of land conveyed to the City of San Antonio in Volume 2183, Page 137 of the Official Public Records of Real Property of Bexar County, Texas; being more particularly described as follows:

BEGINNING: at a calculated point for the Northeastern corner of this joint use agreement (N = 13,701,998.657, E = 2,118,042.129) on the Northern line of said Lot 75, the Southern line of Lot 26 of the said Colonia Buenas Alturas Subdivision, the said being the Southern line of the certain tract of land conveyed to Ramon and Ernesto C. Viquez in Volume 2197, Page 371 of the Deed Records of Bexar County, Texas, from them by a ½ inch iron rod (N = 13,702,036.979, E = 2,118,352.781) with a marked “Survey Adjust” found on the Southern line of Vera Cruz Street (55.6” R.O.W.) for the Southwestern corner of Lot 91 of the said Colonia Buenas Alturas Subdivision bears N 06° 54' 20" W 68.5 feet more or less said to a point on the Southern line of said Lot 75, a line of the said parcels of land conveyed to the City of San Antonio in Volume 2183, Page 137, the original Northern line of said Santiago Street (not in use) as shown on the said map of the Colonia Buenas Alturas Subdivision for the Southeastern corner of this joint use agreement;

THENCE: N 89° 03’ 41” E 41.1 feet along the original Northern line of said Santiago Street, the Southern line of said Lot 75 to a point for the Southwestern corner of said Lot 75 on the Eastern line of Nuevo Leon Street as shown on said plat of Colonia Buenas Alturas Subdivision for the Southwestern corner of this joint use agreement;

THENCE: N 05° 02’ 43” W 225.0 feet along the Eastern line said Nuevo Leon Street, the Western line of said Lot 75, to a point for the Northwestern corner of said Lot 75, the Southwestern corner of said Lot 26, for the Northwestern corner of this joint use agreement;
THENCE: S 84°09'35" E — 5.42 feet along the Northern line of said Lot 75, the Southern line of said Lot 26 to the POINT OF BEGINNING and containing 0.0075 acres (327.9 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared.
8005.00 P14-084.docx.

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83/93; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

Rex L. Hackett
Registered Professional Land Surveyor
License Number 5573

10927 WYE DRIVE SUITE 104 SAN ANTONIO, TX 78217 P. (210) 590-4777 TBPE No. F-1162 F. (210) 590-4948 TBPLS No. 10018400
PLAT SHOWING

JOINT USE AGREEMENT

0.3337 ACRES (14,636.8 Sq. Ft.)


PAGE 2 OF 2

DRAWN BY: P.L.H.

FORD ENGINEERING INC.

GEOLOGICAL SURVEYING * PLANNING

10070 INC. SILENT, STE 104, SAN ANTONIO, TEXAS 78217 * P.210 606-4777 * F.210-595-9483

GEOLOGICAL SURVEYING * PLANNING

FORD ENGINEERING INC.

GEOLOGICAL SURVEYING * PLANNING

10070 INC. SILENT, STE 104, SAN ANTONIO, TEXAS 78217 * P.210 606-4777 * F.210-595-9483

DRAFT
FIELD NOTES DESCRIPTION
0.3337 ACRES (14,536.8 sq. ft.)
Joint Use Agreement

A 0.3337 acre (14,536.8 sq. ft.) joint use agreement being a portion of the original Block 6, N.C.B. 6495 and Block 3, N.C.B. 6492 of the Zarzamora Heights Subdivision recorded in Volume 642, Page 35-36 of the Deed and Plat Records of Bexar County, Texas, now located within the area designated as Urban Renewal Agency Property as shown on maps named U.S.C.E. and U.R.A. Apache Creek R.O.W. dated April 1, 1971 in the Office of San Antonio River Authority and recorded in various parcels in Volume 2183, Page 137 of the Official Public Records of Real Property of Bexar County, Texas and, being more particularly described as follows:

BEGINNING: at a point (N = 13,702.866,424, E = 2,188,615,428) on the Northern line of Guadalupe Street, the south line of the said original N.C.B. 6495, at the Southwestern corner of this joint use agreement from which a ½ inch iron rod found in the Southeastern corner of a certain tract of land conveyed to Sultan Arabi, 5-13-71 in Volume 2183, Page 407 of the Official Public Records of Real Property of Bexar County, Texas, in N 84°19'57" W - 27.22 feet;

THENCE: N 00°15'50" E - 203.30 feet across the land designed as Urban Renewal Agency property of the said Apache Creek R.O.W. maps to a point for a corner of this joint use agreement;

THENCE: N 81°55'59" W - 89.95 feet continuing across the said Urban Renewal Agency property to a point for corner;

THENCE: N 51°13'11" W - 8.71 feet continuing across the said Urban Renewal Agency property to a point (N = 13,703.7283, E = 2,117.961,630) on the Southern line of El Paso Street, the Northern line of Lot 6, N.C.B. 7366 as shown on a plat recorded in Volume 1625, Page 243 of the Deed and Plat Records of Bexar County, Texas, said Lot 6 being a certain tract of land conveyed to the City of San Antonio in Volume 2183, Page 137 of the Official Public Records of Real Property of Bexar County, Texas, from which the calculated Northwestern corner of said Lot 6 bears N 84°11'26" W - 22.02 feet;

THENCE: S 84°11'26" E - 53.55 feet along the Southern line of said El Paso Street, the Northern line of said N.C.B. 7366 and N.C.B. 6492 to a point for the Northeastern corner of this joint use agreement.
THENCE:  S 35°51'31" E – 166.10 feet across the said area designated as Urban Renewal Agency property on the said Apache Creek Maps to a point for corner;

THENCE:  S 81°55'59" E – 28.85 feet continuing across the said area designated as Urban Renewal Agency property to a point on the Western line of said Apache Creek R.O.W., for a corner of this joint use agreement;

THENCE: Along a Western line of said Apache Creek R.O.W. with a curve to the right having a Delta angle of 37°21'32", a Radius of 338.37 feet, an Arc length of 220.63 feet and a Cord bearing of S 13°04'26" E – 216.74 feet to a point for a corner of said Apache Creek R.O.W., for a corner of this joint use agreement;

THENCE: S 05°36'20" E – 38.31 feet continuing along a Western line of the said Apache Creek R.O.W. to a point on the Northern line of said Guadalupe Street, the Southern line of the original line of said N.C.B. 6495, for the Southeastern corner of this joint use agreement;

THENCE: N 84°19'57" W – 25.14 feet along the Northern line of said Guadalupe Street to the POINT OF BEGINNING and containing 0.3337 acres (14,536.8 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared.
8005.00 P14-086 doeX

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE 12, 83393; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALING FACTOR OF 1.00017.

[Signature]
Ray L. Hackett
Registered Professional Land Surveyor
License Number 5573
FIELD NOTES DESCRIPTION

0.1295 ACRES (5,640.6 sq. ft.)

Joint Use Agreement

A 0.1295 acre (5,640.6 sq. ft.) joint use agreement being a portion of the original N.C.B. 7365 recorded in Volume 1625, Page 243 of the Deed and Plat Records of Bexar County, Texas located within the area designated as Urban Renewal Agency Property as shown on maps


Antonio River Authority and recorded in various parcels in Volume 2183, Page 137 of the

Official Public Records of Real Property of Bexar County, Texas also, being more particularly

described as follows:

BEGINNING: at a point (N = 13,703,311.584, E = 2,117,922.330) on the Northern line of

El Paso Street, the south line of the said original N.C.B. 7365 and the Southwestern corner of

this joint use agreement from which a calculated point for the Southwestern corner of said

N.C.B. 7365 bears N 84°07'31" W – 190.96 feet;

THENCE: N 00°15'.50" E – 203.37 feet across the area designated Urban Renewal Agency

property of the said Apache Creek R.O.W. map to a point for corner of this joint use

agreement;

THENCE: N 35°50'.36" W – 42.47 feet across said N.C.B. 7365 and across the said area

designated as Urban Renewal Agency property to a point for corner;

THENCE: N 57°52'.41" W – 47.18 feet continuing across said N.C.B. 7365 and the said

Urban Renewal Agency property to a point for corner;

THENCE: N 83°57'.05" W – 25.57 feet continuing across said N.C.B. 7365 and the said

Urban Renewal Agency property to a point on the Eastern line of South Hamilton Avenue the

western line of said N.C.B. 7365, for corner of this joint use agreement;

THENCE: N 09°13'.03" E – 100.99 feet along the Eastern line of said South Hamilton Avenue,

the Western line of said N.C.B. 7365 to a point of intersection of a Southern line of Apache

Creek R.O.W and the Eastern line of said South Hamilton Avenue for a corner of this joint

use agreement;

THENCE: S 85°22'.55" E – 4.99 feet across said N.C.B. 7365 and along a Southern line of

the said Apache Creek R.O.W. line to a point for corner;
THENCE: Continuing across said N.C.B. 7365 and along a Southern line of said Apache Creek R.O.W. with a curve to the right having a Delta angle of 33°52'18", a Radius of 361.15 feet, an Arc length of 213.50 feet and a Chord bearing of S 68°26'43" E – 210.41 feet to a point for corner;

THENCE: S 35°50'36" E – 52.57 feet deviating from the Apache Creek R.O.W. line and across the said N.C.B. 7365 and the said area designated as Urban Renewal Agency to a point on the Northwestern line of said El Paso Street, the Southeastern line of said N.C.B. 7365, for the Southeastern corner of this joint use agreement;

THENCE: N 87°51'16" W – 28.93 feet along the Northern line of said El Paso Street to a point for corner;

THENCE: N 84°07'31" W – 23.04 feet continuing along the Northern line of said El Paso Street to the POINT OF BEGINNING and containing 0.1295 acres (5,640.6 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared.

BEARINGS AND COORDINATES ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE 13393; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

[Signature]

Ray J. Hackett
Registered Professional Land Surveyor
License Number 5573
FIELD NOTES DESCRIPTION

0.2598 ACRES (11,315.3 sq. ft.)

Joint Use Agreement

A 0.2598 acre (11,315.3 sq. ft.) joint use agreement being of the area designated as Urban Renewal Agency Property as shown on maps Numed U.S.C.E. and U.R.A. Apache Creek R.O.W. dated April 1, 1971 in the office of San Antonio River Authority and recorded in various parcels in Volume 2183, Page 137 of the Official Public Records of Real Property of Bexar County, Texas also; being more particularly described as follows:

BEGINNING: at a point (N = 13,703,507.152, E = 2,117,247.427) on the southeasterly line of the Apache Creek R.O.W. for the Easternmost corner of this joint use agreement from which a PK Nail found for the Northwestern corner of Lot 32, N.C.B. A-61 El Paso Street Addition as shown on a plat recorded in Volume 9559, Page 28 of the Deed and Plat Records of Bexar County, Texas bears N 78°36'04" W – 85.36 feet and S 11°43’35" W – 9.40 feet

THENCE: N 78°36’04" W – 197.05 feet across the area designated as Urban Renewal Agency property of the said Apache Creek R.O.W. maps to a point for a corner of this joint use agreement;

THENCE: S 22°25’14" W – 18.45 feet continuing across the area designated as Urban Renewal Agency property of the said Apache Creek R.O.W. maps to a point for a corner of this joint use agreement;

THENCE: N 67°34’46" W – 150.00 feet continuing across the area designated as Urban Renewal Agency property of the said Apache Creek R.O.W. maps to a point for a corner of this joint use agreement;

THENCE: N 22°35’06" E – 28.00 feet continuing across the area designated as Urban Renewal Agency property of the said Apache Creek R.O.W. maps to a point for a corner of this joint use agreement;

THENCE: N 24°9’29" W – 20.43 feet continuing across the said area designated as Urban Renewal Agency property to point (N = 13,703,780.502, E = 2,116,920.245) on a Southwestern line of the said Apache Creek R.O.W., for the Northernmost corner of this joint use agreement, from which a 1 inch iron bar found on the Southern line of San Fernando Street for the Northwestern corner of Lot 19, N.C.B. 8350 – Union Reserve, Unit 2 as shown.
on a plat recorded in Volume 3025, Page 332 of the Deed and Plat Records of Bexar County, Texas bears S 61°33'57" W – 107.91 feet;

THENCE: Along a Southwestern line of the said Apache Creek R.O.W. line, a curve to the left having a Delta angle of 14°08'02", a Radius of 741.67 feet, an Arc length of 182.96 feet and a Chord bearing of S 40°29'09" E – 182.49 feet to a point for corner;

THENCE: S 27°49'29" E – 65.38 feet deviating from the Apache Creek R.O.W. line and across said the said Urban Renewal Agency property to a point for corner;

THENCE: S 78°36'04" E – 59.41 feet continuing across the said area designated as Urban Renewal Agency property to a point on a Southwestern line of the said Apache Creek R.O.W. line for a corner of this joint use agreement;

THENCE: Along a Southwestern line of the said Apache Creek R.O.W. line a curve to the left having a Delta angle of 10°33'11", a Radius of 741.67 feet, an Arc length of 136.60 feet and a Chord bearing of S 61°32'59" E – 136.41 feet to the POINT OF BEGINNING and containing 0.2598 acres (11,315.3 sq. ft.) of land, according to a survey made on the ground under my supervision

Corresponding plat prepared.
8005.00 P14-091.docx
REVISED 07-18-2016

BEARINGS AND COORDINATES ARE BASED ON THE LAMBERT, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE, 1983; COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALE FACTOR OF 1.00017.

[Signature]
Registered Professional Land Surveyor
License Number 5573
FIELD NOTES DESCRIPTION
0.0593 ACRES (2,583.3 sq. ft.)
Joint Use Agreement

A 0.0593 acre (2,583.3 sq. ft.) joint use agreement being a portion of a 3.8629 acre tract of land as described in a City of San Antonio Ordinance No. 42051, N.C.Bs. 8354, 3402, A-5 and A-6, being an agreement between the City of San Antonio and the Boys Clubs of San Antonio recorded in the Municipal Archives and Records of the City of San Antonio; being more particularly described as follows:

BEGINNING: at a point (N = 13,704,482,454, E = 2,116,370,985) on the eastern line of N.W. 19th street, for the calculated Northwestern corner of the said 3.8629 acre tract, a corner of the Apache Creek R.O.W. as shown on maps named U.S.C.E. and U.R.A. Apache Creek R.O.W. dated April I, 1971 in the office of the San Antonio River Authority, for the Northwestern corner of this joint use agreement;

THENCE: S 83°14'04" E - 70.95 feet along a Northern line of the said 3.8629 acre tract, a line of the said Apache Creek R.O.W. to a point for a corner of said 3.8629 acre tract, a corner of the said Apache Creek R.O.W. line, for a corner of this joint use agreement;

THENCE: Continuing along said line, a curve to the right forming a Dangl angle of 26°25'34", a Radius of 233.10 feet, an Arc length of 107.51 feet and a Bearing of S 70°01'11" E - 106.56 feet to a point (N = 13,704,652,684, E = 2,141,041.591) for the Easternmost corner of this joint use agreement;

THENCE: N 74°11'09" W - 313.76 feet across the said 3.8629 acre tract to a point for corner;

THENCE: S 87°01'14" W - 16.66 feet continuing across the said 3.8629 acre tract to a point for corner;

THENCE: N 31°26'16" E - 16.66 feet continuing across the said 3.8629 acre tract to a point for corner;

THENCE: N 31°26'16" E - 16.66 feet continuing across the said 3.8629 acre tract to a point for corner;
THENCE: S 87°01'14" W – 39.97 feet continuing across the said 3.8629 acre tract to a point on the Western line of the said 3.8629 acre tract, the Eastern line of said N.W. 19th street, for the Southwestern corner of this joint use agreement, from which the calculated Southwestern corner of the said 3.8629 acre tract bears S 05°57'16" W – 463.23 feet;

THENCE: N 05°57'16" E – 23.66 feet along the Eastern line of said N.W. 19th Street, the Western line of the said 3.8629 acre tract to the POINT OF BEGINNING and containing 0.0593 acres (2,583.3 sq. ft.) of land, according to a survey made on the ground under my supervision.

Corresponding plat prepared,
8065.00 P14-092.docx
REVISED 07-18-2016

BEARINGS AND COORDINATES ARE BASED ON LAMBERT CONFORMAL CONICAL, TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE NAD 83. COORDINATES SHOWN HEREON HAVE AN APPLIED SURFACE SCALING FACTOR OF 1.0001.
TO: San Antonio Water System Board of Trustees

FROM: Bruce A. Haby, Manager, Corporate Real Estate, and Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: REQUESTING THE SAN ANTONIO CITY COUNCIL TO DECLARE THE SAN ANTONIO WATER SYSTEM’S C5 CULEBRA-CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK, SAN GABRIEL PROJECT A PUBLIC NECESSITY

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached Resolution requests the San Antonio City Council to declare the San Antonio Water System’s (SAWS) C5 Culebra-Castroville to Laredo & C28 Zarzamora Creek, San Gabriel Project (the “Project”) a public necessity to obtain for public use the permanent sewer easements that are required for the Project’s construction and operation, and authorizes the General Counsel and/or designated Special Counsel to file eminent domain proceedings, if necessary.

- The Project that is the subject of the attached resolution will, if approved, authorize work that is required by Section V.B - Early Action Program of the Consent Decree between SAWS, the United States of America and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This Project was identified in the Comprehensive Wastewater Master Plan developed by the SAWS Master Planning Division. The project will replace and upsize sewer pipe which is in poor condition and require additional capacity.

- The Project will also construct approximately 11,000 linear feet of 24-inch, 27-inch, 30-inch, and 33-inch sewer main starting at W. Houston Street, going northwest and terminating at Culebra Road. Construction will also take place along Landa Ave. from Matyear Street to N. General McMullen. The alignment will follow Zarzamora Creek and terminate at N. San Gabriel. The estimated construction cost of this project is $6,400,000.00.
The Project will require the acquisition of real property being approximately 17 permanent sewer easements.

SAWS intends to use every effort available to obtain the required permanent easement land rights through good faith negotiations, but may require eminent domain if the negotiations fail.

The general location and general route of the Project is set out in Attachment I and Attachment II to the Resolution, attached hereto and incorporated herein for all purposes.

The requested Ordinance will be presented to the San Antonio City Council as soon as possible.

Staff recommends that the Board approve this Resolution.

FINANCIAL IMPACT:

The Project Fund will incur the acquisition costs and possible legal fees associated with the acquisition of the land rights necessary for this Project. Funding for these land rights are found in the 2017 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

Bruce A. Haby  
Manager, Corporate Real Estate

Nancy Belinsky  
Vice President and General Counsel

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Attachments:
I Project Area Map
II Project Site Map
C5 CULEBRA - CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK, SAN GABRIEL

LEGEND

🌟 PROJECT SITE

🌐 EDWARDS RECHARGE ZONE
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES DECLARING A PUBLIC NECESSITY FOR PUBLIC USE, THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE CITY OF SAN ANTONIO (THE “CITY”) BEING PERMANENT SEWER EASEMENTS (THE “EASEMENTS”), THE PROJECT CONSISTING OF APPROXIMATELY 11,000 LINEAR FEET OF SEWER MAIN STARTING AT W. HOUSTON STREET, GOING NORTHWEST AND TERMINATING AT CULEBRA ROAD, ALSO LANDA AVE. FROM MATYEAR STREET TO N. GENERAL MCMULLEN FOLLOWING ZARZAMORA CREEK AND TERMINATING AT N. SAN GABRIEL IN THE SOUTHWEST QUADRANT OF BEXAR COUNTY, TEXAS, FOR THE PUBLIC USE OF THE EXPANSION AND OPERATION OF THE SYSTEM THROUGH THE CONSTRUCTION OF PHASE 3 OF THE C5 CULEBRA-CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK, SAN GABRIEL PROJECT (THE “PROJECT”); REQUESTING THAT THE CITY COUNCIL OF THE CITY OF SAN ANTONIO (THE “CITY COUNCIL”) ADOPT AN ORDINANCE REAFFIRMING AND DECLARING THAT THE PROJECT IS FOR A PUBLIC USE AND A PUBLIC NECESSITY EXISTS FOR THE ACQUISITION OF THE EASEMENTS AND AUTHORIZING THE SYSTEM TO TAKE ALL APPROPRIATE ACTION TO ACQUIRE THE EASEMENTS BY NEGOTIATION AND/OR CONDEMNATION; FINDING THIS RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Phase 3 of the Project calls for design and installation of approximately 11,000 feet of a new sewer main located in the southwest quadrant of Bexar County; and

WHEREAS, the System has determined that acquisition of the Easements is necessary for the Project, the general location and general description of the Project being more particularly set out in Attachment I to this Resolution, and the route of the Project being depicted on Attachment II to this Resolution, both attached hereto and incorporated herein for all purposes; and
WHEREAS, the System intends to use every effort available to obtain the required Easements through good faith negotiations, but may require eminent domain if the negotiations fail; and

WHEREAS, the System finds that the acquisition of such Easements for the Project is necessary for the public health, safety, welfare, and best interests of the citizens of the System’s service area; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) affirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (ii) direct the System staff to negotiate the acquisition of the Easements, (iii) authorize and direct the institution and prosecution to conclusion of all necessary proceedings to condemn such Easements, in the event that the System’s staff is unable to acquire one or more parcels of the Easements by negotiation, (iv) request that the City Council adopt an ordinance to (a) reaffirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (b) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (c) declare that the conveyance of such Easements shall be to the City for the use and benefit of the System, and (d) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary, and (v) provide and approve funding for the acquisition of the Easements; now, therefore:

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

1. That the Project is hereby declared to be a necessary public project and a public necessity is hereby declared for the acquisition of the Easements for public use by negotiation and/or condemnation, if necessary, for the Project.

2. That a public necessity hereby exists to acquire the Easements over, under and across certain privately owned real property, by negotiation and/or condemnation, if necessary, for the expansion of the public sanitary sewer system as part of the Project.

3. That the System’s staff is hereby directed to negotiate with the owner(s) of the respective parcels for the acquisition of the Easements, to execute easements and/or sales agreements or other documents acquiring the Easements from the owners of the Easements and to finalize such acquisitions on behalf of the City, for the use and benefit of the System.

4. That in the event the System’s staff is unable to acquire one or more parcels of the Easements by negotiation by reason of its inability to agree with the owners thereof as to the value of the Easements, or is unable to acquire the Easements for any other reason, the System’s General Counsel and/or designated Special Counsel, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.
5. That the City Council of the City is hereby requested to (i) adopt an ordinance to reaffirm and declare that the Project is for a necessary public use and the acquisition of the Easements is for a public use and is a public necessity for the completion of the Project, (ii) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (iii) declare that the conveyance of such Easements shall be to the City for the use, benefit and control of the System, and (iv) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.

6. That funding for the acquisition of the Easements is found in the 2017 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

7. 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.

8. 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.

9. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary

Attachments:
I Description of general route and location of Project
II Depiction of Project route
Route Description

The Project will construct approximately 11,000 linear feet of 24-inch, 27-inch, 30-inch, and 33-inch sewer main starting at W. Houston Street, going northwest and terminating at Culebra Road. Construction will also take place along Landa Ave. from Matyear Street to N. General McMullen. The alignment will follow Zarzamora Creek and terminate at N. San Gabriel.

AFFECTING PROPERTY LOCATED IN:

New City Blocks: 3640, 3628, 8288, 8898, 8895, 8893, 8891, & 8887
C5 CULEBRA - CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK, SAN GABRIEL TO NW 23RD ST PHASE 3
TO: San Antonio Water System Board of Trustees  
FROM: Bruce A. Haby, Manager, Corporate Real Estate, and Nancy Belinsky, Vice President and General Counsel  
THROUGH: Robert R. Puente, President/Chief Executive Officer  
SUBJECT: REQUESTING THE SAN ANTONIO CITY COUNCIL TO DECLARE THE SAN ANTONIO WATER SYSTEM’S EAST SEWERSHED PACKAGE 3 – ROSILLO CREEK OUTFALL PROJECT A PUBLIC NECESSITY  

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached Resolution requests the San Antonio City Council to declare the San Antonio Water System’s (SAWS) East Sewershed Package 3 – Rosillo Creek Outfall Project (the “Project”) a public necessity to obtain for public use the temporary construction easements that are required for the Project’s construction and operation, and authorizes the General Counsel and/or designated Special Counsel to file eminent domain proceedings, if necessary.

- The Project that is the subject of the attached resolution will, if approved, authorize work that is required by Section V.B - Early Action Program of the Consent Decree between SAWS, the United States of America and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- The Project will rehabilitate approximately 5.54 miles of existing 30-inch to 42-inch sewer main utilizing Cured in Place Pipe (CIPP) along Rosillo Creek. The estimated construction cost for this Project is $15,500,000.00.

- The Project will require the acquisition of real property being approximately 25 temporary construction easements.

- SAWS intends to use every effort available to obtain the required temporary construction easement land rights through good faith negotiations, but may require eminent domain if the negotiations fail.

- The general location and general route of the Project is set out in Attachment I and Attachment II to the Resolution, attached hereto and incorporated herein for all purposes.

- The requested Ordinance will be presented to the San Antonio City Council as soon as possible.
Staff recommends that the Board approve this Resolution.

**FINANCIAL IMPACT:**

The Project Fund will incur the acquisition costs and possible legal fees associated with the acquisition of the land rights necessary for this Project. Funding for these land rights are found in the 2017 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

Bruce A. Haby  
Manager, Corporate Real Estate

Nancy Belinsky  
Vice President and General Counsel

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Attachments:
I  Project Area Map
II  Project Site Map
SAN ANTONIO WATER SYSTEM
PROJECT AREA MAP
ATTACHMENT I

Legend

🌟 Project Site

Edwards Recharge Zones

East Sewershed Package 3
Rosillo Creek Outfall Project
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES DECLARING A PUBLIC NECESSITY FOR PUBLIC USE, THE ACQUISITION OF REAL PROPERTY IN THE CITY OF SAN ANTONIO (THE “CITY”) BEING TEMPORARY CONSTRUCTION EASEMENTS (THE “EASEMENTS”), THE PROJECT CONSISTING OF APPROXIMATELY 5.54 MILES OF EXISTING 30-INCH TO 42-INCH SEWER MAIN UTILIZING CURED IN PLACE PIPE (CIPP) ALONG ROSILLO CREEK, IN THE SOUTHEAST AND NORTHEAST QUADRANTS OF BEXAR COUNTY TEXAS, FOR THE PUBLIC USE OF THE EXPANSION AND OPERATION OF THE SYSTEM THROUGH THE CONSTRUCTION OF THE EAST SEWERSHED PACKAGE 3 – ROSILLO CREEK OUTFALL PROJECT (THE “PROJECT”); REQUESTING THAT THE CITY COUNCIL OF THE CITY OF SAN ANTONIO (THE “CITY COUNCIL”) ADOPT AN ORDINANCE REAFFIRMING AND DECLARING THAT THE PROJECT IS FOR A PUBLIC USE AND A PUBLIC NECESSITY EXISTS FOR THE ACQUISITION OF THE EASEMENTS AND AUTHORIZING THE SYSTEM TO TAKE ALL APPROPRIATE ACTION TO ACQUIRE THE EASEMENTS BY NEGOTIATION AND/OR CONDEMNATION; FINDING THIS RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Project calls for rehabilitation of approximately 5.54 miles of existing sewer main located in the southeast and northeast quadrants of Bexar County; and

WHEREAS, the System has determined that acquisition of the Easements is necessary for the Project, the general location and general description of the Project being more particularly set out in Attachment I to this Resolution, and the route of the Project being depicted on Attachment II to this Resolution, both attached hereto and incorporated herein for all purposes; and

WHEREAS, the System intends to use every effort available to obtain the required Easements through good faith negotiations, but may require eminent domain if the negotiations fail; and

WHEREAS, the System finds that the acquisition of such Easements for the Project is necessary for the public health, safety, welfare, and best interests of the citizens of the System’s service area; and
WHEREAS, the San Antonio Water System Board of Trustees desires to (i) affirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (ii) direct the System staff to negotiate the acquisition of the Easements, (iii) authorize and direct the institution and prosecution to conclusion of all necessary proceedings to condemn such Easements, in the event that the System’s staff is unable to acquire one or more parcels of the Easements by negotiation, (iv) request that the City Council adopt an ordinance to (a) reaffirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (b) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (c) declare that the conveyance of such Easements shall be to the City for the use and benefit of the System, and (d) authorize the the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary, and (v) provide and approve funding for the acquisition of the Easements; now, therefore:

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

1. That the Project is hereby declared to be a necessary public project and a public necessity is hereby declared for the acquisition of the Easements for public use by negotiation and/or condemnation, if necessary, for the Project.

2. That a public necessity hereby exists to acquire the Easements over, under and across certain privately owned real property, by negotiation and/or condemnation, if necessary, for the expansion of the public sanitary sewer system as part of the Project.

3. That the System’s staff is hereby directed to negotiate with the owner(s) of the respective parcels for the acquisition of the Easements, to execute easements and/or sales agreements or other documents acquiring the Easements from the owners of the Easements and to finalize such acquisitions on behalf of the City, for the use and benefit of the System.

4. That in the event the System’s staff is unable to acquire one or more parcels of the Easements by negotiation by reason of its inability to agree with the owners thereof as to the value of the Easements, or is unable to acquire the Easements for any other reason, the System’s General Counsel and/or designated Special Counsel, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.

5. That the City Council of the City is hereby requested to (i) adopt an ordinance to reaffirm and declare that the Project is for a necessary public use and the acquisition of the Easements is for a public use and is a public necessity for the completion of the Project, (ii) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (iii) declare that the conveyance of such Easements shall be to the City for the use, benefit and control of the System, and (iv) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.
6. That funding for the acquisition of the Easements is found in the 2017 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

7. 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.

8. 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.

9. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary

Attachments:
I Description of general route and location of Project
II Depiction of Project route
Route Description

This Project will adjust approximately 29,000 LF of existing 30-inch through 42-inch gravity sewer main along Rosillo Creek between FM 1346 and just south of WW White located in the City of San Antonio and it’s ETJ in Southeast Bexar County.

AFFECTING PROPERTY LOCATED IN: NCB 10881; NCB 10846; NCB 18239; NCB 10852; NCB 10615; NCB 12887; NCB 10780; NCB 10849
TO: San Antonio Water System Board of Trustees

FROM: Bruce A. Haby, Manager, Corporate Real Estate, and Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: REQUESTING THE SAN ANTONIO CITY COUNCIL TO DECLARE THE SAN ANTONIO WATER SYSTEM’S E-19 SEGMENT II: SEGUIN ROAD TO NACOGDOCHES ROAD PROJECT A PUBLIC NECESSITY

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached Resolution requests the San Antonio City Council to declare the San Antonio Water System’s (SAWS) E-19 Segment II: Seguin Road to Nacogdoches Road Project (the “Project”) a public necessity to obtain for public use the permanent sewer easements and temporary construction easements that are required for the Project’s construction and operation, and authorizes the General Counsel and/or designated Special Counsel to file eminent domain proceedings, if necessary.

- The Project that is the subject of the attached resolution will, if approved, authorize work that is required by Section V.B - Early Action Program of the Consent Decree between SAWS, the United States of America and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This Project was identified in the Comprehensive Wastewater Master Plan developed by the SAWS Master Planning Division. The project will replace sewer pipe and eliminate a siphon, which are in poor condition and require additional capacity.

- This Project will upsize approximately three miles of existing 48-inch gravity sewer main with a larger diameter main and eliminate one siphon in the Eastern Sewershed along Salado Creek from a point near Seguin Road running north along Salado Creek to a point just north of Rittman Road. The estimated construction cost for this project is $33,000,000.00.

- The Project will require the acquisition of permanent sewer easements and temporary construction sewer easements, being approximately 31 parcels of which 22 parcels (4 permanent easements and 18 temporary construction easements) are privately owned.
• SAWS intends to use every effort available to obtain the required permanent and temporary easement land rights through good faith negotiations, but may require eminent domain if the negotiations fail.

• The general location and general route of the Project is set out in Attachment I and Attachment II to the Resolution, attached hereto and incorporated herein for all purposes.

• The requested Ordinance will be presented to the San Antonio City Council as soon as possible.

Staff recommends that the Board approve this Resolution.

FINANCIAL IMPACT:

The Project Fund will incur the acquisition costs and possible legal fees associated with the acquisition of the land rights necessary for this Project. Funding for these land rights are found in the 2016 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

Bruce A. Haby
Manager, Corporate Real Estate

Nancy Belinsky
Vice President and General Counsel

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments:
I  Project Area Map
II  Project Site Map
E-19 SEGMENT 2: SEGUIN ROAD TO NACOGDOCHES ROAD

LEGEND

🌟 PROJECT SITE

Edward's Aquifer Recharge Zone
E-19 SEGMENT 2: SEGUIN ROAD TO NACOGDOCHES ROAD
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES DECLARE A
PUBLIC NECESSITY FOR PUBLIC USE, THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE
CITY OF SAN ANTONIO (THE “CITY”) BEING PERMANENT SEWER EASEMENTS AND TEMPORARY
CONSTRUCTION EASEMENTS (COLLECTIVELY, THE “EASEMENTS”), THE PROJECT CONSISTING OF
APPROXIMATELY THREE MILES OF SEWER MAIN ALONG SALADO CREEK FROM A POINT JUST NORTH
OF RITTIMAN ROAD RUNNING NORTH ALONG SALADO CREEK TO A POINT JUST NORTH OF NE LOOP 410, IN
THE NORTHEAST QUADRANT OF BEXAR COUNTY, TEXAS, FOR THE PUBLIC USE OF THE EXPANSION AND
OPERATION OF THE SYSTEM THROUGH THE CONSTRUCTION OF THE E-19 SEGMENT IN SEGUN
ROAD TO NACOGDOCHES ROAD PROJECT (THE “PROJECT”); REQUESTING THAT THE CITY COUNCIL
OF THE CITY OF SAN ANTONIO (THE “CITY COUNCIL”) ADOPT AN ORDINANCE REAFFIRMING AND
DECLARING THAT THE PROJECT IS FOR A PUBLIC USE AND A PUBLIC NECESSITY EXISTS FOR THE
ACQUISITION OF THE EASEMENTS AND AUTHORIZING THE SYSTEM TO TAKE ALL APPROPRIATE ACTION TO
ACQUIRE THE EASEMENTS BY NEGOTIATION AND/OR CONDEMNATION; FINDING THIS RESOLUTION TO
HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A
SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Project calls for the construction of approximately three miles of
sewer main located in the northeast quadrant of Bexar County; and

WHEREAS, the System has determined that acquisition of the Easements is
necessary for the Project, the general location and general description of the Project being more
particularly set out in Attachment I to this Resolution, and the route of the Project being depicted
on Attachment II to this Resolution, both attached hereto and incorporated herein for all purposes; and

WHEREAS, the System intends to use every effort available to obtain the required
Easements through good faith negotiations, but may require eminent domain if the negotiations
fail; and
WHEREAS, the System finds that the acquisition of such Easements for the Project is necessary for the public health, safety, welfare, and best interests of the citizens of the System’s service area; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) affirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (ii) direct the System staff to negotiate the acquisition of the Easements, (iii) authorize and direct the institution and prosecution to conclusion of all necessary proceedings to condemn such Easements, in the event that the System’s staff is unable to acquire one or more parcels of the Easements by negotiation, (iv) request that the City Council adopt an ordinance to (a) reaffirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (b) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (c) declare that the conveyance of such Easements shall be to the City for the use and benefit of the System, and (d) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, as deemed necessary, and (v) provide and approve funding for the acquisition of the Easements; now, therefore:

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

1. That the Project is hereby declared to be a necessary public project and a public necessity is hereby declared for the acquisition of the Easements for public use by negotiation and/or condemnation, if necessary, for the Project.

2. That a public necessity hereby exists to acquire the Easements over, under and across certain privately owned real property, by negotiation and/or condemnation, if necessary, for the expansion of the public sanitary sewer system as part of the Project.

3. That the System’s staff is hereby directed to negotiate with the owner(s) of the respective parcels for the acquisition of the Easements, to execute easements and/or sales agreements or other documents acquiring the Easements from the owners of the Easements and to finalize such acquisitions on behalf of the City, for the use and benefit of the System.

4. That in the event the System’s staff is unable to acquire one or more parcels of the Easements by negotiation by reason of its inability to agree with the owners thereof as to the value of the Easements, or is unable to acquire the Easements for any other reason, the System’s General Counsel and/or designated Special Counsel, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.
5. That the City Council of the City is hereby requested to (i) adopt an ordinance to reaffirm and declare that the Project is for a necessary public use and the acquisition of the Easements is for a public use and is a public necessity for the completion of the Project, (ii) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (iii) declare that the conveyance of such Easements shall be to the City for the use, benefit and control of the System, and (iv) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.

6. That funding for the acquisition of the Easements is found in the 2016 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

7. 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.

8. 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.

9. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary

Attachments:
I  Description of general route and location of Project
II  Depiction of Project route
Route Description

The Project will upsize approximately three miles of existing 48-inch gravity sewer main with a 66-inch and 78-inch diameter main and eliminate one siphon in the Eastern Sewershed along the Salado Creek from a point just north of Rittiman Road running north along Salado Creek to a point just north of NE Loop 410.

AFFECTING PROPERTY LOCATED IN:

NCB:  12163, 12523, 13500, 13569, 14326
CB:  11220, 11230, 14540, 14930, 22170, 98561
E-19 SEGMENT 2: SEGUIN ROAD TO NACOGDOCHES ROAD

LEGEND

Project Limits
TO: San Antonio Water System Board of Trustees

FROM: Bruce A. Haby, Manager, Corporate Real Estate, and Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: REQUESTING THE SAN ANTONIO CITY COUNCIL TO DECLARE THE SAN ANTONIO WATER SYSTEM’S E-20 WURZBACH PARKWAY: JONES MALTSBERGER TO NACOGDOCHES PROJECT A PUBLIC NECESSITY

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached Resolution requests the San Antonio City Council to declare the San Antonio Water System’s (SAWS) E-20 Wurzbach Parkway: Jones Maltsberger to Nacogdoches Project (the “Project”) a public necessity to obtain for public use the permanent sewer easements and temporary construction easements that are required for the Project’s construction and operation, and authorizes the General Counsel and/or designated Special Counsel to file eminent domain proceedings, if necessary.

- The Project that is the subject of the attached resolution will, if approved, authorize work that is required by Section V.B - Early Action Program of the Consent Decree between SAWS, the United States of America and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This Project was identified in the Comprehensive Wastewater Master Plan developed by the SAWS Master Planning Division. The project will replace sewer pipe and eliminate a siphon, which are in poor condition and require additional capacity.

- This Project will upsize approximately four miles of existing 12-inch and 42-inch gravity sewer main with a larger diameter main and eliminate one siphon in the Eastern Sewershed beginning at a point near Nacogdoches Road running north along Salado Creek and Wurzbach Parkway to the intersection of Wurzbach Parkway and Jones Maltsberger Road, and construction of a tunnel beneath Wetmore Road and Union Pacific Railroad Track at Salado Creek. The estimated construction cost for this project is $25,500,000.00.

- The Project will require the acquisition of permanent sewer easements and temporary construction easements, being approximately 20 parcels of which 16 parcels (8 permanent easements and 8 temporary construction easements) are privately owned.
• SAWS intends to use every effort available to obtain the required permanent and temporary easement land rights through good faith negotiations, but may require eminent domain if the negotiations fail.

• The general location and general route of the Project is set out in Attachment I and Attachment II to the Resolution, attached hereto and incorporated herein for all purposes.

• The requested Ordinance will be presented to the San Antonio City Council as soon as possible.

Staff recommends that the Board approve this Resolution.

FINANCIAL IMPACT:

The Project Fund will incur the acquisition costs and possible legal fees associated with the acquisition of the land rights necessary for this Project. Funding for these land rights are found in the 2017 and 2018 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

Bruce A. Haby  
Manager, Corporate Real Estate

Nancy Belinsky  
Vice President and General Counsel

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Attachments:
I  Project Area Map
II  Project Site Map
SAN ANTONIO WATER SYSTEM
PROJECT AREA MAP
ATTACHMENT I

E-20 WURZBACH PARKWAY: JONES MALTSBERGER TO NACOGDOCHES

LEGEND

★ PROJECT SITE

EDWARDS AQUIFER RECHARGE ZONE
RESOLUTION NO.


WHEREAS, the Project calls for the construction of approximately four miles of sewer main located in the northeast quadrant of Bexar County; and

WHEREAS, the System has determined that acquisition of the Easements is necessary for the Project, the general location and general description of the Project being more particularly set out in Attachment I to this Resolution, and the route of the Project being depicted on Attachment II to this Resolution, both attached hereto and incorporated herein for all purposes; and

WHEREAS, the System intends to use every effort available to obtain the required Easements through good faith negotiations, but may require eminent domain if the negotiations...
fail; and

WHEREAS, the System finds that the acquisition of such Easements for the Project is necessary for the public health, safety, welfare, and best interests of the citizens of the System’s service area; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) affirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (ii) direct the System staff to negotiate the acquisition of the Easements, (iii) authorize and direct the institution and prosecution to conclusion of all necessary proceedings to condemn such Easements, in the event that the System’s staff is unable to acquire one or more parcels of the Easements by negotiation, (iv) request that the City Council adopt an ordinance to (a) reaffirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (b) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (c) declare that the conveyance of such Easements shall be to the City for the use and benefit of the System, and (d) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary, and (v) provide and approve funding for the acquisition of the Easements, now, therefore:

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

1. That the Project is hereby declared to be a necessary public project and a public necessity is hereby declared for the acquisition of the Easements for public use by negotiation and/or condemnation, if necessary, for the Project.

2. That a public necessity hereby exists to acquire the Easements over, under and across certain privately owned real property, by negotiation and/or condemnation, if necessary, for the expansion of the public sanitary sewer system as part of the Project.

3. That the System’s staff is hereby directed to negotiate with the owner(s) of the respective parcels for the acquisition of the Easements, to execute easements and/or sales agreements or other documents acquiring the Easements from the owners of the Easements and to finalize such acquisitions on behalf of the City, for the use and benefit of the System.

4. That in the event the System’s staff is unable to acquire one or more parcels of the Easements by negotiation by reason of its inability to agree with the owners thereof as to the value of the Easements, or is unable to acquire the Easements for any other reason, the System’s General Counsel and/or designated Special Counsel, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.
5. That the City Council of the City is hereby requested to (i) adopt an ordinance to reaffirm and declare that the Project is for a necessary public use and the acquisition of the Easements is for a public use and is a public necessity for the completion of the Project, (ii) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (iii) declare that the conveyance of such Easements shall be to the City for the use, benefit and control of the System, and (iv) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.

6. That funding for the acquisition of the Easements is found in the 2017 and 2018 Capital Improvement Program, Wastewater Core Business, Main Replacement - Sewer Category.

7. 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.

8. 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.

9. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary

Attachments:
I Description of general route and location of Project
II Depiction of Project route
Route Description

The Project will upsize approximately four miles of 12-inch to 42-inch wastewater pipeline with larger pipe up to 54-inch diameter and eliminate one siphon in the Eastern Sewershed along Salado Creek. The Project extends from a point south of Nacogdoches Road generally following Salado Creek and Wurzbach Parkway to the intersection of Wurzbach Parkway and Jones Maltsberger Road. The Project also involves the installation of a separate tunnel beneath Wetmore Road and Union Pacific Railroad tracks to route temporary above ground sewer bypass piping currently providing relief to the existing E-20 sewer pipeline until such time as segment 1 of the proposed Project is completed.

AFFECTING PROPERTY LOCATED IN:

New City Blocks: 8644, 11964, 13733, 13748, 13752, 13753, 17285, 17440
County Blocks: 5013
TO: San Antonio Water System Board of Trustees

FROM: Bruce A. Haby, Manager, Corporate Real Estate, and Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: REQUESTING THE SAN ANTONIO CITY COUNCIL TO DECLARE THE SAN ANTONIO WATER SYSTEM’S W-1 LEON CREEK – PHASE 1 - HWY 151 TO HWY 90 PROJECT A PUBLIC NECESSITY

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached Resolution requests the San Antonio City Council to declare the San Antonio Water System’s (SAWS) W-1 Leon Creek – Phase 1 - Hwy 151 to Hwy 90 Project (the “Project”) a public necessity to obtain for public use the permanent sewer easements and temporary construction easements that are required for the Project’s construction and operation, and authorizes the General Counsel and/or designated Special Counsel to file eminent domain proceedings, if necessary.

- The Project that is the subject of the attached resolution will, if approved, authorize work that is required by Section V.B - Early Action Program of the Consent Decree between SAWS, the United States of America and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This Project was identified in the Comprehensive Wastewater Master Plan developed by the SAWS Master Planning Division. The project will replace sewer pipe and eliminate a siphon, which are in poor condition and require additional capacity.

- This Project will replace approximately 7,850 linear feet of existing 42-inch gravity sewer main with a 66-inch diameter gravity sewer in the Western Sewershed along Leon Creek from a point approximately 3,200 linear feet north of Hwy 151 on Leon Creek to a point approximately 4,000 linear feet south of Hwy 151 on Leon Creek. The estimated construction cost for this project is $7,630,560.00.

- The Project will require the acquisition of real property being six permanent sewer easements and four temporary construction easements.
• SAWS intends to use every effort available to obtain the required permanent and temporary easement land rights through good faith negotiations, but may require eminent domain if the negotiations fail.

• The general location and general route of the Project is set out in Attachment I and Attachment II to the Resolution, attached hereto and incorporated herein for all purposes.

• The requested Ordinance will be presented to the San Antonio City Council as soon as possible.

Staff recommends that the Board approve this Resolution.

FINANCIAL IMPACT:

The Project Fund will incur the acquisition costs and possible legal fees associated with the acquisition of the land rights necessary for this project. Funding for these land rights are found in the 2015 Capital Improvement Program, Wastewater Core Business, Main Replacement – Sewer Category. The job number is 15-4508.

Bruce A. Haby
Manager, Corporate Real Estate

Nancy Belinsky
Vice President and General Counsel

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments:
I  Project Area Map
II  Project Site Map
SAN ANTONIO WATER SYSTEM
PROJECT AREA MAP
ATTACHMENT I

W-1 LEON CREEK – PHASE 1 - HWY 151 TO HWY 90 PROJECT

LEGEND

★ PROJECT SITE

EDWARDS AQUIFER RECHARGE ZONE
SAN ANTONIO WATER SYSTEM
PROJECT SITE MAP
ATTACHMENT II

W-1 LEON CREEK – PHASE 1 - HWY 151 TO HWY 90 PROJECT

LEGEND
- PROJECT LIMITS
- Edwards Aquifer Recharge Zone
OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES DECLARING A PUBLIC NECESSITY FOR PUBLIC USE, THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE CITY OF SAN ANTONIO (THE “CITY”) BEING PERMANENT SEWER EASEMENTS AND TEMPORARY CONSTRUCTION EASEMENTS (THE “EASEMENTS”), THE PROJECT CONSISTING OF THE REPLACEMENT OF SEWER MAIN ALONG LEON CREEK FROM A POINT APPROXIMATELY 3,200 LINEAR FEET NORTH OF HWY 151 ON LEON CREEK TO A POINT APPROXIMATELY 4,000 LINEAR FEET SOUTH OF HWY 151 ON LEON CREEK, IN THE SOUTHWEST QUADRANT OF BEXAR COUNTY, TEXAS, FOR THE PUBLIC USE OF THE EXPANSION AND OPERATION OF THE SYSTEM THROUGH THE CONSTRUCTION OF THE W-1 LEON CREEK – HWY 151 TO HWY 90 PROJECT (THE “PROJECT”); REQUESTING THAT THE CITY COUNCIL OF THE CITY OF SAN ANTONIO (THE “CITY COUNCIL”) ADOPT AN ORDINANCE REAFFIRMING AND DECLARING THAT THE PROJECT IS FOR A PUBLIC USE AND A PUBLIC NECESSITY EXISTS FOR THE ACQUISITION OF THE EASEMENTS AND AUTHORIZING THE SYSTEM TO TAKE ALL APPROPRIATE ACTION TO ACQUIRE THE EASEMENTS BY NEGOTIATION AND/OR CONDEMNATION; FINDING THIS RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Project calls for design and installation of approximately 7,850 linear feet of gravity sewer main located in southwest quadrant of Bexar County; and

WHEREAS, the System has determined that acquisition of the Easements is necessary for the Project, the general location and general description of the Project being more particularly set out in Attachment I to this Resolution, and the route of the Project being depicted on Attachment II to this Resolution, both attached hereto and incorporated herein for all purposes; and

WHEREAS, the System intends to use every effort available to obtain the required Easements through good faith negotiations, but may require eminent domain if the negotiations fail; and
WHEREAS, the System finds that the acquisition of such Easements for the Project is necessary for the public health, safety, welfare, and best interests of the citizens of the System’s service area; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) affirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (ii) direct the System staff to negotiate the acquisition of the Easements, (iii) authorize and direct the institution and prosecution to conclusion of all necessary proceedings to condemn such Easements, in the event that the System’s staff is unable to acquire one or more parcels of the Easements by negotiation, (iv) request that the City Council adopt an ordinance to (a) reaffirm and declare that the Project is for a public use and the acquisition of the Easements is for public use and is a public necessity for the completion of the Project, (b) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (c) declare that the conveyance of such Easements shall be to the City for the use and benefit of the System, and (d) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary, and (v) provide and approve funding for the acquisition of the Easements; now, therefore:

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

1. That the Project is hereby declared to be a necessary public project and a public necessity is hereby declared for the acquisition of the Easements for public use by negotiation and/or condemnation, if necessary, for the Project.

2. That a public necessity hereby exists to acquire the Easements over, under and across certain privately owned real property, by negotiation and/or condemnation, if necessary, for the expansion of the public sanitary sewer system as part of the Project.

3. That the System’s staff is hereby directed to negotiate with the owner(s) of the respective parcels for the acquisition of the Easements, to execute easements and/or sales agreements or other documents acquiring the Easements from the owners of the Easements and to finalize such acquisitions on behalf of the City, for the use and benefit of the System.

4. That in the event the System’s staff is unable to acquire one or more parcels of the Easements by negotiation by reason of its inability to agree with the owners thereof as to the value of the Easements, or is unable to acquire the Easements for any other reason, the System’s General Counsel and/or designated Special Counsel, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.
5. That the City Council of the City is hereby requested to (i) adopt an ordinance to reaffirm and declare that the Project is for a necessary public use and the acquisition of the Easements is for a public use and is a public necessity for the completion of the Project, (ii) authorize the System to take all appropriate action to acquire the Easements by negotiation and/or condemnation, (iii) declare that the conveyance of such Easements shall be to the City for the use, benefit and control of the System, and (iv) authorize the System’s General Counsel and/or designated Special Counsel to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.

6. That funding for the acquisition of the Easements is found in the 2015 Capital Improvement Program, Wastewater Core Business, Main Replacement – Sewer Category. The job number is 15-4508.

7. 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 the resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

8. 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.

9. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_________________________
Berto Guerra, Jr., Chairman

ATTEST:

_________________________
Ernesto Arrellano, Jr., Secretary

Attachments:
I Description of general route and location of Project
II Depiction of Project route
Route Description

This project will replace sewer main along Leon Creek from a point approximately 3,200 linear feet north of Highway 151 on Leon Creek to a point approximately 4,000 linear feet south of Highway 151 on Leon Creek.

PROJECT LOCATED IN: NCB 11493, 15330, 15331
TO: San Antonio Water System Board of Trustees

FROM: Darren Thompson, Director, Water Resources, and Donovan Burton, Vice President, Water Resources and Governmental Relations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPOINTING NEW MEMBERS TO THE CITIZENS ADVISORY PANEL THROUGH DECEMBER 31, 2018, TO SERVE OUT THE TERM OF UNEXPIRED VACANCIES

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution appoints two members to the Citizens Advisory Panel (CAP) through December 31, 2018, to complete the terms of the mid-year vacancies. The CAP provides input to the Board of Trustees (Board) regarding water resource policies, plans and projects.

- The CAP was created by Resolution No.98-141 on June 16, 1998, which established the charge for the committee and appointed its initial members. Bylaws created by the CAP and approved by the Board through Resolution No. 07-382 on November 6, 2007 and amended by the Board through Resolution No. 10-113 on March 2, 2010, govern membership goals and CAP structure. Article II, Section 7 of the bylaws describes the procedures to fill vacancies.

- The CAP is charged with supporting the development of long-term water resource plans and periodic updates to those plans, and providing feedback to staff as to how well the proposed policies, plans, and projects respond to citizen concerns.

- CAP members are selected to be a representative of the community, in terms of expertise, geography, and interests. Criteria for selection include interest/knowledge of water resource issues; commitment to a consensus-building approach to solving water resource issues; willingness to participate in meetings; and absence of any conflict of interest, among other items.

- The CAP will hold 10 general membership meetings per calendar year and the meetings shall be held on the third Tuesday of each month.

- Staff recommends the appointment of new CAP nominees, Cullen Jones, and Suzanne de Leon to the CAP for a term to commence April 4, 2017, and expire December 31, 2018. This is specified in Attachment I.
Appointing New Member to the Citizens Advisory Panel

- Cullen Jones lives in San Antonio and represents Council District 2 and the Dignowity Hill Historic District
- Suzanne de Leon is Mayor of the City of Balcones Heights and was selected by the Greater Bexar County Council of Cities (GBCCC) to represent suburban cities on the Citizens Advisory Panel.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

There is no financial impact associated with this resolution.

Darren Thompson, Director
Water Resources

Donovan Burton, Vice President
Water Resources and Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachment:
I. Citizens Advisory Panel Appointee
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPOINTING CULLEN JONES AND SUZANNE DE LEON AS NEW MEMBERS TO THE CITIZENS ADVISORY PANEL FOR A TERM EXPIRING DECEMBER 31, 2018 TO SERVE OUT THE TERM OF THE CURRENT MID-YEAR VACANCIES; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) Board of Trustees (the “Board”) is committed to community involvement in major water resource policies, plans and projects; and

WHEREAS, in order to achieve this goal, the System created the Citizens Advisory Panel (the “CAP”) on June 16, 1998, by Resolution No. 98-141; and

WHEREAS, the purpose of the CAP is to involve the community in water resource policies; and

WHEREAS, mid-term vacancies exist and the President/Chief Executive Officer is desirous to fill these vacancies; and

WHEREAS, it is appropriate to provide continuity within the committee and provide that the System’s Board will fill vacancies for the unexpired term of committee members; and

WHEREAS, the San Antonio Water System’s Board desires to appoint Cullen Jones and Suzanne de Leon to the CAP to serve out the term of the current mid-year vacancies expiring December 31, 2018; now, therefore

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

1. That Cullen Jones and Suzanne de Leon, identified on Attachment I hereto, are hereby appointed to the CAP to serve out the term of the current mid-year vacancies expiring December 31, 2018.

2. 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.

3. 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.

4. This resolution takes effect immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary
## ATTACHMENT I

### 2017 New Members to Fill Vacancy of Mid-Year Unexpired Term

<table>
<thead>
<tr>
<th>Name</th>
<th>Represents</th>
<th>First Term</th>
<th>Current Term</th>
</tr>
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<tbody>
<tr>
<td>Cullen Jones</td>
<td>Dignowity Hill Historic District</td>
<td>April 4, 2017 – Dec. 31, 2018</td>
<td>2017-2018</td>
</tr>
</tbody>
</table>
TO: San Antonio Water System Board of Trustees
FROM: Daniel Crowley, Director, Customer Service; Agnes Barard, Vice President, Customer Service
THROUGH: Robert R. Puente, President/Chief Executive Officer
SUBJECT: APPROVING AN INTERLOCAL AGREEMENT TO PROVIDE SEWER BILLING SERVICES FOR LEON SPRINGS UTILITY COMPANY

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves a revised interlocal agreement between the San Antonio Water System (the “System”) and Leon Springs Utility Company (“Leon Springs”) for sewer billing services.

- Leon Springs’ Certificate of Convenience and Necessity (CCN) for sewer service is situated on approximately 1,500 acres on San Antonio's northwest side, in a neighborhood known as the Dominion.
- The System is the provider of water service in Leon Springs’ sewer CCN.
- The System has a long history of providing Leon Springs with sewer customer billing, under an interlocal billing agreement.
- The existing interlocal agreement between the System and Leon Springs for sewer billing services has expired and an updated agreement is needed.
- The System maintains similar billing agreements with other municipalities whose residents are System retail water customers.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The proposed interlocal agreement provides that Leon Springs will pay the System the following fees for its services related to billing and collection of sewer and storm water charges:

(a) $0.85 per customer per billing period,
(b) 0.8% of gross billings per billing period to cover uncollectable billings.

It is estimated that SAWS will receive $17,200.00 per year from this agreement.
The new fees will be effective immediately upon execution of the agreement and are subject to an increase annually based on cost of providing customer service and billing functions.

Daniel Crowley  
Director, Customer Service

Agnes Barard  
Vice President, Customer Service

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Attachment:

1. Map of the Leon Springs Sewer CCN
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SAN ANTONIO WATER SYSTEM AND LEON SPRINGS UTILITY COMPANY, FOR SEWER BILLING SERVICES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE INTERLOCAL AGREEMENT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Dominion neighborhood is situated on approximately 1,500 acres on San Antonio's northwest side; and

WHEREAS, the San Antonio Water System (the “System”) has a Certificate of Convenience and Necessity (CCN) to provide water service and Leon Springs Utility Company (“Leon Springs”) has a CCN to provide wastewater service in the Dominion area; and

WHEREAS, since the System is the water service provider to the development and Leon Springs is the wastewater service provider, Leon Springs wishes the System to bill the development’s occupants for sewer service charges in addition to the System’s water service charges, and has offered to pay the System to provide the sewer billing services under the terms of an interlocal agreement; and

WHEREAS, the System maintains similar billing agreements with other municipalities whose residents are System retail water customers and would like to extend a similar agreement to Leon Springs; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve the interlocal agreement with Leon Springs Utility Company for sewer billing services, and (ii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the interlocal agreement between the San Antonio Water System and Leon Springs Utility Company; now, therefore:

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

1. That the interlocal agreement between the San Antonio Water System and Leon Springs Utility Company for sewer billing services is hereby approved.

2. That the President/Chief Executive Officer or his duly appointed designee is hereby
authorized to execute the interlocal agreement.

3. 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.

4. If any part, section, paragraph, sentence, phrase of 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.

5. That this Resolution shall take effect immediately from and upon passage hereof.

PASSED AND APPROVED this the 4th day of April, 2017.

__________________________________
Berito Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary

Attachment:
1. Interlocal Agreement
AGREEMENT BETWEEN
SAWS AND THE LEON SPRINGS UTILITY COMPANY

This Interlocal Agreement (the “Agreement”) is entered into, in duplicate originals, and effective on this 4th day of April, 2017, by and between the San Antonio Water System, a wholly owned municipal water and sewer utility of the City of San Antonio, (“SAWS”), as authorized by SAWS Board Resolution No. __________, which was passed on April 4, 2017, and the Leon Springs Utility Company (“LSUC”), an Investor owned wastewater treatment facility located in Bexar County, as authorized by the Vice President of the Utility, Larry Slayter, on __________, 2017, together the “Parties.”

RECITALS

WHEREAS, SAWS will provide water service to some of the same customers which will be served by LSUC’s’s sanitary sewer system; and

WHEREAS, LSUC is an Investor owned wastewater treatment facility located in Bexar County located in the San Antonio area and is adjacent to SAWS’ water and/or wastewater service areas; and

WHEREAS, LSUC has offered to pay SAWS to provide LSUC with billing services for sewer service charges to certain of its customers; and

WHEREAS, SAWS has accepted the offer of LSUC to perform such services on a year-to-year basis for up to a total term of five (5) years with a provision that service may continue to be provided after this term until a successor agreement is executed between the parties; NOW THEREFORE:

The Parties hereto agree as follows:

1.00 Purpose and Scope of Services.

1.01 Purpose. The Parties acknowledge that the intent of this Agreement is for SAWS to provide LSUC with billing services for sewer service charges fees to its customers.

1.02 Scope of Services

(a) SAWS shall only bill customers of LSUC who also receive SAWS’ water service. SAWS shall bill such customers for LSUC’s sewer service charges at rates determined by LSUC per month for each customer for each service and shall receive the payments made for such charges. Such rates are to be
determined by LSUC and approved by the Texas Public Utility Commission, and as may be amended.

(b) SAWS shall provide LSUC with the names and addresses of new water accounts as they are established. LSUC agrees to be solely responsible for responding to questions from customers and for resolving all customer issues with respect to the administration and assessment of wastewater charges. Furthermore, LSUC will be responsible for informing SAWS of billing adjustments needed to be made for individual customer accounts. In no event, however, shall SAWS be required to make any retroactive billing adjustments.

(c) In addition to notifying SAWS of the initial rates to be billed for sewer services to each customer by SAWS, LSUC shall notify its customers and SAWS in writing of any changes in the rates for sewer service charges including the dates such rates are to be applied to billing not less than thirty (30) days prior to the scheduled billing date of LSUC’s customers. Furthermore, if LSUC’s establishes a sewer services rate in terms of a cost per hundred cubic feet, LSUC shall provide SAWS a converted sewer service rate amount in terms of a cost per hundred gallons for use by SAWS for customer consumption billing purposes.

(d) The first billing hereunder shall be made as determined by agreement between management of LSUC and SAWS. SAWS shall bill LSUC’s customers thereafter at the same periods and on the same cycle of approximately 30 days’ duration for which it bills for its own water service to said customers. SAWS shall utilize its standard billing and collection procedures.

2.0 Term and Expiration of Services

2.01 The effective date of this Agreement shall be on the date of execution by both parties and after the final approval by both the SAWS Board and the LSUC. SAWS shall begin to provide services identified in the Agreement upon receipt of LSUC’s written authorization to proceed.

2.02 This term of this Agreement shall be five (5) years after the effective date renewed. The terms of this Agreement may remain in effect after the expiration date until a successor agreement is executed between the parties so long as neither party notifies the other party in writing of its intent to terminate this Agreement.

3.00 Payment for Services

3.01 Fees. LSUC shall pay SAWS the following fees for its services related to billing and collection of charges:

(a) $0.85 per customer per billing period.
(b) 0.8% of gross billings per billing period to cover uncollectible billings.

(c) Such Fees are subject to change on January 1 of each year. The Fee will be based upon an allocation of SAWS’ cost of providing customer service and billing functions. Prior to January 1 of each year, SAWS will notify LSUC of any such adjustment in Fees.

(d) Up to a limit stated below, LSUC’s shall be responsible for the set-up costs of changing the automated billing system of SAWS to accommodate LSUC’s wastewater billing requirement. SAWS shall provide a detailed statement of final set-up costs within 60 days of the initiation of wastewater billing services for LSUC. Within 60 days of the delivery by SAWS of the statement of set-up costs to LSUC, LSUC shall remit to SAWS an amount equal to SAWS’ stated costs; however, this amount shall be no greater than $5,000.00. SAWS reserves the right to discontinue wastewater billing services in the event of non-payment of the set-up costs by the stated deadline.

3.02 Remittance.

(a) By the 15th day of the first month after the month in which the last applicable billing cycle ended, SAWS shall furnish to LSUC a Sewer Accounts Billable Consumption Report and a Billing Summary Report for sewer accounts.

(b) After deducting (1) applicable per customer billing charges, (2) 0.8% of gross billings to cover uncollectible billings, (3) all applicable customer late penalty fees, and (4) all applicable adjustments to sewer billings made as a result of customer inquiry according to adjustment guidelines established by LSUC, SAWS shall remit the net amount to LSUC by the 15th day of the first month after the month in which the last applicable billing cycle ended.

(c) Any adjustments or corrections needed to the above remittance to LSUC shall be made by SAWS in the following month's remittance.

(d) The Sewer Water Accounts Billable Consumption Report and the Billing Summary Report to be provided to LSUC by SAWS under Section 3.02(a) above and the Winter Average Reports (the “Reports”) will be submitted in an electronic format mutually acceptable to both Parties. LSUC will designate in writing the name and contact information of LSUC’s employee to receive the Reports.

4.0 Liability, Indemnity and Insurance

4.01 SAWS shall not be responsible for any direct, indirect, consequential or incidental damages of any kind or nature that result from or are related to SAWS' conduct under this Agreement.
4.02 To the extent allowed by law, each Party agrees to indemnify and hold harmless the other Party, its officers, agents, and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys’ fees, for injury to or death of any person, or for damage to any property, arising out of, or in connection with, SAWS’ provision of the billing services, contemplated under this Agreement, where such injuries, death or damages are caused by the joint negligence of each Party, its employees, contractors, or agents. It is the EXPRESSED INTENTION of both Parties to this Agreement that the indemnity provided for in this paragraph is INDEMNITY BY each Party TO INDEMNIFY AND PROTECT the other Party from the consequences of its own comparative share of negligence. Since SAWS shall be performing governmental functions on behalf of LSUC’s, LSUC’s shall further assist SAWS in asserting any and all sovereign governmental immunity rights or limitations in defending any claims made against SAWS related to any work performed on behalf of LSUC’s.

4.03 Both parties shall name the other party as an additional insured under its current respective insurance policy, maintain the additional insured requirement throughout the term of this Agreement, and furnish certificates of coverage to the other party upon request, including, a Certificate of Insurance coverage indicating the Commercial General Liability policy data and the Additional Insured endorsement.

4.04 Billing errors. SAWS shall not be responsible to LSUC’s or its customers for any over billing or under-billings of LSUC’s sewer customers. Any refunds for over-billings will be paid for by, and be the responsibility of LSUC’s and LSUC’s shall have the authority to decide whether to back bill customers who were under-billed, so long as it is consistent with applicable law. Any such back-billing shall be done at LSUC’s discretion and expense.

4.05 Record keeping. LSUC will be responsible for reviewing all Billing data and shall notify SAWS of any Billing issues within 60 days. SAWS will be responsible for correcting any Billing issues identified by LSUC in the following Billing cycle. SAWS will not be held liable for billing misclassification of customer data prior to notification date.

4.06 Release of liability. SAWS has agreed to pay LSUC within thirty (30) days after the effective date of this Agreement, a cash settlement of $31,212.48 relating to payments by LSUC customers which were improperly classified as SAWS sewer customers. Such amount includes an adjustment relating to payments made by SAWS sewer customers which were improperly classified as LSUC sewer customers. In exchange for this settlement, each Party agrees to release the other from any additional liability relating to billing errors or misclassification of customers prior to the date of this agreement.
5.0 Alterations to Agreement and Scope of Work

No amendments to this Agreement shall be considered valid by either Party unless they are in writing and approved by each Party's respective governing body.

6.0 Default and Termination

6.01 If either Party breaches any term, or terms, of this Agreement, then the breaching party shall have thirty (30) days from the date that it receives written notification of the breach from the other Party to commence good faith efforts to cure such breach. If the breach has not been cured within a reasonable period of time, then the non-breaching Party may terminate this Agreement by providing thirty (30) days written notice of its intent to terminate.

6.02 This Agreement may be unilaterally terminated at will, without cause, by either party upon written notice by certified mail ninety (90) days in advance of the desired effective date of termination.

7.0 Miscellaneous Provisions

7.01 Assignment. No assignment of this Agreement, in whole or in part for any purpose shall be made by either LSUC or SAWS without the prior written consent of the other Party. Subject to this limitation, this Agreement shall bind and inure to the benefit of the successors and assigns of the Parties.

7.02 Notices. All written notices required by the terms of this Agreement shall be in writing and deposited in the United States mail addressed to such Party at the address set forth below:

If to Leon Springs Utility Company:

Leon Springs Utility Company
Laura Syphers, President
14855 Blanco Road, Suite 305
San Antonio, TX  78216

If to SAWS:

San Antonio Water System
These addressees and addresses may be changed by either Party by notice in writing to the other Party.

7.01 Interpretation of Agreement. This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion thereof.

7.02 Severability. If for any reason, any one or more paragraphs of this Agreement are held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining paragraphs of the Agreement as a whole, but shall not be confined to the specific paragraphs, clauses, or paragraphs of this Agreement held legally invalid.

7.03 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior Agreements, understandings and arrangements, oral or written, between the parties thereto with respect to the subject matter hereof.

7.04 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Texas and the venue for any cause of action shall be brought in Bexar County, Texas.

7.05 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to one and the same instrument.

7.06 No Waivers. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

7.07 Authority to Agreement. LSUC’s hereby affirms that it has the authority to enter into this Agreement. SAWS hereby affirms that it has the authority to enter into this Agreement pursuant to a duly adopted resolution of its Board of Trustees and that it’s President/Chief Executive Officer has the authority to execute this Agreement. Each party certifies that the services specified above are necessary and essential for activities that are properly within the statutory functions of each party and serve the interest of efficient and economical administration of each entity.

7.08 No Third Party Beneficiaries. Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy, or right of any kind, it being the
intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

7.09 Force Majeure. If by reason of Force Majeure, a Party shall be rendered unable in whole or in part to carry out its obligations under this Agreement in accordance with the terms and conditions of this Agreement, it shall not be considered a breach of this Agreement. The term "Force Majeure" as used in this Agreement shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of the public enemy, orders of any kind of the federal or state government, or any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, the partial or entire failure of a Party, or any other causes not reasonably within the control of a Party.

LEON SPRINGS UTILITY COMPANY:

By: ____________________________________
Name: Larry W. Slayter
Title: Vice President

SAN ANTONIO WATER SYSTEM:

By: ____________________________________
Name: Robert R. Puente
Title: President/Chief Executive Officer

ACKNOWLEDGMENTS

STATE OF TEXAS

COUNTY OF BEXAR
This instrument was acknowledged before me on _________________, 2016, by Larry W. Slayter, Vice President of Leon Springs Utility Company, an investor owned wastewater treatment facility located in Bexar County, Texas.

____________________________________
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on _________________, by Robert R. Puente, President/Chief Executive Officer of the San Antonio Water System, a Texas municipal corporation, on behalf of said corporation.

___________________________________
Notary Public, State of Texas
TO: San Antonio Water System Board of Trustees

FROM: Yvonne C. Torres, Director, Purchasing, and Douglas P. Evanson, Senior Vice President and Chief Financial Officer

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVING AN INTERLOCAL AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO FOR PROFESSIONAL DEVELOPMENT TRAINING

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves an Interlocal Agreement for Professional Development Training to be provided to the San Antonio Water System (SAWS) by The University of Texas Health Science Center at San Antonio (UTHSC). Professional development training will be conducted either at UTHSC or onsite at SAWS facilities.

- UTHSC provides professional development training that is needed by SAWS.
- SAWS encourages and, as appropriate, requires its employees to pursue safety, technical skills, and other professional development training.
- The professional developmental training provided by UTHSC to SAWS employees will be used to maintain a safer, more skilled, and increasingly professional workforce.
- Utilizing UTHSC to provide professional developmental training enables SAWS to coordinate training across the company, to standardize the quality, content, and effectiveness of training offerings, to ensure compliance with legal and organizational purchasing requirements, and to achieve substantial cost savings.
- UTHSC provides class management ability, quality assurance; quality of appropriate courses offered and scheduling flexibility.
- The Interlocal Agreement provides for the ability to administratively update the “Exhibit” of the Interlocal Agreement which provides for the description of services and associated class costs, through mutual written consent between SAWS and UTHSC.
- The Interlocal Agreement will be for a term of one year and will be automatically renewed for additional one-year periods or until terminated by either party.
The University of Texas Health Science Center

Future awards for Professional Training Services provided by UTHSC will be brought to the SAWS Board of Trustees for approval as required in accordance with the SAWS Purchasing policies and procedures.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Approval of the Interlocal Agreement will have no immediate financial impact to SAWS; however, purchasing of Professional Developmental Training courses through this agreement may result in future cost to SAWS.

Yvonne Torres  
Director, Purchasing

Douglas P. Evanson, Senior Vice President and Chief Financial Officer

Robert R. Puente  
President/Chief Executive Office
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING AN INTERLOCAL AGREEMENT WITH THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO FOR PROFESSIONAL DEVELOPMENT TRAINING SERVICES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER TO EXECUTE THE INTERLOCAL AGREEMENT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) wishes to continuously improve the organization’s operations and professionalism through training and development of its employees through safety, technical skills, and professional development training; and

WHEREAS, the professional development training courses offered by The University of Texas Health Science Center at San Antonio enable the System to achieve these objectives; and

WHEREAS, both the System and The University of Texas Health Science Center at San Antonio desire to enter into an Interlocal Agreement for Professional Development Training Services; and

WHEREAS, the Interlocal Agreement will be for a term of one year and will be automatically renewed for additional one-year periods until terminated by either party; and

WHEREAS, future awards for professional training services provided by The University of Texas Health Science Center at San Antonio will be brought to the Board of Trustees for approval as required in accordance with the System’s Purchasing policies and procedures; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve the Interlocal Agreement with The University of Texas Health Science Center at San Antonio for Professional Development Training Service, and (ii) to authorize the President/Chief Executive Officer to execute the Interlocal Agreement; now, therefore:

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

1. That an Interlocal Agreement for Professional Development Training Services between the San Antonio Water System and The University of Texas Health Science Center at San Antonio in substantially the form attached as Attachment I for a term of one year with automatically renewable one-year periods is hereby approved.
2. That the President/Chief Executive Officer is hereby authorized to execute the Interlocal Agreement with The University of Texas Health Science Center at San Antonio for a term of one year with automatically renewable one-year periods.

3. 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.

4. 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.

5. This Resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

________________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________________
Ernesto Arrellano, Jr., Secretary

Attachment I - Interlocal Agreement
This Interlocal Agreement (the “Agreement”) is made by and between THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO on behalf of its Department of Emergency Health Sciences, an institution of higher education and agency of the State of Texas (individually and collectively referred to herein as either “CENTER” or “UTHSC”), and SAN ANTONIO WATER SYSTEM, a political subdivision of the State of Texas (“SAWS” or “Water System”) (also, individually, a “Party” or, collectively, the “Parties), pursuant to the Interlocal Cooperation Act, Chapter 791 of the Government Code (the “Act”).

In consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby enter into this Agreement for the limited purposes and upon the terms, provisions, and conditions set forth:

1. PURPOSE OF AGREEMENT/INDEPENDENT CONTRACTOR AND LIMITATIONS OF AUTHORITY.

1.01 The purpose of this Agreement is to retain the services of UTHSC to provide education training to SAWS employees in various areas of concentration.

1.02 CENTER’s services and work shall be performed by CENTER as an independent contractor and not as an agent, employee or partner of Water System. CENTER shall be solely responsible for, and have exclusive control over: (a) the means, methods, tools, techniques, sequences and procedures of the CENTER’s services and work under this Agreement; and (b) the acts, errors and omissions of its employees, sub-consultants, sub-sub-consultants, suppliers and their respective agents and employees, and other persons or entities performing portions of the services and work for or on behalf of the CENTER or any of its sub-consultants. Any instruction or direction by Water System with respect to the services and work shall be deemed to relate to the results the Water System desires to obtain from the services and work, and shall in no way affect CENTER’s status as an independent contractor as described herein. While the Water System has the right to review, approve and accept the work, the detailed manner and method of performance of the services and work shall be under the sole control of the CENTER. Nothing in this Agreement shall create a partnership or joint enterprise between the Water System and CENTER.

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

1.04 Neither UTHSC nor SAWS has the authority to act for or on behalf of each other except as provided in this Agreement and no other authority, power or use is granted or implied.

1.05 UTHSC may not incur any debt, obligation, expense, or liability of any kind on behalf of SAWS without said party’s expressed written permission via a Purchase Order.

1.06 Neither UTHSC nor SAWS has the exclusive rights or benefits other than those set forth herein.
2. TERM

2.01 The term period of this Agreement shall begin upon the effective date of award, or September 13, 2016 whichever is later, and terminate September 12, 2017 and will be automatically renewed for additional one (1) year periods until terminated by either party.

2.02 This Agreement may be terminated by either party, without cause or penalty, upon not less than thirty days written notice to the other party.

2.03 Should termination occur, both parties shall be relieved of any further liabilities and rights hereunder except payment of fees accrued through date of termination.

3. SCOPE OF SERVICE AND DUTIES

3.01 Duties of UTHSC.

a) UTHSC agrees to provide SAWS with the following services as described:
   1) Customized training shall be described on attached Exhibit A. Training shall be scheduled by written mutual agreement periodically throughout the term of this agreement. Exhibit A shall herein be attached and considered as the entire agreement.
   2) Provide classroom and coordination of all courses;
   3) Development of curriculum and materials, including testing development, administration, and scoring in order to enable the SAWS to determine the necessity and effectiveness of the training provided by UTHSC;
   4) Utilize SAWS Attendance forms for each class held; and
   5) Provide certificates of completion and pocket/wallet cards for each course.

b) UTHSC agrees to devote the necessary time, energy and attention to the duties specified in this agreement.

c) UTHSC agrees to provide prompt, courteous, efficient and professional services to perform the above-described services in this Agreement.

d) UTHSC agrees to hold classes as requested by SAWS in accordance with this Section 3.1 and 3.2, and only if the Agreement is terminated pursuant to Section 2.2 shall classes be subject to cancellation. (UTHSC will notify SAWS of minimum number of student policy, typically eight to ten (8-10) students per class unless otherwise directed due to course cost changes, or as agreed upon by both parties with resulting fee changes).

e) UTHSC agrees to address/manage students who have difficulty or failed to meet any objectives at no additional cost to SAWS.
   1) The instructor will grade and indicate pass/fail of the written exams and field assessments. Instructor will review questions, correct answers and will review missed questions with students who failed the exams/assessments to determine whether they have a grasp of the subject matter. Following remediation, the student must retake the exam and meet the passing score. If the instructor believes that the student needs additional instructions, the student and SAWS project/training coordinator will be notified of the results.
2) In event that the students fail to successfully complete the training, UTHSC will recommend retraining (take the course again), or other remedial actions; like completing the portion missed on another class. Examples for not completing training include: identified acrophobic, got sick during class/could not complete, was called out due to emergency, language or comprehension issue, release/excused due to unacceptable behavior and/or safety violations.

g) UTHSC agrees to accommodate training cancellation without penalty charges when cancellations are made within 48 hours of scheduled start of class.

3.02 Duties of SAWS.

a) SAWS agrees to provide a purchase order before delivery or performance of the service can be made.

b) SAWS agrees to manage enrollment for SAWS employees, and provide UTHSC with approved SAWS attendance forms, student roster, and course evaluation/questionnaire at least five (5) working days prior to class start date.

c) SAWS agrees to provide written notice regarding any requested courses, additional courses, services, or cancellation of individual programs.

d) To verify quality and contract compliance, SAWS reserves the right to inspect/review UTHSC instructor qualifications, course instruction, and materials at any time.

4. COMPENSATION

4.01 The contractually agreed cost to UTHSC and description for services to SAWS will be in accordance with Exhibit A herein attached to this Agreement.

4.02 The cost for each course/class must be per-student based, without provisions for a minimum charge for each class, and a minimum class enrollment, which may vary from class to class. The cost for each course, described in accordance with Exhibit A includes all materials, equipment, consumables, and facilities cost unless otherwise noted.

4.03 Any exhibits detailing a "DESCRIPTION OF SERVICES" and associated class costs may be administratively amended to this agreement through mutual written consent between SAWS an UTHSC.

4.04 SAWS will be invoiced for delivery of instruction or service in accordance with Section 4.07. UTHSC will submit an invoice to SAWS within thirty (30) days of the beginning of the course.

4.05 Invoice shall be prepared per class and include records of the skills assessments or validations completed by each SAWS student, together with the class attendance roster, and scores. The invoices shall be sent to SAWS Accounts Payable.

4.06 The invoices will be sent to the person and address listed below:
(Authorizing Signature)

NAME: ________________________________

Company: ______________________________

Address: ______________________________

City/State: _____________________________

Zip: _________________________________

Phone: ________________________________

4.07 Payment shall be in accordance with the Texas Prompt Pay Act, Chapter 2251, Texas Government Code. SAWS STANDARD “INVOICE AND PAYMENT” SPECIFICATIONS (“Specifications”) listed below:

(a) Address for Invoices. All invoices must be sent to San Antonio Water System, Attn: Accounts Payable, P.O. Box 2449, San Antonio, Texas 78298-2449.

(b) Information Required On Invoice.
All invoices must be in a form and content approved by SAWS. SAWS may require modification of invoices if necessary in order to satisfy SAWS that all billing is proper and pursuant to the terms of the Agreement. Invoices are required to show each SAWS Purchase Order Number. Invoices must be legible. Items billed on invoices must be specific as to applicable stock, manufacturer, catalog or part number (if any). All invoices must show unit prices for each item being billed, the quantity of items being billed and the total for each item, as well as the total for all items on the invoice. If prices are based on list price basis, then the list prices, the percentage discount or percentage surcharge, net unit prices, extensions and net total prices must be shown. Prompt payment discount offered shall be shown separately on the invoice.

(c) Payment by SAWS. SAWS shall have not less than thirty (30) calendar days to pay for goods or services. Time for payment, including payment under discount terms, will be computed from the later of: (1) the date SAWS receives conforming goods under the Agreement; (2) the date performance of the service under the Agreement is completed; or (3) the date SAWS receives a correct and valid invoice for the goods or services. Payment is deemed to be made on the date of mailing of the check. Payment is made in U.S. dollars only.

This provision shall not apply where there is a bona fide dispute between SAWS and Vendor about the goods delivered or the service performed that causes the payment to be late, or where the invoice is not mailed to the address provided herein.

The payment amount due on invoices may not be manually altered by SAWS personnel. Once disputed items are reconciled, Vendor must submit a corrected invoice, or a credit memorandum for the disputed amount, or the item must be issued by the vendor. SAWS will not make a partial payment on an invoice where there is a dispute.
(d) **NECESSITY OF TIMELY INVOICE / WAIVER OF PAYMENT** NOTWITHSTANDING THE FOREGOING, SAWS CANNOT PAY FOR ANY GOODS OR SERVICES WITHOUT AN INVOICE. VENDOR MUST INVOICE SAWS NO LATER THAN NINETY (90) CALENDAR DAYS FROM THE DATE GOODS ARE DELIVERED OR SERVICES RENDERED. FAILURE TO SUBMIT AN INVOICE WITHIN SAID NINETY DAYS SHALL NEGATE ANY LIABILITY ON THE PART OF SAWS AND CONSTITUTE A WAIVER BY VENDOR OF ANY AND ALL RIGHT OR CLAIMS TO COLLECT MONIES THAT VENDOR MAY RIGHTFULLY BE OTHERWISE ENTITLED TO FOR GOODS OR SERVICES PERFORMED.

(e) The total price for all goods and/or services is shown on Exhibit A.

(f) **Tax Exemption.** The San Antonio Water System is exempt from payment of federal taxes, and State of Texas limited sales, excise, and use taxes. Bidders must not include such taxes in bid prices. An exemption certificate will be signed by SAWS where applicable upon request by bidder after contract award.

5. **ENTIRE AGREEMENT**

5.01 This Agreement, along with the specifications, supersedes any and all other agreements, either oral or in writing, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained herein shall be valid or binding.

6. **ATTORNEY’S FEES**

6.01 If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, to the extent allowed by law, the prevailing Party shall be entitled to reasonable attorney’s fees in addition to any other relief to which the prevailing Party may be entitled.

7. **TEXAS LAW TO APPLY**

7.01 This Agreement is performable in Bexar County, Texas. This Agreement shall be governed by and construed in accordance with Texas law. Venue for any action or proceeding arising under or pertaining to this Agreement shall be exclusively in Bexar County, Texas.

8. **SEVERABILITY**

8.01 If any one or more of the provisions contained in the Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

9. **AMENDMENT**

9.01 No amendment, supplementation, modification, or alteration of the terms hereof will be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the Parties.
10. INSURANCE

10.01 It is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the state who are acting within the scope of their employment. Rather, under the Texas Tort Claims Act, Chapter 101 of the Civil Practice and Remedies Code states ‘that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment...’ Liability of the state government under this chapter is limited to money damages in a maximum amount of $250,000 for each person and $500,000 for each single occurrence for bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property. Employees of the University of Texas System are provided Workers’ Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

11. SURVIVAL

Any and all representations, conditions and warranties made by CENTER under this Agreement are of the essence of this Agreement 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.

12. CURRENT REVENUES

12.01 In accordance with Section 791.011(d)(3) of the Texas Government Code, the party paying for the performance of governmental functions or services, if any, must make those payments from current revenues available to the paying party.

13. AUTHORITY TO CONTACT

13.01 The undersigned representatives acting on behalf of UTHSC hereby affirms that it has the authority to enter into and execute this Agreement pursuant to a duly adopted ordinance, resolution, or bylaw. The undersigned President/Chief Executive Officer of SAWS hereby affirms that it has the authority to enter into and execute this Agreement pursuant to a duly adopted resolution of its Board of Trustees.

13.02 Signatures below constitute acceptance of the terms and conditions set forth in this agreement.
EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH WILL HAVE FULL FORCE AND EFFECT ON THIS ______ DAY OF __________________, 2017.

SAN ANTONIO WATER SYSTEM:

By: ________________________________
    Robert R. Puente
    President/Chief Executive Officer

Date: ______________________________

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO:

By: ______________________________
    Andrea M. Marks, MBA, CPA
    Vice-President and Chief Financial Officer

Date: ______________________________

By: ______________________________
    Lance C. Villers, Ph.D., LP
    Chair, Department of Emergency Health Sciences

Date: ______________________________
EXHIBIT A

DESCRIPTION OF SERVICES: Contract Professional Development Training.

Contractor Pricing for San Antonio Water System (SAWS)

<table>
<thead>
<tr>
<th>Class Description</th>
<th>Cost per Student</th>
<th>Class Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fall Protection Training:</strong> Climbing Safety Training Course (CSTC)**</td>
<td>$75.00</td>
<td>8</td>
</tr>
</tbody>
</table>
Course Syllabus

Course: **Climbing Safety Training Course (CSTC)**
8 - Instructional hours

**Course Description:** This course is designed to satisfy the minimum regulatory requirements by providing the training necessary for all workers who need to work-at-heights as defined by ANSI Z359 and Z490, OSHA 29 CFR 1910 and 1926 Fall Protection program requirements. Upon completion of this course, students will be capable of identifying existing and predictable fall hazards in the workplace and taking corrective measures to eliminate them through the selection, installation and use of appropriate fall protection systems.

**Terminal Objectives:** The following outline topics will be included in the training:

- Understand Fall Protection regulations and SAWS Walking/Working Surfaces & Fall Protection Program.
- Identify the nature of the hazards associated with work-at-heights.
- Demonstrate proper use, care and storage of fall protection equipment.
- Understand and apply use of SAWS Fall Arrest Systems Equipment & Components.
- Demonstrate climbing skills (ascend, descend and negotiate a vertical climb) on a ground tank and elevated tower locations in accordance with progress checklist.
- Perform a task aloft while secured to SAWS Fall Arrest System.
- 

**Prerequisites:** None.

**Course Methods:** Content is presented through lecture, videos, class participation, and hands on demonstration.

**Class Size:** The class size is limited to fifteen (15) students, due to time requirements, travel time, and logistics to perform classroom training, hands-on demonstrations, and field performance assessments.

**Equipment:** Students will be responsible for bringing their own equipment, personal protective equipment (PPE), safety glasses, leather palmed gloves, hard hat with chin-strap, and steel toe safety shoes, and fall protection PPE (see below list).

<table>
<thead>
<tr>
<th>Fall Protection PPE</th>
<th>Lawson #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lad-Saf cable grab with carabiner</td>
<td>31306</td>
</tr>
<tr>
<td>Shockwave 2, 6-Foot Shock Absorbing Lanyard</td>
<td>38236</td>
</tr>
<tr>
<td>or</td>
<td></td>
</tr>
<tr>
<td>Nano Lok Self Retracting Lanyard (SRL)</td>
<td>40972</td>
</tr>
<tr>
<td>Chin Strap for Hard hat</td>
<td>10341</td>
</tr>
</tbody>
</table>
Training Locations:

Classroom: 4201 Medical Drive (Bluffcreek Tower).

Field Training Tank Locations:
  Turtle Creek Pump Station, 8523 Data Point, San Antonio, Texas 78229
  Loma Linda Pump Station, 5218 Loma Linda, San Antonio, Texas 78201

NOTE: SAWS will make arrangements for climbing locations. Students will climb both tanks. Turtle Creek is a very short tank and will allow students to become familiar with the equipment before climbing Loma Linda. SAWS reserves the right to add or delete Field location depending on facility availability and SAWS needs.

Exams: The minimum passing score for written exams (80%) and field/hands-on performance assessments (pass/fail).

Course Evaluation: Standard approved SAWS Attendance Forms will be used to record attendance and course evaluation by students and results will be turned over to SAWS Safety Department.

Training Certificate: Students receive a Certificate of Completion and pocket/wallet Card which is valid for two (2) years.

Attendance: Students must attend 100% of the class to receive credit for this course.
TO: San Antonio Water System Board of Trustees  
FROM: Gavino Ramos, Vice President/Communications and External Affairs  
THROUGH: Robert R. Puente, President/Chief Executive Officer  
SUBJECT: RATIFYING THE AUTHORIZATION OF EXPENDITURES FOR CONFLUENCE 2017  

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution ratifies the actions of the Vice President of Communications and External Affairs in authorizing additional expenditures for decorating, audio visual and electrical support for Confluence 2017 payable to FREEMAN DECORATING CO.

- The Confluence summit is the capstone event for the San Antonio Water System award winning project based high school program called Impact.

- Eighteen area high schools are participating in Impact this school year by designing and facilitating water based projects based on the theme of The Value of Water.

- Confluence is not only an opportunity for Impact Teams to showcase their projects but an opportunity for high school students and teachers from all over the county to meet, network, and explore the water issues facing our community and the world.

- Confluence 2017 saw the largest attendance in its six year history. Over 1,000 students, teachers, exhibitors and volunteers participated in the event.

- A generous amount of sponsorships this year allowed the event to be enhanced by adding additional decoration and audio visual elements right before the event, which caused the amount to go over the planned budget of $48,731.39 as well as the threshold for Board approval.

- Expenditures exceeded the projected amount by $10,651.16.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Funds will be made available from the 2017 Budget (Company 1000, Accounting Unit: 5002800, Account: 511210) and 2017 summit sponsorship funds. Total decorating, audio visual and electrical expenditure amount: $59,382.55.
Approval of Expenditures
Confluence 2017

Gavino Ramos
Vice President, Communications and External Affairs

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES RATIFYING THE ACTIONS OF THE VICE PRESIDENT OF COMMUNICATIONS AND EXTERNAL AFFAIRS IN AUTHORIZING EXPENDITURES IN AN AMOUNT NOT TO EXCEED $59,382.55 FROM THE EDUCATION BUDGET/CONFLUENCE SPONSORSHIP FUNDS; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO PAY FREEMAN DECORATING CO. AN AMOUNT NOT TO EXCEED $59,382.55 FOR DECORATING, AUDIO VISUAL AND ELECTRICAL SUPPORT FOR CONFLUENCE 2017; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, FREEMAN DECORATING CO. was utilized at the San Antonio Water System (the “System”) to provide decorating, audio visual and electrical services for Confluence 2017; and

WHEREAS, the required funding in an amount not to exceed $59,382.55 is available from the Education Budget/Confluence sponsorship funds; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to ratify the actions of the Vice President of Communications and External Affairs in authorizing expenditures and to make available from the Education Budget/Confluence sponsorship funds an amount not to exceed $59,382.55 for decorating, audio visual and electrical services for Confluence 2017, and (ii) to authorize the President/Chief Executive Officer or his duly appointed designee to make payment to FREEMAN DECORATING CO. for the Confluence 2017 decorating, audio visual and electrical expenditures in a total amount not to exceed $59,382.55; now, therefore:

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

1. That the actions of the Vice President of Communications and External Affairs in authorizing expenditures in an amount not to exceed $59,382.55 payable to FREEMAN DECORATING CO. for the decorating, audio visual and electrical services rendered for Confluence 2017 are hereby ratified.

2. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to pay FREEMAN DECORATING CO. an amount not to exceed $59,382.55 for the services rendered for Confluence 2017.
3. 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.

4. 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.

5. This Resolution is effective immediately upon passage of this resolution.

   PASSED AND APPROVED this the 4th day of April, 2017.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Carlos R. Mendoza, Director, Fleet & Facilities, and Michael S. Brinkmann, Vice President, Distribution & Collection Operations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: RATIFICATION OF AWARD OF AN EMERGENCY PURCHASE ORDER FOR THE REPLACEMENT OF UNINTERRUPTIBLE POWER SYSTEM (UPS) AT THE SAWS ENVIRONMENTAL LABORATORY ON 3610 VALLEY ROAD

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution ratifies the actions of the Vice President of Distribution & Collection Operations in approving the award of an emergency purchase order for the replacement of an uninterruptible power system in the amount of $65,447.37 to Y & S Technologies.

- On October 16, 2016, water damage caused the Emerson Uninterruptible Power System (UPS) to lose power redundancy, data history and data entry capabilities for all electronic instrumentation at the San Antonio Water System’s (SAWS) Environmental Laboratory.

- The damage to the UPS system came from the failure of a water softener resin tank manifold head gasket. When this gasket failed, water sprayed and shorted out two main circuit boards and three capacitors in the circuitry of inverting AC voltage to DC voltage. This also shorted out a 350 amp motor control center panel.

- A UPS is typically used to protect hardware such as computers, data centers, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries, fatalities, serious business disruption or data loss.

- Declaration of an emergency condition by the Vice President of Distribution and Collection Operations was due to the criticality of the sophisticated instrumentation at the SAWS Environmental Laboratory.

- An emergency Invitation for Bids was issued and Y&S Technologies provided the lowest priced responsive and responsible bid.

Staff recommends that the Board approve this resolution.
**FINANCIAL IMPACT:**

The System Fund will finance the total amount of $65,447.37 for these services. (Company: 1000; Accounting Units: 5020200; Account: 143500).

**SUPPLEMENTARY COMMENTS:**

SAWS' staff prepared specifications for the replacement of the damaged UPS, and Bid 16-16131 was issued.

A bid opening was held November 18, 2016, at 3:00 p.m. The following bids were submitted:

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y&amp;S Technologies *</td>
<td>$65,447.37</td>
<td>Local / Non-SMWB</td>
</tr>
<tr>
<td>Gerard Electric</td>
<td>$71,200.00</td>
<td>Local / Non-SMWB</td>
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<tr>
<td>Delta Ware Inc.</td>
<td>$84,499.00</td>
<td>Non-Local / Non-SMWB</td>
</tr>
</tbody>
</table>

*Lowest responsible bidder

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Carlos R. Mendoza  
Director, Fleet & Facilities

Michael S. Brinkmann  
Vice President, Distribution & Collection Ops

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES RATIFYING THE ACTIONS OF THE VICE PRESIDENT OF DISTRIBUTION & COLLECTION OPERATIONS IN APPROVING THE AWARD OF AN EMERGENCY PURCHASE ORDER TO Y & S TECHNOLOGIES IN THE AMOUNT OF $65,447.37 IN CONNECTION WITH THE EMERGENCY REPLACEMENT OF UNINTERRUPTIBLE POWER SYSTEM AT THE SYSTEM’S ENVIRONMENTAL LABORATORY ON 3610 VALLEY ROAD; AUTHORIZING THAT AN AMOUNT NOT TO EXCEED $65,447.37 BE MADE AVAILABLE AND EXPENDED FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO PAY Y & S TECHNOLOGIES, AN AMOUNT NOT TO EXCEED $65,447.37 FOR REPLACEMENT OF UNINTERRUPTIBLE POWER SYSTEM AT THE SYSTEM’S ENVIRONMENTAL LABORATORY ON 3610 VALLEY ROAD; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on October 16, 2016, water damage caused the Emerson Uninterruptible Power System (UPS) to lose power redundancy, data history and data entry capabilities for all electronic instrumentation at the San Antonio Water System’s (the “System”) Environmental Laboratory; and

WHEREAS, the damage to the UPS system came from the failure of a water softener resin tank manifold head gasket. When this gasket failed, water sprayed and shorted out two main circuit boards and three capacitors in the circuitry of inverting AC voltage to DC voltage. This also shorted out a 350 amp motor control center panel; and

WHEREAS, a UPS is typically used to protect hardware such as computers, data centers, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries, fatalities, serious business disruption or data loss; and

WHEREAS, staff prepared specifications for the replacement of the damaged UPS and an emergency Invitation for Bids was issued; and

WHEREAS, Y & S Technologies provided the lowest priced responsive and responsible bid and the total amount for the materials, its delivery and installation to completely restore the UPS functionality is $65,447.37 and a Purchase Order was issued; and
WHEREAS, declaration of an emergency condition by the Vice President of Distribution and Collection Operations was due to the criticality of the sophisticated instrumentation at the System’s Environmental Laboratory; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) ratify the actions of the Vice President of Distribution and Collection Operations in approving the award of an emergency purchase order in an amount not to exceed $65,447.37 in connection with the Replacement of Uninterruptible Power System at the System’s Environmental Laboratory on 3610 Valley Road, (ii) approve the expenditure and make available from the System Fund the amount not to exceed $65,447.37 for the project work, and (iii) authorize the President/Chief Executive Officer or his duly appointed designee to pay an amount not to exceed $65,447.37 to Y & S Technologies for the project work; now, therefore:

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

1. That the actions of the Vice President of Distribution and Collection Operations in approving the award of an emergency purchase order in an amount not to exceed $65,447.37 payable to Y & S Technologies for the project work in connection with the Replacement of the Uninterruptible Power System at the System’s Environmental Laboratory on 3610 Valley Road are hereby ratified.

2. That the expenditure of System funds in the amount not to exceed $65,447.37 for the project work is hereby approved.

3. That a total sum not to exceed $65,447.37 for the project work is hereby made available and is to be expended from the System Fund.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to pay Y & S Technologies an amount not to exceed $65,447.37 for the project work in connection with the Replacement of the Uninterruptible Power System at the System’s Environmental Laboratory on 3610 Valley Road.

5. It is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public, and that the 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 4th day of April, 2017.

Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. 23

TO: San Antonio Water System Board of Trustees

FROM: Carlos R. Mendoza, Director, Fleet & Facilities, and Michael S. Brinkmann, Vice President, Distribution & Collection Operations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: RATIFICATION OF AWARD OF AN EMERGENCY PURCHASE ORDER FOR THE REPLACEMENT OF A CARRIER 120 TON AIR COOLED CHILLER AT THE SAN ANTONIO WATER SYSTEM ENVIRONMENTAL LABORATORY AT 3610 VALLEY RD

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution ratifies the actions of the Vice President of Distribution & Collection Operations in approving the award of an emergency purchase order for the replacement of 120 ton air cooled chiller at the San Antonio Water System (SAWS) Environmental Laboratory at 3610 Valley Rd in the amount of $94,690.00 to Daikin Applied Americas Inc.

- On January 6, 2017, there was a severe hard freeze that caused damage to the 120 ton air cooled chiller at the SAWS Environmental Laboratory. The severe freeze caused catastrophic failure to the heat exchanger, water tubes, refrigerant tubes and tube bundle housing. This bundle is a water tube type heat exchanger that is surrounded by refrigerant tubes for heat transfer to the air-cooled condenser coil.

- The water tubes froze and expanded, which caused the water tubes to crack the metal heat exchanger housing. Consequently, this caused the water to mix with the refrigerant oil. As a result, the water and refrigerant went into the condenser air coil, causing damage.

- The mixture of water and refrigerant oil in a lubricating cooling system will produce highly corrosive acids. Thus creating a chemical reaction that often leads to pitting and other damage to the components in the system.

- An observation acid test was done by a third party on the oil integrity and came back as acidic and caustic for metal fatigue due to moisture levels within the cooling oil system.

- Declaration of an emergency condition by the Vice President of Distribution and Collection Operations was due to the criticality of the air quality and humidity conditions in the SAWS Environmental Laboratory. General chemistry testing of vital water samples require an air quality controlled environment.
Ratification of Award of Emergency Purchase Order
Replacement of Carrier 120 Ton Air Cooled Chiller

- Purchase of a replacement Air Cooled Chiller was made on February 20, 2017 from Daikin Applied Americas, Inc. utilizing the Local Government Purchasing Cooperative, or BuyBoard contract number 458-14.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The System Fund will finance the total amount of $94,690.00 for these services. (Company: 1000; Accounting Units: 5020200; Account: 143500).

SUPPLEMENTARY COMMENTS:

Daikin Applied Americas, Inc. pricing in accordance to the Local Government Purchasing Cooperative or BuyBoard contract number 458-14.

<table>
<thead>
<tr>
<th>Description</th>
<th>List Price</th>
<th>Discount Price</th>
<th>Unit Of Measure</th>
<th>Total</th>
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<tbody>
<tr>
<td>Chiller</td>
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<td>1 Each</td>
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<tr>
<td>Labor</td>
<td>$ 120.00</td>
<td></td>
<td>115 Hours</td>
<td>$ 13,800.00</td>
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<tr>
<td>Materials &amp; Supplies</td>
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<tr>
<td>Crane Lift</td>
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<td><strong>Grand Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$ 94,690.00</strong></td>
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</table>

Carlos R. Mendoza
Director, Fleet & Facilities

Michael S. Brinkmann
Vice President, Distribution & Collection Ops

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES RATIFYING THE ACTIONS OF THE VICE PRESIDENT OF DISTRIBUTION & COLLECTION OPERATIONS IN APPROVING THE AWARD OF AN EMERGENCY PURCHASE ORDER TO DAIKIN APPLIED AMERICAS INC., IN THE AMOUNT OF $94,690.00 IN CONNECTION WITH THE EMERGENCY REPLACEMENT OF A 120 TON AIR COOLED CHILLER AT THE SYSTEM’S ENVIRONMENTAL LABORATORY; AUTHORIZING THAT AN AMOUNT NOT TO EXCEED $94,690.00 BE MADE AVAILABLE AND EXPENDED FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO PAY DAIKIN APPLIED AMERICAS INC., AN AMOUNT NOT TO EXCEED $94,690.00 FOR THE 120 TON AIR COOLED CHILLER AT THE SYSTEM’S ENVIRONMENTAL LABORATORY; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on January 6, 2017, there was a severe hard freeze that caused damage to the 120 ton carrier chiller at the San Antonio Water System’s (the “System”) Environmental Laboratory. The severe freeze caused catastrophic failure to the heat exchanger, water tubes, refrigerant tubes and tube bundle housing. This bundle is a water tube type heat exchanger that is surrounded by refrigerant tubes for heat transfer to the air-cooled condenser coil; and

WHEREAS, the water tubes froze and expanded, which caused the water tubes to crack the metal heat exchanger housing. Consequently, this caused the water to mix with the refrigerant oil. As a result, the water and refrigerant went into the condenser air coil, causing damage; and

WHEREAS, the mixture of water and refrigerant oil in a lubricating cooling system will produce highly corrosive acids. Thus creating a chemical reaction that often leads to pitting and other damage to the components in the system; and

WHEREAS, the observation acid test was done by a third party on the oil integrity and came back as acidic and caustic for metal fatigue due to moisture levels within the cooling oil system; and
WHEREAS, the declaration of an emergency condition by the Vice President of Distribution and Collection Operations was due to the criticality of the air quality and humidity conditions in the System’s Environmental Laboratory. General chemistry testing of vital water samples require an air quality controlled environment; and

WHEREAS, pricing for a replacement chiller was solicited from Daikin Applied Americas, Inc. in accordance to the Local Government Purchasing Cooperative, or BuyBoard contract # 458.14.

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) ratify the actions of the Vice President of Distribution and Collection Operations in approving the award of an emergency purchase order in an amount not to exceed $94,690.00 in connection with the Replacement of 120 ton air cooled chiller at the System’s Environmental Laboratory (ii) approve the expenditure and make available from the System Fund the amount not to exceed $94,690.00 for the project work, and (iii) authorize the President/Chief Executive Officer or his duly appointed designee to pay an amount not to exceed $94,690.00 to Daikin Applied Americas, Inc., for the project work; now, therefore:

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

1. That the actions of the Vice President of Distribution and Collection Operations in approving the award of an emergency purchase order in an amount not to exceed $94,690.00 payable to Daikin Applied Americas, Inc., for the project work in connection with the Replacement of the 120 ton air cooled chiller at the System’s Environmental Laboratory are hereby ratified.

2. That the expenditure of System Funds in the amount not to exceed $94,690.00 for the project work is hereby approved.

3. That a total sum not to exceed $94,690.00 for the project work is hereby made available and is to be expended from the System Fund.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to pay Daikin Applied Americas, Inc., an amount not to exceed $94,690.00 for the project work in connection with the Replacement of the 120 ton air cooled chiller at the System’s Environmental Laboratory.

5. It is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public, and that the 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 4th day of April, 2017.

    ____________________________________________
    Berto Guerra, Jr., Chairman

    ATTEST:

    ____________________________________________
    Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Steven Clouse, Senior Vice President/Chief Operating Officer, and Nancy Belinsky, Vice President/General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AUTHORIZATION TO EXECUTE A SETTLEMENT AGREEMENT WITH CDM SMITH, INC. CONCERNING CLAIMS RELATED TO THE DOS RIOS WATER RECYCLING CENTER RE-RATING HEADWORKS IMPROVEMENTS AND PROCESS ENHANCEMENTS PHASE 1 PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the execution of a Full and Final Compromise and Settlement Agreement with CDM Smith, Inc.

- CDM Smith, Inc. (“CDM Smith”) was engaged by the San Antonio Water System (the “System”) pursuant to a Professional Services Agreement effective August 13, 2008 (the “Contract”) to provide engineering design services and construction support services for the System’s Dos Rios Water Recycling Center Headworks Improvements and Process Enhancements Phase I project (the System’s Job No. 08-6502 – hereafter the “Project”).

- CDM Smith alleged that it was owed $1,484,621.00 as additional compensation for work performed in connection with the Project at the System’s direction. The System denied that CDM Smith was owed additional compensation in the amount claimed and asserted that design errors may have caused extra expense to the System.

- Following a series of negotiations between the System and CDM Smith, the System and CDM Smith agreed, subject to approval by the Board of Trustees, to compromise and settle the claims between them pursuant to the terms of a Full and Final Compromise and Settlement Agreement in the form that is Attachment 1 to the attached Resolution.

- Pursuant to the terms of the Full and final Compromise and Settlement Agreement, the System will pay to CDM Smith the sum of $300,000.00. The System and CDM Smith will release each other from any further liability for any claims, demands, damages, or causes of action arising out of the Project or the Contract, with the exception that the System is not releasing CDM Smith from any liability that may arise in the future for claims for personal injury, death or property damage caused or resulting in whole or in part from any negligence of CDM Smith in the performance of any work related to the Contract or the Project.
The amount of $58,874.50 remains unpaid by the System to CDM Smith under the terms of the Contract. As a result, the System will be paying to CDM Smith the sum of $241,125.50 in addition to the Total Fee payable to CDM Smith pursuant to the terms of the Contract.

To avoid litigation and further expense it is in the best interest of the System to execute a Full and Final Compromise and Settlement Agreement with CDM Smith.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The execution and performance of the Full and Final Compromise and Settlement Agreement with CDM Smith will result in payment to CDM Smith by the System of the sum of $300,000.00 that is an increase of $241,125.50 in the total amount payable to CDM Smith under the terms of the Contract.

The Project Fund will finance this expenditure. The increase in the contract amount of $241,125.50 will be provided from 2017 Owner Controlled Construction Changes line item in the CY 2017 Capital Improvement Program, Wastewater Core Business under System job number 08-6502.

Steven Clouse  
Senior Vice President/Chief Operating Officer

Nancy Belinsky  
Vice President/General Counsel

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING THE EXECUTION OF A FULL AND FINAL COMPROMISE AND SETTLEMENT AGREEMENT WITH CDM SMITH, INC. IN CONNECTION WITH CLAIMS BETWEEN THE SYSTEM AND CDM SMITH, INC. ARISING OUT OF A PROFESSIONAL SERVICES AGREEMENT IN CONNECTION WITH THE SYSTEM'S DOS RIOS WATER RECYCLING CENTER RE-RATING HEADWORKS IMPROVEMENTS AND PROCESS ENHANCEMENTS PHASE I PROJECT; AUTHORIZING THE SYSTEM TO PAY FROM THE PROJECT FUND THE SUM OF $300,000.00 TO CDM SMITH, INC.; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER TO EXECUTE A FULL AND FINAL COMPROMISE AND SETTLEMENT AGREEMENT WITH CDM SMITH, INC.; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, CDM Smith, Inc. was engaged by the System pursuant to a Professional Services Agreement effective August 13, 2008 (the “Contract”) to design and to provide construction related services in connection with the System’s Dos Rios Water Recycling Center Re-Rating Headworks Improvements and Process Enhancements Phase I project (the “Project”); and

WHEREAS, CDM Smith, Inc. has alleged that it was owed $1,484,621.00 as additional compensation for work performed in connection with the Project at the System’s direction; and

WHEREAS, the System denies that CDM Smith, Inc. is owed additional compensation in the amount claimed and the System has alleged that errors by CDM Smith, Inc. may have caused extra expense to the System; and

WHEREAS, to avoid litigation and further expense it is in the best interest of the System to settle the claims asserted by and between the System and CDM Smith, Inc.; and

WHEREAS, the System and CDM Smith, Inc. desire to resolve and settle all claims between them that concern the Project and the Contract; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve a Full and Final Compromise and Settlement Agreement with CDM Smith, Inc., (ii) to authorize the President/Chief Executive Officer to execute a Full and Final Compromise and
Settlement Agreement with CDM Smith, Inc., and (iii) to authorize the System to pay to CDM Smith, Inc. the sum of $300,000.00 from the Project Fund; now, therefore:

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

1. That a Full and Final Compromise and Settlement Agreement between the System and CDM Smith, Inc. in a form substantially similar to that attached to this resolution as Attachment 1 is hereby approved.

2. That the President/Chief Executive Officer is hereby authorized to execute a Full and Final Compromise and Settlement Agreement with CDM Smith, Inc. in a form substantially similar to that attached to this resolution as Attachment 1.

3. That the System is hereby authorized to pay to CDM Smith, Inc. the sum of $300,000.00 from the Project Fund pursuant to the terms of the Full and Final Compromise and Settlement Agreement.

4. 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.

5. If any 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.

6. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary

Attachment:
I – Full and Final Compromise and Settlement Agreement
FULL AND FINAL COMPROMISE AND SETTLEMENT AGREEMENT

THIS FULL AND FINAL COMPROMISE AND SETTLEMENT AGREEMENT ("Agreement") is entered into by the San Antonio Water System ("SAWS"), an agency of The City of San Antonio, a Texas home rule municipality and CDM Smith Inc., formerly Camp Dresser & McKee Inc. ("CDM").

WHEREAS, pursuant to a Professional Services Agreement signed by SAWS and CDM and effective on August 13, 2008 (the “Contract”), CDM agreed to perform work for and to provide services to SAWS as more particularly described therein for the Dos Rios Water Recycling Re-Rating Headworks Improvements and Process Enhancements Phase I project, SAWS Job no. 08-6502 (the “Project”);

WHEREAS, CDM alleges that it has performed work for and provided services to SAWS in connection with the Project and in addition to that described in the Contract for which CDM alleges that it is entitled to additional compensation;

WHEREAS, SAWS denies that CDM is entitled to additional compensation for any work performed or services provided in connection with the Project or the Contract;

WHEREAS, SAWS alleges that CDM did not provide certain design services as required by the Contract for which SAWS alleges that it is entitled to compensation;

WHEREAS, CDM denies SAWS’ allegations;

WHEREAS, to avoid litigation and expense, SAWS and CDM have agreed to compromise and settle any claims between them concerning the Contract pursuant to the terms of this Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Agreement, SAWS and CDM agree as follows (SAWS and CDM may be referred to individually as a “Party” or collectively as the “Parties”):

1. SAWS agrees to pay to CDM the sum of Three Hundred Thousand and no/100 U.S. Dollars ($300,000.00 USD) within fifteen days after the execution of this Agreement by SAWS. CDM agrees that upon receipt of the payment by SAWS to CDM that is required by this paragraph that CDM will have received all compensation due under the terms of the Contract and for any work performed or services provided in connection with the Contract or the Project. CDM agrees and acknowledges that it will not receive any further payment from SAWS for work performed or services provided in connection with the Contract or the Project other than the payment required by this paragraph.

2. Upon the execution of this Agreement by the Parties and payment by SAWS to CDM of the sum of $300,000.00 USD pursuant to the terms of this Agreement, each Party and each Party’s respective agents, partners, officers, directors, employees, trustees,
representatives and assigns forever release, acquit and discharge the other Party, and the other Party’s respective agents, officers, partners, employees, trustees, representatives and assigns from all claims, demands, liabilities, causes of action, damages, liquidated damages, costs, extra costs, delay damages, and expenses of whatsoever kind or nature, at law or in equity, known or unknown that each Party or each Party’s respective agents, officers, partners, directors, employees, trustees, representatives or assigns had, now has, or may have in the future that are related to the Contract, or the performance of any work performed or services provided in connection with the Contract or the Project. No other claims, demands, liabilities, causes of action, or damages of any kind or character other than those expressly described in this paragraph are released, acquitted, settled or discharged.

a. Notwithstanding anything to the contrary that is contained in this Agreement, SAWS does not release, acquit or discharge CDM from any liability for personal injury or death, or property damage to the extent caused by or resulting in whole or in part from CDM’s negligence or willful misconduct in the performance of any work performed or service provided by CDM in connection with the Contract or the Project.

b. Notwithstanding anything to the contrary that is contained in this Agreement, SAWS does not release CDM from any obligation or liability arising out of or pursuant to Section XII, entitled Indemnification, of the Contract.

c. Notwithstanding anything to the contrary that is contained in this Agreement, CDM will not perform the work required by Task 4.13 – Record Drawings, of the Contract. In the alternative, provided the as-built documentation for the Project as prepared by the Project’s construction contractor is delivered to CDM within three months of the effective date of this Agreement, and provided SAWS compensates CDM for performing the work of Task 4.13 – Record Drawings on a time and material basis at CDM’s then current hourly rates, then CDM will perform the work required by Task 4.13.

d. As of the date of this Agreement, neither Party is aware of any actual or potential claims of injury, death, property damage, or for indemnification that arise out of or that are related to the Contract or the Project.

3. Each Party agrees that it shall pay its own costs, fees, expenses and attorneys fees incurred in connection with this Agreement, the Project and the Contract.

4. CDM represents and warrants to SAWS that it presently owns, free and clear of any lien or encumbrance, rights of control, pledges or security interests all of the claims, demands, causes of action, damages and expenses that it has released and discharged in this Agreement; that CDM has not assigned or otherwise transferred to any person or entity any interest in the claims, demands, causes of action, damages or expenses that it has released and discharged in this Agreement; that CDM presently possesses the exclusive right to settle all claims and causes of action settled or released by it in this Agreement.

5. This Agreement represents the compromise of disputed claims. This Agreement may not be construed in any action or proceeding as an admission, direct or indirect, of liability,
obligation or duty of any kind, other than as expressly set forth in this Agreement.

6. The terms, conditions and agreements contained in this Agreement shall be binding upon and the benefits and advantages of the same shall inure to all Parties and their respective successors and assigns. The Parties acknowledge, understand and agree that the agreements and representations contained in this Agreement were made to induce the other Party to enter into and sign this Agreement. The terms, provisions, agreements and representations made or contained in this Agreement are contractual and are not mere recitals, and the same will survive perpetually following the execution of this Agreement.

7. This Agreement may be extended, revised, waived, discharged, released, modified, terminated or otherwise amended only by a written instrument executed by the Party against whom enforcement of such revision is asserted.

8. This Agreement contains the final agreement between the Parties relating to the compromise and settlement of all matters described in the Agreement. All prior agreements, if any, related to the subject matter of this Agreement are terminated and are of no force or effect.

9. The Parties represent each to the other that they and their duly authorized representatives have read this Agreement and understand it; that they have executed this Agreement with the intent to be fully bound according to its terms; that in signing this Agreement they have relied solely on their own knowledge or their duly authorized representative's knowledge and judgment and/or the advice of their own attorneys and not in reliance upon any representation, advice, statement or action of any kind of the other Party or other Party's representatives or attorneys, except to the extent that such representations, statements, or actions are expressly set forth in this Agreement. The Parties expressly disclaim reliance on any fact or representation made by any other Party or any other Party's representatives or attorneys that is not expressly contained in this Agreement.

10. The construction, enforcement, interpretation and validity of this Agreement shall be governed by the laws of the State of Texas. The obligations of the Parties are performable and venue of any legal action arising out of this Agreement shall lie exclusively in Bexar County, Texas.

11. If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation is held invalid or unenforceable, such provision will be modified to the minimum extent necessary to make it or its application valid and enforceable and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision will not be affected thereby.

12. No Party may assign this Agreement without the prior written consent of the other Party.

13. This Agreement will be executed in two (2) identical originals, which taken together shall constitute one and the same instrument. Facsimile, “PDF”, and photocopied signatures
shall be treated as original signatures.

14. Each person signing this Agreement for or on behalf of a Party to this Agreement represents and warrants to the other Party that the person signing has authority to and is authorized to execute this Agreement for and on behalf of the Party for whom this Agreement is executed, in the capacity in which this Agreement is executed.

15. In the event that this Agreement, or any provision hereof, is construed or determined to be ambiguous by a court of law, then in that event, the Parties agree that each Party has contributed to the preparation of this Agreement and that they have jointly written or composed this Agreement and that no Party shall be given any advantage over the other Party under the laws of construction of instruments based upon the authorship of this Agreement.

16. This Agreement is made by and for the benefit of the Parties to this Agreement only. There are no third-party beneficiaries of this Agreement, save and except only those persons against whom any claim, demand, cause of action, damage, or expense has been released, settled, discharged or acquitted as provided in paragraph 2 of this Agreement.

*Signature Pages Follow*
Agreed to, executed and effective as of the date of the last signature by a Party, below.

San Antonio Water System

By: __________________________
    Robert R. Puente
    President/Chief Executive Officer

Date: _________________________

STATE of TEXAS §
COUNTY of BEXAR §

Before me, the undersigned notary public on this day personally appeared Robert R. Puente, known to me to be the person whose name is subscribed to the foregoing instrument who acknowledged to me that he executed the same for the purposes and consideration, and in the capacity therein stated.

Given under my hand and seal of office on this ___ day of ____________, 2017.

__________________________________________
Notary Public in and for the State of Texas
CDM Smith Inc.

By: _______________________

Date: _____________________

STATE of ________    §
COUNTY of _________   §

Before me, the undersigned notary public on this day personally appeared
__________________________ known to me to be the person whose name is subscribed to
the foregoing instrument who acknowledged to me that he executed the same for the
purposes and consideration, and in the capacity therein stated.

Given under my hand and seal of office on this ___ day of ____________, 2017

_____________________________
Notary Public in and for the State of ______
AGENDA ITEM NO. _____

TO: San Antonio Water System Board of Trustees

FROM: Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AUTHORIZATION TO FILE A LAWSUIT AGAINST WW DRILLING CO., INC. A/K/A WW FOUNDATION DRILLING, LTD AND HILL COUNTRY BRIDGE, INC.

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the filing of a lawsuit in a court of competent jurisdiction against WW Drilling Co, Inc. a/k/a WW Foundation Drilling LTD (“WWFD”) and Hill Country Bridge, Inc. (“Hill Country”). The resolution also authorizes the San Antonio Water System’s (“System”) General Counsel and any specially engaged outside counsel under her direction to take all necessary action relating to participation in the lawsuit as a party as may be required through final conclusion, including any appeals, as determined necessary by the General Counsel.

- On August 8, 2016, WWFD struck a 30-inch water main at the Olmos Basin Golf Course, at or near the 7000 block of McCullough, in San Antonio, Texas, resulting in significant damages and water loss to the System.

- On October 5, 2016, the System sent a demand to WWFD to recover the System’s damages but WWFD denied any financial responsibility for the incident and failed and refused to remit payment.

- On October 10, 2016, WWFD responded to the System’s demand and admitted to the damage but disputed any liability and alleged liability against Hill Country.

- The System is seeking and demanding payment from WWFD and Hill Country in excess of $94,000.00.

- WWFD and the System have been unable to resolve the dispute to date.

- The System believes that the System’s interests can be best preserved and protected by the filing of a lawsuit.

Staff recommends that the Board approve this resolution authorizing the System’s General Counsel and any specially engaged outside counsel under her direction to file a lawsuit in a court of competent jurisdiction.
FINANCIAL IMPACT:

Any legal fees incurred to file the lawsuit will be paid from the System Fund, 2017 O&M budget (Company: 1000; Accounting Unit: 5000400; Account: 511320).

Nancy Belinsky  
Vice President and General Counsel

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AUTHORIZING THE FILING OF A LAWSUIT AGAINST WW DRILLING CO., INC. A/K/A WW FOUNDATION DRILLING, LTD AND HILL COUNTRY BRIDGE, INC., IN CONNECTION WITH DAMAGE CAUSED TO A WATER MAIN AT OR NEAR THE OLMOS BASIN GOLF COURSE IN SAN ANTONIO, TEXAS; FURTHER AUTHORIZING THE SYSTEM’S GENERAL COUNSEL TO TAKE ALL NECESSARY ACTION RELATING TO SUCH LAWSUIT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, WW Drilling Co., Inc. a/k/a WW Foundation Drilling, LTD. (“WWFD”) struck a 30-inch water main at the Olmos Basin Golf Course, at or near the 7000 block of McCullough, in San Antonio, Texas, on August 8, 2016, resulting in significant damage and loss of water to San Antonio Water System (“System”); and

WHEREAS, on October 5, 2016, the System sent a demand to WWFD to recover the System’s damages but WWFD denied any financial responsibility for the incident and failed and refused to remit payment; and

WHEREAS, on October 10, 2016, WWFD responded to the System’s demand and admitted to the damage but disputed any liability and alleged liability against Hill Country Bridge, Inc. (“Hill Country”); and

WHEREAS, the System is seeking and demanding payment from WWFD and Hill Country in excess of $94,000.00; and

WHEREAS, WWFD and the System have been unable to resolve the dispute to date; and

WHEREAS, the System believes that the System’s interests can be best preserved and protected by the filing of a lawsuit; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to authorize the filing of a lawsuit against WWFD and Hill Country in a court of competent jurisdiction, and (ii) to further authorize the System’s General Counsel and any specially engaged outside counsel under her direction to take all necessary legal action relating to participation in the lawsuit as a party through final conclusion, including any appeals, as determined necessary by the General Counsel; now, therefore:

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

1. That the filing of a lawsuit against WWFD and Hill Country, in a court of competent jurisdiction is hereby approved.

2. That the System’s General Counsel and any specially engaged outside counsel under her direction are hereby further authorized to take all necessary action relating to participation in the lawsuit as a party as may be required through final conclusion, including any appeals, as determined necessary by the General Counsel.

3. 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.

4. If any 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.

5. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Tamsen R. McNarie, Director, Operations Support, and Jeffrey J. Haby, P.E., Vice President, Production and Treatment

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVAL OF CHANGE ORDER NO. 2 IN CONNECTION WITH THE SANITARY SEWER CLEANING AND INSPECTION OF DESIGNATED “YEAR 4” SIPHONS, PACKAGE 1 CONTRACT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Change Order No. 2 and an increase in the amount of $245,501.97 to the contract with Taplin Group, LLC in connection with the Sanitary Sewer Cleaning and Inspection of Designated “Year 4” Siphons, Package 1 Contract.

- The San Antonio Water System (SAWS) is required under the Consent Decree to visually inspect small diameter sewer siphons that are clay pipe installed prior to 1983 using closed circuit television.

- Siphons are points where sewer mains go under rivers or some other low point. Due to a change in flow velocity and direction, material can accumulate within a siphon causing blockages that can result in an overflow. This change order includes cleaning and inspection of two siphons, located at New Laredo Highway and at Conrad Street, totaling approximately 3,270 linear feet ranging in size from 10 inches to 16 inches in diameter.

- On August 2, 2016, by Resolution No. 16-199, the SAWS Board of Trustees approved the award of a service contract to Terra Contracting Services, LLC, a local, non-SMWB vendor in the amount of $1,085,995.95 to perform sewer siphon cleaning and inspection services in connection with the Sanitary Sewer Cleaning and Inspection of Designated “Year 4” Siphons, Package 1 Contract.

- Subsequent to the contract award, Terra Contracting Services, LLC was restructured and this contract was assigned to Taplin Group, LLC.

- Upon completion of the work in the scope of the original contract, funds in the amount of $38,238.15 remained in the contract. Change Order No. 1 in the amount of $11,125.32 was issued using a portion of the remaining funds to clean and inspect two small diameter siphons on St. Mary’s Street.

- The amount of this change order is $272,614.80 which exceeds the $27,112.83 currently remaining in the contract, requiring a $245,501.97 increase in the contract amount.
Approval of Change Order No. 2
Sanitary Sewer Cleaning and Inspection of Designated “Year 4” Siphons,
Package 1 Contract

- This change order and the increase in the contract amount will authorize the additional work and the additional funds necessary to complete the inspection of the siphons in the system that are required by the Consent Decree to be inspected within the four year time frame before the July 23, 2017 deadline.

- This additional work was identified after the contract was awarded.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Funds have been budgeted in the System Fund for this work. The System Fund will finance the increased amount of $245,501.97 for a total amount of $1,331,497.92 for contract services (Company: 1000; Accounting Unit: 5044500; Account 511220). The SAWS bid number for this project is 16-16018.

The authorizations for this project are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 16-199)</td>
<td>$ 1,085,995.95</td>
</tr>
<tr>
<td>Change Order No. 1 (Additional scope of work)</td>
<td>0.00</td>
</tr>
<tr>
<td>Proposed Change Order No. 2 (Additional scope of work and funds)</td>
<td>245,501.97</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$ 1,331,497.92</td>
</tr>
</tbody>
</table>

This increase of funds in the amount of $245,501.97 represents a 22.6% increase in the original contract amount resulting in a revised authorization of $1,331,497.92.

Tamsen R. McNarie
Director, Operations Support

Jeffrey J. Haby, P.E.
Vice President, Production and Treatment

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AMENDING RESOLUTION NO. 16-199 BY APPROVING CHANGE ORDER NO. 2 TO THE CONTRACT WITH TAPLIN GROUP, LLC IN CONNECTION WITH THE SANITARY SEWER CLEANING AND INSPECTION OF DESIGNATED "YEAR 4" SIPHONS, PACKAGE 1 CONTRACT; APPROVING THE EXPENDITURE OF ADDITIONAL FUNDS IN THE AMOUNT OF $245,501.97 FROM THE SYSTEM FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CHANGE ORDER NO. 2 AND TO PAY TAPLIN GROUP, LLC AN ADDITIONAL AMOUNT OF $245,501.97 FOR THE ADDITIONAL PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the San Antonio Water System (the “System”) is required under the Consent Decree to visually inspect small diameter sewer siphons that are clay pipe installed prior to 1983 using closed circuit television; and

WHEREAS, the System requires contracted services to complete the inspection of the siphons in the system that are required by the Consent Decree to be inspected within the four year time frame before the July 31, 2017 deadline; and

WHEREAS, the System, by Resolution No. 16-199 approved August 2, 2016, awarded a contract to Terra Contracting Services, LLC, a business which has since been restructured and which has assigned the contract to Taplin Group, LLC, in the amount of $1,085,995.95 to perform sewer siphon cleaning and inspection services (the "project work") in connection with the Sanitary Sewer Cleaning and Inspection of Designated “Year 4” Siphons, Package 1 Contract; and

WHEREAS, this Change Order No. 2 will clean and inspect two additional siphons and will provide for additional funds in the amount of $245,501.97 necessary to complete the remaining siphon inspections on time in order to comply with the Consent Decree; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) amend Resolution No. 16-199 by approving Change Order No. 2 to the services contract with Taplin Group, LLC for the additional project work in connection with the Sanitary Sewer Cleaning and Inspection of Designated “Year 4” Siphons, Package 1 Contract, (ii) approve the expenditure of an additional amount of $245,501.97 from the System Fund, and (iii) authorize the President/Chief Executive Officer or his duly appointed designee to execute Change Order No. 2 and to pay an
additional amount not to exceed $245,501.97 to Taplin Group, LLC for the additional project work; now, therefore:

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

1. That Resolution No. 16-199 is hereby amended to approve Change Order No. 2 and an increase of funds in the amount of $245,501.97 to the services contract with Taplin Group, LLC for the additional project work in connection with the Sanitary Sewer Cleaning and Inspection of Designated “Year 4” Siphons, Package 1 Contract.

2. That an additional sum not to exceed $245,501.97 is hereby made available and is to be expended from the System Fund.

3. That the System's President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Change Order No. 2 and to pay Taplin Group, LLC an additional amount not to exceed $245,501.97 for the additional project work in connection with the Sanitary Sewer Cleaning and Inspection of Designated “Year 4" Siphons, Package 1 Contract.

4. 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.

5. 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.

6. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________
Ernesto Arrellano, Jr., Secretary
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: THIRD AMENDMENT TO THE WATER TRANSMISSION AND PURCHASE AGREEMENT REGARDING THE VISTA RIDGE REGIONAL WATER SUPPLY PROJECT  

Board Action Date: April 4, 2017  

SUMMARY AND RECOMMENDATION:  

The attached resolution approves the Third Amendment (the Third Amendment), to the Water Transmission and Purchase Agreement (as heretofore amended, the WTPA), which effectuates various changes with regard to the Vista Ridge Regional Water Supply Project, along with conforming changes to other related agreements. Upon Financial Close by the Project Company in November 2016, the SAWS Board passed a resolution that included a provision to continue working with the Project Company to explore options to optimize operations of, and reduce costs to be incurred by SAWS at the Terminus Site. SAWS staff and the Vista Ridge-related parties continued discussions that culminated in the recommendation presented today. (Capitalized terms used in this Memorandum but not otherwise defined herein shall have the meanings set forth in the WTPA, as amended by the Third Amendment.)  

The Third Amendment eliminates the need for SAWS to construct one storage tank and a related pump station, as well as other associated adjustments, providing a significant cost savings to SAWS. The 10 million gallon (MG) Project Company Storage Tank that was originally to be owned and operated by the Project Company and conveyed to SAWS at the end of the Term of the WTPA will now be dedicated and conveyed to SAWS at the Notice of Acceptance Date (effectively, substantial completion of the Project by the Project Company), rather than at the end of the Term of the WTPA. This earlier conveyance to SAWS of the Project Company Storage Tank gives SAWS enhanced operational flexibility by preserving the previously-planned two tanks from which SAWS will operate, while enabling SAWS to construct only one SAWS Storage Tank. The Project Company will no longer operate a storage tank at the Terminus Site.  

This early conveyance and dedication of the Project Company Storage Tank to SAWS, and elimination of one of the planned SAWS Storage Tanks, required revisions throughout the WTPA, including changes to the real estate conveyances, definitions and applications of “Water Made Available”, and Tank Warranty requirements, as well as Appendix revisions. It also required conforming revisions to the Project Real Property Conveyance Agreement between the City of San Antonio, Texas, acting by and through the SAWS Board, and the Central Texas Regional Water Supply Corporation (the First Amendment to RPCA).
As part of the amendment to the WTPA and its related Appendices, you will find the following notable changes:

- The Terminus Site will be divided into three Lots as shown in the final site plan of Appendix 13 (attached).

- On Lot 1 (approximately 1.5 acres), the Project Company will construct the Project Company Flow Meter, water quality sampling and monitoring infrastructure, and electrical and control building which the Project Company will continue to own and operate for the term of the WTPA.

- On Lot 2 (approximately 5.9 acres), the Project Company will construct the Project Company Storage Tank and interconnecting piping from the Product Water Delivery Point. On the Notice of Acceptance Date, the Project Company will dedicate and convey Lot 2 and all improvements on Lot 2, including the Project Company Storage Tank, to SAWS, who will thereafter own and operate those improvements. The Project Company shall have full responsibility for the operation, maintenance and insurance of the Project Company Storage Tank and Terminus Site Lot 2 prior to the Notice of Acceptance Date. On and after the Notice of Acceptance Date, SAWS shall have exclusive responsibility for operating, maintaining and insuring the Project Company Storage Tank.

- Lot 3 (approximately 17.9 acres) will be conveyed to SAWS upon completion of certain grading work by the Project Company on said Lot 3, anticipated to be completed in the first quarter of 2018, and will be the site on which SAWS will construct the treatment facilities, SAWS Storage Tank, and pump station to serve the Stone Oak area as required for integration of the Vista Ridge Water into its distribution system.

- The definition of real estate acquisition was clarified by recognizing that the Project Company will have either the recordable real estate interest, or will have entered into legal proceedings to acquire the real estate interests by June 10, 2017; and, if legal proceedings are required, then a right to possession must be obtained by October 13, 2017. Variances to the Project Company Real Property Related Covenants may be granted by a SAWS Representative on a case-by-case basis.

- Water Made Available is applied primarily in Article 10 of the WTPA. Water Made Available will continue to be measured as water flowing through the meter into the tank; however, given the elimination of one tank, Article 10 now also further defines occasions where SAWS is unable to take water and the Project Company is unable to deliver water. Flow curtailment, and shutoff levels are notated in the WTPA which would require the Project Company to reduce, or cease delivery of water. Certain passages describe how Water Made Available would be measured in these instances.
• The Project Company will provide a warranty for the Project Company Storage Tank, generally for a period of one year after the Commercial Operation Date. In addition, if SAWS cannot take water due to a structural failure of the Project Company Storage Tank at any time during the Term of the WTPA and is unable to take water through the secondary tank, SAWS has no obligation to make payment for such water it is unable to take (the undelivered water is an Excused Supply Shortfall Unit).

• The Third Amendment also necessitates conforming modifications to the Project Real Property Conveyance Agreement between the City, acting by and through the Board, and the Central Texas Regional Water Supply Corporation (the First Amendment to RPCA).

• Additionally, a remaining remnant parcel from the Terminus Site consisting of approximately 0.689 acres will be released from the SAWS Standby Deed of Trust, Security Agreement and UCC Financing Statement for Fixture Filing (as evidenced by a Partial Release of Standby Deed of Trust, Security Agreement and UCC Financing Statement for Fixture Filing, and referred to herein as the Partial Release), as part of a transaction, facilitated by the Water Supply Corporation, in which SAWS will acquire additional access easement rights to the Terminus Site from the adjoining land.

SAWS staff recommends approval of the attached resolution approving execution of the Third Amendment, including execution of various associated documents including the Partial Release and the First Amendment to the RPCA.

**FINANCIAL IMPACT:**

This specific proposed action does not change the financial impacts to SAWS that were described in the approval of the WTPA; however, the change in ownership of the Project Company Storage Tank and real estate at the Terminus Site will reduce construction cost for the SAWS portion of the Terminus Site. The change in ownership of the Project Company Storage Tank increases SAWS operational flexibility at the Terminus Site and eliminates the need for SAWS to construct its second storage tank at the Terminus Site, as well as the need for another pump station, and redundant chemical storage facilities.
Donovan 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 AND Approving Amendments to the Water Transmission and Purchase Agreement between the City of San Antonio, Texas, Acting by and Through the San Antonio Water System, and Vista Ridge LLC; Delegating to the President and Chief Executive Officer of the System the Authority to Accept the Conveyance and Dedication by Vista Ridge LLC of Certain Real Property Interests in the Water Transmission Pipeline Terminus Site; Authorizing the Execution of Agreements and Documentation Related to the Foregoing, Including the First Amendment to the Project Real Property Conveyance Agreement between City of San Antonio, Texas, Acting by and Through the San Antonio Water System, and the Central Texas Regional Water Supply Corporation; 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, acting by and through the Board, and Vista Ridge LLC (formerly known as Abengoa Vista Ridge, LLC and now referred to herein as the Project Company) are parties to that certain Water Transmission and Purchase Agreement, dated as of November 4, 2014, as amended on June 10, 2016 and November 2, 2016, respectively (such agreement, as amended, the WTPA), to facilitate development of a pipeline that will connect to the System’s distribution system in northern Bexar County for the delivery of water (Project Water); and

WHEREAS, the initial execution of the WTPA, as well as the amendments thereto, have been approved by requisite action of the City Council (Ordinance No. 2014-10-30-0818 adopted on October 30, 2014) and the Board (by Resolution No. 14-269 adopted on September 29, 2014, Resolution No. 14-274 adopted on October 15, 2014, Resolution No. 16-138 adopted on May 18, 2016, and Resolution No. 16-277 adopted on November 1, 2016), which respective actions of the City Council and the Board are hereafter referred to as the Prior Authorization; and

WHEREAS, the WTPA provides the prerequisites to achievement of the conveyance and dedication of certain real property interests to SAWS as it relates to the previously agreed upon SAWS’ portion of the transmission pipeline terminus site (the SAWS’ Terminus Site), including conveyance to SAWS of a 5.9 acre tract of real property (Terminus Site Lot 2), and a previously designed and constructed storage tank to be located on Terminus Site Lot 2, utilized as a holding structure for water received via the transmission pipeline (the Project Company Storage Tank; the
foregoing interests to be delivered to SAWS collectively referred to herein as the Conveyances); and

WHEREAS, to accommodate the Conveyances, SAWS has agreed to partially release from the Standby Deed of Trust, Security Agreement and UCC Financing Statement for Fixture Filing approximately 0.689 acres of real property (such documentation to evidence this release, the Partial Release); and

WHEREAS, to accommodate the Conveyances, SAWS has agreed to make conforming modifications to the Project Real Property Conveyance Agreement between the City, acting by and through the Board, and the Central Texas Regional Water Supply Corporation, in the form of an amendment thereto (the First Amendment to RPCA); and

WHEREAS, to accommodate the Conveyances, SAWS has agreed to amend the WTPA in the manner evidenced in a third amendment thereto, a copy of which is attached hereto as Exhibit A (the Third Amendment and, collectively with the Partial Release and the First Amendment to RPCA, the Amendment Documents); and

WHEREAS, no amendments, modifications or releases effectuated pursuant to the Amendment Documents constitute a Reserved Amendment (as such term is defined in Resolution No. 16-138 of the Board previously incorporated by reference herein); and

WHEREAS, consummation of the Conveyances and effectuation of the Amendment Documents require the execution of collateral agreements and documentation determined by SAWS to be necessary and desirable to implement the effect thereof under the WTPA; 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 Third Amendment. Pursuant to, in accordance with, and under authority provided by the WTPA and the Prior Authorization, the Third Amendment (a final version of which is attached hereto as Exhibit A) is hereby approved by the Board. As a result and in reflection of such approval, references to the WTPA in the remainder of this Resolution shall mean the WTPA, as amended by the Third Amendment.

SECTION 2. Approval of First Amendment to RPCA. Pursuant to, in accordance with, and under authority provided by the WTPA and the Prior Authorization, the First Amendment to RPCA (a final version of which is attached hereto as Exhibit B) is hereby approved by the Board.

SECTION 3. Approval of Related Agreements. To implement the Conveyances, Partial Release, and other modifications related to and required under the WTPA, the WTPA requires the execution and delivery of additional agreements, documents, and certifications, including, but not limited to, the Amendment Documents. For such reason, the Board hereby approves the execution of such agreements, documentation, and certificates.
SECTION 4. Delegation Authority. The Board hereby delegates to the President and
Chief Executive Officer of the System or the authorized designee thereof (any of the foregoing, an
Authorized Official) the authority to accept the Conveyances as contemplated under the WTPA
upon determination, in his discretion, of the satisfaction of the prerequisites to such actions set
forth therein. In addition, the Board hereby authorizes an Authorized Official to take such action,
including the authority to execute any necessary documentation (being the agreements and other
documentation identified and/or referenced in Sections 1, 2, and 3 above), to effectuate the
authorizations and directives of the Board herein made. 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 evidence of the act and deed of the
Board for any and all purposes.

SECTION 5. 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 approved
hereunder be undertaken by an Authorized Official on the earliest permissible date and time
subsequent to the Board’s approval hereof, subject to an Authorized Official’s determination that
necessary prerequisites to any such action have theretofore occurred, but the ability to exercise
such authorization hereunder granted shall not have an expiration date.

SECTION 6. 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 7. 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 8. 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 9. 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 10. Definition of Terms. Capitalized terms used herein without definition shall
have the meaning ascribed thereto in the WTPA.

SECTION 11. 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 12. 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 13. 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 4th day of April, 2017.

__________________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________________
Ernesto Arrellano, Jr., Secretary
EXHIBIT A

THIRD AMENDMENT TO WATER TRANSMISSION AND PURCHASE AGREEMENT
THIRD AMENDMENT TO THE
VISTA RIDGE REGIONAL SUPPLY PROJECT
WATER TRANSMISSION AND PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO THE VISTA RIDGE REGIONAL SUPPLY PROJECT WATER TRANSMISSION AND PURCHASE AGREEMENT (this “Amendment”) is made and dated as of April 5, 2017, 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 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 acting by and through SAWS and 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 “Water Transmission and Purchase Agreement”), whereby the Project Company has agreed to produce, transport, make available and sell to SAWS potable water on a long term basis, all as more particularly described therein; and

WHEREAS, the Water Transmission and Purchase Agreement was amended on June 10, 2016, in connection with the acquisition by Garney P3 LLC of a majority interest in the Project Company and SAWS consent thereto; and

WHEREAS, the Water Transmission and Purchase Agreement was further amended on November 2, 2016, in connection with the Project Company’s financing of the water supply project; and

WHEREAS, the City acting by and through SAWS and the Project Company desire to further amend the Water Transmission and Purchase Agreement to make certain changes, including, without limitation, conforming changes in connection with the conveyance by the Project Company to SAWS of certain interests in the Transmission Pipeline Terminus Site.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS. All capitalized terms used and not otherwise defined herein have the meanings set forth in the Water Transmission and Purchase Agreement.

SECTION 2. AMENDED WATER TRANSMISSION AND PURCHASE AGREEMENT PROVISIONS. The Water Transmission and Purchase Agreement is hereby amended by inserting or deleting, as applicable, the marked changes set forth on the blackline attached hereto as Attachment A; and with respect to Reference Document 3 (Project Real Property Conveyance Agreement) to the Water Transmission and Purchase Agreement, by inserting the First Amendment to Vista Ridge Project Real Property Conveyance Agreement, dated as of April 5, 2017, between the City, acting by and through SAWS, and Central Texas Regional Water Supply Corporation, and acknowledged, consented to and joined by the Project Company, substantially in the form attached hereto as Attachment B.

SECTION 3. CONFORMED WATER TRANSMISSION AND PURCHASE AGREEMENT. Promptly following the execution of this Amendment, the parties shall execute a Contract Administration Memorandum which will contain a conforming Water Transmission and
Purchase Agreement reflecting the changes contained herein for the administrative purposes of the parties.

SECTION 4. 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 Amendment shall remain in effect.

SECTION 5. 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 Amendment.

SECTION 6. BINDING EFFECT. This Amendment shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the parties.

SECTION 7. NO REFERENCE REQUIRED. All notices, communications, agreements, certificates, documents or other instruments executed and delivered after the execution and delivery of this Amendment may refer to the Water Transmission and Purchase Agreement without making specific reference to this Amendment, but nevertheless all such references shall include this Amendment unless the context requires otherwise.

SECTION 8. COUNTERPARTS. This Amendment may be executed in counterparts, which together shall constitute one and the same instrument.

SECTION 9. DUE AUTHORIZATION, EXECUTION AND DELIVERY. This Amendment has been duly authorized, executed and delivered by all necessary action of each party.

[Signature page follows]
IN WITNESS WHEREOF, the parties have caused this Third Amendment to the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement to be executed by their duly authorized representatives as of the date first set forth above.

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

By: ___________________________
Name: Robert R. Puente
Title: President and Chief Executive Officer

VISTA RIDGE LLC

By: ___________________________
Name: Scott A. Parrish
Title: President
Attached are blacklines of the following articles of the Water Transmission and Purchase Agreement and Appendices and Transaction Forms to the Water Transmission and Purchase Agreement that were modified pursuant to this Amendment. Items that are not listed below or attached hereto remain unchanged pursuant to this Amendment.

1. Recitals of the Water Transmission and Purchase Agreement
2. Article 1 of the Water Transmission and Purchase Agreement
3. Article 2 of the Water Transmission and Purchase Agreement
4. Article 3 of the Water Transmission and Purchase Agreement
5. Article 4 of the Water Transmission and Purchase Agreement
6. Article 5 of the Water Transmission and Purchase Agreement
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9. Article 8 of the Water Transmission and Purchase Agreement
10. Article 9 of the Water Transmission and Purchase Agreement
11. Article 10 of the Water Transmission and Purchase Agreement
12. Article 11 of the Water Transmission and Purchase Agreement
13. Article 13 of the Water Transmission and Purchase Agreement
14. Article 16 of the Water Transmission and Purchase Agreement
15. Article 17 of the Water Transmission and Purchase Agreement
16. Article 20 of the Water Transmission and Purchase Agreement
17. Article 21 of the Water Transmission and Purchase Agreement
18. Article 22 of the Water Transmission and Purchase Agreement
19. Article 23 of the Water Transmission and Purchase Agreement
20. Article 24 of the Water Transmission and Purchase Agreement
21. Article 26 of the Water Transmission and Purchase Agreement
22. Appendix 1 (Description of the Project)
23. Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion)
24. Appendix 5 (Performance Test Procedures and Standards)
25. Appendix 6 (Operating and Maintenance Standards)
26. Appendix 7 (Insurance Requirements)
27. Appendix 8 (Performance Guarantee Requirements)
28. Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand)
29. Appendix 13 (SAWS Interconnection Improvements)
30. Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site)
31. Transaction Form J (Reciprocal Easement Agreement for the Transmission Pipeline Terminus Site)
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

VISTA RIDGE LLC

Dated
November 4, 2014
As Amended on
June 10, 2016,
And as Further Amended on November 2, 2016
and April 5, 2017
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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 June 10, 2016 and further amended on November 2, 2016 and April 5, 2017, 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 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 252.021 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; and

WHEREAS, this Water Transmission and Purchase Agreement was amended on June 10, 2016, in connection with the acquisition by Garney P3 LLC of a majority interest in the Project Company and SAWS consent thereto; and

WHEREAS, this Water Transmission and Purchase Agreement was further amended on November 2, 2016, in connection with the Project Company's financing of the water supply project; and

WHEREAS, this Water Transmission and Purchase Agreement was further amended on April 5, 2017, in connection with the conveyance by the Project Company to SAWS of certain interests in the Transmission Pipeline Terminus Site.

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(A) (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 specified in Section 10.4(B) (Supply Following Commercial Operation Date of Make-Up Units).

“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 control of, such person.
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 or 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 Section 10.3(A)(2) (Baseline Annual Volume).

“Baseline Daily Volume” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions Section 10.3(A)(3) (Baseline Daily Volume).

“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) or (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 Adjustments 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 June 10, 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 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
“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;
(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.

“Credit Agreement” means the Credit Agreement among the Project Company, the Water Supply Corporation, the Lenders, and the DSRA L/C Issuing Banks party thereto from time to time, and Sumitomo Mitsui Banking Corporation, as administrative agent, executed and delivered by the parties thereto on the Financial Closing Date.

“Creditors’ Remedies Agreement” means the Creditors’ Remedies Agreement to be entered into on or before the Financial Closing Date among SAWS, the Senior Debt Creditors and the Project Company, the form of which is attached hereto as Transaction Form H (Creditors’ Remedies Agreement).

“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 Section 10.3(A)(4) (Daily Delivered Water Units).

“Daily Maximum Volume” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions Section 10.3(A)(5) (Daily Maximum Volume).

“Deductions” means those deductions from the otherwise applicable Monthly Water Purchase Payments that SAWS is permitted to take as offsets (1) on account of a failure by the Project Company to obtain an extension of the Groundwater Transportation Permit, pursuant to Section 9.8(G) (Deductions for Failure to Obtain a Groundwater Transportation Permit Extension); (2) 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); and (3) on account of any electrical power consumption of the Project exceeding the Guaranteed Maximum Electricity Utilization and Guaranteed Maximum Electricity Demand pursuant to Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand).

“Deductions Credit” has the meaning set forth in Section 17.6 (Deductions Credit).

“Delivery Tank” has the meaning specified in Section 10.1(C) (Delivery Tank).

“Demand Shortfall Units” has the meaning specified in Section 10.3 (Product Water Supply and Demand Definitions Section 10.3(A)(7) (Demand Shortfall Units).

“Depositary Agreement” means the Collateral Agency and Depositary Agreement among the Project Company, the Water Supply Corporation and various agents executed and delivered by the parties thereto on the Financial Closing Date.

“Design Build Contract” means the Design Build Contract between the Water Supply Corporation and the Design Build Contractor executed and delivered by the parties thereto on the Financial Closing Date.

“Design Build Contractor” means Garney Companies, Inc.

“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) and Appendix 13 (SAWS Interconnection Improvements).

“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 them 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.

“Equity Contribution Agreement” means the Equity Contribution Agreement among the Project Company, the Shareholders, and the Senior Debt Creditors executed and delivered by the parties thereto on the Financial Closing Date.

“Excess Product Water” has the meaning set forth in Section 10.3 (Section 10.3(A)(8) (Excess 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) Section 10.3(A)(9) (Excused Supply Shortfall Units).

“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 Section 10.9 (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)(19) (Financial Close).

“Financial Close Contract Amendment” means the amendment of this Water Transmission Purchase Agreement to make conforming changes in connection with the occurrence of Financial Close.

“Financial Close Contract Amendment Date” means November 2, 2016, the date in which this Water Transmission and Purchase Agreement was amended by the Financial Close Contract Amendment.

“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)(19) (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) (Financial Closing Date Conditions Defined).

“Financial Closing Longstop Date” has the meaning set forth in Section 4.3(B) (Financial Closing Longstop Date Defined).

“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 Curtailment Tank Level” has the meaning specified in Section 10.3(B) (Flow Curtailment Tank Level).
“Flow Rate” means the rate of flow of Product Water delivered to SAWS measured at the Project Flow Meter, and expressed in CFS/GPM.

“Flow Shutdown Tank Level” has the meaning specified in Section 10.3(C) (Flow Shutdown Tank Level).

“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, storage 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 2 (Groundwater Lease Conveyance Agreement).

“Groundwater Leases” means the leases listed in Exhibit A to Reference Document 2 (Groundwater 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 executed and delivered by Garney Holding Company and SAWS on the Conforming Contract Amendment...
“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.

“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) (Make-Up Units).

“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.

“Midrange Partial Flow” has the meaning set forth in Section 5.5 (Performance Test Sequence of Events) of Appendix 5 (Performance Test Procedures and Standards).

“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 Acceptance Date” 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 Water Supply Corporation and the Operating Service Provider.
subsequent to the Financial Closing Date pursuant to Section 13.1(F) (Operating Service Provider).

“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.

“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 13.1(F) (Operating Service Provider).

“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—Section 10.14 (Project Company Disposal of Residuals); Section 10.13—Section 10.15 (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 of the Project.

“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 (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 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;

(11) Encumbrances granted under any Senior Debt Financing Agreements, 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 point in the pipe between the Project Company Storage Tank Flow Meter and SAWS Storage Tanks on the Project Company Portion of the Transmission Pipeline Storage Tank proximate to the property line separating Terminus Site Lot 1 and Terminus Site Lot 2 designated by the parties pursuant to a Contract Administration Memorandum for determining the point of 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 proximate to the Product Water Delivery Point and the Project Company Storage Tank or at 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 including the SAWS Interconnection Improvements. On and after the Notice of Acceptance Date, the Project shall not include the Project Company Storage Tank and the Project Real Property shall not include Terminus Site Lot 2, and the Project Company Storage Tank and Terminus Site Lot 2 shall be part of the SAWS Distribution System.

“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 earlier of the Project Assets Purchase Date and the Expiration Date.

“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 Vista Ridge LLC (formerly known as 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 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 26.1(E) (Conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site Lot 3).

“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, and tested and maintained by the Project Company on the Transmission Pipeline-Terminus Site Lot 2 for the storage of Product Water prior to SAWS taking delivery, and all related valves, piping, structures, facilities, equipment and improvements, 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, Appendix 13 (SAWS Interconnection Improvements).

“Project Company Storage Tank Defect” has the meaning set forth in Section 5.15(B) (Warranty Inspection).

“Project Company Storage Tank Warranties” has the meaning set forth in Section 5.15(A) (Project Company Storage Tank Warranties Defined).

“Project Company Storage Tank Warranties Term” has the meaning set forth in Section 5.15(C) (Project Company Storage Tank Warranties Term).

“Project Company Storage Tank Warranty Inspection” has the meaning set forth in Section 5.15(B) (Warranty Inspection).

“Project Contractor” means the Design Build 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 Public-Private Partnership Framework Agreement, the Design Build Contract, 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 Design Build Contract 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 upstream of the Project Product Water Delivery Point and the Project Company Storage Tank or at 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 June 10, 2016, between SAWS and the Water Supply Corporation, attached hereto as Reference Document 3 (Project Real Property Conveyance Agreement).

“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.

“Projected Annual Supply Schedule” has the meaning set forth in Section 10.7(A) (Projected Annual Supply Schedules).

“Projected Monthly Supply” has the meaning set forth in Section 10.7(C) (Projected Monthly Supply).

“Proposed Financing” has the meaning specified in Section 10.710.9(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.

“Public-Private Partnership Framework Agreement” means the Amended and Restated Public-Private Partnership Framework Agreement among the Project Company; the Water Supply Corporation; Garney Companies, Inc.; VRRSP Consultants, LLC; Pape-Dawson Engineers, Inc.; Sumitomo Mitsui Banking Corporation, as administrative agent; and Sumitomo Mitsui Banking Corporation, as collateral agent, executed and delivered by the parties thereto on the Financial Closing Date.
“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 transmission and 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, except that, on and after the Notice of Acceptance Date, the SAWS Distribution System shall include the Project Company Storage Tank and Terminus Site Lot 2.
“SAWS Engineer” has the meaning set forth in Section 5.4(l) (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 Tank 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) and, after the Notice of Acceptance Date, the Project Company Storage Tank.

“SAWS Interface Cabinet” means the antenna or other device or equipment serving as an interface for electronic communications and security information between SAWS and the Project Company to be installed by SAWS at the Transmission Pipeline Terminus Site and constituting the operating interface between the SAWS Distribution System and the Project to be installed by SAWS at the Transmission Pipeline Terminus Site.

“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 26.1(D) (Due Diligence Documents for means that portion of the Transmission Pipeline Terminus Site designated as “Lot 3” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements). On and after the Notice of Acceptance Date, the SAWS Portion of the Transmission Pipeline Terminus Site shall also include Terminus Site Lot 2.

“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 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-Requested Design Requirement Change” has the meaning set forth in Section 5.8 (SAWS-Requested Design Requirements Changes).

“SAWS Storage Tank” means the storage tank(s) to be constructed by SAWS on the Transmission Pipeline Terminus Site Lot 3 as part of the SAWS Interconnection Improvements, as generally described in Appendix 13 (SAWS Interconnection Improvements).

“SCADA” means supervisory control and data acquisition.

“Scheduled Company Shutdown Hours” has the meaning set forth in Section 10.7(B)(1) (Project Company Scheduled Maintenance).

“Scheduled Connection Availability Date” shall mean February 2, 2019, the date by which the Project Company shall make the flange connection available to SAWS for connecting the Project Company Storage Tank to the SAWS Distribution System.

“Scheduled Grading Completion Date” shall mean February 27, 2018, the date by which the Project Company shall complete grading Terminus Site Lot 2 as required under Appendix 13 (SAWS Interconnection Improvements).

“Scheduled SAWS Interconnection Improvements Completion Date” has the meaning set forth in Section 6.2(B)(Scheduled SAWS Interconnection Improvements Completion Date).

“Scheduled SAWS Shutdown Hours” has the meaning set forth in Section 10.7(B)(2) (SAWS Scheduled Maintenance).

“Scheduled Utility Shutdown Hours” has the meaning set forth in Section 10.7(B)(3) (Electric Utility Maintenance).

“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 (including debt or other obligations issued or incurred in connection with a Refinancing) 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 (including any hedge or swap providers), as the case may be, and their respective agents and trustees holding Senior Debt under the Senior Debt Financing Agreements.

“Senior Debt Discharge Date” means the date on which the Obligations (as defined in the Credit Agreement) have been paid in full in accordance with the terms of the Credit Agreement and the Secured Parties (as defined in the Credit Agreement) have released the Liens granted pursuant to the Security Documents (as defined in the Credit Agreement), in each case other than in connection with a Refinancing thereof and, if all or any portion of the Senior Debt has been Refinanced, all obligations and liabilities arising under or in connection with such Refinanced Senior Debt have been paid in full (including any hedge or swap termination fees, make-whole or call premiums, and all other amounts owing to any Senior Debt Creditor) and the Senior Debt Creditors thereof shall have released all Liens granted in connection thereof.

“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) the Credit Agreement and any other 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 Credit Agreement.

“Service Area” means all territory in which customers are served by SAWS Distribution System during the Term hereof.

“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.

“SMWB” has the meaning set forth in Section 5.13(B) (Small, Minority and Women-Owned Business Opportunities).

“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 3 (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 List” has the meaning set forth in Section 8.1(F) (Achievement of 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) Section 10.3(A)(13) (Supply Shortfall Units).

“Tank Structural Failure Units” has the meaning specified in Section 10.3(A)(14) (Tank Structural Failure Units).
“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).

“Terminus Site Lot 1” means that portion of the Transmission Pipeline Terminus Site consisting of approximately 1.5 acres and designated as “Lot 1” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

“Terminus Site Lot 2” means that portion of the Transmission Pipeline Terminus Site consisting of approximately 5.9 acres and designated as “Lot 2” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

“Terminus Site Lot 3” means that portion of the Transmission Pipeline Terminus Site consisting of approximately 17.9 acres and designated as “Lot 3” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

“Terminus Site Lot 1 Improvements” means the piping, Project Flow Meter, Product Water quality sampling facilities, and other structures, facilities, equipment and improvements to be designed and built by the Project Company on Terminus Site Lot 1, as further described in Appendix 13 (SAWS Interconnection Improvements).

“Third Contract Amendment” means the third amendment to the Water Transmission and Purchase Agreement to make changes in connection with the Transmission Pipeline Terminus Site.

“Third Contract Amendment Date” means April 5, 2017, the date on which this Water Transmission and Purchase Agreement was amended by the Third Contract Amendment.

“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, prior to the Notice of Acceptance Date, 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 designated as the “Transmission Pipeline Terminus Site” in Attachment 13E of Appendix 13 (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 if 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 Section 10.3(A)(15) (Unexcused Supply Shortfall Units).

“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).

“Variance” has the meaning set forth in Section 26.1(A) (Acquisition by the Project Company of Well Field Facilities Site Real Property Interests and Transmission Pipeline Easements).

“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; all Water Transmission and Purchase Agreement Amendments, including the Conforming Contract Amendment—and, the Financial Close Contract Amendment and the Third Contract Amendment; and the 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 Amended and Restated Water Transportation Agreement between the Project Company and the Water Supply Corporation executed and delivered by the parties thereto on the Financial Closing Date.

“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) Section 10.12(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
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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 moves 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. The number of Units of Product Water that has not been made available in such circumstances shall be determined based on the protocols or conventions developed pursuant to Section 10.4(D) (Protocol for Determining Number of Units of Product Water Not described in Section 10.4(C) (Determination of Water Made Available).

(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 movement of Product Water from the Project Company Storage Tank to the SAWS Distribution System 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.

(DD) References to Acquire. The terms “acquire,” “acquiring,” “acquired,” “acquisition” and any similar terms, when used with respect to a recordable real estate interest, shall mean that the real estate interests have been obtained in the name of the acquirer and such interests have been recorded in the appropriate land records, or that an eminent domain proceeding to condemn the real estate interest has been initiated by the acquirer.
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.

(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.
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. The statements made by Garney Holding Company in the Plan of Development and Financing 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.

(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 over 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 5.15 (Project Company Storage Tank Warranties);**
5. **Section 11.7 (Project Assets Transfer Condition);**
6. **Article 18 (Dispute Resolution);**
7. **Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;**
8. **Article 23 (SAWS Project Assets Purchase Options);**
9. **Article 25 (Indemnification), including all of the indemnities referred to therein;**
10. **Section 26.10 (Intellectual Property Rights);**
Section 26.12 (Project Company’s Confidentiality Obligations);

Section 26.13 (SAWS’ Confidentiality Obligations);

Section 26.14 (Personal Information);

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

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 Guaranty Agreement;

(2) The Groundwater Lease Conveyance Agreement; and

(3) 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 Transmission Pipeline System Real Property Interests other than the Transmission Pipeline Easements. In acquiring easements, the Project Company shall comply with Section 26.1(G) (Right-of-Way Easements). Notwithstanding anything in Section 1.2(DD) (References to Acquire) to the contrary, the Project Company shall not be required to have recorded the Transmission Pipeline Easements until June 10, 2017.

(2) Transmission Pipeline Terminus Site Acquisition and Preliminary Site Plan; SAWS Right of Entry. The Project Company shall have acquired fee simple absolute title to the Transmission Pipeline Terminus Site, and shall have delivered to SAWS a preliminary site plan of the Transmission Pipeline Terminus Site acceptable to SAWS in its discretion. The preliminary site plan shall indicate the anticipated division of the Transmission Pipeline Terminus Site into the Project Company Portion of the Transmission Pipeline Terminus Site and the anticipated SAWS Portion of the Transmission Pipeline Terminus Site. The Project Company also shall have granted, or caused the Water Supply Corporation to grant, SAWS a right of entry to the Transmission Pipeline Terminus Site, effective from the Financial Closing Date through the date of conveyance of title to the SAWS Portion of the Transmission Pipeline Terminus Site pursuant to Section 26.1(E) (Conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site Conveyance Obligations), sufficient for all purposes of the SAWS Interconnection Improvements, including performing engineering, analysis and such additional surface, subsurface and geotechnical studies or tests as deemed necessary by SAWS prior to the commencement of construction of the SAWS Interconnection Improvements.
(3) **Transmission Pipeline Terminus Site Survey, Environmental Site Assessment and Title Commitment.** The Project Company shall provide, with respect to the Transmission Pipeline Terminus Site, (a) 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; (b) a Phase I Environmental Site Assessmentage (i) dated no more than 180 days prior to the Financial Closing Date, (ii) made in accordance with then-current ASTM standards, (iii) naming SAWS as a “user”, and (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 (c) a title commitment from Chicago Title Insurance Company or such other reputable title company to issue an owner policy of title insurance to the Water Supply Corporation for the Transmission Pipeline Terminus Site.

(4) **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 shall 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, subject only to the terms and conditions of such permits, for a term extending to or beyond September 11, 2044 (in the case of the Groundwater Drilling and Operating Permit) and to or beyond September 15, 2034 (in the case of the Groundwater Transportation Permit). No other legal authority shall be required for such pumping, withdrawal and transportation from the POSGCD or any other Governmental Body.

(5) **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.

(6) **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.

(7) **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.

(8) 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.

(9) Public-Private Partnership Framework Agreement and Water Transportation Agreement. The Public-Private Partnership Framework Agreement and the Water Transportation Agreement shall have been duly authorized, executed and delivered by the parties thereto.

(10) Design Build Contract and Design Build Contractor Substitution Agreement. The Design Build Contract shall have been duly authorized, executed and delivered by the Water Supply Corporation and the Design Build Contractor, and the Design Build Contractor Substitution Agreement (in the form set forth as Transaction Form B) shall have been duly authorized, executed and delivered by the Water Supply Corporation, the Design Build Contractor and SAWS.

(11) Required Construction Period Insurance. The Project Company shall have submitted to SAWS certificates of insurance for all Required Construction Period Insurance.

(12) 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).

(13) 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.

(14) 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. 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 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.

(15) **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 thereto, 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.

(16) **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.

(17) **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).

(18) **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.

(19) **Financial Close.** Financial Close shall have occurred. In connection therewith:

(a) **Financial Close Defined.** Financial Close shall be deemed to have occurred when (I) the Senior Secured Credit Facility has been duly authorized, executed and delivered by the parties thereto, (2) the “Initial Funding Date” has occurred under the Senior Secured Credit Facility, (3) the Equity Contribution Agreement has been duly authorized, executed and
delivered by the parties thereto, and (4) the other requirements of this Section 4.1(B) (Financial Closing Date Conditions Defined) have been met.

(b) **SAWS Review.** The Project Company shall provide to SAWS for its review, reasonably in advance of Financial Close, copies of the draft Senior Debt Financing Agreements.

(c) **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)(19)(c) (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; and

5. Shall be prepared in a format and using a methodology consistent with the Contract Date Financial Model 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.

(d) Creditors’ Remedies Agreement, Credit Agreement, Equity Contribution Agreement and Depositary Agreement. The Creditors’ Remedies Agreement, the Credit Agreement, Equity Contribution Agreement and the Depositary Agreement shall have been duly authorized, executed and delivered by the parties thereto.

(e) 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)(19) (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.

(f) 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.

(20) Amended Guaranty Agreement. The amendment to the Guaranty Agreement in the form set forth in Transaction Form A (Garney Guaranty Agreement) shall have been duly authorized, executed and delivered by the parties thereto.

(21) 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 have reasonably requested.

(C) Official Certificate as to Certain Matters. The conditions specified in subsections (1), (4), (6), (7), (8), (12), (13) and (14) 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 certificates, 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 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.

(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 the opinion of counsel for SAWS, in the form set forth in Transaction Form K (Opinion of Counsel to SAWS), 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 as 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)(19) (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 4.1(B) (Financial Closing Date Conditions Defined)) 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
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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 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 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) 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, including those relating to the Project Company Storage Tank, (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 or 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; and

(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; or

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 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 Risk 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, 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.
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 10.9(A)(1) (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.

(F) 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.

(G) 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.

(A) 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.

(B) 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.

(C) 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 and 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.
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 overstated 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 SAWSPOLICIES.

(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.

SECTION 5.14. PROJECT COMPANY STORAGE TANK.

(A) Construction and Conveyance of Project Company Storage Tank. The Project Company Storage Tank initially constitutes part of the Project. Accordingly, the Project Company shall design, construct and commission the Project Company Storage Tank in accordance with all provisions of this Water Transmission and Purchase Agreement applicable to the Project, and SAWS shall have all review, comment and other rights with respect thereto, including those set forth in Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion), as it has with respect to the Project generally. The provisions of this Water Transmission and Purchase Agreement relating to acceptance, performance testing and final completion of the Project, including those provided in Appendix 5 (Performance Test Procedures and Standards), apply fully to the Project Company Storage Tank. On the Notice of Acceptance Date, the Project Company shall convey the Project Company Storage Tank and Terminus Site Lot 2 to SAWS.

(B) Operation, Maintenance and Insurance of the Project Company Storage Tank. The Project Company shall have full responsibility for the operation, maintenance and insurance of the Project Company Storage Tank and Terminus Site Lot 2 prior to the Notice of Acceptance Date. The Project Company hereby grants SAWS a license to access the Project Company Storage Tank and Terminus Site Lot 2 for purposes of inspection, coordination, testing, flushing and similar purposes in connection with SAWS rights and responsibilities with respect to the SAWS Interconnection Improvements and in anticipation of SAWS’ assumption of operational responsibility for the Project Company Storage Tank following the Notice of Acceptance Date. On and after the Notice of Acceptance Date, SAWS shall have exclusive responsibility for operating, maintaining and insuring the Project Company Storage Tank.

SECTION 5.15. PROJECT COMPANY STORAGE TANK WARRANTIES.

(A) Project Company Storage Tank Warranties Defined. The Project Company warrants that: (i) all design work performed for the Project Company Storage Tank pursuant to this Water Transmission and Purchase Agreement shall conform to the requirements of this Water Transmission and Purchase Agreement, Good Industry Practice and all professional engineering principles generally accepted as standards of the industry in the State; (ii) the Project Company Storage Tank shall be free of defects, including design defects, errors and omissions; (iii) the Project Company Storage Tank shall be fit for use for the intended function; (iv) materials and equipment furnished for the Project Company Storage Tank under this Water Transmission and Purchase Agreement shall be of good quality and new; and (v) the Project Company Storage Tank shall meet all of the requirements of this Water Transmission and Purchase Agreement (the “Project Company Storage Tank Warranties”).

(B) Warranty Inspection. At least three months prior to the expiration of the Project Company Storage Tank Warranties Term, SAWS shall notify the Project
Company of a date or series of dates to occur no earlier than during the last two months prior to the expiration of the Project Company Storage Tank Warranties Term on which SAWS (and representatives of SAWS) and the Project Company shall conduct a joint inspection of the Project Company Storage Tank (the "Project Company Storage Tank Warranty Inspection"). If the Project Company fails to participate in such inspection SAWS shall proceed with the inspection without the presence of the Project Company who shall be deemed to have accepted the findings of the inspection. Any deficiency, defect, error, inaccuracy, shortcoming or noncompliance with the requirements of this Water Transmission and Purchase Agreement in the Project Company Storage Tank (fair wear and tear excepted) discovered prior to the expiration of the Project Company Storage Tank Warranty Period whether during such inspection or otherwise shall be a “Project Company Storage Tank Defect”.

(C) Project Company Storage Tank Warranties Term. The Project Company Storage Tank Warranties shall expire one year following the Commercial Operation Date (the “Project Company Storage Tank Warranties Term”). If any part or component of the Project Company Storage Tank is replaced or repaired during the Project Company Storage Tank Warranties Term, then the Project Company Storage Tank Warranties Term in respect of such part or component of the Project Company Storage Tank shall be extended for an additional 12 months from the date of replacement or repair.

(D) Correction of Non-Conforming Work.

(1) Within seven days of receipt by the Project Company of notice from SAWS specifying a Project Company Storage Tank Defect, the Project Company and SAWS shall agree when and how the Project Company shall remedy such violation in such manner and at such times as to minimize disruption to the operation of the Project; provided, however, that in case of an emergency requiring immediate corrective action, the Project Company shall forthwith implement such action as is prudent and shall immediately provide to SAWS details as to the nature of the emergency and the actions being taken. If the Project Company does not promptly and diligently effectuate such remedy within the agreed time, or should the Project Company and SAWS fail to reach such an agreement within such seven day period (or should SAWS disapprove of the actions being taken, in the case of emergency conditions), SAWS, after notice to Project Company, shall have the right to perform or have performed by third parties the necessary remedy, and the reasonable costs thereof shall be borne by the Project Company. In the event that SAWS expressly, in writing, waives the obligations of the Project Company to rectify a defect or deficiency in the Project Company Storage Tank, SAWS shall be entitled to an equitable and reasonable Direct Payment with respect to such waiver as a Compensation Adjustment Event.

(2) The Project Company shall be responsible for obtaining any required encroachment permit from SAWS and required consent from any other Persons, in connection with corrective work required to be performed pursuant to this Section. Project Company shall bear all costs of such corrective work, including additional testing and inspections, and shall reimburse SAWS or pay SAWS’s expenses made necessary thereby.

(E) Subcontractor Warranties.
(1) Without in any way derogating from the Project Company’s own representations and warranties and other obligations with respect to the Project Company Storage Tank, the Project Company shall obtain from all Subcontractors for the Project Company Storage Tank and cause to be extended to SAWS appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment, tools and supplies furnished by such Subcontractors. All representations, warranties, guarantees and obligations of Subcontractors: (a) shall be written so as to survive all SAWS and the Project Company inspections, tests and approvals; and (b) shall run directly to, and be enforceable by, the Project Company, SAWS and their respective successors and assigns. The Project Company hereby assigns to SAWS all of the Project Company’s rights and interest in all extended warranties for periods exceeding the applicable Project Company Storage Tank Warranties Term which are received by the Project Company from any of its Subcontractors and shall cause each Subcontract to include terms and provisions pursuant to which Subcontractor consents to such assignment.

(2) Upon receipt from SAWS prior to expiration of the Project Company Storage Tank Warranties Term of notice of a failure of any part of the Project Company Storage Tank to satisfy any Subcontractor warranty, representation, guarantee or obligation, the Project Company shall be responsible for enforcing or performing any such representation, warranty, guarantee or obligation, in addition to the Project Company’s other obligations, including its direct Project Company Storage Tank Warranties, hereunder. The cost of any equipment, material, labor (including reengineering) or shipping shall be for the account of the Project Company and the Project Company shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.
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 and other measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements), construct the SAWS Interconnection Improvements (excluding the Project Company Storage Tank and related improvements which are to be constructed by the Project Company), 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 (excluding the Project Company Storage Tank, which is to be designed and constructed by the Project Company as part of the Project at the Project Company's cost and expense and conveyed to SAWS on the Notice of Acceptance Date, all as provided in Section 5.14 [Project Company Storage Tank]. Appendix 13 (SAWS Interconnection Improvements) sets forth the general nature,
capacity and functionality of SAWS Interconnection Improvements intended as of the Conforming Third 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 shall 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, January 16, 2020 (the “Scheduled SAWS Interconnection Improvements Completion 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 subsection (D) of this Section (Project Company Mitigation Measures) and 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 Completion 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 Design Build 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 Completion 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, April 15, 2020), 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 Volume. (or, in the event restrictions are imposed on the production or transportation of Raw Groundwater or Product Water by any Governmental Body or under any Governmental Approval, such
lesser number of Units as the Project Company has lawful authority to produce, transport and make available to SAWS).

(D) Project Company Mitigation and Other Measures. In the event the Project Company fails to complete the mitigation, site preparation, and other measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements) in a timely manner as provided therein, including acquisition of other land that may be required to satisfy endangered species or other mitigation requirements, SAWS shall be relieved of its payment obligations under subsection (C) of this Section to the extent that any delay in, stoppage of, or failure to complete construction of the SAWS Interconnection Improvements is reasonably attributable to such failure. Notwithstanding any provision to the contrary, in no event shall an Uncontrollable Circumstance extend the Scheduled Grading Completion Date and the Scheduled Connection Availability Date.

(E) 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. 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 (except as provided with respect to Senior Debt in Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets) or in connection with SAWS exercise of its purchase options in Article 23 (SAWS Project Assets Purchase Options)), nor shall the issuance of any...
Permitted Debt result in an adjustment of the Unit Price except as provided in Section 7.6 (Refinancing and 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 any of the SAWS Interconnection Improvements, except that the Project Company Storage Tank shall be financed, designed, built, commissioned and tested for Acceptance by the Project Company as part of the Project prior to the Notice of Acceptance Date.

(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), Section 10.9(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 30 days prior to the anticipated date of sale of the Initial Senior Debt, 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 15 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).
(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.

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 costs 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 Financings. 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 from the period beginning on the Financial Closing Date (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. With respect to the Credit Agreement and the Depositary Agreement, a matter affecting SAWS as set forth above shall be deemed material if, in an adverse way with respect to SAWS, it: (1) amends the definition of Operating and Maintenance Expenses in the Credit Agreement, if such proposed amendment would affect clause (k) of such definition; (2) modifies the inclusion of amounts...
payable as Operating and Maintenance Expenses in clause (B) of Section 3.03(a)(iii) and in clause (B) of Section 3.03(b)(i) of the Depositary Agreement; (3) increases the aggregate principal amount of Senior Debt (other than (i) treating overdue amounts as principal and (ii) capitalizing interest during the construction period by increasing the principal amount on each interest payment date by the amount of the applicable interest payment) including, without limitation, the advancing of funds pursuant to the Credit Agreement in excess of the principal amount of the Initial Senior Debt and the re-lending of principal that has been repaid, or (4) restructures the principal amortization of the Initial Senior Debt (including by use of hedging arrangements), in either case which proposed increase or restructuring would have the effect of increasing the portion of the Project Assets Purchase Price attributable to the Senior Debt; or (5) such amendment, modification or action otherwise has the effect of increasing the portion of the Project Assets Purchase Price attributable to Senior Debt.

(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 AND 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 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(G) (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 Information.** SAWS shall cooperate with and assist the Project Company in connection with any Refinancing by providing any information, certification or documents that are in SAWS possession and that are reasonably required in connection with the Refinancing.

(G) **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 constitutes 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
(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) [Wet Commissioning];

(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) [Verification of Operational Preparedness];

(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;

(14) **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);

(15) **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;

(16) **Governmental Approvals.** The Project Company has obtained all necessary Governmental Approvals required to commence Performance Testing;

(17) **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;

(18) **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);

(19) **Certificate of Occupancy.** A temporary or final certificate of occupancy, if required, has been issued for any occupied portion of the Project; and

(20) **Punch List.** The Project Company has delivered a Punch List to SAWS.

(E) **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.

(F) **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 145 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; **and**
(8) The Project Company and SAWS have verified that the instrumentation and SCADA control systems on the Project Company Storage Tank are fully functional and can be observed by both the Project Company and SAWS.

(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;
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;

Design Build Contractor Letter of Confirmation. The Design Build Contractor shall have delivered a letter to SAWS and the SAWS Engineer confirming the matters stated in (2) (Achievement of Minimum Performance Criteria);

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);

No Encumbrances. There are no Encumbrances registered or recorded on the Project Sites or any part of the Project other than Permitted Encumbrances;

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;

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

Final Electronic Operation and Maintenance Manuals. The Project Company has delivered to SAWS the final Electronic Operation and Maintenance Manual, including a complete electronic operation and maintenance manual for the Project Company Storage Tank acceptable to SAWS acting reasonably.

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. The date upon which the Notice of Acceptance is delivered to SAWS and the SAWS Engineer shall be the “Notice of Acceptance Date.”

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 Section 8.5(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 April 10, 2021, as such Commercial Operation Longstop Date may be extended as provided in (C) Section 8.6(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 later than October 2, 2022 (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 all eminent domain proceedings have resulted in a recorded judgment granting the applicable Project Real Property interest; and

(6) **Claims 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. Notwithstanding the prior conveyance of the Project
Company Storage Tank on the Notice of Acceptance Date, the requirements for Final
Completion shall apply to the Project Company Storage Tank and related Construction
Work.

(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) (SAWS Payment of Project Electricity Costs During the Operating Period).

(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;
give 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 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).

(G) Deductions For Failure to Obtain a Groundwater Transportation Permit Extension. If, following the later of (i) September 15, 2031, and (ii) the Senior Debt Discharge Date, the Groundwater Transportation Permit has not been extended to or beyond September 11, 2044, then, until such extension has occurred, Deductions shall be imposed against the entirety of SAWS’ Monthly Water Purchase Payment obligations until such time as the total amount of such Deductions equals $50,000,000.

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.

(1) The Project Company shall retain and maintain all records referred to in Section 9.12(E) (Records to Be Kept) for a period of at least ten years from the Contract Year to which such records relate, or such longer period as may be required by Applicable Law, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Water Transmission and Purchase Agreement.

(2) On the expiration of such period or at the earlier request of SAWS, the Project Company shall deliver all those records (or, if those records are required by statute to remain with the Project Company or Project Contractor, copies thereof to SAWS in the manner and at the location as SAWS specifies, acting reasonably.) SAWS shall make available to the Project Company for inspection during normal business hours all records the Project Company delivers pursuant to this Section upon reasonable notice.

(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.

The Cabinet Interface, SCADA and other communication systems to be installed and operated by the parties in connection with the Project will be designed to provide electronic data and information to both parties to facilitate the continuous automatic parallel operation of the Project and the SAWS Distribution System.

(C) Delivery Tank. The Project, the Project Company Storage Tank and the SAWS Storage Tank shall be designed such that Product Water may be directed either to the Project Company Storage Tank or the SAWS Storage Tank at the election of SAWS as the operator of both tanks. The particular tank to which Product Water is directed at any time is referred to herein as the “Delivery Tank.”

(D) 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.

(E) 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) Section 10.12(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 Section 10.10 (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 [a] Product Water that is taken delivery of by SAWS upon resumption of deliveries will not constitute Unacceptable Product Water, and (b) SAWS has adequate time, acting reasonably and in light of its duty to mitigate, to investigate any adverse effect of such deliveries on the SAWS Distribution System and take any necessary corrective action; (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 Section 10.10 (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, cause the Operating Service Agreement to be terminated 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, Section 10.10 (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 Purchase Agreement:

(1) **Advance Project Company Make-Up Units.** “Advance Project Company Make-Up Units” has the meaning set forth in Section 10.4(D)(1) (Supply Following Commercial Operation Date of Make-Up Units).

(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.

(5) Daily Maximum Volume. “Daily Maximum Volume” means (a) 137 Units of Product Water on any day in the months of November, December, January and February, and (b) 149.2 Units on any day in all other months (all subject to the Baseline Annual Volume).

(6) Delivery Tank. “Delivery Tank” has the meaning set forth in Section 10.1(C) (Delivery Tank).

(7) 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, if any, by which the number of Daily Delivered Water Units 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), as determined under Section 10.4(C) (Determination of Water Made Available), up to the Daily Maximum Volume. Demand Shortfall Units shall not, however, include any Tank Structural Failure Units. In no event shall Demand Shortfall Units be deemed to have been created on any day during which the Product Water level in the Delivery Tank was lower than the Flow Shutdown Tank Level throughout the entire day, unless and only to the extent that SAWS has directed the Project Company in writing to curtail or shut down Product Water flow into the Delivery Tank.

(8) 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.

(9) Excused Supply Shortfall Units. “Excused Supply Shortfall Units” means the sum of (a) the number of Supply Shortfall Units which the Project Company did not make available due to an Uncontrollable Circumstance, and (b) the number of Tank Structural Failure Units. 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. A Tank Structural Failure Unit is an Excused Supply Shortfall Unit.

(10) Flow Curtailment Tank Level. “Flow Curtailment Tank Level” has the meaning set forth in Section 10.3(B) (Flow Curtailment Tank Level).

(11) Flow Shutdown Tank Level. “Flow Shutdown Tank Level” has the meaning set forth in Section 10.3(C) (Flow Shutdown Tank Level).

(12) 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.
(13) **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 Volume.

(14) **Tank Structural Failure Units.** “Tank Structural Failure Units” means for any day the number of Units that SAWS, after reasonable efforts to comply with its mitigation obligations through the use of the SAWS Storage Tank as the Delivery Tank and other appropriate measures, did not take delivery of on account of a structural failure of the Project Company Storage Tank that prevented its continued use due to operational or regulatory requirements and occurred due to the Project Company's failure to build the Project Company Storage Tank in accordance with the requirements of this Water Transmission and Purchase Agreement.

(15) **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) **Flow Curtailment Tank Level.** Promptly following substantial completion of the Project design, the parties shall negotiate and establish the level in the Delivery Tank (expressed in feet above mean sea level) at which a skilled operator applying Good Management Practice should begin to curtail the flow of Product Water to the Delivery Tank in order to avoid the risk of the Product Water level in the Delivery Tank reaching the Flow Shutdown Tank Level in a two-hour period if Product Water were to continue to flow into the Delivery Tank at the rate of 33,000 GPM with no Product Water drawdown by SAWS from the Delivery Tank during such two-hour period. The agreed-upon level shall be the “Flow Curtailment Tank Level”, and shall be reflected in a Contract Administration Memorandum. Until and unless the parties agree otherwise pursuant to this subsection, the Flow Curtailment Tank Level shall be 1070 MSL.

(C) **Flow Shutdown Tank Level.** Promptly following completion of the Project design and in conjunction with the establishment of the Flow Curtailment Tank Level, the parties shall negotiate and establish the level in the Delivery Tank (expressed in feet above mean sea level) at which a skilled operator applying Good Management Practice should shut down the supply of Product Water to the Delivery Tank in order to avoid the possibility that the Product Water level in the Delivery Tank will reach a level that would overflow the Delivery Tank. The agreed-upon level shall be the “Flow Shutdown Tank Level”, and shall be reflected in a Contract Administration Memorandum. Until and unless the parties agree otherwise pursuant to this subsection, the Flow Shutdown Tank Level shall be 1079 MSL.

(D) **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 on January 16, 2020, 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 April 15, 2020) and throughout the Term, to make available a maximum of 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: (except as provided in Section 10.4(D)(2) (Supply of Make-Up Units) with respect to the delivery of Project Company Make-Up Units). Product Water shall be supplied and made available in accordance with the following terms and conditions:

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: Project Company may not supply more than 137.0 Units, and on any day;

2. The Project Company may not supply Project Water on any day in excess of the Daily Maximum Volume applicable to such day;

3. In the event of an extended Project shutdown, the Project Company may not supply Project Water except in accordance with the requirements of Section 6.6.2 (Extended Shutdowns) of Appendix 6 (Operating and Maintenance Standards);

4. Whenever the Product Water level in the Delivery Tank reaches the Flow Curtailment Tank Level, the Project Company shall curtail the Flow Rate to a rate not in excess of 31,000 GPM; and

5. Whenever the Product Water level in the Delivery Tank reaches the Flow Shutdown Tank Level, the Project Company shall shut down the flow of Product Water to the Delivery Tank.

(C) Determination of Water Made Available. Product Water shall be deemed to have been made available on any day:

1. In the first 30 days after the Commercial Operation Date, in a volume equal to the average daily volume of Product Water successfully produced by the Project Company and supplied to SAWS during the Performance Test, up to the Baseline Daily Volume applicable in such 30-day period; and
(2) Thereafter, in a volume equal to the average daily number of Daily Delivered Water Units in the 30-day period immediately preceding such day, subject to the following:

(a) If on any day in such 30-day period Product Water has not been taken delivery of by SAWS for any reason (including due to a curtailment or shutdown under Section 10.4[B][4] or [5] above), such average daily volume shall be calculated by using only the days within such 30-day period on which SAWS has taken delivery of all Product Water made available by the Project Company. For example, if during such a 30-day period, SAWS did not take delivery of any Product Water in whole or in part on three days, the daily average shall be calculated over the 27 days on which SAWS did take delivery of all Product Water made available by the Project Company; and

(b) If on any day in such 30-day period the Project Company is not capable of delivering Product Water in volumes up to the Baseline Daily Volume, whether due to physical operating capacity constraints or due to limitations under Governmental Approvals or other Applicable Law (including regulatory reductions in permitted production or transportation volumes), then Product Water shall be deemed to have been made available only in a volume up to the volume that the Project Company was operationally capable of delivering under Applicable Law on that day. In the event the average daily volume calculated under item (C)(2) above is less than the volume that the Project Company was operationally capable of delivering under Applicable Law on such day, such lesser average daily volume shall be deemed to be the volume of Product Water made available.

(D) Supply of Make-Up Units. Subject to the Daily Maximum Volume:

(1) (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 on any Contract Year day does not exceed 53,000 Acre Feet the Daily Maximum Volume; and

(2) (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.

Make-Up Units supplied pursuant to this subsection (D) shall be so identified and recorded as such on a daily basis in the appropriate tracking account, and used as appropriate for monthly and annual tracking and reconciliation purposes.
(E) Effect of Opportunities. In the event SAWS exercises its rights under Section 26.5 (Opportunities), the parties shall negotiate and reflect in a Contract Administration an appropriate adjustment to the Product Water Delivery Point and to the terms and conditions of this Section in order to give effect to SAWS’ exercise of such rights in a manner that does not adversely affect any of the Project Company’s rights hereunder.

(C) Extended Shutdowns. The Project Company acknowledges that its right to supply Product Water may be limited by the requirements of Section 6.6 of Appendix 6 (Operating and Maintenance) related to extended shutdowns.

(D) Protocol for Determining Number of Units of Product Water Not Made Available. Product Water shall be deemed to have been made available hereunder as provided in Section 1.2(M)(References to “Making Available Product Water”). Not later than the date on which SAWS approves the Operating Service Provider and the terms of the Operating Service Agreement pursuant to Section 13.1(E)(Operating Service Provider), SAWS and the Project Company shall develop and agree on protocols or conventions for measuring the number of Units of Product Water that has not been made available in any circumstance of Product Water unavailability. The resulting agreement shall be reflected in a Contract Administration Memorandum.

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 Project 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) Section 10.4(D) (Supply Following Commercial Operation Date of Make-Up Units)). 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) Section 10.4(D) (Supply Following Commercial Operation Date of Make-Up Units)), 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 limits of 137.0 and 149.2 Units as provided in Section 10.4(B) (Supply Following Commercial Operation Date Daily Maximum Volume unless otherwise agreed by the parties), shall use all reasonable efforts to deliver Product Water so as to create SAWS Make-Up Units as soon as practicable with the objective of minimizing the volume of Product Water to be delivered at the end of the Term.

SECTION 10.7. PROJECTED ANNUAL DELIVERY SCHEDULES.

(A) Projected Annual Supply Schedules. The Project Company and SAWS shall negotiate and establish a proposed Product Water production plan (the “Projected Annual Supply Schedule”) for each Contract Year (commencing with the Contract Year in which the Commercial Operation Date occurs) during the Term setting forth the daily and monthly volumes of Product Water (expressed in number of Units per day) that the Project Company proposes to produce and make available and that SAWS proposes to take delivery of and purchase during each Billing Period of such Contract Year. The Projected Annual Supply Schedule shall be prepared on an estimated basis not later than 365 days prior to the commencement of each such Contract Year, and on a definitive basis not later than 60 days prior to the commencement of each such Contract Year (or, for the first such Contract Year, not later than 30 days prior to the Commercial Operation Date). The Project Company acknowledges that the Projected Annual Supply Schedule will be incorporated...
into SAWS annual Distribution System operating plan. The Projected Annual Supply Schedules will be prepared for planning purposes only and will not be binding on the parties. The Projected Annual Supply Schedule established for a particular Contract Year shall be applicable to the subsequent Contract Year unless and until a Projected Annual Supply Schedule is negotiated and established for the subsequent Contract Year.

(B) Delivery Schedule Factors. The Projected Annual Supply Schedule shall take into account and reflect the following:

(1) Project Company Scheduled Maintenance. Planned shutdowns or partial outages of any part of the Project in order to perform scheduled maintenance, repair and replacement, which shall be limited to the months of November, December, January and February to the extent reasonably practicable. Specific hours designated by the Project Company in the Projected Annual Delivery Schedule for scheduled maintenance are “Scheduled Company Shutdown Hours”;

(2) SAWS Scheduled Maintenance. Planned shutdowns or partial outages of any part of SAWS Distribution System in order to perform scheduled maintenance, repair and replacement, which may limit SAWS ability to receive Product Water during the period of SAWS shutdown. Specific hours designated by SAWS in the Projected Annual Delivery Schedule for scheduled SAWS Distribution System maintenance are “Scheduled SAWS Shutdown Hours”;

(3) Electric Utility Maintenance. Planned shutdowns or partial outages of any Utility or other facilities supplying electricity necessary for Project operations in order to perform scheduled maintenance, repair and replacement. Specific hours designated by the Project Company for scheduled Utility maintenance are “Scheduled Utility Shutdown Hours”;

(4) Capital Modifications. The timing of any Capital Modification work to be performed during the Contract Year; and

(5) Other Operating Considerations. Other considerations material to Project and SAWS Distribution System operations.

The designation of any Scheduled Project Company Shutdown Hours, Scheduled SAWS Shutdown Hours, and Scheduled Utility Shutdown Hours shall not serve to lessen the Baseline Annual Volume. The parties may at any time, by mutual agreement, modify the Projected Annual Supply Schedule.

(C) Projected Monthly Supply. “Projected Monthly Supply” means the number of Units that the parties, pursuant to Section (A) of this Section, negotiate and agree upon that are intended to be made available by the Project Company and taken delivery of by SAWS for each Billing Period in a Contract Year. The Projected Monthly Supply for each Billing Period shall be established such that the sum of the Projected Monthly Supply Units for the Contract Year equals the Baseline Annual Volume.

SECTION 10.8. SAWS-DIRECTED CURTAILMENTS AND SHUTDOWNS.

The Project Company acknowledges that operating conditions in SAWS Distribution System as a whole may require SAWS to immediately curtail receipt of Product
Water, and that such conditions may therefore necessitate the issuance by SAWS Representative of a written directive requiring the immediate curtailment or cessation of ordinary operations at the Project and placement of the Project in Shutdown Mode. Such conditions may occur as a result of mechanical or structural failure within the SAWS Distribution System, emergency conditions originating in the SAWS Distribution System or other unexpected factors. The issuance of any such directive shall constitute an Uncontrollable Circumstance. In responding to any curtailment or shutdown directive issued by SAWS under this Section, the Project Company shall use reasonable efforts to meet the curtailed water delivery level and all of the other Performance Guarantees; provided, however, that the Project Company shall be under no obligation to do so unless such requirements can be met while operating the Project in accordance with Applicable Law, Good Management Practice, and within its design limits. The Project Company shall resume full operations of the Project within 24 hours of receipt by the Project Company of a written resumption directive issued by SAWS Representative.

SECTION 10.9. 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) Section 10.9(A) (Shortfall Units), together with the basis therefor. On or before 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 Financial Close Financial Model; and

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

   (i) Entry of the proposed equity contribution, if any, into the Financial Close 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% (which was the pre-tax internal rate of return anticipated to be earned in the Contract Date Financial Model);

   (ii) Entry of the proposed Permitted Debt issuance amount into the Financial Close 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 Capital and Raw Groundwater Unit Price constant, extend the Term for the necessary number of quarters to amortize the proposed Permitted Debt issuance to maturity assuming level debt service payments which begin at the Senior Debt Discharge Date as anticipated in the Financial Close Financial Model (June 2049) or such later date as may be necessary assuming principal balances of previously issued Permitted Debt remain outstanding beyond such Senior Debt Discharge 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% on the incremental equity contribution referred to in item (i) of this subsection, 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 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.

(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) Section 10.9(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 Financial Close Financial Model taking into account the actual results of the financing will be forwarded to SAWS within 10 days of the closing of the Proposed Financing, with the actual extension of the Term being as determined in such adjusted Financial Close 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 Section 10.9 (Extension of Term) in order to further extend the Term, subject to the limitations set forth in this Section 10.7 Section 10.9 (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 Section 10.9 (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 10.10. 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 10.11. 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 protocols 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 10.12. 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 10.13. 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 10.14. 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 Residuals 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 all Loss-and-Expense resulting from the generation, processing, transportation or disposal of Residuals by the Project Company.

**SECTION 10.15. 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 10.16. 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 or 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 hereof 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 (End of Term Project Condition Requirements)); and

2. Which, with respect to Project Equipment’s maintenance, repair and replacement status, meets 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 13
CONTRACTION 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 Design Build Contractor to provide the performance and payment bonds required under the Design Build Contract, 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 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, Section 13.1(F) (Operating Service Provider).

(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 other 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 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 Project Company understands 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. Concurrently with the execution and delivery of the Operating Service Agreement, the Water Supply Corporation, the Operating Service Provider and SAWS shall execute and deliver the Operating Service Provider Substitution Agreement in the form set forth as Transaction Form C.

(G) Design Build Contractor Substitution Agreement and Operating Service Provider Substitution Agreement. The Project Company acknowledges the rights of
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; that on or before the Financial Closing Date the Project Company has executed the Water Transportation Agreement with the Water Supply Corporation; and that on or before the Financial Closing Date the Water Supply Corporation has executed the Design Build Contract with the Design Build Contractor; and that following the Financial Closing Date the Water Supply Corporation will execute the Operating Service Agreement with the Operating Service Provider as provided in Section 13.1(F) (Operating Service Provider). The Project Company shall have the right to contract and conduct business with the Water Supply Corporation as contemplated hereby.

(B) Water Supply Corporation Related Covenants. 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 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

(3) 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.

(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 (Term) and Article 4 (Development and Financing Period) 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.

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 Design Build 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; or

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
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 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 Section 10.9 (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, Section 10.9 (Extension of Term).

(B) No Compensation Relief. If an Uncontrollable Circumstance occurs,

(1) 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 shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee; and

(3) 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 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 $1,606 per Acre Foot, and shall remain fixed for the Term.

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 and O&M Budget Panel Administration). The composition and functioning of the standing panel (the “O & M Budget Panel”) are described in Section 19.9 of Appendix 19 (Compensable Costs and 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 Payment 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 Costs 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 (including any Deductions imposed pursuant to Section 9.8(G) (Deductions for Failure to Obtain a Ground Water Transportation Permit Extension) and Appendix 9 (Guaranteed Maximum Electricity Utilization and Demand)) 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 and 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.

(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 4.15 (Project Company Storage Tank Warranties);
(3) Section 6.2 (SAWS Interconnection Improvements);
(4) Section 8.5(C) (Achievement of Acceptance);
(5) Section 8.8(C) (Achievement of Final Completion);
(6) Section 9.4(B) (SAWS Payment of Project Electricity Costs During the Operating Period);
(7) Section 10.2(D) (Remedies for Breach of Product Water Quality Guarantee – Off-Specification Product Water);
(8) Section 10.2(E) (Remedies for Breach of Product Water Quality Guarantee – Unacceptable Product Water);
(9) Section 10.14 (Administrative Obligations);
(10) Section 12.4(D) (Preparation Costs);
(11) Section 17.3(F) (Payment of Major Repair and Replacement Compensable Costs);
(12) Section 14.1(E) (Failure to Provide Insurance Coverage);
(13) Section 17.6 (Deductions Credit);
(14) Section 17.12(B) (Taxes Imposed by a Discriminatory Change in Tax Law and a Specified Change in Tax Law);
(15) Article 19 (Remedies of the Parties);
(16) Section 23.8 (Project Company to Cooperate);
(17) 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);

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

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

(20) 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) (Invoicing and Monthly Water Purchase Payment Due Date), 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 such 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 exclusion 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
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.

(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 Design Build 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 owner 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. SAW'S 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 RECOUSE 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 20

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);
20.1(B) [Project Company Remedial Breach Defined], 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 this 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 REMEDIABLE 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) forremedying 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 rights 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) (Notice), 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(C), (D) and (E) (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); or

(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) (SAWS Termination Rights) and 22.1(B) (Project Company Termination Rights), 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 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. (a) the aggregate amount required to prepay in full any Senior Debt outstanding as of the Project Assets 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, minus (b) 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 Purchase Date, to the extent applied to the payment of the amounts identified in item (a) of this subsection. The Project Assets Purchase Price shall not include Project Company Reimbursable Costs;

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 Purchase Date using a discount rate of 8.04652%, of the Target Equity Return Amount in the Financial Close Financial Model (“Quarterly Calculations” tab, row 2640) 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 2640 of the Financial Close 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)(19)(c), 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).
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 amount required to prepay in full any Senior Debt outstanding as of the Project Assets 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, 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 Purchase Date, to the extent applied to the payment of the amounts identified in item (1) of this subsection. 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 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 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 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 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 lines for taxes), (8), (9), (10) and (13) of the definition of Permitted Encumbrances. Such assignment, conveyance, acceptance and assumption shall be effective on the Project Assets 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 (Development and Financing Period) 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 Convey and 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, then 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 Contact 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.
SECTION 26.1. CERTAIN REAL PROPERTY-RELATED COVENANTS.

(A) Acquisition by the Project Company of Well Field Facilities Site Real Property Interests and Transmission Pipeline Easements. The Project Company, acting in cooperation with the Water Supply Corporation, shall acquire (1) all of the Well Field Facilities Site Real Property Interests no later than June 10, 2017, and (2) all of the Transmission Pipeline Easements no later than June 10, 2017. In acquiring easements, the Project Company shall comply with Section 26.1(G) (Right-of-Way Easements). The Project Company shall cause possession of all Transmission Pipeline Easements and Well Field Facilities Site Real Property Interests that are the subject of an eminent domain proceeding to have been obtained (subject to continued legal proceedings as may be applicable) no later than October 13, 2017. SAWS may, in its discretion, provide a variance to the requirements of this Section for a particular property interest on a case by case basis (“Variance”), upon written request from the Project Company.

(B) Transmission Pipeline Terminus Site Subdivision Property Line and Final Site Plan. The Project Company is obligated under subsections (C), (D), (E) and (F) of this Section to perform various obligations with respect to the Transmission Pipeline Terminus Site. In performing such obligations, the Project Company (1) shall use, as the final subdivision property line, the subdivision property line dividing the SAWS Portion of the Transmission Pipeline Terminus Site from the Project Company Portion of the Transmission Pipeline Terminus Site indicated in Figure 2-9 Attachment 13E of Appendix 113 (Description of the Project SAWS Interconnection Improvements), and (2) shall use, as the final site plan, the preliminary site plan set forth in Figure 2-9 Attachment 13E of Appendix 1 (Description of the Project), unless, by January 6, 2017, the parties agree to establish a different final subdivision property line or a different final site plan or both, in which case the Project Company shall perform such obligations using the agreed upon final subdivision property line or the final site plan, 13 (SAWS Interconnection Improvements).

(C) Final Site Plan Requirements for the Transmission Pipeline Terminus Site. The final site plan for the Transmission Pipeline Terminus Site shall show:

(a) that the proposed location of the Project Company Storage Tank and related portions of the Transmission Pipeline System, and the SAWS Storage Tanks Tank and related portion of the SAWS Interconnection Improvements, as set forth in Attachment 13E of Appendix 113 (Description of the Project SAWS Interconnection Improvements), on the Transmission Pipeline Terminus Site are in compliance with all applicable building and setback lines and do 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 Tank 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.
(D) Due Diligence Documents for the SAWS Portion of the Transmission Pipeline Terminus Site. Not later than January 13, 2017, 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 26.1(E) (Conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site Conveyance Obligations), (a) a proposed subdivision plat of the Transmission Pipeline Terminus Site, subdividing the SAWS Portion of the Transmission Pipeline Terminus Site generally as depicted on the final site plan described in Section 26.1(C) (Final Site Plan Requirements for the Transmission Pipeline Terminus Site), acceptable to SAWS in its discretion; (b) 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 and the title company; (c) an updated 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”, and (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 (d) 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 set forth in Exhibit B to Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site). 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 26.1(E) (Conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site Conveyance Obligations). If the Phase I Environmental Site Assessment recommends further action, the Project Company shall cause all necessary remediation to be performed to the satisfaction of SAWS such that SAWS can qualify as an “innocent landowner” and “bona fide prospective purchaser.”

(E) Transmission Pipeline Terminus Site Conveyance Obligations.

(E) Conveyance to SAWS of the SAWS Portion of the Transmission Pipeline Terminus Site Lot 3. Not later than March 13, 2017, the Scheduled Grading Completion Date, or the actual date of completion of grading for Terminus Site Lot 2 as required under Appendix 13 (SAWS Interconnection Improvements), whichever is earlier, the Project Company shall convey to SAWS, or shall cause the Water Supply Corporation to convey to SAWS, without compensation, good and indefeasible title to and interest in the SAWS Portion of the Transmission Pipeline Terminus Site Lot 3, by deed substantially in the form set forth as Transaction Form I (Deed to SAWS 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 Lot 3, 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 other than those set forth in Exhibit B to Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site), 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 (including Terminus Site Lot 2 until its conveyance to SAWS pursuant to Section 26.1(E)(2)) (Conveyance to SAWS of the Project Company Storage Tank) is the “Project Company Portion of the Transmission Pipeline Terminus Site.” The Project Company, not later than the date of such conveyance, also shall cause all mitigation and related measures required to be undertaken by the Project Company under Appendix 13 (SAWS Interconnection Improvements) to be completed so as to cause no interference with or delay to SAWS’ work on the SAWS Portion of the Transmission Pipeline Terminus Site Lot 3.

(2) Conveyance to SAWS of the Project Company Storage Tank. On the Notice of Acceptance Date, the Project Company shall convey to SAWS, or shall cause the Water Supply Corporation to convey to SAWS, without compensation, good and indefeasible title to and interest in Terminus Site Lot 2 and the Project Company Storage Tank by deed substantially in the form set forth as Transaction Form I (Deed to SAWS Portion of the Transmission Pipeline Terminus Site), subject to any additional exceptions to title as SAWS may approve in its discretion, and in accordance with the requirements of subsection 26.1(D) and paragraph (1) of this subsection 26.1(E). All documents so required to be delivered in connection with such conveyance shall be delivered to SAWS no later than 60 days prior to the conveyance date. Title to Terminus Site Lot 1 and the Terminus Site Lot 1 Improvements, which are not subject to any conveyance obligations, shall be retained by the Project Company and thereupon become the Project Company Portion of the Transmission Pipeline Terminus Site for the remainder of the Term.

(F) Reciprocal Easement Agreements. Concurrently with the conveyance provided for in Item (1) of subsection (E) of this Section, SAWS and the Project Company or the Water Supply Corporation, as applicable, shall execute a reciprocal easement agreement for the Transmission Pipeline Terminus Site substantially in the form set forth as Transaction Form J (Reciprocal Easement Agreement for the Transmission Pipeline Terminus Site), providing each owner of the Transmission Pipeline Terminus Site with access to the other owner’s portion of the Transmission Pipeline Terminus Site for purposes of this Water Transmission and Purchase Agreement.

(G) 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 85 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 without SAWS’ consent, shall not contain any indemnity provisions that would according to their terms apply or purport to apply to SAWS or other provisions that are not reasonable and customary for SAWS utility easements. In the event the Project Company delivers to SAWS a request for its consent to any variances to these easement requirements, and SAWS has not responded to the Project Company’s request within 10 Business Days of receipt, SAWS’ consent shall be deemed to have been given. The Project Company shall not deliver to SAWS more than 10 such requests for consent to a Variance
from any easement requirement in any period of five Business Days. 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 June 10, 2017.

(H) 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.

(I) 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.

(J) 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 Changes 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. The SAWS Representative shall also have the right to issue Variances.

(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, Variances 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) Amendments 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);
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 program(s) 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.belinsky@saws.org

(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
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 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

Name: Robert R. Puente
Title: President/Chief Executive Officer
Date: November 4, 2014

APPROVED AS TO FORM:

ABENGOA VISTA RIDGE LLC

By: /s/ Pedro Almagro Gavilán

Name: Pedro Almagro Gavilán
Title: Manager and President
Date: November 4, 2014*

[* FINANCIAL CLOSE VERSION – November 2, 2016 THIRD AMENDMENT – April 5, 2017]
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Table 4-1 Federally-Listed Threatened/Endangered Species Potentially Present 39

ACRONYMS

CCWSC: Cross Country Water Supply Corporation
HSPS: High Service Pump Station
IPS #1: Intermediate Pump Station, number 1
IPS #2: Intermediate Pump Station, number 2
POSGCD: Post Oak Savannah Groundwater Conservation District
SAWS: San Antonio Water System
TCEQ: Texas Commission on Environmental Quality
MG: Million US Gallons
APPENDIX 1

DESCRIPTION OF THE PROJECT

1. Introduction

1.1. Purpose

The purpose of this Appendix is to provide a general overview of the Project. To the extent any provision of this Appendix is addressed differently or more specifically by a provision in any other Appendix or this Water Transmission and Purchase Agreement, such other provision shall take precedence. To the extent any provision of this Appendix is addressed differently or more specifically by the Technical Memorandum in Attachment 3A of Appendix 3 or Appendix 13, the higher standard will govern.

1.2. Prologue

This Appendix presents the feasibility, conceptual plans, design criteria and the implementation plan for the Project. This Appendix covers the Project Improvements to produce, treat, store, and deliver 50,000 ac-ft/yr water from Well Field Facilities in Burleson County, Texas, to a delivery point in north Bexar County, Texas. The plan includes sizing and location of the required facilities and a conceptual level plan for implementation. Water quality and integration studies associated with combining the Project source water with SAWS’ Edwards aquifer water sources are also analyzed and discussed.

This Appendix has been prepared to be used in the context of a performance-based contract to deliver water to SAWS. This Appendix is not intended to be a final design and construction report. All assumptions are subject to change based on the future detailed engineering design.

1.3. Project Overview

The Project will deliver up to 50,000 ac-ft/yr of potable water. Basic facilities include Wells, Collection Pipelines, treatment facilities, tanks, pump stations, ground storage tanks, and the Transmission Pipeline.

The Well Field Facilities Site will include Wells in the Carrizo-Wilcox Aquifer and Simsboro Aquifer. The Collection Pipelines will convey the Raw Groundwater to the High Service Pump Station (HSPS) where the water may be cooled, disinfected and may receive some stabilization treatment. The water will then be pumped through
the Transmission Pipeline approximately 140 miles to the Transmission Pipeline Terminus Site in northern Bexar County. The Transmission Pipeline diameters include 54 and 60 inches. The Transmission Pipeline System includes two intermediate pump stations with storage and, prior to the Notice of Acceptance Date, a Project Company Storage Tank at the Transmission Pipeline Terminus Site. The Project overview is shown in Figure 1-1.
Figure 1-1 Project Overview
1.4. **Planning Factors**

Several factors were taken into consideration in the formulation of the conceptual plans:

- Utilizing fully permitted and vested groundwater rights in Burleson County to meet SAWS water demands
- Location and capacity of the Well Field Facilities
- Engineering design and construction considerations
- Environmental issues (including antiquities)
- Location of the Transmission Pipeline Terminus Site
- Ease of right-of-way acquisition
- Pipeline corridor
- Costs (capital, operation and maintenance)
- Flexibility of integrating additional sources of water

2. **Project Description**

2.1. **Well Field Facilities**

At full capacity, the Project water production facilities will incorporate a Well field with eighteen (18) Wells, an expandable HSPS and approximately 7.5 miles of Collection Pipelines. These Project Improvements are located in Burleson County near the intersection of State Highway (SH) 21 and Farm-to-Market Road (FM) 696, approximately eight miles west of the City of Caldwell, Texas. These facilities and all of their key components, structures and access roads will be constructed on properties for which the Project Company has secured access and appropriate easements.

The Well Field Facilities and individual Wells for the Project were located based on the following:

- Extensive mapping using geophysical logs, geology logs and other tools available defining the character and extent of the aquifer units throughout the central portion of the Carrizo-Wilcox Aquifer
Known hydraulic characteristics of the aquifer units
• Mapped hydraulic boundaries in the aquifer
• Regional and local groundwater use
• Groundwater conservation district regulations
• Locations of Groundwater Lease property
• Test drilling and production testing

The Simsboro Aquifer and Carrizo-Wilcox Aquifer within Burleson County were selected based on water quality and aquifer hydraulic characteristics. Local groundwater demands are negligible because there is limited irrigation production from these aquifers and municipal usage is low. In Burleson County, most groundwater users obtain their drinking water supplies from shallower aquifers.

Well Locations

The distribution of Wells and production distribution between the Simsboro and Carrizo members of the Carrizo-Wilcox Aquifer are shown below. Note that the Project includes a total of 18 Wells, with one Well per aquifer included as a backup (16 + 2 configuration).

Figure 2-1 shows the approximate location of the Well Field Facilities Site and individual Wells at the full delivered 50,000 ac-ft/yr capacity, including standby Wells. All drilling sites shown on Figure 2-1 are permitted for drilling and completion by the Post Oak Savannah Groundwater Conservation District (POSGCD). The Well locations shown are based on meeting specific POSGCD rules and regulations governing the spacing and locating of Wells.

Per the POSGCD rules, two criteria must be met for locating and spacing of Wells. These criteria are:

• Location and spacing of Simsboro Wells:
  • The spacing of a new Simsboro Well from any Well existing in the Simsboro shall be a minimum distance of 1 foot per gpm of production capacity.
  • The location of a new Simsboro Well shall be a minimum of 1/2 foot per gpm from the property line of a different groundwater right holder.
• Location and spacing of Carrizo Wells:
  o The spacing of a new Carrizo Well from any other Carrizo Well shall be a minimum distance of 2 feet per gpm of production capacity.
  o The location of a new Carrizo Well shall be a minimum of 1 foot per gpm from the property line of a different groundwater right holder.

The Well locations shown on Figure 2-1 meet these criteria. Drilling permits have been approved and all rights to construct Wells at these sites are fully vested for the term of the existing production permits. Figure 2-1 also shows the permitted maximum production for each Well in gallons per minute.

![Figure 2-1 Well Field Location](image-url)
The Project Company may change the location of the individual Wells at their discretion, provided the revised location and spacing of the Wells meet the rules and spacing criteria of the POSGCD.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
Table 2-1 Project Well Field

<table>
<thead>
<tr>
<th>Description</th>
<th>Total Number of Wells</th>
<th>Typical Yield per Well (gpm)</th>
<th>Total Production Capacity (ac-ft/yr)</th>
<th>Total Capacity by Permit (ac-ft/yr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simsboro Wells</td>
<td>9</td>
<td>3,000 (a)</td>
<td>42,745</td>
<td>39,745</td>
</tr>
<tr>
<td>Carrizo Wells</td>
<td>9</td>
<td>1,200 (b)</td>
<td>17,057</td>
<td>14,857</td>
</tr>
<tr>
<td>Total</td>
<td>18</td>
<td>NA</td>
<td>59,802</td>
<td>54,602</td>
</tr>
</tbody>
</table>

(a) 8 Wells permitted at 3,000 gpm, 1 Well permitted at 2,500 gpm due to Well spacing and property off-set requirements
(b) 8 Wells permitted at 1,200 gpm, 1 Well permitted at 975 gpm due to Well spacing and property off-set requirements

**Simsboro Wells**

Based on modeling efforts and testing of a pilot production Well, the Simsboro Aquifer is fully capable of producing 3,000 gpm, or higher, long-term Well yields. As shown on Figure 2-1, one of the Simsboro Wells is permitted for a slightly different amount. This reduced permitted Well yield is necessary to comply with the POSGCD Well spacing and property off-set requirements, not due to aquifer production characteristics.

Figure 2-2 shows the preliminary Well design for Simsboro Wells in the Well Field Facilities Site. The Wells will be constructed using standard underreamed, gravel packed, municipal Well construction procedures.

Nominal depth of the Simsboro Wells will be 2,700 feet, with approximately 300 feet of screen.

Actual screen settings, Well depths and screen intervals and lengths will vary based on ground level elevation at each site and site specific hydrogeological conditions.

At this time, water quality data indicates carbon steel casing, liner and column pipe are suitable, with an estimated design life of approximately 50 years

Screens will be carbon steel pipe based, with underbar and stainless steel wire-wrap.

Each Well will be constructed using methods and materials that comply with Texas Commission on Environmental Quality (TCEQ) public water supply system
requirements. The Well construction specifications will include the drilling and logging of an initial test hole and test Well to determine water quality, and to provide site-specific information needed for proper selection of material settings, such as casing seat, screen interval, screen slot size and gravel pack grade. In addition, the Well specifications will include appropriate warranties and guarantees from the Design Build Contractor governing work completion schedules, finished Well efficiency and sand production.

Well pumps will be vertical line-shaft turbine pumps. Pump settings, total dynamic heads, and the resulting number of pump bowls and electric motor horsepower (HP) will vary depending on site specific conditions, Well characteristics and groundwater levels.

Initially, horsepower requirements for the Simsboro Wells will be about 600 HP each.
Figure 2-2 Simsboro Well Design
Carrizo Wells

Carrizo Well yields will be approximately 1,200 gpm. Carrizo Wells in the Well Field Facilities Site are generally permitted to produce up to 1,200 gpm. As shown on Figure 2-3, one of the Carrizo Wells is permitted for a slightly different amount. This lower permitted Well yield is necessary to comply with the POSGCD Well spacing and property off-set requirements, not due to aquifer production characteristics.

Figure 2-3 shows the preliminary Well design for the Carrizo Wells. The Wells will be constructed using generally accepted underreamed and gravel packed municipal Well construction techniques.

Nominal depth of the Carrizo Wells will be 1,200 feet deep with approximately 150 feet of screen. Actual materials, Well depths and screen setting and lengths will vary based on ground level elevation at each site and site specific hydrogeological conditions encountered during construction.

Available water quality data indicates carbon steel materials for casing, liner and column pipe are suitable, with an estimated design life of approximately 50 years. Screens will be carbon steel pipe based, with underbar and stainless steel wire wrap.

All Well construction methods and materials will meet TCEQ’s public water supply requirements. The specifications will include the drilling and logging of an initial test hole and construction of a test Well to determine water quality, and to provide site-specific information needed for the selection of proper material setting such as casing depth, screen interval, screen slot size and gravel pack grade. In addition, the Well specifications will include appropriate warranties and guarantees governing work completion schedules, and finished Well efficiency and sand production.

Pumps used will be vertical line shaft turbine pumps. Pump settings, total dynamic heads and resulting number of pump bowls and electric motor horsepower will vary based on site specific conditions, Well characteristics and aquifer levels. Initial horsepower requirements for the Carrizo Wells are estimated to be about 200 HP each.
Figure 2-3 Carrizo Well Design
**Well Head Design**

Each Well will include an airline, a water level measurement pipe, a dedicated water level pressure transducer, isolation valves, check valves, and interactive SCADA capabilities.

Isolation valves, check valves and flowmeters will be incorporated on the discharge piping of each Well and at appropriate locations in the Well field piping to measure the flow and isolate the downstream piping for maintenance. See Figure 2-4 for a typical detail of the Well pump discharge piping.

**Collection Pipelines**

A series of 24-inch through 54-inch water mains will be constructed as part of the Collection Pipelines to deliver water from the various Wells to the HSPS. Figure 2-5 illustrates the planned infrastructure piping network. The mains are sized considering peak flows and friction head losses, and providing the most efficient Well motor operations.

The piping network avoids crossing large streams or creeks. Several piping network segments will cross small branch tributaries of an existing unnamed creek north of State Highway (SH) 21. These tributaries have small drainage areas that provide intermittent flows only after localized rainfall events. Preliminary review of available maps and aerial topography suggest that the potential for impacts to waters of the United States is negligible.

**Well Field Facilities Site**

The Well Field Facilities will be designed and constructed in accordance with current TCEQ rules and guidelines and recommendations of the American Water Works Association (AWWA). Security provisions recommended under AWWA Guidelines for Physical Security for Water Facilities, December 2006, will be included in all facilities. Those recommendations will include, at a minimum, the following items:

- 8-ft tall security fence with barbwire – intruder strands at the top of the fence of each production Well site and pump station facility
- Separate structures for each Well site hosting a SCADA system
- An all-weather road for access by required vehicles, trucks and repair equipment to each Well site
• One mobile emergency/back-up generator at the Well Field Facilities Site, adequately sized to operate two Well pumps at one of the sites during electrical service interruptions of the primary electrical service, and to maintain SCADA controls
Figure 2-4 Well Pump Discharge Piping
ure 2-5 Collection Pipelines
2.2. Transmission Pipeline System - Description

The Transmission Pipeline System route was developed using many criteria, with a focus on minimizing potential impacts to landowners and businesses along the route, the terrain, and overall length of the route.

Additional parameters considered in developing the Transmission Pipeline Alignment included environmental concerns, endangered species, cultural sites, historical sites, and easement acquisition costs.

The Transmission Pipeline is composed of approximately 140 miles long pipeline and three Transmission Pipeline Pumping Stations:

- HSPS
- Intermediate PS #1 (IPS #1)
- Intermediate PS #2 (IPS #2)

The Transmission Pipeline System includes the Transmission Pipeline and, prior to the Notice of Acceptance Date, the Project Company Storage Tank. The Transmission Pipeline System begins at the HSPS located at the proximity of the Well Field Facilities Site in Burleson County and terminates at the Transmission Pipeline Terminus Site in Bexar County (Refer to Figure 1-1).

Initial construction standards reflect the depth of cover over the top of pipe will be a minimum of 5 feet below natural ground surface and approximately 10 feet under local, county and state roadways. Potential river crossings include the Cibolo River, Guadalupe River, San Marcos River, and the Colorado River. The Transmission Pipeline Alignment will cross railroad and road rights-of-way at several locations.

Pipeline materials will be evaluated during preliminary studies and when design calculations are completed. The selected materials will comply with the applicable codes and standards such as those by the American Water Works Association (AWWA)

**High Service Pump Station (HSPS)**

The HSPS will receive the water from the Collection Pipelines and after some temperature, preventive disinfection and stability adjustments, pump it to the IPS #1.
The land needed for the HSPS will be covered under an existing Groundwater Lease. The planned layout for the pump station site is in a grassy field that is mostly clear of trees.

Water arriving from the Well Field Facilities Site will first be chemically treated with sodium hypochlorite before entering the variable frequency drive (VFD) operated cooling towers. The flow from the cooling towers will be routed to a ground storage tank.

Horizontal split case or vertical turbine pumps will be fed from the ground storage tank and will deliver the water into the Transmission Pipeline where it will receive further chemical treatment for Langelier saturation index (LSI) adjustment before leaving the HSPS to go to the IPS #1.

As is shown on the site layout in Figure 2-6, the HSPS will initially consist of:

**Table 2-2 HSPS Scope**

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cooling System</td>
<td>Five (5) VFD-operated 10,500 gpm cooling towers</td>
</tr>
<tr>
<td>Storage</td>
<td>One (1) Pre-stressed concrete 4MG ground storage pump-feeding tank</td>
</tr>
<tr>
<td>Treatment</td>
<td>One (1) Dosing system: Sodium Hypochlorite</td>
</tr>
<tr>
<td></td>
<td>One (1) Dosing system: Caustic Soda</td>
</tr>
<tr>
<td></td>
<td>One (1) Chemical Storage facility</td>
</tr>
<tr>
<td>Electrical Services</td>
<td>One (1) Electrical connection facility</td>
</tr>
<tr>
<td>Pump Pad</td>
<td>Four (4) 11,300 gpm @ 495’ TH high service pumps</td>
</tr>
<tr>
<td>Other</td>
<td>Access road and the necessary security items at the site</td>
</tr>
</tbody>
</table>

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**Figure 2-6 High Service Pump Station Site Layout**

A1-22
Pipe Section 1: HSPS to IPS #1

The Transmission Pipeline from the HSPS to the Intermediate Pump Station (IPS) #1 is approximately 39 miles long and extends across rural properties. The pipe size for this portion of the alignment is planned to be 54-inch diameter pipe capable of delivering the necessary flow rate to IPS #1. The Transmission Pipeline extends from the HSPS, in a northerly direction and subsequently parallels the existing Cross County Water Supply Corporation Project 130 (CCWSC 130) pipeline which was completed in 2011. The Transmission Pipeline is planned to parallel the Project 130 pipeline in a westerly direction toward the IPS #1, for a distance of approximately 27 miles.

IPS #1

Based on the current design, IPS #1 will be located in Bastrop County, TX on an approximately 8-acre site.

The IPS #1 will receive water from the HSPS and pump it to the IPS #2.

The conceptual site layout is presented in Figure 2-7

The IPS #1 will ultimately consist of:

Table 2-3. IPS #1 Scope

<table>
<thead>
<tr>
<th>Storage</th>
<th>One (1) Pre-stressed concrete 4MG ground storage pump-feeding tank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatment</td>
<td>One (1) Dosing system: Sodium Hypochlorite</td>
</tr>
<tr>
<td></td>
<td>One (1) Chemical Storage facility</td>
</tr>
<tr>
<td>Electrical Services</td>
<td>One (1) Electrical connection facility</td>
</tr>
<tr>
<td>Pump Pad</td>
<td>Four (4) 11,300 gpm @ 445’ TH pumps</td>
</tr>
<tr>
<td>Other</td>
<td>Access road and the necessary security items at the site</td>
</tr>
</tbody>
</table>
Figure 2-7 Intermediate Pump Station #1 Site Layout
Pipe section 2: IPS #1 to IPS #2

The Transmission Pipeline from the IPS #1 to the IPS #2 is planned to be approximately 72 miles long and extends through predominately rural properties. A 60-inch diameter pipeline capable of delivering the necessary flow to the IPS #2 is planned for this segment.

The Transmission Pipeline extends from the IPS #1 in a southwesterly direction toward the IPS #2. The Transmission Pipeline is planned to be constructed within a 85-foot wide permanent easement that parallels an existing Lower Colorado River Authority (LCRA) electrical transmission easement. In several instances, the Transmission Pipeline Alignment shifts away from the LCRA easement in order to avoid residential neighborhoods, stock ponds, trees, and existing infrastructure.

IPS #2

Based in the current design, IPS #2 will be located in Guadalupe County, TX on an approximately 8-acre site.

IPS #2 will receive water from IPS #1 and pump the water to the Transmission Pipeline Terminus Site.

The conceptual site layout is presented in Figure 2-8

The IPS #2 will ultimately consist of:

<table>
<thead>
<tr>
<th>Storage</th>
<th>One (1) Pre-stressed concrete 4MG ground storage pump-feeding tank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatment</td>
<td>One (1) Dosing system: Sodium Hypochlorite One (1) Chemical Storage facility</td>
</tr>
<tr>
<td>Electrical Services</td>
<td>One (1) Electrical connection facility</td>
</tr>
<tr>
<td>Pump Pad</td>
<td>Four (4) 11,300 gpm @ 562’ TH pumps</td>
</tr>
<tr>
<td>Other</td>
<td>Access road and the necessary security items at the site</td>
</tr>
</tbody>
</table>
Figure 2-8 Intermediate Pump Station #2 Site Layout
Pipe Section 3: IPS #2 to Transmission Pipeline Terminus Site

The Transmission Pipeline from the IPS #2 to the Transmission Pipeline Terminus Site is approximately 29 miles long and extends through mostly semi-rural properties. The pipe size for this portion of the Transmission Pipeline System is planned to be a 60-inch diameter pipe. The Transmission Pipeline extends from the IPS #2 in a southwesterly direction toward the Transmission Pipeline Terminus Site. The Transmission Pipeline is planned to be constructed within a 85-foot wide permanent easement that parallels the existing LCRA easement until the Transmission Pipeline Alignment reaches Green Valley Road in Guadalupe County. The Transmission Pipeline Alignment from that point shifts away from the LCRA easement and extends towards the Transmission Pipeline Terminus Site. Multiple roadways under county and State jurisdiction will also be crossed perpendicularly as typically required by local and State regulations.

Transmission Pipeline Terminus Site

The Transmission Pipeline Terminus Site is located in north Bexar County.

The Project Company Storage Tank will receive Product Water from the Transmission Pipeline. The Project Company will design, construct and test the 10 MG Project Company Storage Tank is located on a high point within the Project and dedicate the tank to SAWS on the Notice of Acceptance Date. The Transmission Pipeline Terminus Site is located within 12,000 feet of the intersection of Blanco Road and Texas State Highway Loop 1604 (the 1604) in Northern Bexar County, in San Antonio. The conceptual site layout for this facility is presented in Figure 2-9Attachment 13E of Appendix 13 (SAWS Interconnection Improvements).

The Transmission Pipeline Terminus Site will have the following major facilities:

<table>
<thead>
<tr>
<th>Table 2-5 Transmission Pipeline Terminus Site Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Storage</strong></td>
</tr>
<tr>
<td><strong>Treatment</strong></td>
</tr>
<tr>
<td><strong>Electrical Services</strong></td>
</tr>
<tr>
<td><strong>Other</strong></td>
</tr>
</tbody>
</table>
The Transmission Pipeline Terminus Site will be sited large enough to accommodate the SAWS Interconnection Improvements, including a SAWS 10-million-gallon tank, pump station and additional treatment facilities.

The Product Water Delivery Point is assumed to be a 48” flange downstream of a 10 MG and Project Company Storage Tank. This 10MG storage tank may be the one Flow Meter are included in the current design scope or an additional one provided by SAWS for the Transmission Pipeline Terminus Site. The Product Water Delivery Point is expected to be downstream of the Project Flow Meter. Water is expected to be delivered at the pressure granted by the height of the water surface inside the tank Project Company Storage Tank.
Figure 2-9 Transmission Pipeline Terminus Site Layout
3. Design Intent and Project Requirements

3.1. Transmission Pipeline System

**Transmission Pipeline Hydraulics**

Planning stage hydraulic calculations have been performed for the sizing of the pipelines and selecting pumps for the Transmission Pipeline Alignment. The calculations in Table 3-1 are based on the final delivery flow of 50,000 ac-ft/yr. Water losses in the Transmission Pipeline are assumed to be 4%. Friction losses in the Transmission Pipeline are based on a Hazen Williams’ Coefficient (C) equal to 120 for the aged pipe. Based on the above assumptions, the total head at each pump station is calculated. Table 3-1 shows pipeline size, pipeline length, static head, friction losses and total head.

<table>
<thead>
<tr>
<th>Table 3-1 Hydraulic Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>Pipe Diameter (in)</td>
</tr>
<tr>
<td>Static Lift (ft)</td>
</tr>
<tr>
<td>C Factor</td>
</tr>
<tr>
<td>Head Loss (ft/1,000')</td>
</tr>
<tr>
<td>Segment Length (ft)</td>
</tr>
<tr>
<td>Friction Losses (ft)¹</td>
</tr>
<tr>
<td>Total Head (ft)</td>
</tr>
</tbody>
</table>

¹ Friction losses include frictional losses from the pipe as well as 15’ losses from elbows and valves.

Note that frictional losses are expected to increase throughout the life of the pipelines. Since this Project will be in operation for at least 30 years, the Transmission Pipeline efficiency and capacity are expected to decrease from year to year despite regular maintenance, which will maintain frictional losses within acceptable levels. The maximum theoretical peak flow rate for the Transmission Pipeline System is estimated to be between 34,880 gpm (new pipe) and 32,548 gpm (30-year pipe).
In order to provide a conservative estimate for the pressure class for each section of
the Transmission Pipeline, all pressure losses from valves and elbows are accounted
for along each section of pipeline. Figure 3-1 shows the hydraulic profile of the
Transmission Pipeline System.
Figure 3-1 Hydraulic Grade Line
**Delivery Variability**

The Project is designed to provide some variations in the delivery of 50,000 ac-ft/year to SAWS. The Project includes allowances for losses due to evaporation (cooling towers) and unavoidable or non-economically repairable leakage on pipes. Table 3-2 provides the design capacities of the major components (and potential losses).

**Table 3-2 Design Capacity of Components**

<table>
<thead>
<tr>
<th></th>
<th>Wellfield</th>
<th>Evaporation (2%)</th>
<th>HSPS</th>
<th>Pipe</th>
<th>Losses (4%)</th>
<th>Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Acft /yr</td>
<td>gpm</td>
<td>Acft /yr</td>
<td>gpm</td>
<td>Acft /yr</td>
<td>gpm</td>
</tr>
<tr>
<td><strong>New Pipe with Losses (C=140)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peak</td>
<td>59800</td>
<td>37075</td>
<td>1196</td>
<td>742</td>
<td>58606</td>
<td>36334</td>
</tr>
<tr>
<td>Operation</td>
<td>53028</td>
<td>32875</td>
<td>1061</td>
<td>658</td>
<td>52261</td>
<td>32400</td>
</tr>
<tr>
<td>Margin</td>
<td>6775</td>
<td>4200</td>
<td></td>
<td></td>
<td>6345</td>
<td>3934</td>
</tr>
<tr>
<td>Margin %</td>
<td>13%</td>
<td>13%</td>
<td></td>
<td></td>
<td>12%</td>
<td>12%</td>
</tr>
<tr>
<td><strong>Old Pipe with Losses (C=120)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peak</td>
<td>59800</td>
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<tr>
<td>Margin %</td>
<td>13%</td>
<td>13%</td>
<td></td>
<td></td>
<td>12%</td>
<td>12%</td>
</tr>
</tbody>
</table>
Based on the difference between peak and normal operation, Table 3-3 and Table 3-4 illustrate the anticipated recovery time following a down time within the Project for the initial installation and the 30-year old pipe scenario.

**Table 3-3 Project Recovery (Initial Installation; C factor = 140)**

<table>
<thead>
<tr>
<th>Stop Time (minutes)</th>
<th>Base Load (gpm)</th>
<th>Unsold Volume (kgallons)</th>
<th>Excess Capacity (gpm)</th>
<th>Recovery Time (minutes)</th>
<th>Recovery Time (hours)</th>
<th>Recovery Time (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>31,104</td>
<td>467</td>
<td>3,776</td>
<td>124</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>30</td>
<td>31,104</td>
<td>933</td>
<td>3,776</td>
<td>247</td>
<td>4</td>
<td>-</td>
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<td>60</td>
<td>31,104</td>
<td>1,866</td>
<td>3,776</td>
<td>494</td>
<td>8</td>
<td>-</td>
</tr>
<tr>
<td>Stop Time (hours)</td>
<td>Base Load (gpm)</td>
<td>Unsold Volume (kgallons)</td>
<td>Excess Capacity (gpm)</td>
<td>Recovery Time (minutes)</td>
<td>Recovery Time (hours)</td>
<td>Recovery Time (days)</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------</td>
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<td>------------------------</td>
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</tr>
<tr>
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<td>3,733</td>
<td>3,776</td>
<td>988</td>
<td>17</td>
<td>0.7</td>
</tr>
<tr>
<td>4</td>
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<td>7,465</td>
<td>3,776</td>
<td>1,977</td>
<td>33</td>
<td>1.4</td>
</tr>
<tr>
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<td>14,930</td>
<td>3,776</td>
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</tr>
<tr>
<td>24</td>
<td>31,104</td>
<td>44,790</td>
<td>3,776</td>
<td>11,861</td>
<td>198</td>
<td>8.2</td>
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</tbody>
</table>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
Table 3-4 Project Recovery (30-Year Old Pipe; C factor = 120)

<table>
<thead>
<tr>
<th>Stop Time (minutes)</th>
<th>Base Load (gpm)</th>
<th>Unsold Volume (kgallons)</th>
<th>Excess Capacity (gpm)</th>
<th>Recovery Time (minutes)</th>
<th>Recovery Time (hours)</th>
<th>Recovery Time (days)</th>
</tr>
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<tbody>
<tr>
<td>15</td>
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<td>467</td>
<td>1,444</td>
<td>323</td>
<td>5</td>
<td>-</td>
</tr>
<tr>
<td>30</td>
<td>31,104</td>
<td>933</td>
<td>1,444</td>
<td>646</td>
<td>11</td>
<td>-</td>
</tr>
<tr>
<td>60</td>
<td>31,104</td>
<td>1,866</td>
<td>1,444</td>
<td>1,293</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>Stop Time (hours)</td>
<td>Base Load (gpm)</td>
<td>Unsold Volume (kgallons)</td>
<td>Excess Capacity (gpm)</td>
<td>Recovery Time (minutes)</td>
<td>Recovery Time (hours)</td>
<td>Recovery Time (days)</td>
</tr>
<tr>
<td>2</td>
<td>31,104</td>
<td>3,733</td>
<td>1,444</td>
<td>2.585</td>
<td>43</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>31,104</td>
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<td>5,170</td>
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<td>4</td>
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<td>8</td>
<td>31,104</td>
<td>14,930</td>
<td>1,444</td>
<td>10,340</td>
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<td>24</td>
<td>31,104</td>
<td>44,790</td>
<td>1,444</td>
<td>31,021</td>
<td>517</td>
<td>22</td>
</tr>
</tbody>
</table>

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
**Surge Control**

During the detailed design phase of the Project, two potential surge events will be evaluated:

1) A pump shutdown due to power failure at the Project and

2) A sudden valve closing at the Project.

Various surge scenarios will be used to evaluate the impacts of either surge event in the Transmission Pipeline System. The simulation results will be used to evaluate and recommend surge protection devices to provide sufficient surge protection for the Transmission Pipeline System.

The effectiveness of installing air/vacuum valves along the Transmission Pipeline in addition to those at high points and/or installing surge tanks will be studied to control surge pressures. Combination air valves will be installed on each of the pump discharges as well as the common header at each pump station. These extra surge protection devices will be adequately sized during final design.

Also, at each pump station, a surge anticipator/relief line with surge anticipator valve will be installed off of the discharge header and tied into the suction header to relieve surge waves. The surge anticipating valve will activate on the low pressure wave and remain in the open position to dissipate the anticipated return high pressure wave in order to protect the Transmission Pipeline and the equipment at the pump station from any damage caused by unexpected surge pressures. It will also function as a pressure relief valve, and will open when the pressure in the pipe exceeds a preset high pressure limit to protect the equipment from damage caused by unexpected high non-surge pressures.

Final design of surge control equipment will be performed after a thorough transient analysis is completed and will include detailed modeling of all aspects of the Transmission Pipeline under multiple operating scenarios. The Project analysis includes costing for industry standard surge mitigation devices.

**Transmission Pipeline Easements**

The Transmission Pipeline traverses numerous parcels that generally consist of farmland, with lesser lengths located in residential sites and mixed-use developments.
The Project Company shall acquire access (which are broadly described in this section as “easements”) to approximately 450 land parcels for the construction, operation and maintenance of the Transmission Pipeline. This will be accomplished by means of easements, rights-of-way, or fee interests, which will be acquired by negotiation with the relevant landowners or, if necessary, by means of eminent domain proceedings.

Typically, permanent easements are of sufficient width to allow installation of the pipeline, access for construction equipment, stockpiles of excavated material and staging areas for pipe and bedding material. In evaluating the recommended easement width, it was determined that if the easement is wide enough to construct the Project pipeline, it will be wide enough to provide for operations and maintenance.

With respect to the Well Field Facilities Site and HSPS in Burleson County to the Burleson/Lee County line, Groundwater Leases are in place on the traversed parcels which allow for the construction of the Well pump station, the HSPS and Transmission Pipeline within those properties. 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.

Additional easements will be required at several locations from the Burleson/Lee County line to IPS #1 in Lee County, where the existing easement width is not adequate to install the pipeline. Temporary construction easement may also be obtained to construct this segment of the pipeline.

Between IPS #1, IPS #2 and the Transmission Pipeline Terminus Site, the planned 85-foot easement will mainly parallel an existing LCRA electrical transmission line easement.

The following is a summary of the course of action to acquire easements for the Project once the route of the Transmission Pipeline has been decided:

a. Identify property owners

b. Develop Right of Entry and Easement forms

c. Obtain Rights of Entry

d. Determine the approximate value of land within the pipeline route
e. Develop a schedule easement acquisition
f. Process title commitments or title runs to reveal the current land owner and any encumbrances
g. Contract with property appraisers to determine the value of the easement
h. Complete surveys and appraisals of the properties
i. Acquire the easement. Task includes negotiating with the landowners
j. Pay easement and recording fees to finalize transactions

An experienced local appraiser was consulted in developing a preliminary estimate of easement acquisition costs for property values on a per acre basis by county.

**Soil Corrosion Control and Cathodic Protection**

The Transmission Pipeline extends west and southwest across a series of Eocene sedimentary deposits to a location near the Bastrop - Caldwell County Line. At that point, and continuing to its terminus at the Transmission Pipeline Terminus Site, bedrock consists of Cretaceous-age marl and shale sedimentary deposits. Formations that will be crossed along the northeastern half of the pipeline include the Sparta Sand, Weches Formation, Queen City Sand, Wellborn Formation, and the Wilcox and Midway Groups. These formations are predominantly comprised of fine- to medium-grained sands, clayey sands and clay. Interbeds of clay, mudstone and sandstone are fairly common.

The southwestern half of the Transmission Pipeline will traverse Cretaceous-age formations identified as the Austin Chalk, Navarro Group and Marlbrook Marl and Pecan Gap Chalk ("upper Taylor Marl"). The Austin Chalk is comprised primarily of chalk and marl and locally may contain bentonitic seams. The Navarro Group and Marlbrook Marl is a mixture of marl, clay, sandstone and siltstone. The Pecan Gap Formation consists of chalk and chalky marl. Stream and river valleys will feature alluvial deposits of sand, clay and gravel to varying depths and horizontal extent.

It is anticipated that the Austin Chalk is likely to contain some beds of relatively hard limestone, requiring special methods of trenching.

The corrosive nature of the soil surrounding pipelines is based on characteristics including electric resistivity, pH, chloride content, sulfate/sulfide content, redox potential and moisture condition.
The soil for the Project will be studied by taking soil bores along the Transmission Pipeline Alignment and testing it for resistivity and pH. The wet chemistry of the soil will also be studied to determine the chloride content, the sulfate concentration and to verify the pH.

If corrosion protection is warranted, there are common installation methods for each pipe material to combat the corrosive soils. Bar wrapped cylinder concrete pipe can be installed in polyethylene encasement, but more typical is a mortar coating that acts as a barrier between the corrosive soils and the pipe. Steel pipe also commonly uses a urethane or mortar coating as corrosion protection. Fiberglass pipe will not be used or considered as a suitable material for the pipeline.

Cathodic corrosion protection offers an optimum of safety and efficiency. Corrosion evaluation and mitigation measures will be considered during design and development of the Transmission Pipeline System and dependent on the results of the onsite specific corrosion evaluation.

For preliminary study purposes, soil surveys conducted by National Resources Conservation Service indicate that soil is mild to moderately corrosive for concrete and high or moderately high corrosive for uncoated steel. Cathodic protection has been included because it would be beneficial and economical for the life of the pipeline.

Installation of galvanic anode system is one of the options planned for the Project for corrosion protection of the pipeline; active cathodic protection will be studied too.

Suitable measures as per applicable standards will be taken to mitigate any interference current and cross currents from any source. Special protection will be provided at cased-crossing (road crossing/rail crossing etc.). Additional permanent sacrificial anodes for casings/ carrier pipes within casings will be provided if needed. The final cathodic protection system will be decided after the field studies and detailed design is performed.

### 3.2. Instrumentation and Controls

The Project will utilize a supervisory control and data acquisition (SCADA) system to monitor and control the facilities along the Transmission Pipeline. In general, there are three major components for the SCADA system; the human machine interface (HMI), the programmable logic controller (PLC), and the communication system.
The top-end HMI consists of operators’ workstations, a communication server and a historical server. This will be located at the main control center. The HMI provides the operator with an operator’s interface, alarms, and trending functionality.

PLCs are installed with major equipment or at locations along the Transmission Pipeline where it has direct control of the equipment. The user-defined function block provided by the PLC, together with the classes and objects provided by the HMI, promote consistency throughout the SCADA system.

Fiber optics will be used for the communication between the Well Field Facilities Site and the HSPS, whereas reliable wireless communication system may be used for the communication between the Transmission Pipeline Pumping Stations. The primary/main control center will be located either at the HSPS or at the Transmission Pipeline Terminus Site.

### 3.3. Fire Protection

The fire protection system includes all material, design, fabrication, installation and testing per National Fire Protection Association (NFPA) and local code requirements. The fire protection system includes open head deluge sprinklers with dry pilot activation in the chemical buildings for HSPS and Intermediate Pump Stations. The open head deluge sprinklers will be designed to meet extra hazard per NFPA with a density of 0.30 over the entire area of protection. The ground storage tanks will be protected with two levels of protection and will be designed to meet a density of 0.30 over the surface area of the tank. The valves will be located within a conditioned area of each building. The cooling towers’ fire protection system includes open head deluge sprinklers with dry pilot activation. The cooling towers’ fire protection system will be designed to meet a density of 0.50 over the entire area. Each electrical room will contain dry closed head system or a double interlock pre-action tied to the smoke detection system. Each electrical room’s fire protection packages also include fire alarms, monitoring systems, smoke detection, heat detection, and two 20 pound (lb.) CO$_2$ and six 20 lb. ABC fire extinguishers.

### 3.4. Water Treatment

General water quality data was reviewed and evaluated for Edwards, Carrizo, and Simsboro water. The evaluation results indicate that no water quality parameters exceeded the current PMCLs and SMCLs in any one of these three sources. In addition, the Project water sources are of high quality and have a total dissolved solids content similar to the SAWS’ Edwards supply.
**Stability**

Generally speaking, the water is typically considered in a stable state when a LSI is greater than -0.4 and lower than 0.4. The evaluation results indicate the Carrizo water is under stable conditions with a LSI of 0.15 while the water from Wells in the Simsboro Aquifer has a slight corrosive tendency based on the calculated LSIs. The Additional Product Water Quality Standards require Product Water with a LSI greater than 0.1. The stability was then evaluated for the water mixture blended from these two sources. Under the current plan, a blending ratio between 20-40% of Carrizo water is considered with a design ratio of 30%. The resulting LSI from this mixed Carrizo-Simsboro blending ratio range is between -0.66 and -0.75 at a temperature of 77°F. The Project Company will treat the Raw Groundwater so that the delivered Product Water falls within the LSI range preferred by SAWS. Treatment to bring the delivered Product Water to within SAWS-preferred LSI range was evaluated. The planned treatment is the addition of caustic (NaOH) solution for adjustment of the pH of the delivered Product Water. The results of the treatment evaluations are summarized in Table 3-5 for a Carrizo/Simsboro blend of 20 percent and 40 percent.
Table 3-5 Water Stability for Blended Source Water after pH Adjustment

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Unit</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parameter</td>
<td></td>
<td>Value</td>
</tr>
<tr>
<td>20%−40% Carrizo Water</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Caustic Data</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dosage mg/L as NaOH</td>
<td>11.0−13.9</td>
<td></td>
</tr>
<tr>
<td>mg/L as solution at 50%</td>
<td>22.0−27.8</td>
<td></td>
</tr>
<tr>
<td>Water Quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temperature °F</td>
<td>77</td>
<td></td>
</tr>
<tr>
<td>Total Alkalinity mg/L as CaCO₃</td>
<td>174−190</td>
<td></td>
</tr>
<tr>
<td>TDS mg/L</td>
<td>263−269</td>
<td></td>
</tr>
<tr>
<td>Calcium mg/L as Ca</td>
<td>9.71−10.2</td>
<td></td>
</tr>
<tr>
<td>pH standard unit</td>
<td>8.57−8.59</td>
<td></td>
</tr>
<tr>
<td>Water Stability</td>
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<td></td>
</tr>
<tr>
<td>pH at CaCO₃ Saturation (pHs) standard unit</td>
<td>8.27−8.28</td>
<td></td>
</tr>
<tr>
<td>Langelier Saturation Index (LSI)</td>
<td>0.30</td>
<td></td>
</tr>
</tbody>
</table>

1 It is assumed a temperature of 77°F is reached in the distribution system after cooling and treatment on the well site.

The evaluation results indicate a resulting LSI after treatment of 0.3 can be reached in the blended source water at a caustic dosages range from 11.0 to 13.9 mg/L as NaOH. The water mixture is under safe and stable conditions after pH adjustment and within the range preferred by SAWS. No stability concern is associated with integration of the Product Water into the SAWS Distribution System.

**Disinfection**

Free chlorine residual is planned for primary disinfection of the source water at the Project treatment facility. It is also used as secondary disinfectant in the Transmission Pipeline System. Since free chlorine is used by SAWS in the SAWS Distribution System, waters from both water supplies are compatible in terms of disinfection mechanism and are not anticipated to create and concerns from blending.

A minimum free chlorine residual of 0.5 mg/L is recommended for design to provide the secondary disinfection as well as prevent bacteria regrowth in the Transmission
Pipeline System. It is anticipated that the free chlorine residual should also meet the minimum residual disinfectant concentration of 0.2 mg/L by the TCEQ for free chlorine in any blending scenarios.

Cooling

Based on SAWS requirements the delivered Product Water must not exceed 83° F. The Simsboro water will enter the Well pump at 101° F and the Carrizo water enters at 81° F. These waters will mix in the Well header lines, and will have an estimated temperature of 95.3° after blending. However, this is higher than the 83° SAWS stipulated water temperature. To meet the SAWS temperature requirement, the water will be fed through cooling towers, at the HSPS, before entering the Transmission Pipeline.

Water losses due to evaporation are considered to be 2% of the incoming volume.

The cooling towers are designed to accept incoming water and cool it down to 84° F, using the wet bulb temperature of 78°. This is 1° higher than the SAWS requirement but additional cooling will take place as the Product Water travels approximately 140 miles through the Transmission Pipeline before being delivered to the SAWS Distribution System. The transient time spent in cooler subsurface conditions will provide additional aid in the cooling of the Product Water to the SAWS stipulated 83°.

Additional Treatment

Additional Product Water Quality Standards are set forth in Appendix 8 (Performance Guarantees). This includes modifications to the calcium and iron levels. The HSPS site has adequate acreage to accommodate these types of advanced treatment processes, if required by the Project.

A treatment concept for reducing the iron content from the 0.3 mg/L secondary standard in the Product Water delivered to SAWS to an iron concentration of 0.2 mg/L has been evaluated. The HSPS site is currently sized to accommodate the iron removal process if required by SAWS.

In the evaluated process, the existing cooling and chlorination systems may be used for oxidation of iron. Partial flow may be diverted to a filtration system where iron precipitates to be removed. The filtered effluent would be lifted by pumps and blended with unfiltered flow in an in-line mixer prior to the ground storage tanks. The filters may need to be washed periodically and the backwash wastes be sent to
a pond. A pilot study is recommended once iron concentrations are actually known to verify the treatment processes and validate the design parameters.

4. **Environmental Considerations**

This section will identify potential Federal and State requirements that may impact planning, design, construction and operational requirements for the Project.

**Jurisdictional Waters of the US**

According to the National Hydrography Dataset, the Project would potentially cross numerous streams, tributaries and ponds. The Project will require a jurisdictional waters determination and delineation investigation along the Transmission Pipeline Alignment to identify potential waters of the United States, including wetlands. The Project would likely be permitted under Nationwide Permit (NWP) 12 for Utility Line Activities pursuant to Section 404 of the Clean Water Act (CWA).

If there are impacts to wetlands or if impacts to waters of the U.S. exceed 0.10 acres, the U.S. Army Corps of Engineers (USACE) must be notified prior to initiating any activity and a Pre-Construction Notification (PCN) must be prepared and submitted to the USACE-Fort Worth District for approval. Other conditions that could require preparation of a PCN include the presence of federally-listed threatened or endangered species habitat in the vicinity of the Project. If impacts to jurisdictional wetlands and/or waters of the U.S. exceed a half acre or the proposed activity does not meet the general conditions of the NWP 12, an Individual Permit (IP) may be required, which usually requires public notice. Generally, the typical agency review and approval period is 45 to 60 days for NWPs and 270 days for IPs.

**Threatened and Endangered Species**

Prior to final design, a review of technical databases, technical literature, governmental publications, databases, and field surveys will be performed to identify federally threatened, endangered, and candidate plant and animal species in the vicinity of the Project Sites. The habitat assessment will determine whether suitable habitat exists within and adjacent to the Project Sites, taking representative photographs of the Project Sites, and reporting all findings. Protocols for determining required habitat will be performed for the federally threatened, endangered, and candidate species listed in Table 4-1, which lists federally-designated threatened, endangered, and candidate species within the counties where the Project is located. However, according to the Natural Diversity Database, only two federally-listed species occur within five miles of the Transmission Pipeline.
Alignment. The Houston Toad (Anaxyrus houstonensis) is a federally-designated endangered species and occurs within five miles of the Transmission Pipeline Alignment in Lee County. The Houston toad and bald eagle (Haliaeetus leucocephalus), the latter of which is a federally delisted species (currently in recovery), has been observed within five miles of the Transmission Pipeline Alignment in Bastrop County.

Table 4-1  Federally-Listed Threatened/Endangered Species Potentially Present

<table>
<thead>
<tr>
<th>Species/Sub-Species</th>
<th>Scientific Name</th>
<th>Species Group</th>
<th>Federal Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bexar County</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[unnamed] ground beetle</td>
<td>Rhadine exilis</td>
<td>Insects</td>
<td>E</td>
</tr>
<tr>
<td>[unnamed] ground beetle</td>
<td>Rhadine infernalis</td>
<td>Insects</td>
<td>E</td>
</tr>
<tr>
<td>Black-Capped Vireo</td>
<td>Vireo atricapilla</td>
<td>Birds</td>
<td>E</td>
</tr>
<tr>
<td>Braken Bat Cave Meshweaver</td>
<td>Cicurina venii</td>
<td>Arachnids</td>
<td>E</td>
</tr>
<tr>
<td>Cokendolpher Cave Harvestman</td>
<td>Texella cokendolpheri</td>
<td>Arachnids</td>
<td>E</td>
</tr>
<tr>
<td>Comal Springs Dryopid Beetle</td>
<td>Stygoparnus comalensis</td>
<td>Insects</td>
<td>E</td>
</tr>
<tr>
<td>Comal Springs Riffle Beetle</td>
<td>Heterelmis comalensis</td>
<td>Insects</td>
<td>E</td>
</tr>
<tr>
<td>Fountain Darter</td>
<td>Etheostoma fonticola</td>
<td>Fishes</td>
<td>E</td>
</tr>
<tr>
<td>Golden-Cheeked Warbler</td>
<td>Dendroica chrysoparia</td>
<td>Birds</td>
<td>E</td>
</tr>
<tr>
<td>Government Canyon Bat Cave Meshweaver</td>
<td>Cicurina vespera</td>
<td>Arachnids</td>
<td>E</td>
</tr>
<tr>
<td>Government Canyon Bat Cave Spider</td>
<td>Neoleptoneta microps</td>
<td>Arachnids</td>
<td>E</td>
</tr>
<tr>
<td>Helotes Mold Beetle</td>
<td>Batrisodes venyivi</td>
<td>Insects</td>
<td>E</td>
</tr>
<tr>
<td>Madla’s Cave Meshweaver</td>
<td>Cicurina madla</td>
<td>Arachnids</td>
<td>E</td>
</tr>
<tr>
<td>Peck’s Cave Amphipod</td>
<td>Stygobromus pecki</td>
<td>Crustaceans</td>
<td>E</td>
</tr>
<tr>
<td>Robber Baron Cave Meshweaver</td>
<td>Cicurina baronia</td>
<td>Arachnids</td>
<td>E</td>
</tr>
<tr>
<td>San Marcos Gambusia</td>
<td>Gambusia georgei</td>
<td>Fishes</td>
<td>E</td>
</tr>
<tr>
<td>San Marcos Salamander</td>
<td>Eurycea nana</td>
<td>Amphibians</td>
<td>T</td>
</tr>
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<td>Texas Blind Salamander</td>
<td>Typhlomolge rathbuni</td>
<td>Amphibians</td>
<td>E</td>
</tr>
<tr>
<td>Species/Sub-Species</td>
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<td>Species Group</td>
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<td>---------------------</td>
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<tr>
<td>Texas Wild-Rice</td>
<td>Zizania texana</td>
<td>Flowering Plants</td>
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<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
<td>E</td>
</tr>
<tr>
<td>Guadalupe County</td>
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<td></td>
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<tr>
<td>Bald Eagle</td>
<td>Haliaeetus leucocephalus</td>
<td>Birds</td>
<td>DM</td>
</tr>
<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
<td>E</td>
</tr>
<tr>
<td>Caldwell County</td>
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</tr>
<tr>
<td>Bald Eagle</td>
<td>Haliaeetus leucocephalus</td>
<td>Birds</td>
<td>DM</td>
</tr>
<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
<td>E</td>
</tr>
<tr>
<td>Bastrop County</td>
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</tr>
<tr>
<td>Bald Eagle</td>
<td>Haliaeetus leucocephalus</td>
<td>Birds</td>
<td>DM</td>
</tr>
<tr>
<td>Houston Toad</td>
<td>Bufo houstonensis</td>
<td>Amphibians</td>
<td>E</td>
</tr>
<tr>
<td>Navasota Ladies’-Tresses</td>
<td>Spiranthes parksii</td>
<td>Flowering Plants</td>
<td>E</td>
</tr>
<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
<td>E</td>
</tr>
<tr>
<td>Lee County</td>
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</tr>
<tr>
<td>Bald Eagle</td>
<td>Haliaeetus leucocephalus</td>
<td>Birds</td>
<td>DM</td>
</tr>
<tr>
<td>Houston Toad</td>
<td>Bufo houstonensis</td>
<td>Amphibians</td>
<td>E</td>
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<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
<td>E</td>
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<td>Burleson County</td>
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</tr>
<tr>
<td>Bald Eagle</td>
<td>Haliaeetus leucocephalus</td>
<td>Birds</td>
<td>DM</td>
</tr>
<tr>
<td>Houston Toad</td>
<td>Bufo houstonensis</td>
<td>Amphibians</td>
<td>E</td>
</tr>
<tr>
<td>Navasota Ladies’-Tresses</td>
<td>Spiranthes parksii</td>
<td>Flowering Plants</td>
<td>E</td>
</tr>
<tr>
<td>Sharpnose Shiner</td>
<td>Notropis oxyrhynchus</td>
<td>Fishes</td>
<td>C</td>
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<td>Smalleye Shiner</td>
<td>Notropis buccula</td>
<td>Fishes</td>
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<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
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<td>Navasota Ladies’-Tresses</td>
<td>Spiranthes parksii</td>
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<tr>
<td>Whooping Crane</td>
<td>Grus Americana</td>
<td>Birds</td>
<td>E</td>
</tr>
</tbody>
</table>

Sources: U.S. Fish and Wildlife Service, 2011
Notes: ¹ C = candidate species, DM = delisted species (in recovery), E = endangered, T = threatened
Both the Houston toad and the bald eagle were identified during the CCWSC 130 Project and both were addressed successfully from a regulatory standpoint without significant loss of time or additional expenditures. Accordingly, currently neither of these issues is believed to constitute a potential concern or unknown with regard to the feasibility of the Project or potential significant delay in the delivery of water. As a part of this Project, a Habitat Assessment Report is expected to be prepared for review and approval.

If habitat for federally listed species is identified, coordination with the U.S. Fish and Wildlife Service would be conducted under a supplemental agreement.

**Archeological**

A Texas Antiquities permit is anticipated to be required to cover any archeological field reconnaissance and survey investigations per the requirements of the Antiquities Code of Texas. An Antiquities permit also allows monitoring of construction and recovery/recording of resources during construction.

A cursory review of the planned Transmission Pipeline Alignment was performed utilizing the Texas Historical Commission Site Atlas (Atlas). This Atlas illustrates previously recorded cultural resources and conducted surveys across the State. Generally, archeological surveys were conducted for the CCWSC 130 Project which shares part of the Transmission Pipeline Alignment with the Project. The historical data indicates that of the remaining Transmission Pipeline properties the majority of the Transmission Pipeline properties have never been formally surveyed for archaeological resources. A records research of the properties that have not been surveyed needs to be conducted to determine potential areas along the Transmission Pipeline Alignment that may contain significant archaeological sites. A survey plan would then be developed and the properties would be field assessed to confirm the location of any potential archaeological sites. Below is a list from the Atlas by county of the potential archaeological sites as well as high probability areas (mainly large waterways) traversed by the Transmission Pipeline Alignment which may contain significant archaeological sites:

1. **Burleson County** – None

2. **Lee County** – None anticipated but further study will be done on the short portion of the Transmission Pipeline Alignment that deviates from the CCWSC 130 Project.
3. **Bastrop County** – Colorado River crossing - several previously recorded sites including 41BP75 and 41BP306 near the Transmission Pipeline Alignment are considered significant and the Project Company will have to evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to the previously recorded sites.

4. **Caldwell County** – San Marcos River crossing near Martindale, high probability of containing significant archaeological sites near the Transmission Pipeline Alignment. The Project Company will evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to these areas.

5. **Guadalupe County** – Guadalupe River crossing contains numerous significant, previously recorded significant sites near the Transmission Pipeline Alignment. The Project Company will evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to these areas.

6. **Bexar County** – Cibolo Creek crossing contains numerous previously recorded significant sites near the Transmission Pipeline Alignment. The Project Company will evaluate these areas during the design of the Transmission Pipeline in order to ensure there are no impacts to these areas.

Note that a majority of the Transmission Pipeline Alignment south and west of the IPS #1 parallels an existing LCRA power line. Therefore, significant issues with archeological sites are currently considered to be unlikely.

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APPENDIX 4

DESIGN AND CONSTRUCTION REVIEW PROCEDURES,
COMMISSIONING AND SUBSTANTIAL COMPLETION
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DESIGN AND CONSTRUCTION REVIEW PROCEDURES,
COMMISSIONING AND SUBSTANTIAL COMPLETION

PART A: DESIGN AND CONSTRUCTION REVIEW PROCEDURES

4.1. OVERVIEW

4.1.1 Purpose. The purpose of this Appendix is to set forth the procedures for
SAWS’ review of the Construction Work to verify that the Project has been designed and
constructed in accordance with the Contract Standards, and to provide a process to review
Design Requirements Changes.

4.1.2 SAWS Review and Comment on Design Documents. The Project Company
shall have the obligation to make available to SAWS Design Documents in accordance with
this Appendix. SAWS will have the right to provide comments on Design Documents which
identify any issues: (a) of material non-compliance with the Design Requirements; (b) that
may reasonably and adversely affect the ability of the Project Company to achieve
Acceptance or meet the Performance Guarantees; or (c) which may have a material impact
on the SAWS Distribution System (“Material Issue Comments”). The Project Company shall
provide written responses to any Material Issue Comments delivered by SAWS indicating if
proposed measures will be taken to correct any such material issues. Neither compliance
by the Project Company with the Design Requirements, nor review and comment by SAWS
of the Design Documents, nor any failure or delay by SAWS in commenting on any design
submittals shall in any way relieve the Project Company of full responsibility for the design,
construction, performance, operation, maintenance and management of the Project in
accordance with the Contract Standards. During the review process set forth in Section
4.4 (SAWS Design Review) of this Appendix, the Project Company may proceed with the
Construction Work based on a particular design package, provided that all Material Issue
Comments related to that design package are responded to within 30 days of receipt.

4.1.3 Document Ownership

All design and construction information shall remain property of the Project
Company until the ownership of such information is transferred to SAWS in accordance
with the terms and conditions of this Water Transmission and Purchase Agreement. Any
information provided or made available to SAWS with regards to this Section may be
defined as confidential by the Project Company and SAWS agrees not to disclose such
information as and to the extent provided under Section 26.13 (SAWS Confidentiality
Obligations) of this Water Transmission and Purchase Agreement.

4.1.4 Document Review Protocol. No later than 30 days following the Financial
Closing Date, the Project Company shall submit to SAWS a document review protocol (the
“Document Review Protocol”) which shall identify the key document review packages to be
prepared by the Project Company, the expected information availability dates to SAWS and
the expected dates for SAWS comments, which shall be reasonable and be based on and
consistent with the Project Schedule. The Document Review Protocol shall stipulate that
SAWS shall have at least 10 Business Days for review of each document package and
provide related Material Issue Comments. The Document Review Protocol shall also require
the Project Company to submit to SAWS for review and comment (but not approval) five
hardcopies and one electronic copy of the final versions of the record drawings and
specifications set forth in: (i) Section 4.6.2(a) (Record Drawings and Specifications) of this Appendix; and (ii) and the maintenance manuals and other information set forth in Section 4.6.2(b) (Maintenance Manuals) of this Appendix. All other project records required pursuant to Section 4.6.2 (Project Records) of this Appendix, and all other reports, plans, drawings, submittals, and draft and final versions of documentation required to be provided or made available to SAWS may be submitted for review and comment (but not approval) electronically in an agreed upon format and in accordance with Section 1.2(X) (Delivery of Documents in Digital Format) of this Water Transmission and Purchase Agreement. The Document Review Protocol shall also require the Project Company to distribute the document submittals in the manner directed by SAWS.

4.2. PROJECT SCHEDULE

4.2.1 Initial Project Schedule. Attachment 4A (Preliminary Project Schedule) to this Appendix is the initial project schedule (the “Project Schedule”), which the parties have relied upon when entering into this Water Transmission and Purchase Agreement.

4.2.2 Baseline CPM Schedule. Within 45 days following the Financial Closing Date, the Project Company shall prepare a critical path method (“CPM”) Project Schedule that is an accurate representation of the proposed means and methods for accomplishing the Construction Work and reflects the entire scope of the Construction Work as included in this Water Transmission and Purchase Agreement. This updated Project Schedule shall show the breakdown of Construction Work into activities and relationships to the extent required to effectively plan the Project, report work progress and analyze time impacts.

4.2.3 Project Schedule Updates. The Project Company shall, as required from time to time until the Commercial Operation Date, but no less than once per calendar month, update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of the Project Company’s plans for the completion of the Construction Work in accordance with the requirements of this Water Transmission and Purchase Agreement. The updates shall include:

(a) Adjustments resulting from Design Requirements Changes;
(b) Property acquisition timeline;
(c) As the design progresses, best estimates of:
   (i) The start and completion dates for the major design phases; and
   (ii) The commencement of construction of each heading;
(d) The planned start and completion dates of the major activities of construction;
(e) The planned start and completion dates for fabrication, testing and delivery of the Project and major equipment items; and
(f) The estimated date on which Project construction completion is expected to occur.
The Project Company shall deliver to SAWS for review and comment (but not approval) an updated Project Schedule on a monthly basis to SAWS. Upon delivery, the updated Project Schedule shall replace the previously issued Project Schedule as the “Project Schedule” under this Water Transmission and Purchase Agreement.

4.3. PROJECT COMPANY DESIGN PROCESS

4.3.1 Phases Generally. The Project Company shall cause the Design Build Contractor to undertake the design in progressive phases, with each phase capturing the information and detail provided in a previous phase.

4.3.2 Construction Drawings Phase. The construction drawings phase shall include construction documents consisting of drawings and specifications describing in detail the requirements for the construction of elements of the Project delivered to SAWS when the design of the Project is:

(a) Approximately 50% complete or better (“Ready for Construction”); and

(b) Final Documents (as defined below).

These construction documents shall be delivered to SAWS for review and comment (but not approval) in a timely way in advance of construction with sufficient detail as to permit SAWS to monitor compliance and to assess the design of that portion of the Project. At such time as all or a portion of the construction documents are finally complete (the “Final Documents”), the Project Company shall deliver the Final Documents to SAWS and the SAWS Engineer. SAWS and the SAWS Engineer shall review and comment on (but not approve) the Final Documents in accordance with the Document Review Protocol and this Appendix.

4.3.3 Documentation Generally. In each phase, the Project Company shall provide to SAWS the level of detail and documentation as required by Good Design and Construction Practice.

4.3.4 Conditions to Issuance of Construction Drawings. The Project Company shall only issue drawings and specifications for construction purposes which have been submitted to SAWS in accordance with the Document Review Protocol. Should SAWS provide comments at a time later than that set forth in the Document Review Protocol, the Project Company’s obligation to respond to such SAWS comments shall be deemed to have been waived.

4.3.5 Document Control and Coordination. The Project Company shall ensure that all documentation made available to SAWS as part of the design process:

(a) indicates the design phase to which it relates, and if it is a document from the construction drawings phase pursuant to Section 4.3.2 (Construction Drawings Phase) of this Appendix, whether such document is part of the Ready for Construction documents or the Final Documents; and

(b) is provided in accordance with the Document Review Protocol.
4.4. SAWS DESIGN REVIEW

4.4.1 Identification of Design Requirements Changes. Any Design Requirements Change shall be submitted in accordance with Sections 5.7 (Project Company-Requested Design Requirements Changes) and 5.8 (SAWS-Requested Design Requirements Changes) of this Water Transmission and Purchase Agreement.

4.4.2 Time for Project Company Response. When necessary, SAWS may provide written Material Issue Comments in accordance with Section 4.1.2 (SAWS Review and Comment on Design Documents) of this Appendix. The Project Company shall provide a written response to such Material Issue Comments within the time periods set forth in the Document Review Protocol.

4.4.3 Design Submittals During Construction. It is anticipated that there could be some redesign or design clarifications needed during construction and after the Final Documents are completed. This continuing design effort shall be subject to SAWS’ review for compliance and consistency with the applicable Design Requirements in the same manner as set forth in this Appendix with respect to the Design Documents. Material design changes to a particular Final Document performed following the issuance of the Design Document for construction shall be issued under a Design Change Notice (“DCN”) process that accurately tracks and documents changes to the design. Copies of all DCNs will be submitted to SAWS in a timely manner to allow review by SAWS and the ability to make Material Issue Comments in the same manner as set forth with respect to the Design Documents. If a DCN requires a material change from what was reflected in the applications for Governmental Approvals, the DCN must be approved by the appropriate Governmental Body if required by Applicable Law.

4.4.4 Role of SAWS Engineer. The Project Company shall fully cooperate with the SAWS Engineer in connection with the administration of the construction of the Project. The Project Company agrees that SAWS Engineer may: review and monitor construction progress and procedures; determine the completion of specified portions of the Project; review proposed changes to the Design Requirements; review plans, drawings and specifications of the Project for compliance with the Design Requirements; monitor the Performance Test undertaken by the Project Company and review the Project Company’s certified test reports to determine whether the Acceptance Conditions have been satisfied; and perform in-plant observation of fabrication for all pipeline, valves, equipment, and appurtenances.
4.5. SAWS REVIEW DURING CONSTRUCTION

4.5.1 Construction Review Intent. In accordance with the terms and conditions of this Water Transmission and Purchase Agreement, SAWS will review construction activities and participate in construction progress meetings to verify compliance with this Water Transmission and Purchase Agreement, including the construction-related requirements specified in Appendix 3 (Technical Specifications). SAWS’ review and involvement in construction activities is not intended to be a part of the Project Company's independent quality assurance process and shall not be viewed as an additional layer or integral part of the Construction Quality Management Plan.

4.6. CONSTRUCTION MEETINGS AND REPORTS

4.6.1 Construction Progress Meetings. From the time mobilization for construction commences through the Commercial Operation Date, for the purpose of facilitating the construction process, the Project Company shall schedule, hold, and facilitate construction progress meetings. SAWS shall have the right, but not the obligation, to attend such meetings.

4.6.2 Project Records. Notwithstanding any other provision of this Water Transmission and Purchase Agreement, the Project Company shall meet the following obligations:

(a) Record Drawings and Specifications. The Project Company shall:

(i) throughout the Construction Period, update the Design Documents (with respect to the drawings, such update shall be in electronic format), including approved shop drawings that are available from the Design Build Contractor and Subcontractors, so as to produce accurate and complete record documents for the Project;

(ii) as requested from time to time during the Construction Period, make available such record drawings and specifications to SAWS or the SAWS Engineer for review to permit SAWS to monitor the Project Company's compliance with the requirements of this Water Transmission and Purchase Agreement;

(iii) provide an electronic copy of the conformed, approved shop drawings; and

(iv) provide an electronic version and one hard copy of the completed, as-built record drawings and specifications to SAWS as a condition to Final Completion in accordance with Attachment 4B (SAWS Drawing Requirements) of this Appendix. All as-built information shall remain property of the Project Company until the ownership of such information is transferred to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement. Any as-built information provided or made available to SAWS may be defined as confidential by the Project Company and SAWS agrees not to disclose such information as and to the extent provided under
Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement.

(b) Maintenance Manuals. The Project Company shall make available all maintenance manuals, specifications, warranties and related information, in both written and electronic form, for all the equipment and systems that have been included in the Construction Work for review by SAWS.

(c) Design Records. The Project Company shall retain electronic records of the design development consistent with the record retention requirements of this Water Transmission and Purchase Agreement.

(d) Minutes of Meetings. The Project Company shall promulgate minutes of meetings between SAWS and the Project Company relating to the Construction Work, and shall make available such minutes to SAWS Representative for review and comment.

(e) Inspection Reports and Tests Results. The Project Company shall retain official reports and certified test records of all inspections and tests which were undertaken as part of the construction.

(f) Utility Plans. The Project Company shall retain utility plans for the Project.

(g) Copies of all Governmental Approvals. The Project Company shall retain copies of all Governmental Approvals for the construction and occupation of the Project.

(h) Signed Construction Quality Management Plan. The Project Company shall retain a signed copy of the Construction Quality Management Plan (as defined in Section 4.7 of this Appendix) for the construction and all records of the quality assurance program implemented as required by this Water Transmission and Purchase Agreement.

4.7. QUALITY MANAGEMENT

4.7.1 Quality of the Construction Work. The Project Company is solely responsible for the quality of the Construction Work and acknowledges that a comprehensive quality management system is critical for the proper and timely completion of the Construction Work. At all times during the Construction Period, the Project Company shall comply with the requirements set forth in the Construction Quality Management Plan and this Water Transmission and Purchase Agreement.

4.7.2 Construction Quality Management Plan. The development and implementation of the Construction Quality Management Plan shall be the responsibility of the Project Company. Within 45 days following the Financial Closing Date, the Project Company shall submit for SAWS review and comment (but not approval) its Construction Quality Management Plan that describes how QA/QC will be provided and managed for all design, permitting and construction activities and which shall include, but not be limited to, the following:

(a) Design integration;
(b) Interdisciplinary coordination;
(c) Constructability reviews;
(d) Cost impact analyses;
(e) On-site equipment/materials protection; and
(f) Quality assurance procedures, inspections and testing.

Revisions and updates to the Project Company’s Construction Quality Management Plan may be proposed by the Project Company as the Construction Work progresses. Any such changes shall be provided to SAWS for review and comment (but not approval) prior to the start of the element of the Construction Work to which the revision applies.

4.7.3 Construction Quality Management Plan Objectives. The Construction Quality Management Plan, including QA and QC, shall be consistent with and support the following overall quality objectives:

(a) Ensure that the permitting, design, and construction of the Project are consistent with this Water Transmission and Purchase Agreement and the Contract Standards.
(b) Provide for high-quality workmanship.
(c) Integrate and coordinate permit specialists, environmental scientists, designers, engineers, construction contractors, and operators into all review phases of the Construction Work.
(d) Develop systems to ensure that problems are discovered early, resolved in a timely manner, and do not recur.
(e) Provide independent (non-production) oversight equipped with adequate resources to ensure that quality is not compromised by production goals. During the permitting and design phase, independent oversight is defined as having QA/QC personnel separate from and independent of the design production team on whose work QA/QC functions are being performed. During the construction phase, the lead engineering personnel involved in making design decisions shall remain involved (including receiving periodic updates on the progress of the construction and making site visits during key points in the construction related to their respective design expertise) to ensure quality assurance.
(f) Ensure implementation of the QA/QC functions by the use of specified procedures and audit functions.

4.7.4 Quality Review by SAWS. SAWS may, at its discretion, perform its own audits of the Construction Quality Management Plan and for that purpose the Project Company shall make available for review by SAWS, upon request from SAWS, all material records relating to the Construction Quality Management Plan.
4.8. ENVIRONMENTAL REVIEW AND PROTECTION

4.8.1 Compliance With Governmental Approvals. The Project Company shall be solely responsible for developing and complying with all applicable environmental mitigation and management measures required by the Governmental Approvals during the performance of the Construction Work.

4.8.2 Hazardous Substances Management Program. The Project Company shall develop and maintain a written Hazardous Substances management program that includes as a minimum, but is not limited to, the requirements specified in this Section 4.8 (Environmental Review and Protection) (the “Hazardous Substance Management Program”). A copy of the Hazardous Substance Management Program shall be submitted to SAWS. Accidental spills, site contamination, and injury of personnel shall be avoided. SAWS shall notify the Project Company of suspected violations. Any fines that may be levied against SAWS for violations relating to Hazardous Substances connected to the Project shall be reimbursed immediately by the Project Company. All documents required by the Hazardous Substances Management Program shall be made available to SAWS immediately upon request.

4.8.3 Project Company Hazardous Substances. Any Hazardous Substances related to the Project shall be the responsibility of the Project Company. To the extent required by Applicable Law, the Project Company shall ensure that an EPA identification number is obtained for all Project Company Hazardous Substances, listing the Project Company’s name and Project construction office address as the generator of the Project Company Hazardous Substance. To the extent required by Applicable Law, the Project Company shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of such Hazardous Substances.

4.8.4 Emergency/Spill Response Plan. The Project Company shall develop an Emergency/Spill Response Plan (“Response Plan”), for each Hazardous Substance or class/group of Hazardous Substances either known to be on the Project Sites or intended to be brought to the Project Sites by the Project Company. As a minimum, the Response Plan must address the following:

(a) Provide a description of on-site equipment used to segregate and contain Hazardous Substances and available to respond to an emergency/spill of the Hazardous Substance;

(b) Notification procedures, including notification to potentially impacted residents and businesses adjacent to the Project;

(c) Response coordination procedures between the Project Company and SAWS;

(d) Provide a Project Sites plan identifying the location of stored Hazardous Substances and location spill containment/response equipment;

(e) Provide a description of the Hazardous Substances handling and spill response training provided to employees of the Project Company, the Design Build Contractor and Subcontractors; and
(f) Provide a description of arrangements with Hazardous Substance and spill response contractors and their response times.

PART B: COMMISSIONING

4.9. PROJECT COMMISSIONING

4.9.1 General Commissioning Plan Requirements. The Project Company shall prepare a commissioning plan which shall provide a protocol for the conduct of all Project start-up and commissioning activities consistent with this Section (the “Commissioning Plan”). As set forth in Section 8.1(B) (Commissioning Plan) of this Water Transmission and Purchase Agreement, 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. The content of the Commissioning Plan shall be consistent with the terms and provisions of this Water Transmission and Purchase Agreement. All commissioning activities shall be performed in compliance with all Applicable Laws, Governmental Approvals, equipment manufacturer warranties and guidelines, the Electronic Operation and Maintenance Manual, Good Design and Construction Practice, and Good Management Practice.

4.9.2 Commissioning Plan Content. The Commissioning Plan shall be a comprehensive plan organized into separate sections addressing overall Project start-up and commissioning procedures and practices, all equipment and each unit operation, all auxiliary Project equipment and systems, and the Project Company’s management, documentation, and oversight of the start-up and commissioning process. At a minimum, the Project Company’s Commissioning Plan shall include the following:

(a) A start-up and commissioning overview with a complete description of start-up and commissioning activities.

(b) The list of prerequisites required for commencing commissioning.

(c) A critical path method (“CPM”) commissioning schedule that sequences all commissioning activities required to achieve Substantial Completion. The commissioning schedule shall incorporate logic to properly sequence activities with precedents and constraints including, but not limited to, Governmental Approvals such that the schedule addresses dry and wet testing, verification of equipment readiness for service, instrumentation and controls calibration, local control and SCADA functionality, and all other steps consistent with Good Design and Construction Practice, Good Management Practice, and all equipment manufacturers’ guidelines and equipment warranty provisions. The commissioning schedule shall also indicate any activities on the critical path that require SAWS actions.

(d) A description of the Project Company’s process for assuring orderly transitions between its construction, start-up, commissioning activities and the Performance Test, and the Operating Period.
(e) An organizational chart for the Project Company’s start-up and commissioning team and a description stating the responsibilities and the level of authority of each Project Company representative in the organizational chart.

(f) The QA/QC procedures for oversight by the Design Build Contractor’s QA/QC staff to assure adherence to the requirements of the Commissioning Plan and the procedures for deficiency correction and tracking/documentation of such corrections.

(g) A description of the procedures the Project Company proposes for inspecting equipment prior to and during functional testing and for developing the Punch List.

(h) The procedures and staffing planned that Project Company intends to use for disinfecting the Project and obtaining all regulatory clearances necessary for starting-up the Project and producing Product Water;

(i) A description of the systems or components of the Project that will be started up as unit processes or sub-process and the sequence in which they will be started up.

(j) A description of the sequence of start-up and commissioning activities the Project Company intends to conduct including the functional testing of individual control loops and unit processes, equipment, generator systems, SCADA demonstrations, and CMMS demonstrations.

(k) A description of the dry testing of the Project, which shall include ensuring proper electrical installation, mechanical installation, valve operation, pump operational readiness, instrumentation calibration and performance, complete and calibrated electronic signals, and control hardware installation. Initial performance during dry testing shall be logged on data sheets maintained by the Project Company and available for review by SAWS.

(l) A description of the wet testing of the Project, which shall include ensuring proper air venting, flushing of all lines and pressure vessels, chlorinating lines and tanks (as appropriate), running water through all systems, control loop check, adjustment and tuning, ensuring proper communications between systems and SCADA, ensuring SCADA system coordinates all systems according to Operating and Maintenance Standards, testing SCADA alarms, starting and testing chemical feed systems, loading cartridge filters.

(m) A **schedule and description** of the approach for coordination with SAWS to facilitate necessary testing, adjustment and calibration of the **Project Company Storage Tank and SAWS’ chemical feed, SCADA, Stone Oak pumping station** and flow control systems at the **SAWS Portion of the Transmission Pipeline Terminus Site Lot 2 and Terminus Site Lot 3**.

(n) A list of all Governmental Approvals required for functional testing and for Performance Testing and the tracking mechanism the Project Company proposes to use to confirm that the Project Company has obtained all such Governmental Approvals prior to commencing the functional testing and
Performance Testing activities for which such Governmental Approvals are required.

(o) A description of the approach for management of Project generated wastewaters confirming that all wastewater created during start-up and commissioning activities can be disposed of in a manner consistent with the provisions of all Governmental Approvals.

(p) A list of all controls system set points and alarms required for operating the Project and for equipment protection. The Project Company shall maintain the list as a controlled document throughout the Construction Period.

(q) A description of the procedure the company will follow for making corrections to its Electronic Operation and Maintenance Manual.

(r) A Flushing Plan, as further described in Section 4.9.3 (Flushing Plan) of this Appendix.

4.9.3 Flushing Plan. The Project Company shall prepare a flushing plan which shall provide a protocol for the conduct of all Project flushing, including flushing points, volumes to be flushed, drainage ways, identification of potentially affected parties and mitigation plans and procedures (the “Flushing Plan”). The Project Company shall prepare and submit to SAWS for its approval the Flushing Plan as part of the Commissioning Plan. The content of the Flushing Plan shall be consistent with the terms and provisions of this Water Transmission and Purchase Agreement. All flushing activities shall be performed in compliance with all Applicable Laws, Governmental Approvals, equipment manufacturer warranties and guidelines, the Electronic Operation and Maintenance Manual, Good Design and Construction Practice, and Good Management Practice.

4.9.4 Start-up Prerequisites. The Project Company shall complete the following prerequisites prior to commencing start-up:

(a) Commissioning Plan. The Project Company has prepared and forwarded a copy of the Commissioning Plan to SAWS and received SAWS’ approval for the plan in accordance with Section 8.1(B) (Commissioning Plan) of this Water Transmission and Purchase Agreement.

(b) Flushing Plan. The Project Company has prepared and forwarded a copy of the Flushing Plan to SAWS and received SAWS’ approval for the plan in accordance with subsection 4.9.3 (Flushing Plan) of this Appendix.

(c) Instrument Calibration. The Project Company has completed instrument calibration activities required to assure Project instrumentation provides readings accurate within manufacturer’s tolerances only as applicable to the systems and subsystems commissioned. Upon request by SAWS, the Project Company shall produce documentation verifying the completion of such activities.

(d) SCADA. The Project Company has completed SCADA programming and testing necessary for operating the Project in both automatic mode and manual mode and a fully functional fiber optic link to SAWS’ SCADA system.
has been established. Upon request, the Project Company shall deliver to SAWS verification that SCADA testing has been completed.

(e) Operation and Maintenance Staff Training. The Project Company completed all operation and maintenance staff training on equipment operations and maintenance provided on-site by the equipment manufacturers or suppliers sufficient to start-up the Project in accordance with Good Industry Practices and provided documentation to SAWS, if requested, certifying all such training has been completed.

(f) Electronic Operation and Maintenance Manual. The Project Company completed the draft Electronic Operation and Maintenance Manual and obtained SAWS' comments in accordance with Section 9.5 (Electronic Operation and Maintenance Manual) of this Water Transmission and Purchase Agreement.

(g) Operating Protocol. The Project Company and SAWS have jointly developed the Operating Protocol in accordance with this Water Transmission and Purchase Agreement.

(h) Governmental Approvals. The Project Company obtained all Governmental Approvals required for commencing Performance Testing.

4.9.5 Coordination Meetings. The Project Company shall meet with SAWS and the SAWS Engineer on a regularly scheduled basis to review status of its commissioning activities; to coordinate with SAWS for activities related to system walk-downs with the Design Build Contractor and the development of a Punch List; witnessing equipment functional and operability demonstrations; and to address any other relevant issues. The Commissioning Plan shall define the frequency of all commissioning activity coordination meetings.

4.9.6 Documentation. All documentation verifying start-up and commissioning activities shall incorporate checklists which are signed and dated by an authorized representative of the Design Build Contractor’s staff confirming the accuracy of the information on each checklist. An authorized representative of the Design Build Contractor's staff shall also review and sign and date all such documentation prior to its review by SAWS, or if required, prior to transmittal to SAWS, thus indicating that the information in the checklist has been incorporated into the commissioning records. The Project Company shall submit an electronic copy of such documentation to SAWS. The electronic copies shall be searchable documents supplied in Adobe Acrobat electronic format or other format acceptable to SAWS.

4.9.7 Commissioning Manager. The Project Company shall designate a manager who shall be responsible for directing all Substantial Completion Procedures and who shall attend all Project meetings related to construction completion or Substantial Completion Procedures (the “Commissioning Manager”). The direction of all start-up, Substantial Completion Procedures, and Performance Tests shall be the Commissioning Manager's primary duty. The Project Company shall assure that the Commissioning Manager has sufficient authority to direct start-up and the Substantial Completion Procedures. The Commissioning Manager shall be a Key Individual and the Project Company's sole representative responsible to schedule Substantial Completion Procedures with SAWS.
4.9.8 Project Company Responsibilities. The Project Company shall be responsible for all items that pertain to start-up, commissioning and testing. Overall, the start-up, commissioning and testing decision-making shall be based on the following key objectives:

(a) Protection of the health and welfare of the public;
(b) Protection of the health and safety of the Operating Service Provider staff;
(c) Preservation of the long-term reliability of the Project for supplying potable water;
(d) Protection and preservation of all Project facilities;
(e) Protection of the environment;
(f) Compliance with Applicable Law;
(g) Maximizing the efficiency of commissioning activities of the Project Company and SAWS staff and representatives;
(h) Achieving Acceptance by the Commercial Operation Date; and
(i) Assure that the staff of the Operating Service Provider is competent to perform the operation and maintenance requirements for the Project before Performance Testing commences.

PART C: SUBSTANTIAL COMPLETION

4.10. SUBSTANTIAL COMPLETION PROCEDURES

4.10.1 Substantial Completion Procedures Generally. The intent of the Substantial Completion Procedures (as defined below) are to demonstrate that the installed facilities, systems, subsystems, related equipment, and the Project as a whole are ready to perform in accordance with the requirements of this Water Transmission and Purchase Agreement and Design Requirements. The procedures described in this Appendix for determining when the Project Company has achieved Substantial Completion (the “Substantial Completion Procedures”) include pre-commissioning, verification of start-up readiness, Governmental Approval compliance, functionality of individual Project subsystems, testing the back-up power capabilities of the Project and Project commissioning. During the implementation of the Substantial Completion Procedures, the Project Company shall carry out various inspections and pre-performance test activities, the scope and extent of which tests are outlined in this Appendix. Each system, subsystem or facility identified in this Section shall be successfully demonstrated to have the capability to operate both individually, and as a part of the integrated Project.

4.10.2 Performance Testing. The purpose of Performance Testing is to demonstrate that the Project meets all performance requirements set forth in this Water Transmission and Purchase Agreement. This Appendix and Appendix 5 (Performance Test Procedures and Standards) set forth the requirements for the Performance Test of the Project required pursuant to Section 8.3 (Performance Testing) of this Water Transmission and Purchase Agreement.
4.10.3 Construction Testing. To confirm compliance with the Technical Specifications, the Project Company shall submit certified reports. The certified reports shall be from the appropriate certifying entity demonstrating that construction meets the Technical Specifications and has satisfactorily passed relevant testing. For general construction, the reports will be submitted by a professional engineer. For valves and pumps and similar equipment, the certifications shall be factory certifications. Specifically the tests listed in Sections 4.10.4, 4.10.5 and 4.10.6 of this Appendix, and others as required by selection of material, will be conducted and certified reports submitted by the Project Company to SAWS.

4.10.4 Water Main Testing and Documentation Requirements.

(a) PIPE LEAK TEST RECORD, i.e. Hydrostatic Test (FN027-4) (Form 10).

(b) PIPE COATING TESTS for Steel Pipes – Provide reports from testing agency that demonstrate no holidays and repair of holidays.

(c) CATHODIC PROTECTION TESTS – Provide reports signed by Cathodic Protection Engineer.

(d) WELD TESTS – Provide reports signed by Certified Welder for full penetration exterior welds.

(e) DENSITY TESTS – Sand Cone Tests for Gravel & Density test on secondary backfill confirming 95% compaction level. Provide geotechnical lab test reports.

(f) DEFLECTION TESTS – Provide test reports signed by the construction observer/inspector and contractor or televising reports and approval and signed by an engineer if used in lieu of deflection tests.

(g) VERIFY JOINT RESTRAINT SYSTEM – Follow manufacturer’s recommendation – consider valves to be closed.

(h) VERIFY ALL VALVES OPERATE PROPERLY – either through operation and visual operation after installation or factory certification.

(i) RIVER CROSSING – Provide scour analysis report and certification that the pipe was installed at the appropriate depth.

4.10.5 Production Well Testing and Documentation Requirements. Where appropriate, certification can be made by a professional geologist for well testing.

(a) General Information:

- Copy of Sanitary Control Easements filed w/County Courthouse
- Construction Data –
  - Well location information per TCEQ requirements
  - casing information (diameter, thickness, length, material type)
  - casing alignment information & surveys
  - screen type, length, slot size, and location of screened intervals
  - cementing information & class of cement
4.10.6 Facilities Testing and Documentation Requirements.

(a) GENERAL:

- Site Environmental and Archaeological/Historical Assessments
- Reports of Explorations & Tests of Subsurface Conditions at the Project Sites
- Manifests for the Removal of Hazardous Materials (where applicable)
- Signed and sealed Vendors Certificates, Test Reports & Shop Drawings
- Backflow Prevention Reports (where applicable)

(b) DIVISION 1 – GENERAL PROVISIONS:

**Section 01400 International Building Code Special Inspections:**

- Certificate of Structural Statement of Special Inspections for buildings signed by Structural Engineer of Record and/or Design Professional in Responsible Charge
- Steel Construction Special Inspection Reports for miscellaneous structural steel, steel joist and metal deck
- Concrete Construction Special Inspection Report for cast-in-place concrete
- Masonry Construction Special Inspection Report for load bearing and reinforced concrete masonry construction
- Soils Special Inspection Report for structural and compacted fill for shallow footings and slabs-on-grade

**Section 01640 Manufacturer Field Services:**

- Manufacturer’s Certificate of Proper Installation Form signed by an authorized representative
- Certificate of Successful Equipment Testing signed by an authorized Manufacturer’s representative and Contractor’s representative witnessing the test
- System Start Up Testing Form

(c) DIVISION 2 – SITE WORK:

**Section 02200 Excavation, Backfill and Compaction:**

- Subgrade soil compaction test

- gravel pack size, length of gravel pack & location, under ream information
- geophysical logs (hardcopies & electronic format)
- color video of final completed well (from surface to total depth)
- copy of drillers log
- Copy of State of Texas Water Well Report

(b) Hydrologic Testing:

- 36 Hour Pump Test - TCEQ 290.41 (c)(3)(A) & (G) (Aquifer parameters)
- Storativity
- Drawdown
- Specific Capacity of each well
• Compaction tests under proposed structures

Section 02220 Structural Excavation Fill and Backfill:
• Test results of materials reused onsite
• Test results for “select materials” brought onsite

Section 02510 Buried Steel Pipe and Fittings epoxy lined and polyurethane coated:
• Welder’s certificates
• Field Weld Test results
• Coatings system test results
• Lining system factory test results

Section 02675 Disinfection of Potable Water Facilities:
• Test results for bacteriological samples
• Test results for disinfection

(d) DIVISION 3 – CONCRETE:

Section 03200 - Concrete Reinforcement:
• Rebar Mill Test certificates

Section 03300 - Cast-in-Place Concrete:
• Slump tests
• Air content tests
• Temperature tests
• Strength test results

Section 03400 Flowable Fill:
• Permeability test
• Subsidence test
• Strength test
• Fluidity test

Section 03600 – Grout:
• Strength test results
• Field Control Test Results (when required)

(e) DIVISION 4 – MANSONRY:

Section 04200 Building Masonry:
• Mortar Test Results
• Grout Strength Tests
• Field Control Test Results (when required)

(f) DIVISION 5 – METALS:

Section 05120 - Structural Steel
• Nondestructive test results

Section 05500 – Structural and Misc. Metals:
• Bolts & Washers Test Ratings
Stainless Steel 24 hour Water Test Results

**Section 05501 - Anchor Bolts, Expansion Anchors and Concrete Inserts:**
- Certificates.

(g) DIVISION 7 - THERMAL AND MOISTURE PROTECTION (not used)

(h) DIVISION 9 – FINISHES:

**Section 9820 Pre-stressed Concrete Tanking Coating:**
- Coating Samples

**Section 09900 – Painting:**
- Coating Test Results

**Section 09940 – Protective Coatings:**
- Coating Test Results

(i) DIVISION 10 – SPECIALTIES:

**Section 10520 - Fire-Protection Specialties**
- Performance Test Results
- Witnessed Test Results
- Flow Test Results
- Test Certificates

(j) DIVISION 11 – EQUIPMENT:

**Section 11100 Horizontal Split Case Pumps:**
- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
  - Test results shall show no minus tolerance or margin with respect to
capacity, total head or guaranteed efficiency at the specified
conditions. Pumps shall have a continuous down slope in the head-
capacity curve. Pumps shall be within the following plus tolerance:
  1) At rated head: +10% of rated capacity
  2) At rated capacity: +5% of rated head
  3) Provide certified copy of all test data and test curves for the
pump
  - CERTIFIED TEST REPORTS – Submit the following certified test
reports for the pump:
    1) Provide CTR for pump factory performance tests
    2) Provide CTR for metallurgical analysis of castings
    3) Provide CTR for stress relieving of components
4) Provide CTR for pump casing hydrostatic tests
5) Provide CTR (with EIR) for pump field tests

Field test results.
1. Mounting and Alignment. The pump and motor shall be aligned using laser alignment
2. Vibration Test
3. Noise Test

Testing Log
Functional test results
Performance test results
Operational test results
O&M Manuals

**Section 11200 Vertical Sump Pumps:**
- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
- Field test results
- Testing Log
- Functional test results
- Performance test results
- Operational test results
- O&M Manuals

**Section 11220 Vertical Turbine Pumps:**
- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
- Field test results
- Testing Log
- Functional test results
- Performance test results
- Operational test results
- O&M Manuals

**Section 11300 Control Valves:**
- Manufacturer’s Certificate of Proper Installation
- Certificate of Successful Equipment Testing
- Start Up Testing Form

**Section 11400 Flow Meters:**
- Manufacturer’s Certificate of Proper Installation
- Certificate of Successful Equipment Testing
- Start Up Testing Form

(k) **DIVISION 13 – SPECIAL CONSTRUCTION:**

**Section 13122 Chemical Tank Cover Structures:**
- Manufacturer test results
- Certifications
• Test of Wind-Uplift Resistance of Roof Assembly Results
• Canopy Leak - Field Test Results

**Section 13000 Wrapped Pre-stressed Concrete Tank:**
• Leak Test Results
• Disinfection Test Results

**Section 13110 – Cathodic Protection System:**
• System testing results

(l) DIVISION 14 – CONVEYING SYSTEMS (not used)

(m) DIVISION 15 – MECHANICAL:

**Section 15002 - Field Testing of Piping Systems:**
• Hydrostatic Test Results for pressure line
• Leak test results

**Section 15064 - Steel Pipe and Fittings:**
• Hydrostatic Test Results
• Factory Test Results for steel
• Weld Test Results demonstrating full penetration weld
• Welder’s Certifications

**Section 15102, 15103, 15104, 15107, 15108 – Valves:**
• Factory Test Results
• Leak Test Results

**Section 15500 - HVAC – General Provisions:**
• Shop Test Results for AC Units, Heating Equipment, Refrigeration Systems, DX Air Handling Units, Fans, Ductwork and Accessories, and Controls
• Field Test Results for AC Units, Heating Equipment, Refrigeration Systems, DX Air Handling Units, Fans, Ductwork and Accessories, and Controls
• Indoor / Outdoor Coil Pressure Test Results
• HVAC Balancing Report

(n) DIVISION 16 – ELECTRICAL:

**Section 16060 – Electrical Testing:**
• Independent Third Party Testing Reports
• In accordance with National Electrical Testing Association – Standard for Acceptance Testing Specifications (NETA-ATS) for Electrical Power Equipment and Systems, ANSI/NFPA 70, NFPA70E, ANSI C2, IEEE 1584 and Manufacturer’s recommendations
• Power System Study Report
(o) DIVISION 17 – INSTRUMENTATION:

Section 17000 - Instrumentation – General Provisions:

- System Test Results for Field Instruments, Panel Mounted Equipment, Control Loops, Input/Outputs, Programmable Logic Controllers, Communications Interface Equipment, etc.
- Unwitnessed Factory Test (UFT) Results
- System Integration Test (SIT) Results
- Factory Acceptance Test (FAT) Results
- Operational Readiness Test (ORT) Results
- Functional Demonstration Test (FDT) Results
- 30-Day Site Acceptance Test (SAT) Results
- Radio Path Study Results for Communications

4.10.7 Observation of Substantial Completion Procedures. SAWS reserves the right to observe and inspect the Substantial Completion Procedures. The Project Company shall provide at least five days’ notice to SAWS prior to commencement of any Substantial Completion Procedure. The Project Company shall also ensure that each equipment manufacturer representative that is required to witness such Substantial Completion Procedures is present.

4.10.8 Subcontractors Required During Substantial Completion Procedures. Prior to the commencement of any Substantial Completion Procedure, the Project Company will identify all Subcontractors needed during such Substantial Completion Procedure, and define their roles.

4.10.9 Substantial Completion Protocol. As part of the Commissioning Plan required to be prepared and submitted by the Project Company pursuant to subsection 4.9.1 (General Commissioning Plan Requirements) of this Appendix and subsection 8.1(B) (Commissioning Plan) of this Water Transmission and Purchase Agreement, the Project Company shall also prepare and submit a protocol for the conduct of the Substantial Completion Procedures pursuant to this Appendix (the “Substantial Completion Protocol”). The Substantial Completion Protocol shall identify the key Substantial Completion Procedures to be performed and the expected date of such performance as well as expected submittal dates to SAWS related to the Substantial Completion Procedures and the expected dates for SAWS responses, which shall be reasonable and be based on and consistent with the Project Schedule. The content of the Substantial Completion Protocol shall be consistent with the terms and provisions of this Water Transmission and Purchase Agreement. All Substantial Completion Procedures shall be performed in compliance with all Applicable Laws, Governmental Approvals, equipment manufacturer warranties and guidelines, the Electronic Operation and Maintenance Manual, Good Design and Construction Practice, and Good Management Practice.

4.11. SUBSTANTIAL COMPLETION PROCEDURE REQUIREMENTS AND COMPONENTS

4.11.1 General Information. To meet the requirements of Substantial Completion, the Project Company is required to demonstrate that all key Project equipment, processes, systems, subsystems and the Project as a whole function in accordance with the Contract Standards, equipment warranty provisions, all Applicable Laws and Governmental Approvals.

4.11.2 Process and Equipment Performance Requirements. During the Substantial Completion Procedures, the following, at a minimum, shall be demonstrated with respect to all of the tested Project systems and subsystems:
(a) All pumps operate through their specified design range, and are verified for proper rotation, speed, flow rate, pressure and design point;

(b) Project systems and subsystems meet the requirements of the Contract Standards and are installed as designed;

(c) All required automatic, manual control and remote control features are provided and operable;

(d) All required valves, water quality sensors and analyzers, pressure and flow sensors, liquid level sensors, indicators, alarms, signals, leak detectors, monitors, controls, field devices and panel devices, are provided, correctly installed, calibrated and operable over their full range;

(e) All required inlet, outlet, sensor taps, and drain connections are included and operable;

(f) All required liquid dosing metering pumps, accessories, appurtenances, and injection systems, are provided, installed and operable over the full turn down range, for each chemical;

(g) The Project functions as designed upon loss of power, loss of control system, manual start-up and shutdown, and automatic shutdown;

(h) Software and hardware operational interlocks and startup, shutdown, control loop functions, and proper sequencing within all programmable logic controllers, HMIs, SCADA and other control locations are fully functional; and

(i) All equipment manufacturer's equipment warranty, start-up and operating instructions draft standard operating procedures for system or subsystem start-up, operation and shut down are available on-site.

In addition, the Project Company shall demonstrate a complete Project start-up and shutdown cycle.

4.12. SUBSTANTIAL COMPLETION PROCEDURES REPORT

4.12.1 Substantial Completion Procedures Report Requirements. Upon completion of operational preparedness, and as a condition of Substantial Completion, the Project Company will prepare and submit five copies of the Substantial Completion Procedures report which shall comply with the requirements set forth in this Section and Section 8.1(C) (Substantial Completion Procedures Report) of this Water Transmission and Purchase Agreement (the “Substantial Completion Procedures Report”).

4.12.2 Substantial Completion Procedures Report Contents. The Substantial Completion Procedures Report will include a signed and sealed certification by a State registered professional engineer with thorough and appropriate knowledge of the Project Company’s start-up and commissioning activities and signed by a duly authorized officer of the Design Build Contractor attesting to the facts that the Project has achieved Substantial Completion including that: (i) all equipment has been properly installed correctly and the applicable equipment manufacturers’ post-installation inspection certifications for major...
equipment are available; (ii) all dry, wet, and functional testing has been satisfactorily completed; (iii) all pre-operational checks are complete, including, but not limited to, flushing and pressure testing piping, tanks, and other such components; (iv) checking automated valve operations, rotating equipment has been properly balanced and vibrations are within manufacturer’s Good Design and Construction Practice; (v) motor rotational direction has been confirmed; (vi) electrical insulation integrity has been confirmed; (vii) all electric over/under voltage or amperage protective equipment is appropriately programmed, calibrated or set; (viii) all instrumentation, valves, metering pumps, and chemical dosing systems have been calibrated (as applicable); (ix) local and remote instrumentation and SCADA readings are consistent; (x) appropriate instrumentation and control set points have been established and hard-wired; (xi) SCADA equipment protective devices function properly; (xii) local and manual equipment controls are fully functional; (xiii) SCADA control system logic functions have been tested, and are fail safe, and function as intended; (xiv) an alarm and set point register has been established documenting all alarm and controls set points; (xv) all equipment is ready for service in accordance with Good Design and Construction Practice, Good Management Practice, and all equipment manufacturer’s guidelines and no equipment warranty provisions have been voided; (xvi) all wet testing of the Project has been completed successfully; (xvii) the Operating Service Provider staff have available to them, on-site, all required equipment manufacturer’s documentation, including but not limited to operation and maintenance manuals, equipment manufacturers’ equipment manuals and copies of applicable equipment warranties; (xviii) all orientation, classroom and field training necessary to be provided to the Operating Service Provider has been conducted and such staff is competent to operate the Project; and (xix) all Governmental Approvals necessary for subsequent commissioning activities have been received prior to conducting such commissioning steps.
ATTACHMENT 4A
PRELIMINARY PROJECT SCHEDULE
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**Task 1: Financial Close Version, November 2, 2016**

**Task 2: Third Amendment, April 5, 2017**

**Task 3: Design and Construction Review Procedures, Commissioning and Substantial Completion**

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**Appendix 4**

**Vista Ridge Project Bills Schedule 9-23-16 Backup.xml**

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**A4A-3**

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**Start Constraints**

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**Page 2 of 12**

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**Task: All Activities**

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**K2008200 Systems, Inc.**

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**2717483-3 038521 OTH2795434.2 038521 CTR**
Vista Ridge Regional Supply Project
Water Transmission and Purchase Agreement

Appendix 4
Design and Construction Review Procedures,
Commissioning and Substantial Completion

Financial Close Version, November 2, 2016
Third Amendment, April 5, 2017

A4A-6
### Vista Ridge Regional Supply Project

**Water Transmission and Purchase Agreement**

Appendix 4

**Design and Construction Review Procedures, Commissioning and Substantial Completion**

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#### Vista Ridge Project Bills Schedule 1 2/3 16 Baseline

**Classic WBS Layout**

25-Oct-16 21:11

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**Financial Close Version, November 2, 2016**

**Third Amendment, April 5, 2017**

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#### Additional Information

- **A4A-7**
- **Task 25**: System Testing and Commissioning
- **Start**: November 2, 2016
- **Finish**: April 5, 2017
- **Duration**: 128 weeks
- **Level of Effort**: Critical Remaining Work
- **Milestone**
ATTACHMENT 4B
SAWS DRAWING REQUIREMENTS

This Attachment sets forth the requirements with which the as-built construction record drawings delivered by the Project Company shall comply as noted in Section 4.6.2(a)(iv) of this Appendix.

4B.1 RECORD DRAWINGS PREPARATION

4B.1.3 Discussion. Record drawings are a complete set of drawings for a facility reflecting the best understanding of what was constructed or modified. During construction or modification of a facility, a record of the construction of the facility is marked in red on a set of the construction drawing blueprints (that is, a master set of contract redline drawings). Following construction, the master set of contract redline drawings is incorporated into the construction drawings and finalized as record drawings. The record drawings will then be forwarded to SAWS and, to the extent permitted under Applicable Law based on the ownership of such record drawings by the Project Company prior to transfer of their ownership to SAWS in accordance with the terms and conditions of this Water Transmission and Purchase Agreement, SAWS will incorporate such record drawings into SAWS’ archive construction drawing inventory. Any record drawings provided or made available to SAWS may be defined as confidential by the Project Company and SAWS agrees not to disclose such information as and to the extent provided under Section 26.13 (SAWS Confidentiality Obligations) of this Water Transmission and Purchase Agreement.

4B.1.4 Procedure. Procedures for preparation and future updates of record drawings are as follows:

(a) Record Drawing Preparation. The record drawings shall be prepared as follows:

(i) Original AutoCAD addendum/conformed CAD drawing files shall be updated to prepare record drawings.

(ii) Before preparation of the record drawings, the master set of contract redline drawings shall be reviewed by the Project Company to ensure the master set of contract redline drawings represent accurately what was constructed.

(iii) Line work for profiles, plans, details, and other elements that require modifications shall be erased on the original CAD drawing files and drafted according to the master redline drawings developed during construction. All lettering, line patterns, and weights required to revise the original CAD drawings shall match those shown on the existing original CAD drawings. Revisions to the drawings shall be bubble outlined to highlight the revised areas on each drawing. The bubbled outline shall also contain a small triangle with a corresponding revision number as shown in the revision block.

(iv) Notes shall be added on the plan and profile sheets identifying the stations and the type of materials (for example, sand, concrete, or...
gravel) used for backfill in the pipe zone. Additional information to be noted on the record drawings includes, but is not limited to:

(a) locations of over excavation; give approximate dimensions and materials;

(b) dewatering well heads/casing left in place;

(c) zones where groundwater was encountered; estimate seepage rate and elevation;

(d) trench conditions that deviate from the originally assumed conditions; give trench width, failures, approximate dimensions of backfill, and type of material;

(e) soil description of trench sidewalls;

(f) soil stabilization treatments left in place, such as piles and bracing;

(g) location of any shoring left in place, such as soldier beams and tunnel supports; and

(h) utility relocations.

(v) The information in item (iv) and any other unusual conditions are to be recorded in the construction daily reports and transferred to the drawings during the preparation of the record drawings.

(vi) The Project Company is responsible for ensuring all revised CAD drawing files have the appropriate signatures and registered professional engineer's seal as provided on the original CAD drawings to the extent required pursuant to Applicable Law.

(vii) SAWS has the right to review and approve the record drawings for consistency with the Contract Standards.

(viii) If construction management services are not performed by the Project Company's Design Engineer, then the Construction Manager's registered professional engineer's stamp is required on the record drawings for construction revisions/record drawing purposes only.

(ix) The Project Company shall include GPS coordinates for all installed improvements in the Record Drawings. GPS coordinates must be listed using the NAD 83 Texas South Central FIPS Zone: 4204 Feet coordinate system.

(b) Annual Update of Record Drawings. In accordance with subsection 9.10(D) (Annual Update of Record Drawings and Documents) of this Water Transmission and Purchase Agreement, the Project Company shall deliver to SAWS an annual update of record drawing in accordance with the Contract Standards.
Standards. SAWS shall review and approve all updates for consistency with the Contract Standards. Revisions to the drawing shall be bubble outlined to highlight the revised areas on each drawing. The bubbled outline shall also contain a small triangle with the next succeeding revision number as shown on the revision block. Each revised drawing shall have a description of the change filled in the revision block adjacent to the corresponding revision number with the date drawn, checked, and approved boxed filled in.
APPENDIX 5

PERFORMANCE TEST PROCEDURES AND STANDARDS
5.1. PURPOSE

The purpose of the Performance Test is to demonstrate that the Project has achieved the Minimum Performance Criteria (as defined in Section 5.4 of this Appendix) and has met applicable Contract Standards, including compliance with all Applicable Laws (the “Performance Test”). The Performance Test is intended to verify the performance of the Project, including in terms of operability, Product Water quality, Product Water quantity, total power consumption and total chemical consumption.

5.2. PERFORMANCE TESTING PREREQUISITES

The Project Company shall not commence the Performance Test until the events in Section 8.3(D) (Conditions to Commencement of the Performance Test) of this Water Transmission and Purchase Agreement have occurred.

The Project Company shall submit a detailed Performance Test Protocol to SAWS for its approval no later than 145 days prior to the date upon which the Project Company plans to commence the Performance Test. SAWS will have the right to observe the testing as it occurs. The Project Company shall provide SAWS with at least three Business Days written notice prior to any Performance Test and the reasonable opportunity to observe the test. SAWS cannot request a retest to observe performance if SAWS failed to attend the original test as scheduled.

Prior to the Performance Test, the Project Company shall provide evidence of (i) pressure testing of all pipelines, including the Well Field Facilities and the Transmission Pipeline and their appurtenances, and (ii) testing each of the Project Equipment at the Asset Registry level as identified in Appendix 6 (Operating and Maintenance Standards), including testing of the Transmission Pipeline cathodic protection system, pumps, motors, fiber optic cable communication system, electrical system components, instrumentation system components, and SCADA control system components following the completion of the PLC programming in accordance with the Design Requirements. SAWS shall make available its SCADA system integrator to verify proper integration of the Project components into SAWS’ SCADA system as required, no later than 30 days prior to the performance of the Performance Test. Testing procedures for each of these tests will be described in the Performance Test Protocol, and test reports will be delivered promptly upon completion throughout the Performance Test period. The Commercial Operation Date and Acceptance shall not be deemed to have occurred until all Performance Test-related reports have been properly prepared and delivered to SAWS in accordance with this Appendix and Section 8.3(F) (Test Report) of this Water Transmission and Purchase Agreement.

Prior to commencement of the Performance Test, the Project Company shall have received written notice from SAWS that the SAWS Interconnection Improvements have been completed and SAWS is ready to receive Product Water. The Scheduled SAWS Interconnection Improvements Completion Date and any completion delays are described in Sections 6.2(B), (C), and (D) of this Water Transmission and Purchase Agreement.

5.3. PERFORMANCE TESTING REQUIREMENTS
The Performance Test shall be conducted in compliance with the Contract Standards, including all Applicable Laws and Governmental Approvals.

To meet the requirements of the Performance Test, the Project Company must demonstrate that the Project meets the following criteria at all times during the Performance Test:

1. The Project performs in a manner that is consistent with Appendix 3 (Technical Specifications), Sections 4.10 (Substantial Completion Procedures) and 4.11 (Substantial Completion Procedure Requirements and Components) of Appendix 4 (Design and Construction Review Procedures), Appendix 13 (SAWS Interconnection Improvements), Governmental Approvals, Applicable Law, and all other Contract Standards;

2. The Project has been operated and maintained pursuant to the requirements of the draft preliminary Electronic Operation and Maintenance Manual for the entire duration of the Performance Test;

3. All Project Equipment functions properly as per the manufacturers specifications and recommendations for such operations and there is no need for any material temporary repairs or material overrides of any equipment protective devices to keep the Project Equipment functioning properly during the Performance Test;

4. The Project operates properly with automated and computerized systems in full operation (allowing for periodic manual operation consistent with Good Management Practice) and with only the normal complement of employees included in the Project Company’s staffing plan for the Project (or SAWS’s staffing plan for the Project Company Storage Tank, as applicable), with the exception of additional Project Company staffing related to collection and analysis of samples and other test data;

5. The Residuals handling system operates as intended and all solids are removed from the Project Sites in accordance with the draft preliminary Electronic Operation and Maintenance Manual and Applicable Law;

6. Any Off-Specification Product Water and Unacceptable Product Water produced by the Project shall constitute a failure of the Performance Test, and the Performance Test shall immediately terminate;

7. The Project has been operated and maintained in a manner consistent with all Applicable Law and Governmental Approvals;

8. Procedures are in place to prevent Unacceptable Water and Off-Specification Product Water not accepted by SAWS from being introduced into the SAWS Distribution System, and for the disposal of such water; and

9. The Project has achieved the performance specified in Section 5.4 (Minimum Performance Criteria) of this Appendix.

10. The Project operates properly during unexpected loss of power.
If any of the foregoing criteria are not met during a Test Event (as defined in Section 5.5 of this Appendix), that Test Event will be considered to have failed.
5.4. MINIMUM PERFORMANCE CRITERIA

The minimum performance criteria which must be met in order for the Project Company to achieve Acceptance are the flow ranges identified in Section 5.5 of this Appendix and Product Water Quality Guarantee requirements provided in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Appendix 8 (Performance Guarantee Requirements) (the “Minimum Performance Criteria”). The Minimum Performance Criteria will be measured at the Product Water Delivery Point (for flow ranges) and Product Water Quality Sampling Locations (for Product Water Quality Guarantee). Failure to comply with any of the Minimum Performance Criteria shall result in the Project Company failing the Performance Test.

5.5. PERFORMANCE TEST SEQUENCE OF EVENTS

The Performance Test will be divided into two independent events (“Event 1” and “Event 2”), the successful completion of which results in the Project as a whole being rated for a capacity and in SAWS taking delivery of Product Water in the amount of the accepted capacity.

Upon agreement of both parties, the Performance Test may be restructured into three or more events. The parties will coordinate in advance to determine the best course of action overall.

Event 1, Event 2, or any additional event shall be a “Test Event.”

Event 1 and Event 2 are described below.

5.5.1 Event 1 - Whole Project Partial Flow Performance Test (Midrange Partial Flow)

Event 1 will be preceded by the testing described in Section 5.2 (Performance Testing Prerequisites) of this Appendix. The purpose of the Performance Test tied to Event 1 is to obtain Acceptance in accordance with Article 8 (Completion and Acceptance of the Project) of this Water Transmission and Purchase Agreement for operation of the Project as a whole to deliver a fraction of 50,000 Acre Feet per Contract Year (the “Midrange Partial Flow”) of Product Water to the Product Water Delivery Point with the water quality described in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Section 8.2.1 (Product Water Quality Guarantee) of Appendix 8 (Performance Guarantee Requirements). The Midrange Partial Flow will be specifically defined in the Performance Test Protocol as the lowest 7-day sustainable flow that the project is designed to deliver capable of delivering and falling within the range of 22,400 to 33,600 Acre Feet per Contract Year (20-30 mgd).

It should be noted that only a portion of the Wells and their associated mechanical equipment will need to be released for successful completion of Event 1. That is, as long as sufficient Wells are available to provide a firm capacity equal to the Midrange Partial Flow (delivered) within the water quality parameters that SAWS has set forth in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Section 8.2.1 (Product Water Quality Guarantee) of Appendix 8 (Performance Guarantee Requirements), then the Project as a whole will be released for production and delivery of the Midrange Partial Flow expressed in units of Acre Feet per Contract Year. Likewise, only a portion of the pumps at the pump stations will need to be
released for successful completion of Event 1. Any component that cannot demonstrate performance as outlined in Section 5.3 (Performance Testing Requirements) of this Appendix may be substituted for another identical and available Project component. Each piece of equipment at the Asset Registry level that cannot successfully demonstrate performance as outlined in Section 5.3 (Performance Testing Requirements) of this Appendix will need to be successfully demonstrated before final acceptance of Event 2 described in Section 5.5.2 of this Appendix.

5.5.2 Event 2 - Whole Project Performance (50,000 Acre Feet per Contract Year)

Event 2 will be preceded by Event 1, as well as any additional testing needed, including mechanical testing of additional Wells and pumps, to complete Event 2. The purpose of the Performance Test tied to Event 2 is to obtain Acceptance in accordance with Article 8 (Completion and Acceptance of the Project) of this Water Transmission and Purchase Agreement for operation of the Project as a whole to deliver 50,000 Acre Feet per Contract Year of Product Water to the Product Water Delivery Point with the water quality described in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement and Appendix 8 (Performance Guarantee Requirements).

Event 2 will include simulation of loss of power while pumping the full 50,000 Acre Foot per year flow by de-energizing Intermediate Pump Station #2 at the main disconnect switch for a 24-hour period then re-energizing and resuming the Test Event to demonstrate proper response and recovery of normal operation of the whole Project. The timing of the simulated power loss during Event 2 will be agreed upon by both parties. Event 2 will also include ramping up delivery of Product Water to the maximum sustainable design flow or 149.2 Acre Feet per day for a period of 6 hours. The timing of the delivery of the maximum sustainable design flow will be determined by SAWS and will occur within the duration of Event 2 as defined in Section 5.6 of this Appendix.

It should be noted that in addition to the Wells and pumps released during Event 1, additional Wells and pumps will need to be released for successful completion of Event 2. Once the Performance Test for all Asset Registry level components is successfully demonstrated, then the Project as a whole will be released for production and delivery of 50,000 Acre Feet per Contract Year. To successfully pass Event 2, all Project components at the Asset Registry level will need to successfully demonstrate performance as outlined in Section 5.3 (Performance Testing Requirements) of this Appendix.

A failure of test Event 2 will not require a repeat of test Event 1.

5.6. DURATION OF PERFORMANCE TESTING

The duration of Event 1 will be a minimum of 7 days followed by a minimum 3-day period of no delivery. The duration of Event 2 will be for a minimum of 18 days inclusive of the 6-hour delivery of the maximum sustainable design flow and the 24-hour simulation of loss of power. The combined duration of Event 1 and Event 2 exclusive of the intervening 3-day shutdown will be 25 days using the two-step performance testing described.

Should a failure occur during Event 1, repairs or replacements will be made and the entire Test Event will be repeated until performance is successfully demonstrated. Should an unplanned failure occur after the fifth day of Event 2 test of the whole Project for the full 50,000 Acre Foot delivery, then any retest to demonstrate performance will be reduced to
10 days. If additional failures occur during the 10-day retest, then the 10-day
demonstration will repeat until the Project as a whole passes the Performance Test.

Any failures, stoppages or interruption of the Project that occurs during a Performance Test
shall not excuse the Project Company from complying with the Performance Test
requirements set forth in this Appendix, except for an hour-for-hour extension of the
duration of the Performance Test for the duration of an Uncontrollable Circumstance for
which performance or schedule relief is provided in accordance with this Water
Transmission and Purchase Agreement.
5.7. PUMPING RAMP-UP LIMITS AND EXTENDED SHUTDOWN

When initiating delivery of Product Water for Performance Testing, the Project Company shall limit pumping ramp-up to allow SAWS sufficient time to manage reversal of flow within the SAWS Distribution System, except for initiation of pumping up to the Midrange Partial Flow (i.e. within the range of 20 to 30 mgd) during which the ramp-up may occur as quickly as the Project Company may choose. Increasing delivery of Product Water above the Midrange Partial Flow during Event 2 may only occur after the Project Company first notifies SAWS that the Midrange Partial Flow has been reached, and a minimum of 6 hours of subsequent operation at the Midrange Partial Flow has been sustained.

During either of the Test Events, any unplanned Project shutdown exceeding 120 minutes will constitute an extended shutdown and automatically trigger a minimum 3-day suspension of Performance Testing.

5.8. VERIFICATION OF PERFORMANCE

The quality of water delivered during the Performance Test will be certified by an independent laboratory certified in accordance with Section 5.6(B) (Sampling, Testing and Laboratory Work) Water quality testing will be performed in accordance with this Section and Section 5.6(B) (Sampling, Testing and Laboratory Work) and Section 10.10(A) (Testing) of this Water Transmission and Purchase Agreement. All water quality analytical methods used to demonstrate compliance with the Product Water Quality Guarantee shall be performed according to methods approved by TCEQ or EPA, or otherwise approved in advance by SAWS. For routine process control analysis or routine Product Water analysis, the Project Company may use the SAWS Analytical Laboratory to perform the water quality testing. An independent third-party laboratory should be used if the Project Company reasonably believes that water quality may become noncompliant with any Product Water Quality Guarantee or for any reanalysis of Product Water.
APPENDIX 6

OPERATING AND MAINTENANCE STANDARDS
APPENDIX 6

OPERATING AND MAINTENANCE STANDARDS

6.1. OPERATING AND MAINTENANCE STANDARDS

6.1.1 Purpose. The purpose of this Appendix is to supplement the requirements for the Operating Work set forth in Articles 9 (Operation and Management of the Project), 10 (Performance) and 11 (Maintenance, Repair and Replacement) of this Water Transmission and Purchase Agreement.

6.2. OPERATIONS REQUIREMENTS

6.2.1 Objectives. The Project Company shall operate and maintain the Project in accordance with this Water Transmission and Purchase Agreement and the Contract Standards. Operational decision-making shall always be based on the following operating objectives:

(a) Protection of the health, safety, and welfare of the public and operating staff;
(b) Compliance with the Performance Guarantees;
(c) Protection of the environment;
(d) Protection and preservation of the Project;
(e) Protection of the SAWS Distribution System; and
(f) Producing a reliable supply of Product Water consistent with this Water Transmission and Purchase Agreement.

6.2.2 Operations Generally. The Project Company shall operate the Project under all conditions in accordance with the Contract Standards and as described below in this Appendix.

6.2.3 Wastewater Facilities and Disposal. The Project Company shall operate and maintain wastewater facilities to service the sanitary wastewater produced at the Project and the Project Sites. The Project Company shall arrange for servicing of holding tanks on a regular basis. The Project Company shall manage and operate the wastewater facilities such that no leaks or overflows occur.

6.2.4 Electric Service Equipment. The Project Company shall operate and maintain all electric service equipment owned by the Project Company in accordance with the requirements of the electric service provider. The Project Company shall provide the electric service provider with access to all electric service equipment owned by the electric service provider.

6.2.5 Operations During Power Outage. Following a primary electrical power outage from any cause, the Project Company shall maintain uninterrupted supply by gravity of Product Water from the Project Company Storage Tank at the Transmission Pipeline Terminus Site in compliance with the Contract Standards for a period of not less than 120 minutes. Further, the Project Company shall assure that the flush pumps and
any other components required for equipment protection during such a loss of power event remain functional upon loss of power to the Project.

6.2.6 Minimum Staffing. The Project Company shall staff the Project consistent with the Operating Protocol and Applicable Law; provided, however, that (1) in no event shall the Project be staffed less than eight hours per day, and (2) the Project shall be monitored by an operator 24 hours per day. All individuals who are proposed to operate or supervise the operation and maintenance of the Project must possess valid operator certifications that meet the requirements of Applicable Law. The Chief Operator shall have the overall responsibility for the day-to-day, hands-on operation of the Project. During off hours (including vacation and sick leave), an operator or shift operator (with a minimum certification meeting the requirements of Applicable Law), in either case with a demonstrated familiarity with the Project, shall be accessible to the on-site staff and SAWS by phone within one hour notice.

6.2.7 Environmental Compliance. The Project Company shall assure compliance with Applicable Law and Governmental Approvals. The Project Company shall provide ongoing training and environmental education of staff and operators for long-term environmental sensitivity, awareness, and compliance. Annually, the Project Company shall perform an environmental review of the Project Sites that will include confirming compliance with Applicable Law and Governmental Approvals. The review shall also include all reports (e.g., quarterly and annual) and monitoring data, as necessary to demonstrate compliance therewith. Any non-compliance and reporting issues shall be reported to the Chief Operator and SAWS immediately.

6.2.8 Regulated Substances Management. The Project Company shall maintain and comply with a current Regulated Substances management program and emergency/spill response plan meeting the requirements of Applicable Law and this Water Transmission and Purchase Agreement. All water treatment chemicals and corrosion inhibitors used at the Project Sites shall comply with the American Water Works Association standards and shall be approved by the National Science Foundation for potable water treatment. Chemicals that could be discharged into the environment shall be stored and used in compliance with Applicable Law. Each chemical load shall be certified by the manufacturer and shall be randomly tested for product quality at least once per month in accordance with the Project Company’s standard operating procedures. Records of such test results shall, at all times, be maintained and available for SAWS review.

6.2.9 Buildings and Grounds. The Project Company shall at a minimum perform the following activities relevant to the buildings and grounds:

(a) Maintain the buildings, grounds, and landscaping in an aesthetically attractive and clean condition.

(b) Repair all roof leaks promptly upon discovery.

(c) Implement regularly scheduled pest control measures.

(d) Apply paint as necessary to all painted surfaces, as appropriate. All painted surfaces shall be painted to maintain a clean aspect, except for such surfaces that have maintained their original condition and would be adversely affected.
by frequent painting. The Transmission Pipeline is excluded from this obligation.

(e) Repair cracks, erosions, depressions, and potholes, and slab shifts on paved areas, sidewalls, and other areas, as necessary.

(f) Periodically resurface paved areas, if and as necessary.

(g) Mow all Transmission Pipeline Easements at least once every three years, or more frequently if necessary, to provide for ease of inspection of the Transmission Pipeline System.

6.2.10 Pipeline Maintenance Requirements. All Project pipelines shall be maintained by the Project Company in accordance with the Contract Standards. If any such pipelines develop a leak or otherwise fail, the Project Company shall repair and restore the affected pipeline as soon as possible. Prior to placing the pipeline back into service, the Project Company shall perform proper blow-off and as pertinent, sanitation procedures shall be followed in accordance with Applicable Law. If a leak or rupture occurs, barricades shall be placed around the problem area and at all times the safety of the public shall be paramount. The Project Company shall follow all requirements of Applicable Law such as proper backfill and compaction, erosion and sediment control and traffic control. Utility locations, traffic control plans, and other information required by applicable Governmental Bodies prior to digging shall be provided before any such work begins. The Project Company shall comply with all applicable local requirements for construction at all times. After repair of any pipelines, sod or pavement shall be replaced and the area shall be restored to at least its original condition. Where metallic piping is used, the Project Company shall incorporate appropriate measures into the corrosion protection plan to protect the integrity of the pipelines and monitor the rate of corrosion. If requested by SAWS, the Project Company shall utilize a closed-circuit televising or other survey equipment approved in writing by SAWS to determine the condition of all pipelines operated by the Project Company every 10 years, or earlier if necessary, during the Term and prior to the expiration of the Term and the Project Company’s turnover of the Project to SAWS pursuant to Article 23 (SAWS Project Assets Purchase Options) of this Water Transmission and Purchase Agreement.

6.2.11 Project Flow Meter and Well Field Meters.

(a) On a monthly basis, the Project Company shall provide routine servicing and maintenance of the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments. Routine maintenance activities generally include, but are not limited to: (i) inspection and cleaning of all ports; (ii) visual inspection to detect leaks, and (iii) confirming properly functioning differential pressure transducers. Twice yearly, the Project Company shall calibrate and service, as required, the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments at the Project Sites. The Project Company shall provide SAWS with copies of its maintenance reports and also enter such reports in the CMMS.

(b) At any time other than during the twice yearly calibration by the Project Company, SAWS can request, at its own expense, to have the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted
instruments calibrated, provided that such calibration shall be performed by the Project Company at the Project Sites within 10 business days of the Project Company's receipt of written notification of such request.

(c) In the event any such calibration test discloses an error exceeding two percent, an adjustment shall be made in charges incurred during the known or estimated period of such error, but in no event exceeding six months prior.

6.2.12 Ordinary and Preventive Maintenance Generally. The Project Company’s preventive maintenance plan within the Maintenance, Repair and Replacement Plan (as defined below) shall reflect procedures and standards consistent with Good Management Practice. The preventive maintenance plan shall reflect that in no event shall maintenance be less frequent and less comprehensive than that specified in manufacturers’ warranties and manuals, unless otherwise approved in writing by SAWS. The preventive maintenance plan shall also address the inspection, leak testing, maintenance, and repair procedures for all water-bearing structures in accordance with Good Management Practice.

6.2.13 Preventive Maintenance Activities. All equipment preventive maintenance activities shall, at a minimum, meet the maintenance requirements of the Project Equipment suppliers. As such, all equipment usage shall be logged through the SCADA system or otherwise entered into the CMMS to provide the necessary input to the CMMS. The CMMS shall generate work orders that are specific to the item of equipment. These work orders shall outline the required preventive maintenance, describing the work to be undertaken. These work orders shall be undertaken and completed promptly. The resultant preventive maintenance work shall be logged as to when the work order was issued, when completed, by whom, duration of work, and listing of consumables and spare parts used in providing the required work. This information shall be continuously maintained for all equipment and summarized on an annual basis to SAWS, as part of the annual operations report required by Section 9.11 (Periodic Reports) of this Water Transmission and Purchase Agreement, to confirm the work is being undertaken as required so as to protect the investment in the infrastructure. SAWS, however, may request to review records more frequently. The Project Company, in addition, shall:

(a) Maintain and replace the Project Equipment in accordance with manufacturer’s recommended maintenance procedures and Good Management Practice;

(b) Maintain accurate records and all other data required for the proper supervision and administration of the maintenance of the Project Equipment;

(c) Provide continuous inspection of Project Equipment to detect any significant variance from the manufacturer’s recommended operating tolerances and specifications of the Project when new. Corrective action shall be taken to prevent damage to the equipment, as well as protect warranties on new equipment;

(d) Conduct all maintenance, repair, and replacements in a manner that does not endanger the safety of Project Company or SAWS staff and visitors and residents in the vicinity of the Project Sites;
(e) Maintain and replace any cathodic protection systems at the Project, if installed, at the optimum operating condition at all times to ensure effective corrosion prevention of all underground piping and other Project components installed in corrosive environments;

(f) Provide the services of factory-trained technicians, tools, and equipment to field-calibrate, test, inspect and adjust all instruments to their specified performance requirements in accordance with the manufacturer's specifications and instructions;

(g) Maintain and implement a regular gate and valve exercising program. The Project Company shall maintain a log of its gate and valve exercising activities in its CMMS; and

(h) Perform predictive maintenance on all pumps and motors having over 250 horsepower at least two times per Contract Year. Such predictive maintenance shall include, at a minimum, thermal evaluations and diagnostics of the electrical systems and vibration analysis of the mechanical systems.

6.2.14 CMMS. The Project Company shall maintain and update the CMMS. If the Project Company changes or upgrades its CMMS, it shall provide 60 days prior notice to SAWS about the changes or upgrades to its CMMS.

(a) Asset Registry. The CMMS program shall be configured to produce an Asset Registry which shall include a complete listing of all assets having an installed cost, defined as the estimated cost to install that asset, that exceeds $25,000 (Index Linked) that constitute the Project, with Project Equipment grouped separately from Project Structures, including for each such asset:

(i) a unique CMMS asset identifier (with each system separately identified, e.g., pump, motor, meter, motor control center, etc.);

(ii) an asset descriptor;

(iii) the asset’s manufacturer and model number;

(iv) photographs and video (to the extent reasonably accessible);

(v) the asset’s service life;

(vi) the asset’s estimated installed cost, including material, equipment and labor costs;

(vii) date of installation; and

(viii) service status (i.e., in service or removed from service).
The CMMS program shall be able to prepare an Asset Registry report (hardcopy and exportable in digital spreadsheet or database form) and shall be provided to SAWS in both hardcopy and digital formats within six months following the Commercial Operation Date.

(b) **Updates.** The CMMS shall be updated as necessary to reflect all newly added assets, including populating fields with the information identified in clause (a) of this subsection. Assets that are removed from the Project shall be deleted from the CMMS, and assets that are removed from service but left in place shall remain in the CMMS, but be flagged to indicate service status as removed from service. Any asset removed from service but left in place with no defined schedule for returning the asset to service shall be deemed to be abandoned in place. The Project Company shall provide an updated Asset Registry report annually to SAWS in digital format.

At the end of every fifth year, the Project Company shall update the CMMS to reflect the condition, functionality, structural integrity, and accompanying condition status of the existing assets. The Project Company shall consider the updated asset condition information in its evaluation of subsequent updates of the Maintenance, Repair and Replacement Schedule (as defined below).

6.2.15 **Maintenance, Repair and Replacement Plan.** Within 60 days after the Commercial Operation Date, the Project Company shall prepare and submit for SAWS’ review a Maintenance, Repair and Replacement Plan (as defined below). After addressing SAWS’ comments, the Project Company shall submit a final Maintenance, Repair and Replacement Plan to SAWS. This plan shall be periodically updated when equipment is replaced, and submitted to SAWS annually with a summary of new equipment in place. If any component identified in the Asset Registry fails prior to its anticipated replacement date, the updated plan shall include a detailed report outlining the cause for the failure and the corrective action undertaken by the Project Company to allow the replacement component to meet the replacement date specified in the plan. Any such component that fails during the warranty period shall be replaced at no cost to SAWS. The Project Company shall comply with the Maintenance, Repair and Replacement Plan throughout the Operating Period except where it can demonstrate to SAWS that changes are in accordance with Good Management Practice.

6.2.16 **Minimum Plan Requirements.** The Maintenance, Repair and Replacement Plan shall define how the Project Company will achieve the Contract Standards objective of quality performance, including but not limited to the following components of quality performance: (1) availability of spare parts for critical operating systems; (2) energy efficiency; (3) ongoing maintenance and repair; (4) appropriate and timely renewal and replacement of equipment; (5) cost-effective upgrades of obsolete equipment and systems; (6) the minimum standards for performance of its ongoing maintenance, repair and replacement obligations; and (7) an equipment inventory, schedule for shift and preventive maintenance, and related operator training (the “Maintenance, Repair and Replacement Plan”). The Maintenance, Repair and Replacement Plan shall also address how the Project Company shall: (i) maintain and repair the Project, including without limitation, repair or replacement of components, including all maintenance, repair and component replacement which may be characterized as “major” or “capital” in nature; (ii) maintain the Project Equipment substantially in accordance with applicable manufacturer’s instructions, the applicable operation and maintenance manuals, and Good Management Practice and using...
the CMMS; (iii) perform all maintenance, repairs and replacements reasonably necessary to the continued operation of the Project at all times; (iv) maintain the Project Structures in accordance with Good Management Practice; and (v) keep accurate records and all other data required for the purposes of proper administration and review of the maintenance of the Project Equipment and Project Structures. The Maintenance, Repair and Replacement Schedule shall be provided as part of the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan shall comply with the requirements set forth in Section 11.2(A) (Maintenance, Repair and Replacement Plan) of this Water Transmission and Purchase Agreement.

6.2.17 Maintenance, Repair and Replacement Schedule. For individual items of equipment with an installed repair or replacement value exceeding $25,000 (Index Linked) (which includes the estimated total cost to repair or replace such equipment, but excludes any on-site labor), the Project Company shall prepare and deliver to SAWS a maintenance, repair and replacement schedule which identifies the projected timing and costs of such major repairs and replacements in defined intervals over the Term (the “Maintenance, Repair and Replacement Schedule”). The Project Company shall not be required to repair or replace a particular piece of equipment in a particular year solely because the projected Maintenance, Repair and Replacement Schedule indicates that timing is the appropriate repair or replacement interval.

6.2.18 One-Year Maintenance, Repair and Replacement Schedule Update. Annually, concurrently with the budgeting performed in accordance with Section 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement, the Project Company shall have prepared an update of the projected Maintenance, Repair and Replacement Schedule for the next Contract Year for individual items of equipment with an installed repair or replacement value exceeding $25,000 (Index Linked) (a “One-Year Maintenance, Repair and Replacement Schedule Update”). The One-Year Maintenance, Repair and Replacement Schedule Update shall include the proposed schedule for each such major repairs and replacements projected for the Contract Year by the Project Company. The Project Company and SAWS shall hold a meeting to review each annual One-Year Maintenance, Repair and Replacement Schedule Update. The initial Maintenance, Repair and Replacement Schedule and each One-Year Maintenance, Repair and Replacement Schedule Update thereof shall detail the proposed schedule of major repairs and replacements for the immediately following Contract Year (year one of the update), an updated schedule for the next Contract Year (year two of the update), and updated schedule for each of the following three Contract Years (years three through five of the update).

6.2.19 Changes Proposed by One-Year Maintenance, Repair and Replacement Schedule Update. For all changes to the Maintenance, Repair and Replacement Schedule proposed in a One-Year Maintenance, Repair and Replacement Schedule Update, the Project Company shall indicate to SAWS the reason for the change and provide supporting information including at a minimum the following:

(a) Operating or test results used by the Project Company to determine the differing repair or replacement need, demonstrating the actual performance of the asset in comparison to that which would be expected by the same asset performing as was anticipated by the current Maintenance, Repair and Replacement Schedule.
(b) Complete detailed history of the assets in question from the CMMS, indicating actual scheduled and unscheduled maintenance events.

(c) In the case of Project Equipment or manufactured Project Structures, manufacturer’s data indicating recommended maintenance schedules.

In the interest of maintaining the expected reliability level of operation of the Project, SAWS will review the recommended One-Year Maintenance, Repair and Replacement Schedule Updates and supporting information. For Maintenance, Repair and Replacement Schedule changes that would delay previously anticipated repairs or replacements, should SAWS determine (acting reasonably) that the delay could adversely impact the public health and safety, SAWS shall have the right to reject the delay and require that the repair or replacement be performed as previously scheduled. In making such a determination, SAWS will consider whether or not the asset’s condition and performance was continuously monitored as required by this Appendix, and whether or not the Project Company performed appropriate levels of ordinary and preventive maintenance on the asset.

6.2.20 Five-Year Capital Plan. Prior to the commencement of the third Contract Year following the Commercial Operation Date, the Project Company shall prepare and provide to SAWS a report that recommends the anticipated major equipment repair and replacement projects at the Project over the course of the next five Contract Years (the “Five-Year Capital Plan”). The Five-Year Capital Plan shall be used as a planning tool by SAWS and the Project Company to consider future proposed major equipment repair and replacement projects at the Project and other long-term work, and to make certain that the Project facilities are being adequately maintained and will be available. The Five-Year Capital Plan shall set forth a description of each project, the rationale for performing each project, the impact or effect of each project on the Project, a preliminary cost estimate or cost allowance for each project, the approximate period of time when each project would be performed and the proposed method or procedure for delivery of each project. The Five-Year Capital Plan shall be updated on an annual basis by the anniversary of each Contract Year concurrent with the budgeting performed in accordance with Section 17.3 (Operating and Maintenance Costs) of this Water Transmission and Purchase Agreement. Each year, the Five-Year Capital Plan shall be updated by the Project Company and a copy shall be delivered to SAWS. SAWS and the Project Company shall meet and confer regarding each update to the Five-Year Capital Plan and its implementation.

6.2.21 Project Company Obligation to Repair and Replace Not Limited. Notwithstanding the Project Company’s performance of its obligations pursuant to Sections 6.2.15 (Maintenance, Repair, and Replacement Plan), 6.2.17 (Maintenance, Repair and Replacement Schedule), 6.2.18 (One-Year Maintenance, Repair and Replacement Schedule), and 6.2.20 (Five-Year Capital Plan) of this Appendix, the Project Company shall repair and replace equipment and structures as needed over the Term, and such obligation shall not be limited in any way.

6.3. GENERAL OPERATING PERIOD REQUIREMENTS

6.3.1 Monthly Operations Reports. No later than 60 days prior to initiating the Performance Test, the Project Company shall submit for SAWS’ review and approval, the proposed format of the monthly operations report required to be submitted by the Project Company pursuant to Section 9.11 (Periodic Reports) of this Water Transmission and
Purchase Agreement. In addition to the information and data required to be included pursuant to Section 9.11 (Periodic Reports) of this Water Transmission and Purchase Agreement, the monthly operations report shall include all other data or information required to be furnished under the Operating Protocol.

6.3.2 Identification Badges. The Project Company shall cause the Operating Service Provider to provide standardized identification badges to all of its on-site employees and all on-site employees of the Project Company and Subcontractors throughout the Operating Period. Such employees shall wear these badges at all times when on the Project Sites. Identification badges shall also be issued to all visitors at the time of arrival with records retained of the name and affiliation of the visitor, purpose of the visit, time of arrival and time of departure. The identification badge shall be surrendered at each time of departure.

6.3.3 SAWS Office Space. The Project Company shall cause the Operating Service Provider to designate and reserve an office at or adjacent to the permanent Operating Service Provider offices if located outside of Bexar County (and related reasonable ingress and egress rights) for SAWS’ exclusive use, as provided in Section 9.1(C) (SAWS Administrative Space) of this Water Transmission and Purchase Agreement. The Project Company, Operating Service Provider or Subcontractors shall not enter or inhabit such SAWS-designated office without SAWS’ prior approval. At a minimum, the office reserved for SAWS shall have the following features:

(a) 170 square feet (similar in character to that provided for the Operating Service Provider's management personnel).
(b) three electric duplex receptacle wall outlets.
(c) Broad band high-speed internet access.
(d) Three telephone lines and one speakerphone. One of the telephone lines shall be dedicated to a facsimile machine (to be provided by SAWS). If the Operating Service Provider provides wireless internet services for its own use, such service shall also be provided to SAWS.
(e) Secure, lockable, and uniquely keyed.

The Project Company shall also provide SAWS with access to the multipurpose room, conference room, and administrative areas at the permanent Project Company offices. The parties will coordinate so that SAWS has reasonable access to these facilities.

6.3.4 SAWS Interface Cabinet. SAWS has provided and installed the SAWS Interface Cabinet. SAWS shall own and be responsible for the maintenance, repair and replacement of the SAWS Interface Cabinet and its contents after the Performance Test. The Project Company shall provide a power supply to operate the SAWS Interface Cabinet's equipment consistent with its design. Further, the Project Company shall be responsible to continuously provide the signals from the Project in a format that is compatible with SAWS’ SCADA system. SAWS will be responsible to provide the PLC programming and human machine interface (“HMI”) integration for these signals into its control system. The Project
Company shall provide adequate means of ingress and egress to SAWS for the operations, maintenance, repair and replacement of the SAWS Interface Cabinet.

6.3.5 Risk Management and Safety. To the extent required by Applicable Law, the Project Company shall prepare and maintain a risk management prevention program and a process safety and management plan.

6.3.6 SAWS Communication with Project Contractors. The Project Company shall provide SAWS with access to the Project Contractors and Subcontractors pursuant to Section 13.1(E) (SAWS Access to and Communications with Project Contractors and Subcontractors) of this Water Transmission and Purchase Agreement.

6.4. SAWS REVIEW

6.4.1 General. SAWS will review the Project Company’s operation, maintenance, repair and replacement of the Project throughout the Term. SAWS may assign one or more persons to observe the operation and maintenance of the Project, to review repair and replacement records, and to provide coordination assistance to the Project Company to assure that the operation of the Project is fully integrated into the operation of the SAWS Distribution System.

6.4.2 Monthly Coordination Meetings. As required by Section 9.2 (Service Coordination) of this Water Transmission and Purchase Agreement, monthly coordination meetings between the Project Company and SAWS shall be held at the Transmission Pipeline Terminus Site or other location designated by SAWS. 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 who is at a management level above the Chief Operator shall attend these meetings. The purpose of these meetings is to review management, operational, performance, and planning matters for the Project, maintenance issues, the monthly operations reports, condition of the Project, safety, housekeeping of the Project Sites, compliance with Applicable Law, Governmental Approvals and the Performance Guarantees, staffing issues, invoicing issues, public relations, and other relevant issues. The Project Company shall be responsible for producing meeting minutes. The Project Company shall distribute copies of documentation of these meetings to all attendees and shall maintain a chronological file of such documentation, which upon request, will be made available to SAWS.

6.4.3 Governmental Body Submittals. The Project Company shall submit draft copies of all Governmental Approvals and other regulatory submittals required for the Operating Work to SAWS for review and comment at least 14 days prior to submittal to any Governmental Body. The Project Company shall address SAWS’ comments prior to submitting the documents to the Governmental Body and shall strictly comply with SAWS comments identifying areas where a statement made in a submittal would be contrary to SAWS policies or would otherwise impose an unreasonable cost or burden on SAWS.

6.4.4 Periodic Maintenance Inspections and Testing. SAWS may perform annual maintenance inspections of the Project as provided in Section 11.4 (Periodic Maintenance Inspections) of this Water Transmission and Purchase Agreement.

6.4.5 Review at End of Term. Requirements for the review of the Project related to the Expiration Date are provided in Sections 11.6 (End of Term Performance Evaluation
6.5. SECURITY PLAN

6.5.1 Security Plan. At least 180 days before the initiation of the Performance Test, the Project Company shall prepare and submit for SAWS’ review and comment, a Security Plan as required by Section 9.7 (Security) of this Water Transmission and Purchase Agreement. The Security Plan shall address security for the Project Sites and all improvements thereon. After receipt and consideration of SAWS’ comments, the Project Company shall submit a final Security Plan to SAWS prior to the initiation of the Operating Period. The Security Plan shall be periodically updated to address changing threat conditions and when security equipment or systems are added or modified. If the Security Plan is changed in any Contract Year, then the updated Security Plan shall be submitted to SAWS with a summary of the new or modified equipment or systems within 60 days of the end of that Contract Year. The Project Company shall comply with the Security Plan throughout the Operating Period. SAWS intends, except as may be required by Applicable Law, to keep confidential all information and materials relating to security at the Project Sites, including the Security Plan, irrespective of whether the Project Company has requested SAWS to keep any such information and materials confidential.

6.5.2 Minimum Requirements for the Security Plan. The Project Company’s Security Plan shall include at a minimum, the following information:

(a) A general description of the Project Company’s security threats including (i) security measures and procedures for prevention, detection, and response to terrorism, (ii) vandalism, (iii) sabotage, (iv) natural disasters, (v) theft, (vi) accident, (vii) assault on employees, and (viii) cross-connection contamination.

(b) A risk analysis of critical areas on the Project Sites and measures to secure them. Critical areas include, but are not limited to, chemical storage and feed facilities, control room and systems, electrical systems (including transformers), clearwells, laboratory, pump stations, and flow control systems.

(c) A description of the Project Company’s zoning or subzoning of the Project Sites into multiple levels of security.

(d) A description of the intrusion detection and surveillance systems.

(e) A description of all security alarms and how and where they will be monitored to ensure a rapid and effective response.

(f) A description of means to track Project Company’s staff, vendors, visitors, SAWS staff, and all other persons on the Project Sites.

(g) A vulnerability assessment of the Project which shall include, but not be limited to, a review of pipes and constructed conveyances, operationally critical long lead time equipment or spare parts, physical barriers, water collection, pretreatment, treatment, storage and distribution facilities.
electronic, computer or other automated systems which are utilized by the
SAWS Distribution System, the use, storage, or handling of various chemicals
and the operation and maintenance of such system, as consistent with all
Applicable Law.

(h) An emergency response plan for the Project which shall also include actions,
procedures, and identification of equipment which can obviate or significantly
lessen the impact of terrorist attacks or other intentional actions on the
public health and the safety and supply of drinking water provided to
communities and individuals, as consistent with Applicable Law.

(i) A description of the Project Company’s plan for notifying nearby residents of
emergencies at the Project Sites.

(j) Coordination with SAWS during periods of elevated risk.

(k) Immediate notification procedures to SAWS of security intrusions and events
at the Project, including requirements for a monthly report to be provided to
SAWS addressing all security-related events during the preceding month and
proposed mitigation strategies.

6.6. OPERATING PROTOCOL

6.6.1 Minimum Requirements for the Operating Protocol. The Project Company
shall prepare the Operating Protocol in cooperation with SAWS. The Project Company shall
be responsible for the preparation of the Operation Protocol, which shall be subject to
SAWS’ approval. The Operating Protocol shall include at a minimum, the following
information:

(a) A general description of how the Project will be operated in conjunction with
the SAWS Distribution System;

(b) A description of the Project Company’s QA/QC procedures during the
Operating Period;

(c) A description of any operational procedures to be implemented in order to
comply with the Performance Guarantees;

(d) Procedures to be verified before routine start-up or shut-down of flow of
Product Water from the Project;

(e) Procedures for emergency start-up or shut-down of flow of Product Water
from the Project;

(f) Procedures for the Project Company to communicate weekly forecast of
Product Water production for consideration in SAWS’ weekly operating plan
development meeting;

(g) Operations and maintenance communications procedures and requirements;
(h) Operational procedures including Product Water pump operations to avoid creating material hydraulic transients in accordance with the final hydraulic transient analysis compliant with Appendix 3 (Technical Specifications);

(i) Procedures for the Project Company’s scheduling of planned maintenance outages to provide adequate schedule for warranty inspections and any requisite warranty repairs of the Project and the SAWS Interconnection Improvements after the Commercial Operation Date;

(j) A list and description of the chemicals to be used at the Project Sites, methods of delivery, on-site storage volume, and procedures for safe storage and use of the chemicals;

(k) A description of the intended method of Residuals handling and disposal (identifying the approximate amount and type of Residuals that will be generated); and

(l) Alternative operations procedures reflecting all reasonable SAWS Distribution System operating scenarios.

As required by Section 10.9 (Service Coordination) of this Water Transmission and Purchase Agreement, the Project Company shall update at least 60 days prior to the commencement of each Contract Year following the Commercial Operation Date, the Operating Protocol for the forthcoming Contract Year. In addition, the Project Company shall update the Operating Protocol as directed by SAWS from time to time in order for the document to remain current.

6.6.2 Extended Shutdown. To initiate delivery of Product Water following an extended shutdown of the Project, the Project Company shall limit pumping ramp-up to allow SAWS sufficient time to manage reversal of flow within the SAWS Distribution System, except for initiation of pumping up to the Midrange Partial Flow (as defined in Appendix 5 (Performance Test Procedures and Standards)) during which the ramp-up may occur as quickly as the Project Company may choose. Increasing delivery of Product Water above the Midrange Partial Flow may only occur after the Project Company first notifies SAWS that the Midrange Partial Flow has been reached, and a minimum of 3 hours of subsequent operation at the Midrange Partial Flow has been sustained. The duration of minimum sustained operation prior to ramp-up above the Midrange Partial Flow may be lessened as SAWS may approve. Any Project shutdown exceeding 120 minutes will constitute an extended shutdown and automatically trigger a minimum 24-hour suspension of delivery and availability of Product Water. The Project Company shall provide a minimum 6-hour advance notice prior to resuming pumping following an extended shutdown.
APPENDIX 7

INSURANCE REQUIREMENTS
APPENDIX 7

INSURANCE REQUIREMENTS

7.1. INSURANCE DURING THE CONSTRUCTION PERIOD

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, the following policies of insurance during the Construction Period, in accordance with the terms of this Section. Copies of these policies shall be delivered to SAWS promptly if requested from the Project Company. Each policy shall be obtained and be in force prior to the performance of any work or commencement of any activity intended to be insured by each policy. At the Project Company’s option, the Project Company may provide any or all of the following insurance policies by means of a Contractor Controlled Insurance Program (“CCIP”). In such case, (a) the limits for Commercial General Liability insurance shall equal or exceed the limits set forth in subsection 7.1.3 (Commercial General Liability) of this Appendix for on-site activities and (b) the limits for Commercial General Liability insurance may be less than the limits set forth in subsection 7.1.3 (Commercial General Liability) of this Appendix for off-site operations, but in no event less than $1 million per occurrence/aggregate.

7.1.1 Builder’s Risk. A builder’s insurance policy obtained on an “all risks” coverage basis, covering all Construction Work, other than design (including testing and commissioning), at the Project Sites. Coverage shall include risks while in transit and at any temporary off-site location; all materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project or incidental to the construction; all temporary structures at the Project Sites that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project to the extent the cost thereof is included in the Construction Work upon which the Monthly Water Purchase Payments are based; and risks while on or about the Project Sites awaiting or during construction. The builder’s risk policy:

(a) shall be maintained until the Commercial Operation Date;
(b) shall be in an amount not less than $540 million ($540,000,000);
(c) shall be written on an all risk basis on a minimum of a LEG2 basis with no co-insurance provisions, including coverage for flood and water damage, and subject to a $20 million aggregate sublimit for flood coverage;
(d) shall include coverage for delay costs, including the loss of revenue, loss of investment income, continued payment of debt service and a covered loss ensuing as a result of design error, all subject to a $64,000,000 sublimit;
(e) shall include loss arising from earthquake and earth movement, subject to a $20 million aggregate sublimit;
(f) shall provide that equipment in transit or stored at off-site locations shall be subject to a $20 million sublimit;
(g) shall include reasonable sublimits for increased cost of construction, extra and expediting expenses, debris removal, professional fees, civil authority, hot testing, and prevention in ingress / egress and

(h) may include deductibles or self-insured retentions not more than $1,000,000, but such deductible or self-insured retention shall not be a recoverable cost under this Water Transmission and Purchase Agreement, except as provided in subsection 7.7.3 (Earthquake Insurance Deductibles) of this Appendix with respect to loss from earthquakes and earth movement.

Named Insureds: Project Company, Water Supply Corporation and Design Build Contractor

First Loss Payee: Senior Debt Creditors, as their interests may appear

7.1.2 Professional Liability Insurance. A professional liability errors and omissions insurance policy, which policy shall:

(a) be in an amount not less than $10 million per claim and in the aggregate;

(b) be on a “claims-made” basis; and

(c) have an extended reporting or discovery “tail” period, or be renewed for a period, of not less than ten years after the Contract Date.

Such policy shall have a retroactive date effective before the commencement of any design.

The practice professional liability policy of the primary design professional shall be specifically in excess of any project-specific professional liability errors and omissions policy. However, should the Project professional liability insurance limit be reduced by claims or losses, the design professional’s practice policy shall become excess to any remaining (reduced) portion of the Project professional liability policy. The primary design professional shall maintain its practice policy until the statute of repose expires in an amount not less than $2010 million. Such practice policy shall not include any exclusionary language relating to construction joint ventures or partnerships or both.

Named Insureds: All entities providing professional design services

Indemnified Parties: Project Company, Water Supply Corporation and Design Build Contractor

7.1.3 Commercial General Liability. A commercial general liability insurance policy, written on an occurrence basis and covering liabilities arising out of the construction of the Project, including independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract, and (unless covered under separate professional liability insurance) professional services provided in connection with the construction of the Project. The policy shall not contain exclusions for property damage from explosion, collapse or underground hazard, or inadvertent construction defects. The products and completed operations liability coverage shall be maintained for a period of not less than 10 years following the Commercial Operation Date or the Termination Date, whichever occurs first. The insurance shall apply
separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability. This insurance policy shall:

(a) have coverage for any one occurrence or claim of not less than $50 million per occurrence and a $50 million aggregate limit applicable solely to the construction of the Project (including liabilities arising out of the construction of the Project), which requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” or umbrella basis;

(b) be maintained from the Contract Date until the Commercial Operation Date;

(c) include a cross liability and severability of interests clause; and

(d) have been renewed for a period of not less than ten years complying operations coverage tail after the Contract Date.

Named Insureds: Project Company, Water Supply Corporation and Design Build Contractor

Additional Insureds: SAWS and Senior Debt Creditors

7.1.4 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than $5 million per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the construction of the Project. If transporting Hazardous Substances, the commercial automobile liability insurance shall either be endorsed to provide coverage under the TE9948CA 99 48 10 13 endorsement, or the Design Build Contractor’s pollution liability insurance policy shall be endorsed to provide transportation coverage beyond the boundaries of the Project Sites.

Named Insureds: The vehicle owner

Additional Insureds: Project Company, Water Supply Corporation, Design Build Contractor, SAWS and Senior Debt Creditors

7.1.5 Worker’s Compensation and Employer’s Liability. A worker’s compensation insurance policy as required by Applicable Law, and employer’s liability insurance having coverage limits of $1 million for each accident, $1 million for disease (each employee), and $1 million for disease (policy limit).

7.1.6 Contractor Pollution Liability. A contractor pollution liability insurance policy, supplied by the Design Build Contractor, written on an occurrence form with limits of not less than $5 million and a $5 million project aggregate limit, covering liability due to pollution caused by or exacerbated by construction activities. If the policy is provided on a “claims-made” form, the Project Company shall cause the Design Build Contractor to continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three years following the Commercial Operation Date. The policy shall provide either a “claims made” or an “occurrence based” coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character arising out of any pollution condition that is in any way related to
the Design Build Contractor’s operations, actions or inactions, and completed operations associated with any work performed by the Design Build Contractor, its Subcontractors, or any of their respective employees, agents, representatives, or officers under this Water Transmission and Purchase Agreement.

Named Insured:  Project Company, Water Supply Corporation, SAWS, Design Build Contractor and Subcontractors

7.1.7 Pollution Legal Liability. A pollution legal liability insurance policy, supplied by the Project Company, provided on a “claims-made” form with limits of not less than $5 million and a $5 million project aggregate limit, covering third party bodily injury and property damage, and remediation costs for known and unknown pollution conditions, and first party property damage. The Project Company shall continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three years following the Commercial Operation Date.

Named Insured:  Project Company, Water Supply Corporation, SAWS, Design Build Contractor and Subcontractors

7.2. INSURANCE DURING THE OPERATING PERIOD

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Operating Period the following insurance coverage:

7.2.1 Property. An all risk property insurance policy (excluding earthquake) on a stated amount basis for the Full Insurable Value insuring all buildings, improvements and equipment that are built or placed on the Project Sites, and including coverage for business interruption, extra expense and expediting expense, subject to a $20 million aggregate sublimit for flood coverage ($20 million flood sublimit excluded from Boiler and Machinery coverage as set forth in subsection 7.2.2 (Boiler and Machinery) of this Appendix). Said policy will include coverage for law and ordinance, including demolition and increased cost of construction, extra and expediting expenses, debris removal and professional fees.

Name Insureds:  Project Company, Water Supply Corporation, Operating Service Provider and SAWS

First Loss Payee:  Senior Debt Creditors, as their interests may appear

7.2.2 Boiler and Machinery. A boiler and machinery insurance policy with limits of liability of not less than $100 million per loss, insuring those objects as defined in the comprehensive object definition that are in use or connected and ready for use and are located on the Project Sites, and including coverage for business interruption, extra expense and expediting expense.

Named Insureds:  Project Company, Water Supply Corporation, Operating Service Provider and SAWS

First Loss Payee:  Senior Debt Creditors, as their interests may appear

7.2.3 Business Interruption. The business interruption insurance policies required by subsections 7.2.1 (Property) and 7.2.2 (Boiler and Machinery) of this Appendix shall be provided with limits of liability in such amounts as are necessary to compensate the Project
Company for direct loss of income and earnings resulting from or attributable to any of the perils required to be insured against under the policies referred to in subsections 7.2.1 (Property) and 7.2.2 (Boiler and Machinery) of this Appendix, including losses resulting from interference with or prevention of access to the Project Sites or the Project, in each case in whole or in part, as a result of such perils or for any other reason. Said policy will include civil authority and prevention of ingress / egress.

Named Insured: Project Company, Water Supply Corporation and Operating Service Provider

First Loss Payee: Senior Debt Creditors, as their interests may appear

7.2.4 Commercial General Liability. A commercial general liability insurance policy insuring against liability of the Project Company, Water Supply Corporation and the Operating Service Provider with respect to the Project or arising out of the Contract Services, written on an occurrence basis and covering liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The insurance shall (a) apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability and (b) have coverage for any one occurrence or claim of not less than $25 million, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis. Said policy will include cross liability and severability of interests clause.

Named Insured: Project Company, Water Supply Corporation and Operating Service Provider

Additional Insureds: SAWS and Senior Debt Creditors

7.2.5 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than $2 million per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the operation and maintenance of the Project. If transporting Hazardous Substances, the commercial automobile liability insurance shall either be endorsed to provide coverage under the TE9948CA 99 48 10 13 endorsement, or the Operating Service Provider’s pollution liability insurance policy shall be endorsed to provide transportation coverage beyond the boundaries of the Project Sites.

Named Insured: The vehicle owner

Additional Insureds: Project Company, Water Supply Corporation, SAWS, Senior Debt Creditors and Operating Service Provider

7.2.6 Worker’s Compensation and Employer’s Liability. A worker’s compensation insurance policy as required by Applicable Law, and employer’s liability insurance having coverage limits of $1 million for each accident, $1 million for disease (each employee), and $1 million for disease (policy limit).
7.2.7 Pollution Legal Liability. A pollution legal liability insurance policy having coverage for any one occurrence or claim of not less than $5 million and a $5 million project aggregate limit, covering third party bodily injury and property damage, remediation costs for known and unknown pollution conditions, and first party property damage.

Named Insured: Project Company, Water Supply Corporation, SAWS, and Operating Service Provider

7.2.8 Operating Service Provider Pollution Liability. During the Operating Period, the Operating Service Provider shall maintain in full force and effect an accidental pollution liability insurance policy written on an occurrence form with limits of not less than $5 million and a $5 million project aggregate limit. The policy shall provide either a “claims made” or an “occurrence based” coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character arising out of any pollution condition that is in any way related to the Operating Service Provider’s operations, actions or inactions, and completed operations associated with any work performed by the Operating Service Provider, its Subcontractors, or any of their respective employees, agents, representatives, or officers under this Water Transmission and Purchase Agreement.

Named Insured: Operating Service Provider, SAWS

Additional Insured: Project Company and Water Supply Corporation

7.2.9 Earthquake and Earth Movement. An earthquake and earth movement insurance policy, including land movement, landslide, settlement, subsidence, lateral support, and mudslide, having coverage for any one occurrence or claim of not less than $20 million and a $20 million project aggregate limit.

Named Insureds: Project Company, Water Supply Corporation and Operating Service Provider

7.2.10 Other. Any other form of insurance and with such limits; in such form, in amounts and for risks as SAWS, acting reasonably, may require from time to time. The Monthly Water Purchase Payment shall be adjusted (through a Direct Payment) to reflect the cost of any such additionally required insurance.

7.3. FULL INSURABLE VALUE

7.3.1 Determining Full Insurable Value. For the purposes of this Appendix, “Full Insurable Value” of any building, improvement, equipment or other property shall be determined by the Project Company, acting reasonably, at the time the insurance is initially taken out and thereafter at least once every 12 months, and the Project Company shall promptly notify SAWS in writing of each such determination, provided that SAWS may at any time (but not more frequently than once in any 12 month period), by written notice to the Project Company, require the Full Insurable Value of any building, improvement, equipment or other property to be redetermined by an independent qualified appraiser designated by the Project Company’s insurance agent/broker and approved by the property insurance company. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to SAWS.

7.3.2 Adequacy of Contemplated Insurance. In addition to the determination of Full Insurable Value, as part of the periodic review contemplated in subsection 7.3.1...
(Determining Full Insurable Value) of this Appendix, the Project Company shall determine whether the policies set out in Section 7.2 (Insurance During the Operating Period) of this Appendix and the limits of such policies are adequate for the Project, and the Project Company shall promptly notify SAWS in writing of each such determination, provided that SAWS may at any time (but not more frequently than once in any 12 month period), by written notice to the Project Company, require the policies or the limits of such policies be redetermined, in the manner described in the preceding paragraph. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to SAWS. The Operation and Maintenance Charge shall be adjusted to reflect any reduced or increased cost of any SAWS-directed insurance redetermination.

7.4. WAIVER OF SUBROGATION RIGHTS, AND OTHER POLICY REQUIREMENTS

7.4.1 Design Build Contractor Waiver of Subrogation. The Design Build Contractor and its insurers providing the insurance required under Section 7.1 (Insurance during the Construction Period) of this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against the City, SAWS, SAWS Indemnitees and those for whom SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

7.4.2 Operating Service Provider Waiver of Subrogation. The Operating Service Provider and its insurers providing the insurance required under Section 7.2 (Insurance during the Operating Period) of this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against the City, SAWS, SAWS Indemnitees and those for whom SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

7.4.3 Project Company and Water Supply Corporation Waiver of Subrogation. The Project Company, Water Supply Corporation and their insurers providing the insurance required under this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against the City, SAWS, SAWS Indemnitees and those for whom SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

7.4.4 Non-Recourse to SAWS. All insurance policies shall provide that the insurers shall have no recourse against SAWS for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to this Water Transmission and Purchase Agreement shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Project Company, of its respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and within the coverages of any liability insurance or self-insurance program maintained by SAWS.

7.5. GENERAL POLICY REQUIREMENTS

Each policy of insurance required under this Appendix shall:
(a) be written on a project or location specific basis with project or site specific dedicated limits, except for commercial automobile and worker’s compensation coverage;

(b) be issued by a Qualified Insurer;

(c) be in a form approved by SAWS, such approval not to be unreasonably withheld;

(d) be non-contributing with and shall apply only as primary insurance and not excess to any other insurance, self-insurance, or other risk financing program available to SAWS;

(e) contain an undertaking by the insurers to notify SAWS and the Senior Debt Creditors in writing not less than 60 days before any material change, cancellation or termination, except for non-payment of premium whereby 10 days will apply;

(f) where SAWS is an additional insured, insure SAWS Indemnites; and

(g) where SAWS is an additional insured, use Insurance Services Office (ISO) endorsement CG 20 10 and CG 20 37 or equivalent substitutions.

7.6. EVIDENCE OF INSURANCE

Upon the issue of a policy of insurance, and otherwise upon request by SAWS, the Project Company shall deliver to the Operating Service Provider (to the extent of coverage under which it is an additional insured) and SAWS a copy of policy endorsements and certificates. The Project Company, acting reasonably, may redact proprietary information from the copy of the policies delivered to SAWS. Upon request by SAWS, the Project Company shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. No review or approval of any insurance certificate or insurance policy by SAWS shall derogate from or diminish SAWS’ rights under this Water Transmission and Purchase Agreement.

7.7. DEDUCTIBLES

7.7.1 Deductibles During the Construction Period. Except as provided in subsection 7.7.3 (Earthquake Insurance Deductibles) of this Appendix, any of the policies of insurance required under Section 7.1 (Insurance During the Construction Period) of this Appendix during the Construction Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Project Company and approved by SAWS, such approval not to be unreasonably withheld. During the Construction Period, the Project Company shall pay the amount deducted from the insurance moneys payable in the event of any loss.

7.7.2 Deductibles During the Operating Period. Except as provided in subsection 7.7.3 (Earthquake Insurance Deductibles) of this Appendix, any of the policies of insurance required under Section 7.2 (Insurance During the Operating Period) of this Appendix during the Operating Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Project Company and approved by SAWS, such approval not to be unreasonably withheld. The Project Company
shall pay the amount deducted from the insurance moneys payable in the event of any loss.

7.7.3 Earthquake Insurance Deductibles. The policy of insurance required under subsections 7.1.1 (Builder’s Risk) and 7.2.9 (Earthquake and Earth Movement) of this Appendix may, with respect to loss arising from earthquakes and earth movement, provide that the amount payable in the event of such loss shall be reduced by a deductible amount of five percent of the loss or $250,000, whichever is less, of the $20 million sublimit insurance requirement.

7.8. SUBCONTRACTORS

The Project Company shall be responsible for ensuring that all Subcontractors performing the Construction Work and the Operating Work secure and maintain all insurance coverages (including workers’ compensation insurance) and other financial sureties required by the laws of the State in connection with their presence at the Project Sites and the performance of their duties pursuant to their respective Subcontracts.
APPENDIX 8

PERFORMANCE GUARANTEE REQUIREMENTS
APPENDIX 8

PERFORMANCE GUARANTEE REQUIREMENTS

8.1. PURPOSE

This Appendix sets forth the requirements for certain Performance Guarantees in this Water Transmission and Purchase Agreement and the noncompliant Product Water deductions for failure of the Project Company to meet such Performance Guarantees throughout the Operating Period.

The Product Water Quality Sampling Locations for Product Water quality compliance monitoring shall be at the point of delivery which will be a designated sample tap downstream of the Project Company Storage Tank, somewhere between the tank and at a point proximate to the Product Water Delivery Point flange or at another location approved by the parties. All sampling methodology, holding times and analytical methods used shall be compliant with the latest edition of Standard Methods for the Examination of Water and Wastewater unless otherwise approved in advance by SAWS.

8.2. PERFORMANCE GUARANTEES

8.2.1 Product Water Quality Guarantee.

The Product Water that the Project Company delivers to SAWS at the Product Water Delivery Point shall be treated water suitable for immediate distribution as public water supply and shall meet:

(1) the quality criteria prescribed by the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirement for Public Water System, 30 Texas Administrative Code, Chapter 290, subchapter F;

(2) all federal drinking water regulations (e.g. primary and secondary maximum contaminant levels) promulgated by the EPA and enforceable in Texas; and

(3) the Additional Product Water Quality Standards specified in Table 8-1 of this Appendix.

The Project Company shall be responsible for compliance with all then-current drinking water quality regulatory requirements in items (1) or (2) above throughout the Operating Period.

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### Table 8-1. Additional Product Water Quality Standards

<table>
<thead>
<tr>
<th>Product Water Quality Parameter</th>
<th>Unit</th>
<th>Concentration at Product Water Delivery Point</th>
<th>Minimum Sampling Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Iron</td>
<td>mg/L</td>
<td>≤0.3</td>
<td>Weekly</td>
</tr>
<tr>
<td>pH</td>
<td>Standard units</td>
<td>7.57.0 - 9.0</td>
<td>Continuous</td>
</tr>
<tr>
<td>Temperature</td>
<td>° F</td>
<td>≤83</td>
<td>Continuous</td>
</tr>
<tr>
<td>Langeliers Saturation Index¹</td>
<td>Standard units</td>
<td>&gt; 0.1 but ≤ 0.3</td>
<td>Weekly</td>
</tr>
<tr>
<td>Free Chlorine</td>
<td>mg/L</td>
<td>≥0.50.2 but ≤ 3.0</td>
<td>Continuous</td>
</tr>
<tr>
<td>Turbidity</td>
<td>NTU</td>
<td>≤2</td>
<td>Continuous</td>
</tr>
</tbody>
</table>


#### 8.2.2 Changes in Applicable Law.

The Project Company, as provided in Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement, shall comply with Applicable Law with regard to Product Water quality as it may be in effect from time to time throughout the Term. SAWS and the Project Company will coordinate in the development of any new treatment processes and methodologies necessary to meet future regulatory requirements.

#### 8.2.3 Product Water Quality Sampling.

Sampling and monitoring will be performed following TCEQ regulation requirements or as directed by SAWS.

Continuous monitoring shall be conducted by on-line meters, located at a Product Water Quality Sampling Location that is capable of transmitting real-time information to SAWS’ SCADA system. Any parameter not requiring continuous monitoring shall be collected at the minimum frequency specified by the TCEQ and EPA by a grab sample at a Product Water Quality Sampling Location.

If it is determined through routine or SAWS-requested monitoring that delivered water does not comply with one or more of the Additional Product Water Quality Standards listed in Table 8-1, or with items (1) and (2) in subsection 8.2.1 of this Appendix, the Product Water shall be considered Off-Specification Product Water or Unacceptable Product Water as listed in Table 8-2.
Demonstrated noncompliance of any Product Water Quality Guarantee at the Product Water Delivery Point shall give SAWS the right to instruct the Project Company to sample at any point(s) from the Well Field Facilities to the Product Water Delivery Point. The results of all such sampling shall be provided to SAWS within two Business Days following receipt by the Project Company.

All water quality analytical methods used to demonstrate compliance with the Product Water Quality Guarantee shall be performed according to methods approved by TCEQ or EPA, or otherwise approved in advance by SAWS. For routine process control analysis or routine Product Water analysis, SAWS may require the Project Company to use the SAWS Analytical Laboratory to perform the water quality testing. An independent third-party laboratory should be used if the Project Company reasonably believes that water quality may become noncompliant with any Product Water Quality Guarantee or for any reanalysis of Product Water. Any external laboratory analyzing Product Water samples must be a certified, independent, third-party laboratory preapproved in writing for use by SAWS. Approvals of laboratories for Product Water quality analysis shall not be unreasonably delayed by SAWS.

### 8.2.4 Raw Groundwater Sampling from Wells.

The Project Company shall sample all Wells during each Contract Year at least once for total coliforms. Each Well that returns a positive detection of coliforms shall require a resampling for coliforms from that Well within one month. If any of the Wells show coliforms on the resampling results, the following minimum safety protocol will be undertaken by the Project Company:

1. If coliforms are deemed migrating from the Well, the Well will be temporarily put out of service or the Raw Groundwater coming out of it shall be treated in a manner to protect from transfer downstream.

2. The Project Company will investigate the possible causes, define the need and the type of mitigation, and conduct the mitigation work.

3. If the resampling results show coliforms presence after mitigation is complete, a plan will be developed by the Project Company in coordination with the prior investigation results in order to define the most cost-effective solution to such issue. Proper resolution steps to be taken may include, but are not limited to, flushing the Well three or more times, chemical disinfection of the Well, shutting down the Well and drilling new Wells, and installing a water treatment system guaranteeing coliform-free water downstream. Repeated failures of the mitigation efforts will require the Project Company to develop new plans to progressively move toward more significant or costly efforts to eliminate the presence of coliforms coming from a Well. Any such plan to move towards more costly mitigation efforts shall be submitted to SAWS for review and comment prior to implementation.
(4) Once the coliform presence in the Raw Groundwater has been mitigated, the Project will return to normal operation ending the current mitigation efforts and returning to annual Raw Groundwater sampling efforts.

8.2.5 Off-Specification Product Water Deductions.

Pursuant to Section 10.2 (Product Water Quality Guarantee) of this Water Transmission and Purchase Agreement, SAWS shall have the right to impose Deductions in the amounts specified in Table 8-2 of this Appendix in the event SAWS takes delivery of any Off-Specification Product Water. Such Deduction amounts shall be Index Linked.

This Appendix provides for Deductions, which are intended as liquidated damages for the relevant circumstances herein described. The parties agree that actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. Such Deductions shall constitute the only damages payable by the obligated party in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit any party’s right to exercise its remedies herein provided, including remedies associated with a Project Company Event of Default or a SAWS Event of Default under Section 20.1 (Project Company Events of Default) and Section 21.1 (SAWS Events of Default) of this Water Transmission and Purchase Agreement, respectively. The parties acknowledge and agree that the additional remedies specifically provided for in this Water Transmission and Purchase Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree as follows:

(1) that the Deductions are not a penalty, and are fair and reasonable and such Deductions represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the specific circumstances of non-performance or breach; and

(2) that, in recognition of the acknowledgments above, the Project Company is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty and that they are not enforceable.

Any parameters requiring continuous measurement shall be noncompliant for a minimum of 4 hours before any Off-Specification Product Water Deductions are to be assessed by SAWS at SAWS sole discretion, or the water is determined to be Unacceptable Product Water. If the Project Company can demonstrate to SAWS’ satisfaction that the period of noncompliance was the result of a faulty meter or detector, or any other cause that SAWS believes adequately demonstrates that the reported value was not indicative of the actual Product Water quality delivered, then SAWS shall have the right to waive any Off-Specification Product Water Deductions.
Water that remains in an off-specification condition will be assessed a Deduction for each 24-hour period that the off-specification condition exists.
## Table 8-2. Deductions for Product Water that is Not Compliant with Additional Product Water Quality Standards

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Table 8-1 Compliance Standards</th>
<th>Off-Specification Product Water</th>
<th>Unacceptable Product Water</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>limits</td>
<td>limits</td>
<td>Deduction per day(^1)</td>
</tr>
<tr>
<td>Total Iron</td>
<td>≤0.3 mg/L</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>pH</td>
<td>7.57.0 - 9.0 units</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Temperature</td>
<td>≤83 °F</td>
<td>≥ 84 but ≤ 89 °F</td>
<td>$5000</td>
</tr>
<tr>
<td>Langeliers Saturation Index</td>
<td>&gt; 0.1 but ≤ 0.3 units</td>
<td>≤0.1 units</td>
<td>$8000</td>
</tr>
<tr>
<td>Free Chlorine</td>
<td>≥0.2 but ≤ 3 mg/L</td>
<td>&lt; 0.2 or &gt;3 mg/L</td>
<td>$1000</td>
</tr>
<tr>
<td>Turbidity</td>
<td>≤2 NTU</td>
<td>&gt; 2 but &lt; 4 NTU</td>
<td>$5000</td>
</tr>
</tbody>
</table>

\(^1\) Index Linked
APPENDIX 9

GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND
APPENDIX 9
GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND

9.1 INTRODUCTION

This Appendix is being included in this Water Transmission and Purchase Agreement to outline the current understanding of the electrical requirements of the Project and the performance requirements for efficient design and operational power consumption that will be required of the Project Company.

9.2 PURPOSE

The purpose of this Appendix is to define the electric power needs of the Project to be fulfilled by the electricity service providers based on the power service contracts to be secured by SAWS, to establish the Guaranteed Maximum Electricity Utilization (GMEU) and Guaranteed Maximum Electricity Demand (GMED) in the first Contract Year of the Operating Period of the Project, and to define an approach for establishing a revised, efficient GMEU and GMED through the involvement of the O&M Budget Panel (defined in Appendix 19) for subsequent Contract Years. A methodology using measured performance data in a flow-based calculation is presented as a suggested option for determination of the GMEU and GMED for the subsequent Contract Years of operation.

Following the end of each Contract Year of the Operating Period, the O&M Budget Panel will evaluate the operation of the project, meet with SAWS and the Project Company, and (1) determine any electrical costs resulting in a Monthly Water Purchase Payment Deduction for that completed Contract Year; and (2) establish the GMEU and GMED values for the subsequent Contract Year based on historical periods of efficient operation and anticipated aquifer levels. Any electrical power consumption that exceeds the established GMEU or GMED in a given Contract Year will be a Monthly Water Purchase Payment Deduction constituting a portion of the Deductions Credit (as defined in Section 17.6 of this Water Transmission and Purchase Agreement) at the average of the current electrical rates by the electrical providers at the time.

The parties agree to cooperate with the O&M Budget Panel in the annual refinement of the calculation methodology and to obtain the necessary and accurate input parameters to establish a precise GMEU and GMED. It is a goal of the O&M Budget panel to establish the GMEU and GMED values that ensure highly efficient operation of the Project overall.

9.3 POWER SUPPLY

SAWS will establish service agreements with the electricity service providers to provide the electrical supply to the Project as needed. The electricity service providers will bill SAWS directly for all electrical costs.

The Project Company will be responsible to work directly with the electrical service providers and to supply all technical information necessary to establish the specific power delivery requirements and the interconnection points between the service providers and the Project Company. SAWS will be responsible for ensuring that electrical service is constructed and adequate to meet the Commercial Operation Date.
The Project Company will be responsible to design and operate the Project in the most efficient manner possible which minimizes electrical demand, minimizes the total electrical consumption and minimizes the total electrical costs to operate the Project. This Appendix assumes that electrical service will be provided by power utilities or direct generators at a wholesale rate. This Appendix also assumes that the Project Company will not provide back-up generators as alternate power supplies for the Well Field Facilities and pump stations after the Commercial Operation Date. In the event that back-up generators are included, the period of use of the generators will be excluded from the calculation of the guarantees.

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.

In the event that SAWS develops other customers on the Transmission Pipeline, this Appendix will be updated in accordance with the electrical demand and use of those other projects.

**9.4 POWER NEEDS**

The Project will require power supply from the grid at several locations. Power supply availability and stability must be at any time sufficient so as to not limit the Project normal operations (start-up, base load production and transportation, peaking production, transportation, operation and maintenance and others required for the Project Company to be able to supply Product Water under the terms of this Water Transmission and Purchase Agreement).

Power supply quality will be determined through the final engineering design process and established through negotiations with the power service providers.

The anticipated power supply quality requirements are as follows:

- **Power supply will not produce power shortages.** SAWS will work with the Project Company and the electricity service providers to provide a high quality service with the minimum number of micro interruptions. The Project anticipates using a single power source with no double ended switchgear or dual service drops intended.

All power quality and quantity information is draft in this version of this Appendix.

<table>
<thead>
<tr>
<th>Phases</th>
<th>Separate Acceptable Deviations</th>
<th>Combined Acceptable Deviations</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Frequency (Hz)</td>
<td>60Hz ±2%</td>
<td>±2%</td>
</tr>
<tr>
<td>Voltage (V)</td>
<td>4160 ±5%</td>
<td>±5%</td>
</tr>
</tbody>
</table>

Separate deviations means that only one of the parameters is deviating and combined means that two or more parameters are deviating from the requirement.
If required, the Project Company will assist SAWS on its power supply negotiations providing the most accurate power needs and power quality data available.

At each of the electric meters where the electricity service providers determine the power factor for Project electrical loads, the Project Company agrees to meet the electricity service providers’ minimum allowable power factor that is not subject to penalty or surcharge.

Connection points will be required at every location as follows:

Well Field Facilities Site

At each wellhead site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider. Table 1 includes the electrical requirements for each of the nine wellhead sites. Each wellhead site will have two pumps, one 350 hp pump and one 1,250 hp pump. Both pumps will be on variable frequency drives for startup and operation.

Power supply provided at those connectors based on the initial operation must be as follows:

<p>| Table 1: Individual Well Head Connected Load |</p>
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>1,300</td>
</tr>
</tbody>
</table>

Pump Stations

At each pump station site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider.

Power supply provided at those connectors based on the initial operation must be as follows:

<p>| Table 2: HSPS Connected Load Requirements |</p>
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>6,570</td>
</tr>
</tbody>
</table>

<p>| Table 3: IPS #1 Connected Load Requirements |</p>
<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>4,770</td>
</tr>
</tbody>
</table>
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Table 4
IPS #2 Connected Load Requirements

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>7,860, 8,210</td>
</tr>
</tbody>
</table>

Product Water Delivery Point

At the Product Water Delivery Point site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider. The power requirements shown in Table 5 only account for Project Company delivery infrastructure. Power required for SAWS pumping and distribution will be additional to the power listed.

Power supply provided at those connectors based on the initial operation must be as follows:

Table 5
Delivery Point Site Power Connected Load Requirements

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phases</td>
<td>3</td>
</tr>
<tr>
<td>Frequency (Hz)</td>
<td>60Hz</td>
</tr>
<tr>
<td>Voltage (V)</td>
<td>208/120</td>
</tr>
<tr>
<td>Power (KW)</td>
<td>75</td>
</tr>
</tbody>
</table>

9.5 GUARANTEED POWER USAGE IN THE FIRST CONTRACT YEAR OF COMMERCIAL OPERATION

This section establishes the GMEU and GMED in the first Contract Year of the Operating Period based on an assumption of maximum Product Water delivery (subject to the daily volume limits in Section 10.4(B) of this Water Transmission and Purchase Agreement) and peak production electricity demand in every month. Attachment 9A dated October 21, 2016 to this Appendix 9 outlines the anticipated power consumption calculated for the first Contract Year of the Operating Period estimating 112,355,307 kWh as the GMEU and 20,573,22,918 kW as the GMED. The parties agree that Attachment 9A will be updated prior to the Commercial Operation Date based on current aquifer levels, information obtained through the Performance Test period, and agreed operating procedures.

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The annual GMEU and GMED presented therein will be pro-rated for the number of days of actual production in the first Contract Year of the Operating Period ending December 31.

9.6 SUGGESTED METHODOLOGY FOR GUARANTEED POWER USAGE IN CONTRACT YEARS SUBSEQUENT TO THE FIRST CONTRACT YEAR OF COMMERCIAL OPERATION

This section describes a suggested calculation methodology that the O&M Budget Panel may consider for determination of the Guaranteed Maximum Electricity Demand and Guaranteed Maximum Electricity Utilization in Contract Years following the first Contract Year of the Operating Period. Major components for this methodology cannot be established until historical data has been collected at efficient modes of operation during Performance Testing and subsequent Contract Years of the Operating Period. Therefore, this methodology will remain as a conceptual outline until further developed and finalized by the O&M Budget Panel as part of the annual budget review process. The information included at this time is intended to outline a suggested GMEU and GMED calculation methodology and reasonable estimates for input parameters.

It is understood that delivery of Product Water will typically vary by season and by year depending on Supply/Demand Shortfalls or Make-Up Units delivery. To account for these variations and reasonably motivate efficient operation, the calculation of GMEU and GMED will be established as a function of the delivered flow (i.e. volume of Product Water delivered per unit of time). Accordingly, it is anticipated that the O&M Budget Panel will establish a set of GMEU and GMED values as a function of delivered flow rate, adjusting the values each year based on aquifer levels or other parameters that are expected to change over time and that impact the following year’s power consumption. These GMEU and GMED values may be presented in tabular or a graphical format (i.e. GMEU and GMED plotted against delivered flow).

Calculation of theoretical utilization and demand for each load in the system based on design and manufacturer data would involve assumptions of various parameters including pump efficiencies, motor efficiencies, tank levels, pipe roughness, aquifer levels, and pipeline water leakage. To avoid the uncertainties associated with theoretical estimates, the calculation of GMEU and GMED for subsequent Contract Years of operation will be based on actual measurements obtained at several operating points under standard, efficient operating conditions including the Performance Testing prescribed in Appendix 5. To establish the GMEU and GMED as a function of delivered flow, a series of tables or plotted curves, each patterned after Table 6 (for GMEU) and Table 7 (for GMED), will be developed based on measured data for each of the operating points defined across the expected pumping range of Project operation. It is anticipated that the O&M Budget Panel will define approximately 7 operating points and establish standard, efficient operating conditions as part of the Performance Test Protocol and as annual operational experience dictates.

Since power consumption varies due to total volumes delivered, aquifer level fluctuations, deterioration of pump efficiencies, increasing pipe roughness, and changes in water leakage throughout the Transmission Pipeline, re-measurement of actual utilization and demand will be made at the various operating points under standard, efficient operating conditions during subsequent commercial operation of the Project conducted at frequencies mutually

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agreed by the parties and at times convenient for the Project Company (e.g. during startup from a planned shutdown).

Water losses will be measured at the various operating points defining the GMEU and GMED and will be assumed constant throughout a Contract Year. Water losses of 2% for evaporation and 4% for leakage are contemplated as maximums for the purposes of hydraulic design, but the trends of change in water losses over time will be monitored by the O&M Budget Panel and adjusted in keeping with efficient operating practice. Water losses in excess of the maximums established will result in discounting the GMEU and GMED in a manner consistent with the Hazen-Williams equation relating pressure and flow.

### 9.7 CALCULATION OF WATER PAYMENT DEDUCTIONS

A power consumption balance performed at the end of every Contract Year during the Operating Period will ascertain the balance between the GMEU and GMED and the actual electricity utilization and demand at the delivered flow.

Three types of parameters will be used in the power consumption balance:

- Guaranteed Parameters (in kWh/task and in kWh/acre-ft)

- Measurable Parameters (volumes of Product Water delivered or delivered flow, aquifer levels, metered usage, metered Product Water delivery, and water losses calculated as the difference between meter readings)

- Operating Tolerances (a margin accounting for reasonable operational deviations from most efficient operation)

The payment deduction, if any, for actual power consumption that exceeds the GMEU and GMED will be computed as described below for each Contract Year. The methodology for payment deductions may be modified by the O&M Budget Panel if agreed to by both parties.

**Payment Deduction = Net GMEU & GMED Deduction + ESP Penalties**

Where:

\[
\text{Net GMEU & GMED Deduction} = \text{absolute value of (Utilization Deduction + Demand Deduction) if that value is negative, or 0 if positive}
\]

\[
\text{Utilization Deduction} = \text{Utilization Balance (kWh)} \times \text{Operating Tolerance Factor} \times \text{Average Utilization Cost ($/kWh)}
\]

\[
\text{Utilization Balance} = \text{GMEU (kWh)} - \text{Total Actual Utilization (kWh)}
\]

\[
\text{GMEU} \text{ is the calculated value in kWh representing the guaranteed power consumption at the actual volume of delivered flow. It is computed as the GMED determined for the delivered flow rate multiplied by the number of operating hours.}
\]
Since delivered flow will not necessarily fall on the 7 measured operating points, a linear interpolation or graphical reading of a GMED curve would be used.

**Average Utilization Cost** is the cost in US dollars paid by SAWS for the electricity utilization (i.e. for kWh) supplied to the Project divided by Total Actual Utilization

**Operating Tolerance Factor** is a number representing a reasonable accounting for a reasonable margin of error for an efficiently operated Project. For the first Contract Year of the Operating Period the factor will be equal to 1.000; for subsequent years, a suggested value of 1.015 is suggested, but may be adjusted as the O&M Budget Panel determines.

\[
\text{Demand Deduction} = \text{Demand Balance (kW) × Operating Tolerance Factor × Average Demand Cost ($/kW)}
\]

\[
\text{Demand Balance} = \text{GMED (kW) – Total Actual Demand (kW)}
\]

**GMED** is the calculated value in kW representing the guaranteed power demand at the actual volume of delivered flow. Since delivered flow will not necessarily fall on the 7 measured operating points, a linear interpolation or graphical reading of a GMED curve will be used.

**Average Demand Cost** is the total power demand cost in US dollars paid by SAWS for the electricity demand (i.e. for kW) supplied to the Project divided by Total Actual Demand.

**ESP Penalties** is the sum of all penalties and surcharges billed to SAWS by the electricity service providers for operation that does not meet minimum power factor requirements.
## Table 6 – GMEU Calculation Matrix

<table>
<thead>
<tr>
<th>Power users in the system</th>
<th>Power Utilization (Guaranteed kWh/acre-ft)</th>
<th>Delivered Flow (acre-ft)</th>
<th>Guaranteed Utilization (kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellfield</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 1</td>
<td>Y1</td>
<td>P1</td>
<td>S1= Y1*P1</td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 2</td>
<td>Y2</td>
<td>P2</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other users</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HSPS Meter</td>
<td>Yj</td>
<td>Pj</td>
<td>Sj= Yj*Pj</td>
</tr>
<tr>
<td>IPS# 1 Meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPS# 2 Meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terminus Meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cathodic Protection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 2...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The sum of this column is the **GMEU**
Table 7 – GMED Calculation Matrix

<table>
<thead>
<tr>
<th>Power users in the system</th>
<th>Guaranteed Demand at the Delivered Flow (kW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellfield</td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 1</td>
<td>Y1</td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 2</td>
<td>Y2</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 8</td>
<td>...</td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 9</td>
<td></td>
</tr>
<tr>
<td>Other users</td>
<td></td>
</tr>
<tr>
<td>HSPS Meter</td>
<td>Yj</td>
</tr>
<tr>
<td>IPS# 1 Meter</td>
<td></td>
</tr>
<tr>
<td>IPS# 2 Meter</td>
<td></td>
</tr>
<tr>
<td>Terminus Meter</td>
<td></td>
</tr>
<tr>
<td>Cathodic Protection</td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 1</td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 2...</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
</tbody>
</table>

The sum of this column is the GMED
Additional Design Guarantees

In order to provide SAWS with additional guarantees for energy efficiency, the Project Company commits to the following:

- At Project commissioning, the pipe will have physical properties resulting in an average Hazen-Williams coefficient (C) of no less than 135.

- When selecting equipment, for functionally equivalent equipment (matches the functional needs of the Project), the Project Company will select those providing the best efficiency average at an annual theoretical operation regime. If the price difference between the most efficient and the second most efficient is higher than 5%, then the selected item will be the second most efficient.
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2717488.6 038521 OTH 2792933.6 038521 CTR
October 21, 2016

Mr. Steve Clouse
San Antonio Water System
2800 U.S. Highway 281 North
San Antonio, Texas 78212

RE: VRRSP
Appendix 9
Updated Spreadsheet

Dear Mr. Clouse:

As a follow up to our discussions on Tuesday regarding the calculation of electric usage in the proposed Vista Ridge Regional Supply Project, we have modified the spreadsheet as follows:

- The delivered flow is 50,000 ac-ft/year (as opposed to a peak year flow of 53,000 ac-ft/year).
- The wellfield represents current estimated aquifer levels.
- The spreadsheet divides the well calculation into a separate tab.
- A summary sheet has been added.
- A tab showing the headloss through a butterfly valve in the system has been added.
- The footnotes have been disaggregated to allow for easier understanding of each equation and to allow the application of “what-if” scenarios.

Based on the current First Year scenarios, at delivered flow of 50,000 ac-ft/year, the electric usage is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year N, equipment guaranteed usage (KWh)</th>
<th>Percent of total</th>
<th>Demand (kW)</th>
<th>Percent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wells</td>
<td>57,909,179</td>
<td>34%</td>
<td>6,758</td>
<td>33%</td>
</tr>
<tr>
<td>System</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HSPS Pumps</td>
<td>33,036,896</td>
<td>19%</td>
<td>2,966</td>
<td>19%</td>
</tr>
<tr>
<td>Remaining HSPS usage</td>
<td>9,457,005</td>
<td>6%</td>
<td>1,080</td>
<td>5%</td>
</tr>
<tr>
<td>IPS 1 Pumps</td>
<td>25,368,536</td>
<td>15%</td>
<td>3,172</td>
<td>15%</td>
</tr>
<tr>
<td>Remaining IPS 1 usage</td>
<td>558,450</td>
<td>0%</td>
<td>64</td>
<td>0%</td>
</tr>
<tr>
<td>IPS 2 Pumps</td>
<td>42,184,610</td>
<td>25%</td>
<td>5,335</td>
<td>26%</td>
</tr>
<tr>
<td>Remaining IPS 2 usage</td>
<td>558,450</td>
<td>0%</td>
<td>64</td>
<td>0%</td>
</tr>
<tr>
<td>Terminus Site</td>
<td>315,070</td>
<td>0%</td>
<td>38</td>
<td>0%</td>
</tr>
<tr>
<td>Remaining Usage</td>
<td>856,290</td>
<td>1%</td>
<td>98</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>112,355,307</strong></td>
<td><strong>66%</strong></td>
<td><strong>13,816</strong></td>
<td><strong>67%</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>170,264,486</strong></td>
<td></td>
<td><strong>20,573</strong></td>
<td></td>
</tr>
</tbody>
</table>

Financial Close Version, November 2, 2016
Third Amendment, April 5, 2017
ATTACHMENT 9A

MARCH 17, 2017 LETTER REGARDING ANTICIPATED POWER CONSUMPTION CALCULATED FOR THE FIRST CONTRACT YEAR OF THE OPERATING PERIOD

Financial Close Version, November 2, 2016
Third Amendment, April 5, 2017
October 21, 2016
Mr. Steve Clouse
Appendix 9
Page 2 of 2

In our meeting Tuesday, there was a concern that an operator may try to operate the system against a partially closed valve. Although final pump selection has not been made, we do have the estimated shut-off heads for the pumps currently being proposed. (These are provided on the Valve Equation tab.) In the case of the HSPS and IPSZ, any butterfly valve closed beyond 60-degrees will trigger a head condition that shuts down the pumps. (IPS1 has a higher shut off head, so this is not the case.)

To show the functionality of the provided spreadsheet, we can look at the effect of a 60-degree closed butterfly in the section of pipe between the HSPS and IPS1. As shown on the Valve equation tab, it would increase the overall horsepower by approximately 8%. Going back to the Station Horsepower Requirements tab, the 4,720 total horsepower (cell B8) can be increased by 8%. The effect on the summary is an increase in Guaranteed Usage to 172,068,811 kWh, and that is assuming that the operator runs it this way for a full year. The delta is 1,804,325 kWh, or 1.06% greater than the typical operation scenario.

Running the system again with the worst case scenario, operating IPS1 with a 70% closed valve, results in a 4.40% increase in power usage. This is assuming that the operator ran the system this way through the entire year.

There are certain assumptions that need to be taken into consideration when using this spreadsheet:

- Final pumps have not been selected. They will have a minor effect on the overall numbers.
- The VFDs will have a beneficial effect on the base flow condition, once selected.
- The aquifer levels are estimates, and will change once each well is drilled and actual data is available.

We believe these findings support our position that establishing the maximum electricity utilization and demand should be included as per of the operation and maintenance panel. Please feel free to contact Kim Keefer should you have questions or comments on the spreadsheet or data contained therein.

Sincerely,
VRRSP Consultants, LLC

Kim S. Keefer, PE
Administrative Program Manager

Attachments (if applicable)

Cc: M. Vergara (CP&Y)

P:\77\74\03\WTPA_Requirements\161021_LTR_Clouse_Dawson_Appendix 9 spreadsheet.docx

2000 NW Loop 410 San Antonio, Texas 78213
March 17, 2017

Mr. Steve Clouse  
San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, Texas 78212

RE: VRRSP  
Appendix 9- Updated Spreadsheet

Dear Mr. Clouse:

We have modified the spreadsheet as follows:

- The delivered flow is 50,000 ac-ft/year (as opposed to a peak year flow of 53,000 ac-ft/year).
- The wellfield represents current estimated aquifer levels.
- The spreadsheet divides the well calculation into a separate tab.
- A summary sheet has been added.
- A tab showing the headloss through a butterfly valve in the system has been added.
- The footnotes have been disaggregated to allow for easier understanding of each equation and to allow the application of “what-if” scenarios.

Based on the current First Year scenarios, at delivered flow of 50,000 ac-ft/year, the electric usage is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Year N, equipment guaranteed usage (KWh)</th>
<th>Percent of total</th>
<th>Demand (kW)</th>
<th>Percent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wells</td>
<td>61,517,937</td>
<td>35%</td>
<td>7,750</td>
<td>34%</td>
</tr>
<tr>
<td>System</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HSPS Pumps</td>
<td>31,308,906</td>
<td>18%</td>
<td>4,279</td>
<td>19%</td>
</tr>
<tr>
<td>Remaining HSPS usage</td>
<td>11,989,639</td>
<td>7%</td>
<td>1,369</td>
<td>6%</td>
</tr>
<tr>
<td>IPS 1 Pumps</td>
<td>24,930,453</td>
<td>14%</td>
<td>3,274</td>
<td>14%</td>
</tr>
<tr>
<td>Remaining IPS 1 usage</td>
<td>1,914,060</td>
<td>1%</td>
<td>218.5</td>
<td>1%</td>
</tr>
<tr>
<td>IPS 2 Pumps</td>
<td>42,027,382</td>
<td>24%</td>
<td>5,587</td>
<td>24%</td>
</tr>
<tr>
<td>Remaining IPS 2 usage</td>
<td>2,330,160</td>
<td>1%</td>
<td>266</td>
<td>1%</td>
</tr>
</tbody>
</table>

Financial Close Version, November 2, 2016  
Third Amendment, April 5, 2017
There was a concern that an operator may try to operate the system against a partially closed valve. Although final pump selection has not been made, we do have the estimated shut-off heads for the pumps currently being proposed. (These are provided on the Valve Equation tab.) In the case of the HSPS and IPS2, any butterfly valve closed beyond 60-degrees will trigger a head condition that shuts down the pumps. (IPS1 has a higher shut off head, so this is not the case.)

There are certain assumptions that need to be taken into consideration when using this spreadsheet:

- Final pumps have not been selected. They will have a minor effect on the overall numbers.
- The VFDs will have a beneficial effect on the base flow condition, once selected.
- The aquifer levels are estimates, and will change once each well is drilled and actual data is available.

We believe these findings support our position that establishing the maximum electricity utilization and demand should be included as part of the operation and maintenance panel. Please feel free to contact Kim Keefer should you have questions or comments on the spreadsheet or data contained therein.

Sincerely,

VRRSP Consultants, LLC

Kim S. Keefer, PE
Administrative Program Manager

Attachments (if applicable)

Cc: M. Vergara (CP&Y)

P:\77\74\03\WTPA_Requirements\Appendix_9\170317_LTR_Clouse_Dawson_Appendix 9 spreadsheet revised.docx

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Financial Close Version, November 2, 2016
Third Amendment, April 5, 2017
APPENDIX 13

SAWS INTERCONNECTION IMPROVEMENTS
APPENDIX 13

SAWS INTERCONNECTION IMPROVEMENTS

13.1. PROJECT COMPANY RESPONSIBILITIES REGARDING TRANSMISSION PIPELINE TERMINUS SITE

13.1.1 The Project Company shall construct the Product Water Delivery Point as a connection to the SAWS Distribution System at a point immediately after the terminal Project Company Storage Tank at the Transmission Pipeline Terminus Site.

13.1.2 The Terminus Site Lot 3. Pursuant to Section 26.1(E) (Transmission Pipeline Terminus Site Conveyance Obligations), the Project Company shall convey, or shall cause the Water Supply Corporation to convey, Terminus Site Lot 3 to SAWS. The parties intend Terminus Site Lot 3 to provide sufficient land and legal access thereto, within an approximately 20-acre parcel, within 12,000 feet of the intersection of Blanco Road and Texas State Highway Loop 1604, for SAWS to construct additional ground storage, pumping facilities, SCADA communication facilities and other necessary treatment facilities as part of the SAWS Portion of the Transmission Pipeline Interconnection Improvements. Terminus Site.

13.1.3 Lot 3 Such land must have a shape and grading necessary to adequately house all facilities the SAWS Interconnection Improvements and provide delivery truck drive-through access to delivery or maintenance points throughout the SAWS Portion of the Transmission Pipeline Terminus Site. Sufficient space shall also be provided to include fluoride, chlorine, iron and calcium treatment systems and to allow SAWS to add an additional storage tank if SAWS determines such a tank is necessary.

13.1.4 The Terminus Site Lot 2 and Project Company shall plat the SAWS Portion of the Storage Tank. Pursuant to Sections 5.14 (Project Company Storage Tank) and 26.1(E) (Transmission Pipeline Terminus Site and Conveyance Obligations) of the Water Transmission and Purchase Agreement, the Project Company Portion of the Transmission Pipeline Terminus Site (each separately as its own lot): construct necessary improvements, including off-site drainage, on-site stormwater detention and roads; and pay all fees required as a condition of platting. shall design and construct the Project Company Storage Tank on Terminus Site Lot 2 in conformance with the Design Requirements, including the requirements of Attachment 13A (Project Company Storage Tank Specifications), and convey, or cause the Water Supply Corporation to convey, the Project Company Storage Tank and Terminus Site Lot 2 to SAWS on the Notice of Acceptance Date.

13.1.3 Grading the Transmission Pipeline Terminus Site. The Project Company shall grade Terminus Site Lot 2 and Terminus Site Lot 3 in order to allow for the construction of the SAWS Interconnection Improvements, including the Project Company Storage Tank, and shall grade the Transmission Pipeline Terminus Site in accordance with the grading plan in Attachment 13B (Grading Plan for Transmission Pipeline Terminus Site) and the grading and compaction specifications in Attachment 13C (Grading Specifications for Transmission Pipeline Terminus Site).

13.1.4 Platting the Transmission Pipeline Terminus Site. The Project Company shall separately plat Terminus Site Lot 1, Terminus Site Lot 2 and Terminus Site Lot 3 and pay all fees required as a condition of platting.
13.1.5 Transmission Pipeline Terminus Site Preparation. Except as specifically provided in Section 13.2 (SAWS Interconnection Improvements), the Project Company shall construct all necessary improvements for the Transmission Pipeline Terminus Site, including off-site drainage and on-site stormwater detention, and other site preparation work, including grading as provided in Section 13.1.3, to prepare the site for construction of the Project Improvements and SAWS Interconnection Improvements. In designing and constructing such improvements and preparing the Transmission Pipeline Terminus Site, the Project Company shall take into account off-site impacts and potential easements for flushing of the SAWS Storage Tank and Project Company Storage Tank, including providing a method for adequate drainage to flush the SAWS Storage Tank and Project Company Storage Tank as necessary.

13.1.6 Mitigation. The Project Company shall acquire tree preservation, flood plain, stormwater and other permits and acquire other land that may be necessary to satisfy drainage, tree, endangered species or other mitigation requirements, or may be necessary for construction of the SAWS Interconnection Improvements, at the Transmission Pipeline Terminus Site, all as required or necessary under Applicable Law.

13.1.6 The Project Company shall consider off-site impacts and potential easements for flushing of the SAWS Storage Tanks and Project Company Storage Tank, including providing an adequate drainage way to flush the SAWS Storage Tanks as necessary.

13.1.7 The Project Flow Meter and Product Water Delivery Point will be the discharge point from the Project Flow Meter on Terminus Site Lot 1 and the Product Water Delivery Point at a point in the pipe between the Project Flow Meter and the Project Company Storage Tank proximate to the property line separating Terminus Site Lot 1 and Terminus Site Lot 2 (as designated by the parties pursuant to a Contract Administration Memorandum). The Product Water Delivery Point will mark the transition of Product Water ownership from the Project Company to SAWS. The Product Water Delivery Point will remain accessible to both the Project Company and SAWS.

13.1.8 Product Water Quality Sampling Locations. Immediately prior to the Product Water Delivery Point on Terminus Site Lot 1, the Project Company shall provide Product Water Quality Sampling Locations for testing Product Water quality in accordance with Appendix 8 (Performance Guarantee Requirements). The Project Company shall provide necessary facilities for treating or discharging Product Water that fails to meet the Product Water Quality Guarantee.

13.1.9 Project Company Bypass Pipe. The Project Company shall install a flanged Tee to accommodate the operation of the SAWS Storage Tank.

13.1.10 Temporary Roads and Other Temporary Services Required to Facilitate Construction Work on the Transmission Pipeline Terminus Site. The Project Company shall construct any and all temporary roads necessary to provide access to the Transmission Pipeline Terminus Site during the Construction Period, including internal service roads, and provide any and all other temporary facilities, structures, equipment, utilities or other services as required to facilitate the proper performance of the Construction Work on the Transmission Pipeline Terminus Site during the Construction Period.

13.1.11 Perimeter Fencing. The Project Company shall construct necessary roads to access, install permanent 5-strand barbed wire fencing around the perimeter of the
Transmission Pipeline Terminus Site, provide perimeter fencing around the Transmission Pipeline Terminus Site, and make any necessary drainage improvements.

13.1.10 SAWS and the Project Company shall agree upon an internal layout of the SAWS Interconnection Improvements and Project Improvements on the Transmission Pipeline Terminus Site and will jointly construct joint use facilities such as security gates, lighting and internal service roads.

13.1.11 SCADA information will be transmitted by the Project Company from IPS2 and the Transmission Pipeline Terminus Site to SAWS. SAWS shall provide the Project Company with SCADA information from relevant points within the SAWS Distribution System to facilitate good system operation for both parties.

13.1.12 Site Landscaping. The Project Company shall provide all site beautification landscaping or facility visual improvements for the Transmission Pipeline Terminus Site as required by the City of San Antonio building codes or other Applicable Law.

13.1.13 Schedule for Completion of Transmission Pipeline Terminus Site Work by the Project Company. The schedule for the Construction Work to be performed by the Project Company on the Transmission Pipeline Terminus Site is set forth in Attachment 13D (Schedule for Transmission Pipeline Terminus Site Work By The Project Company). The Project Company shall complete grading as described in Section 13.1.3 and all prior tasks as indicated in Attachment 13D by February 27, 2018 (the “Scheduled Grading Completion Date”), and make the flange connection available to SAWS for connecting the SAWS Distribution System to the Project Company Storage Tank by February 2, 2019 (the “Scheduled Connection Availability Date”). When the Project Company believes that it has achieved completion of the grading and related site preparation work, it shall deliver to SAWS and the SAWS Engineer a written notice thereof (the “Notice of Grading Completion”). The Notice of Grading Completion shall contain a report signed and sealed by a Texas registered professional engineer, 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 such work.

13.2. SAWS INTERCONNECTION IMPROVEMENTS

13.2.1 SAWS Interconnection Improvements. SAWS shall design and build the SAWS Interconnection Improvements (excluding the Project Company Storage Tank) necessary to be able to take delivery of Product Water and introduce the delivered Product Water into the SAWS Distribution System. The Project Company Storage Tank shall be constructed by the Project Company and shall become part of the SAWS Interconnection Improvements on the Notice of Acceptance Date as provided in Section 5.14(A) (Construction and Conveyance of Project Company Storage Tank) in the Water Transmission and Purchase Agreement.

13.2.2 SAWS currently plans to build at least one 10 million gallon Storage Tank and Other Facilities. SAWS Interconnection Improvements are expected to include storage tank and treatment facilities to add calcium and piping or pumping facilities on the SAWS Portion of the Transmission Pipeline Terminus Site. It is anticipated that other tanks and possibly other treatment facilities may be needed at this location. SAWS shall
13.2.3 **Permanent Internal Roads, Fencing, Lighting and Surveillance for Terminus Site Lot 2 and Terminus Site Lot 3.** SAWS shall construct pumping facilities at any and all permanent internal service roads necessary to provide access within the SAWS Portion of the Transmission Pipeline Terminus Site.

13.2.4, and provide any and all interior fencing, security gates, lighting, SAWS shall install surveillance equipment necessary to monitor and other services as required to facilitate the proper operation of the SAWS Interconnection Improvements on the SAWS Portion of the Transmission Pipeline Terminus Site. The Project Company shall be responsible for providing the foregoing as required for Terminus Site Lot 1 and Terminus Site Lot 1 Improvements.

13.2.5 **Water Mains.** SAWS shall construct necessary Interconnection Improvements are expected to include any water mains necessary to convey the Product Water from the SAWS Portion of the Transmission Pipeline Terminus Site to SAWS Pump Station 63. SAWS will construct other necessary mains within the SAWS Distribution System to ensure 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. This may entail water mains being constructed from the Product Water Delivery Point to SAWS Pump Station 63 and other water mains necessary to convey it on further to Bitters Pump Station, Maltsberger Pump Station, Basin Pump Station and further as hydraulic analysis indicates may be necessary to distribute delivered Product Water. Some existing mains within the SAWS Distribution System may be “repurposed” to be used as a part of the transmission system needed to convey the Product Water into the SAWS Distribution System.

13.2.6 **Sewer Service.** SAWS will construct domestic sewer service mains to the Transmission Pipeline Terminus Site capable of providing service to both SAWS and the Project Company.

13.3 **TRANSMISSION PIPELINE TERMINUS SITE PLAN**

13.3.1 Transmission Pipeline Terminus Site and Plan. The Transmission Pipeline Terminus Site consists of Terminus Site Lot 1, Terminus Site Lot 2 and Terminus Site Lot 3. The site plan is attached as Attachment 13E. This site plan completely and fully supersedes all prior versions of the site plan, including Figure 2-9 in Appendix 1.

13.3.2 Modifications to Site Plan. As the Project design develops, the parties shall make modifications the Transmission Pipeline Terminus Site plan that SAWS reasonably requests.

13.4 **SCADA**

SCADA information shall be transmitted by the Project Company from IPS2 and the Transmission Pipeline Terminus Site to SAWS. SAWS shall provide the Project Company with SCADA information from relevant points within the SAWS Distribution System to facilitate good system operation for both parties.
13.5. JOINT USE AND COOPERATION

13.5.1 Cooperation. The Project Company agrees to cooperate with SAWS and any other contractor engaged by SAWS (“Separate Contractor”), and SAWS agrees to (or shall cause any Separate Contractor to) cooperate with the Project Company, in connection with the work to be performed toward completion of the Project and SAWS Interconnection Improvements. The parties recognize that a cooperative and collaborative environment among all persons engaged in performing such work is essential to the successful implementation of the Project and agree to use their best efforts to work with all such other persons toward fostering such an environment.

13.5.2 Joint Use.

(a) SAWS Access during Construction of Project Company Storage Tank and Site Preparation Work. The Project Company shall construct the Project Company Storage Tank on Terminus Site Lot 2 and prepare Terminus Site Lot 3, including grading, for construction of SAWS Interconnection Improvements in accordance with the schedule in Attachment 13E. During this period, SAWS expects to visit and inspect the Project, conduct tours, and perform engineering, analysis and such additional surface, subsurface and geotechnical studies or tests as deemed necessary by SAWS in accordance with Section 4.1(B)(2) (Transmission Pipeline Terminus Site Acquisition and Preliminary Site Plan; SAWS Right of Entry), Section 5.14(B) (Operation, Maintenance and Insurance of the Project Company Storage Tank) and Section 9.9 (SAWS Access to Project) of the Water Transmission and Purchase Agreement.

(b) Concurrent Projects. The Project Company acknowledges that SAWS may construct certain SAWS Interconnection Improvements (“Concurrent Projects”) at the Transmission Pipeline Terminus Site concurrently with the construction of certain Project Improvements by the Project Company at the Transmission Pipeline Terminus Site, and agrees to coordinate the Construction Work with the work associated with any Concurrent Projects in accordance with this Attachment and any Concurrent Projects Coordination Protocol (as described below) to the extent SAWS requires the Separate Contractors to do the same.

(c) Equipment and Materials Storage at Transmission Pipeline Terminus Site. The Project Company, SAWS and any Separate Contractors shall provide reasonable opportunity for the introduction and storage of their respective equipment and materials and the execution of their respective work at the Transmission Pipeline Terminus Site. The Project Company, SAWS and any Separate Contractors shall coordinate to store apparatus, materials, supplies and equipment in such orderly fashion at the Transmission Pipeline Terminus Site as will not unduly interfere with the progress of all activities taking place on the Transmission Pipeline Terminus Site.

(d) Concurrent Projects Coordination Protocol. Upon the reasonable request of SAWS, the Project Company shall develop with the Separate Contractors a joint use protocol that is intended to establish a management framework for creating a cooperative and collaborative project environment and facilitate the
coordination of schedules, laydown areas, and other issues as necessary (the “Concurrent Projects Coordination Protocol”).

(e) Internal Layout of Transmission Pipeline Terminus Site. SAWS and the Project Company shall consult and cooperate with each other with respect to the internal layout of the SAWS Interconnection Improvements and Project Improvements on the Transmission Pipeline Terminus Site.

13.5.3 Coordination Meetings. SAWS intends to have coordination meetings among the Project Company and the various Separate Contractors in an effort to coordinate the work being performed at the Transmission Pipeline Terminus Site and avoid or mitigate cost and time impacts. The Project Company agrees that it will attend and participate in any such logistics meetings with the Separate Contractors, and the Project Company shall cooperate with SAWS and the Separate Contractors, and SAWS shall cooperate with the Project Company, to the extent reasonably necessary for the performance by the Separate Contractors of their work and the Project Company of the Construction Work.

13.5.4 Relationship of Project Company and Separate Contractors. Notwithstanding anything to the contrary in any Concurrent Projects Coordination Protocol or this Water Transmission and Purchase Agreement, the Project Company’s agreement to comply with the provisions of this Section 13.5 or any Concurrent Projects Coordination Protocol shall not be construed to: (1) confer upon the Project Company any liability for the acts or omissions of the Separate Contractors; (2) impose upon the Project Company joint or several liability for the acts or omissions of the Separate Contractors; (3) create a partnership, consortium or joint venture relationship among the Project Company and any Separate Contractor; or (4) expand the Project Company’s liabilities beyond those set forth in this Water Transmission and Purchase Agreement. Nothing in this Attachment or any Concurrent Projects Coordination Protocol shall limit or excuse the Project Company’s performance of the Contract Services, except to the extent the Project Company is entitled to Uncontrollable Circumstance relief as specified in this Water Transmission and Purchase Agreement.
ATTACHMENT 13A

PROJECT COMPANY STORAGE TANK SPECIFICATIONS

1. In accordance with Attachment 3A of Appendix 3 (Technical Specifications), the Project Company Storage Tank will be an AWWA D110, Type III precast, prestressed, concrete circular tank with steel diaphragm, and appurtenances shall be industry standard.

2. The Project Company Storage Tank will follow the recommendations of the “Geotechnical Engineering Study for Vista Ridge Regional Supply Project Terminus Site San Antonio, Texas” by Raba-Kistner Consultants dated December 10, 2015, for the foundation of the tank. The parties acknowledge and agree that the study does not require a pier supported structure.

3. The external ladder will have a vandal guard and ladder-up safety post (but no cage), as well as a landing every 45 feet, or half-way for tanks taller than 45 feet. The Project Company will provide an additive alternate price for the provision of specifically the DBI-Sala Safety Climb System.

4. The internal ladder will have a landing every 45 feet, or half-way for tanks taller than 45 feet. The Project Company will provide an additive alternate price for the provision of specifically the DBI-Sala Safety Climb System.

5. The Project Company will provide an additive alternate price for the provision of handrails encompassing the pie shaped area from the ladder, to vent, to hatch, and back to the ladder along the perimeter of the Project Company Storage Tank, per the typical SAWS standard for safety railing at the top of the tank.

6. Redundant level controls will be provided.

7. The internal stand pipe will be made of steel. The Project Company will provide an additive alternate for the provision of a 316 stainless steel stand pipe.

8. The Project Company will provide a “stilling well” for the level control measurements.
9. The overflow weir will be constructed of 304 stainless steel. The Project Company will provide an additive alternate for the provision of a 316 stainless steel overflow weir.

10. The overflow pipe will be made of ductile iron. The Project Company will provide an additive alternate for the provision of a 316 stainless steel overflow pipe.

11. Overflow structures will meet requirements of TCEQ.

12. Overflow/drain will have erosion design consideration; these may or may not include piping.

13. Space will be available for lay down and construction under the current plat.

14. If SAWS chooses to pursue any of the optional items described above for which additional payment is required, such additional payment will be payable as a Direct Payment to the Project Company.
ATTACHMENT 13C

GRADING SPECIFICATIONS FOR TRANSMISSION PIPELINE TERMINUS SITE

In accordance with the “Geotechnical Engineering Study for Vista Ridge Regional Supply Project Terminus Site,” San Antonio, Texas by Raba Kistner Consultants dated December 10, 2015, the grading and compaction on the Transmission Pipeline Terminus Site shall be as follows:

In general, select fill and onsite material should be placed in loose lifts not exceeding 8 inches in thickness and compacted to at least 95 percent of maximum density as determined by TxDOT, Tex-113-E, Compaction Test. The moisture content of the fill should be maintained within the range of 2 percentage points below to 2 percentage points above the optimum moisture content until final compaction for imported crushed limestone base. For low PI materials, the moisture content of the fill should be maintained within the range of optimum to plus 3 percentage points above the optimum moisture content until final compaction and until permanently covered.

Fills to support the SAWS Storage Tank and Project Company Storage Tank should be placed in loose lifts not exceeding 8 inches in thickness and compacted to at least 95 percent of maximum density as determined by ASTM D 1557, Modified Compaction Test.
ATTACHMENT 13D

SCHEDULE FOR TRANSMISSION PIPELINE TERMINUS SITE WORK
BY THE PROJECT COMPANY
ATTACHMENT 13E

TRANSMISSION PIPELINE TERMINUS SITE PLAN

Third Amendment, April 5, 2017

2787610.6 038521 CTR

A13-14
WARRANTY DEED, BILL OF SALE AND ASSIGNMENT OF EASEMENT RIGHTS

THE STATE OF TEXAS §
COUNTY OF BEXAR §

THAT THE UNDERSIGNED, CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, a Texas not-for-profit water supply corporation (referred to herein as "Grantor"), for and in consideration of the sum of TEN DOLLARS ($10.00) cash, and other good and valuable consideration paid to Grantor by the SAN ANTONIO WATER SYSTEM, the receipt and sufficiency of which are hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto THE CITY OF SAN ANTONIO, a Texas municipal corporation, for the use, benefit and control of its SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ("Grantee"), as such and their successors in office appointed by the City Council of the said City of San Antonio as provided in Ordinance No. 75686, adopted at a regular meeting of said council, April 30, 1992, that certain _______ acre parcel of land and improvements thereon Lot __, Block __, NCB __ Vista Ridge Integration, a subdivision in Bexar County, Texas being more particularly described and depicted in Exhibit “A” attached hereto and made a part hereof for all purposes according the plat thereof recorded in Volume __, Page ___ of the Official Public Records of Real Property of Bexar County, Texas (the “Land”), together with all water rights and claims of water rights of any nature related to said Land, and together with all of Grantor's right, title and interest in and to all oil, gas and other minerals in and under and that may be produced from said Land, and all improvements, privileges and appurtenances pertaining to the Land, including, but not limited to, strips between the Land and abutting properties, and in any street, highway, alley, easement or right of way, existing or proposed, on, adjacent or appurtenant to the Land, and also including the Assigned Easements as hereinafter defined, and any right of reversion related to the Land and all facilities and fixtures located on or under the Land (collectively, the “Property”).

This conveyance is made and accepted subject to those certain matters (the “Permitted Exceptions”) set forth on Exhibit “BA” attached hereto and made a part hereof for all purposes and the Reserved Easement Interest described below.

TO HAVE AND TO HOLD the Property unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind Grantor and Grantor's successors to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, and Grantee's
successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof, subject to the Permitted Exceptions and the Reserved Easement Interest, when the claim is made by, through or under Grantor, but not otherwise.

Ad valorem taxes and special assessments, if any, against the Land relating to periods for the year of conveyance prorated to the date of conveyance and roll back taxes, if any, assessed against the Land for the current or prior years due to a change in ownership or use occurring prior to the effective date hereinbelow of this conveyance to Grantee shall remain the responsibility of the Grantor.

[For Lot 3 deed: Notwithstanding the foregoing, Grantor hereby makes a partial assignment and conveyance to Grantee of Grantor’s rights under the following non-exclusive easements: (i) access easement reserved in instrument recorded in Volume 15250, Page 1615, Real Property Records, Bexar County, Texas, (ii) ingress and egress easement, 50 feet wide, described as Tract 1 (L.W. Steubing Home Easement) containing 0.364 acres and an ingress and egress easement, 50 foot wide, described as Tract 2 (Dague Easement) containing 1.627 acres both being described in the Conveyance of Easement recorded in Volume 14997, Page 1210 and in Volume 15250, Page 1622, Real Property Records of Bexar County, Texas, (collectively, the “Assigned Easements”). The foregoing assignment is partial in that Grantor retains and reserves the right to use the Assigned Easements (the “Reserved Easement Interest”). Grantor and Grantee shall each have the right to use the easements along with all other persons entitled to use such easements. Grantee shall have no obligation to Grantor to maintain the Assigned Easements or contribute to the maintenance of same.]

[For Lot 2 deed: Grantor hereby makes an assignment and conveyance to Grantee of all of Grantor’s interest in the following non-exclusive easements: (i) access easement reserved in instrument recorded in Volume 15250, Page 1615, Real Property Records, Bexar County, Texas, (ii) ingress and egress easement, 50 feet wide, described as Tract 1 (L.W. Steubing Home Easement) containing 0.364 acres and an ingress and egress easement, 50 foot wide, described as Tract 2 (Dague Easement) containing 1.627 acres both being described in the Conveyance of Easement recorded in Volume 14997, Page 1210 and in Volume 15250, Page 1622, Real Property Records of Bexar County, Texas.] EXECUTED to be effective the ____day of _________20 __.

Signatures and acknowledgements on following pages

Financial Close Version, November__, 2016
Third Amendment, April 5, 2017
GRANTOR:

Central Texas Regional Water Supply Corporation,
a Texas non-profit water supply corporation

By: ________________________________
Name: ______________________________
Title: ______________________________

STATE OF TEXAS §

COUNTY OF ________ §

This instrument was acknowledged before me on this _______ day of ________, 20__, by _____________________________ (name), _____________________________(title) of Central Texas Regional Water Supply Corporation, a Texas non-profit water supply corporation, on behalf of same.

[Seal]

______________________________________________
Notary Public, State of Texas
ACCEPTED BY GRANTEE:
City of San Antonio by and through its San Antonio Water System Board of Trustees

By: _______________________________
Name: _______________________________
Title: _______________________________

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this _________ day of ____________, 20__, by _____________________________ (name), __________ ________________(title) of the San Antonio Water System Board of Trustees, a municipal utility of the City of San Antonio, on behalf of same.

[Seal]

Notary Public, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

San Antonio Water System
Attn: Mark Brewton
P.O. Box 2449
San Antonio, Texas 78298
Exhibit “BA”

Permitted Exceptions

1. Declaration of Reciprocal Restrictive Covenants recorded in Volume 15250, Page 1628, Real Property Records, Bexar County, Texas, as amended by the Amendment to Declaration of Reciprocal Restrictive Covenants recorded in Volume ___18184, Page ___1220, Real Property Records, Bexar County, Texas.

2. Variable Width Drainage Easement (0.341 acres) into subject property at its most northerly corner, as shown on plat recorded in Volume 9624, Page(s) 94, Deed and Plat Records, Bexar County, Texas. [if applicable, e.g., if Property contains this easement]

3. Variable Width Drainage as created by plat recorded in Volume ___, Page ___ of the Plat Records of Bexar County, Texas.

4. Reciprocal Easement Agreement by and between Grantor and Grantee dated ______, 2017 [if known at time of deed: recorded in Volume ___, Page ___ of the Official Public Records of Real Property of Bexar County, Texas]
TRANSACTION FORM J

RECIPROCAL EASEMENT AGREEMENT FOR THE TRANSMISSION PIPELINE TERMINUS SITE
RECIPROCAL EASEMENT AGREEMENT

This Reciprocal Easement Agreement ("Agreement") is made and entered into by and between CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION, a Texas not-for-profit water supply corporation ("WSC") and CITY OF SAN ANTONIO BY AND THROUGH ITS—THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ("SAWS"), each being a "Party" to this Agreement and collectively being the "Parties" to this Agreement.

WHEREAS, SAWS and the Vista Ridge, LLC (formerly known as Abengoa Vista Ridge, LLC) (the "Project Company") have entered into that Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (as it has heretofore been and may hereafter be amended, the "WTPA") 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;

WHEREAS, the WSC has been duly formed to participate with the Project Company in the development and operation of the regional water supply system (the "Project") provided for in the WTPA, 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, and in connection therewith, to acquire and operate certain real property and improvements necessary for the Project;

WHEREAS, the WSC has acquired a certain 26.17 acre site in Bexar County (consisting of a 26.009 acre tract and a 0.161 acre "flag" tract), described in the instrument recorded in Volume ___18184, Page ___1226 of the Official Public Records of Real Property of Bexar County, Texas, to be the Transmission Pipeline Terminus Site (as defined in the WTPA) for the Project;

WHEREAS, the WSC has platted a 25.238 acre portion of the 26.009 acre tract as a three lot subdivision called the Vista Ridge Integration subdivision according to the plat thereof recorded in Volume __, Page ___ of the Official Public Records of Real Property of Bexar County, Texas (the "Subdivision");

WHEREAS, contemporaneously with this Agreement, the WSC has conveyed a _____ acre portion of the Transmission Pipeline Terminus Site to SAWS, being Lot 3, Block __, NCB__Vista Ridge Integration, a subdivision in Bexar County, Texas according the plat thereof (the "Plat") recorded in Volume __, Page ___ of the Official Public Records of Real Property of Bexar County, Texas (the "SAWS Portion of the Transmission Pipeline Terminus Site") described on Exhibit A attached hereto and incorporated herein, and accordingly, has
retained for itself the remaining ____ acre portion of the Transmission Pipeline Terminus Site Lots 1 and 2 of said Subdivision (the “WSC Portion of the Transmission Pipeline Terminus Site”) described on Exhibit B attached hereto and incorporated herein;

WHEREAS, SAWS and the WSC will each be constructing and operating certain water infrastructure on their respective portions of the Transmission Pipeline Terminus Site; and

WHEREAS, SAWS and the WSC require certain easements from each other in order to access, construct and operate said water infrastructure;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, WSC and SAWS hereby agree as follows:

1. **SAWS Easements.**

   a. **Access.** WSC hereby grants to SAWS an access easement upon, over and across the WSC Portion of the Transmission Pipeline Terminus Site and the above-referenced 0.161 acre “flag” tract (said access easement to the extent over such 0.161 acre “flag” tract to terminate and merge into that certain 0.784 acre Access Easement by and between SAWS, WSC and Dague Ranch Limited Partnership upon execution and recordation of same) for ingress and egress to and from the SAWS Portion of the Transmission Pipeline Terminus Site. This easement shall include, but not limited to, access across all roads and drives (permanent or temporary construction) located now or in the future on the WSC Portion of the Transmission Pipeline Terminus Site. With respect to SAWS ingress and egress over any other non-road, non-drive areas on the WSC Portion of the Transmission Pipeline Terminus Site, SAWS will exercise reasonable care not to disrupt or interfere with the WSC’s operations.

   b. **Facilities.** The WSC hereby grants to SAWS an easement upon, under, over and across the WSC Portion of the Transmission Pipeline Terminus Site to construct, reconstruct, realign, inspect, patrol, maintain, operate, repair, add, remove and replace water lines and facilities, and appurtenances thereto (including SAWS-operated SCADA, electrical and telecommunications facilities). SAWS will locate such lines, facilities and appurtenances in locations across the WSC Portion of the Transmission Pipeline Terminus Site so as to minimize interference with WSC’s activities, provided, however, following SAWS initial construction of such
lines, facilities and appurtenances, the WSC will not construct or place buildings, structures, water detention facilities, or change the grade over such areas, and SAWS shall have the right to remove any encumbrances or obstructions interfering with SAWS’ easement rights under this Section 1b.

c. **Drainage.** The WSC hereby grants to SAWS an easement upon, over and across the WSC Portion of the Transmission Pipeline Terminus Site for drainage of surface water and discharge of water from the SAWS Portion of the Transmission Pipeline Terminus Site. With respect to any increase in volume of water draining or discharged from the SAWS Portion of the Transmission Pipeline Terminus Site as a result of SAWS’ improvements or operations on its property, and to the extent not flowing over and across any platted drainage easement dedicated to the public, SAWS agrees that such additional volume shall not damage any facilities or materially disrupt operations on the WSC Portion of the Transmission Pipeline Terminus Site.

The easements granted hereinabove to SAWS are collectively referred to herein as the "SAWS Easements".

2. **WSC Easements.**

   a. **Access.** SAWS hereby grants to WSC an access easement upon, over and across all roads and drives (permanent or temporary construction) located now or in the future on the SAWS Portion of the Transmission Pipeline Terminus Site for ingress and egress to and from the WSC Portion of the Transmission Pipeline Terminus Site.

   b. **Drainage.** SAWS hereby grants to WSC an easement upon, over and across the SAWS Portion of the Transmission Pipeline Terminus Site for drainage of surface water and discharge of water from the WSC Portion of the Transmission Pipeline Terminus Site. With respect to any increase in volume of water draining or discharged from the WSC Portion of the Transmission Pipeline Terminus Site as a result of WSC’s improvements or operations on its property, and to the extent not flowing over and across any platted drainage easement dedicated to the public, WSC agrees that such additional volume shall not damage any facilities or materially disrupt operations on the SAWS Portion of
the Transmission Pipeline Terminus Site.

The easements granted hereinabove to WSC are collectively referred to herein as the "WSC Easements".

3. Utility Easements. WSC agrees, upon request by SAWS, to grant utility easements to any utility provider (including but not limited to electrical, gas, telecommunications and data providers) upon, under, over and across defined areas of the WSC Portion of the Transmission Pipeline Terminus Site to serve the SAWS Portion of the Transmission Pipeline Terminus Site. Such easement grants shall be in form and substance acceptable to the applicable utility provider.

4. Non-Exclusive Nature; Use of Easements. All easements granted under this Agreement are non-exclusive and, subject to the express terms of Sections 1 through 3 above, the granting Party reserves all rights to use of the applicable easement area to the extent not inconsistent with the applicable easement grants. All easements granted herein may be used by the grantee Party and their respective employees, agents, trustees, invitees, consultants, contractors and subcontractors.

5. Construction, Maintenance and Repair of Joint Facilities. Construction and maintenance of jointly used facilities, including roads and drives, at the Transmission Pipeline Terminus Site shall be in accordance with the provisions of the WTPA, including Appendix 13 of same, as the same may be amended from time to time.

6. Term. The SAWS Easements and WSC Easements shall expire and terminate upon the expiration of the Term (as defined in the WTPA), as same may be renewed and extended, of the WTPA or the earlier termination of the WTPA, provided, however, (i) if at such expiration of the WTPA the WSC Portion of the Transmission Pipeline Terminus Site has not yet been conveyed to SAWS, the SAWS Easements shall remain in full force and effect until such time of conveyance and (ii) if at the time of such earlier termination of the WTPA SAWS has sent notice of exercise of its right under the WTPA to purchase the Project Assets (as defined in the WTPA), which include the WSC Portion of the Transmission Pipeline Terminus Site, but such conveyance has not yet occurred, the SAWS Easements shall remain in full force and effect until such time of conveyance.

7. Title. The grant and use of the WSC Easements and SAWS Easements is made subject to all matters of record that effect the SAWS Portion of the Transmission Pipeline Terminus Site and WSC Portion of the Transmission Pipeline Terminus Site, respectively. Subject to the foregoing, the WSC hereby
agrees to warrant and forever defend the SAWS Easements unto SAWS and SAWS’ successors and assigns, against every person whomsoever claiming or to claim the same or any part thereof.

8. **Liens.** Neither Party hereto shall have the right to bind the property of the other for any claim for labor or materials or for any other charge or expense incurred in the construction, installation, replacement, maintenance or removal of any improvements, personal property, equipment or fixtures installed on or behalf of such Party pursuant to this Agreement (the “Improvements”). If any involuntary liens for labor and materials supplied or claimed to have been supplied to the Improvements shall be filed, the Party by or for whom such Improvements was installed, or who contracted for or performed the installation of such Improvements, shall promptly obtain the release or discharge thereof to the extent such lien(s) purports to cover the property of the other Party.

9. **Notices.** All notices under this Agreement shall be provided for in the manner set forth in that certain Vista Ridge Project Real Property Conveyance Agreement (as may be amended) by and between SAWS and WSC dated effective June 10, 2016, as the same may be amended from time to time.

10. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of WSC and SAWS and their respective heirs, legal representatives, successors and permitted assigns. The SAWS Easements shall run with the SAWS Portion of the Transmission Pipeline Terminus Site and the WSC Easements shall run with the WSC Portion of the Transmission Pipeline Terminus Site.

11. **Non-Assignment.** The Agreement shall not be assigned, hypothecated or transferred in any manner whatsoever, directly or indirectly, by the WSC without the prior written consent of SAWS, except to secure any Permitted Debt (as defined in the WTPA).

12. **Counterparts.** This Agreement may be executed in counterparts, which shall together constitute one original Agreement.

13. **Defined Easement Areas.** With respect to the easements described in Sections 1 and 2 of this Agreement, SAWS and the WSC agree that such easements may be amended to apply to a defined, surveyed area, subject to the foregoing (i) the Party whose property the applicable easement is located upon shall propose a defined area for said easement and submit a drawing of same to the other Party for review and approval, such approval not to unreasonably withheld, (ii) if the Parties then agree with the proposed location, the Party who submitted the drawing shall then proceed to have the area described by metes and bounds with an accompanying survey, and submitted to the other Party for review and approval, such approval not to unreasonably withheld and (iii) if and upon
approval of the survey, the Parties shall execute a recordable amendment to this Agreement amending said easement to be limited to the surveyed area.

13. Amendment Upon Subsequent Conveyance. Under the WTPA, the WSC will be caused to convey to SAWS Lot 2 of the Subdivision, being currently part of the WSC Portion of the Transmission Pipeline Terminus Site, in accordance with the terms of the WTPA. Contemporaneously with such conveyance, SAWS and WSC will execute an amendment to this Agreement acknowledging such conveyance and in which any necessary easements, as determined jointly by the Parties, shall be granted by SAWS to the WSC over Lot 2.

(Signature Pages Follow)
EXECUTED TO BE EFFECTIVE this _____ day of ___________, 201__. 

WSC:

Central Texas Regional Water Supply Corporation, 
a Texas non-profit water supply corporation

By: ________________________________
Name: ________________________________
Title: ________________________________

STATE OF TEXAS §

COUNTY OF ________ §

This instrument was acknowledged before me on this _______ day of ________, 20__ , by __________________________ (name), __________________________ (title) of Central Texas Regional Water Supply Corporation, a Texas non-profit water supply corporation, on behalf of same.

[Seal]

Notary Public, State of Texas
SAWS:

City of San Antonio by and through its San Antonio Water System Board of Trustees

By: ________________________________
Name: ______________________________
Title: ______________________________

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on this ________ day of __________, 20__, by _____________________________ (name), __________ ________________(title) of the San Antonio Water System Board of Trustees, a municipal utility of the City of San Antonio, on behalf of same.

[Seal]

Notary Public, State of Texas
ATTACHMENT B

FIRST AMENDMENT TO VISTA RIDGE PROJECT REAL PROPERTY CONVEYANCE AGREEMENT

This FIRST AMENDMENT TO VISTA RIDGE PROJECT REAL PROPERTY CONVEYANCE AGREEMENT (this “Amendment”) is entered into effective on the ____ day of ______, 2017 (the “Effective Date”), between the City of San Antonio, Texas (the “City”), acting by and through the San Antonio Water System Board of Trustees (“SAWS”), a component unit of the City established pursuant to the provisions of City Ordinance Number 75686, Chapter 552, as amended, Texas Local Government Code, and Chapter 1502, as amended, Texas Government Code, 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 Vista Ridge LLC, a Texas limited liability company (“Project Company”).

RECITALS

WHEREAS, SAWS and the Water Supply Corporation, joined by the Project Company, entered into that certain Vista Ridge Project Real Property Conveyance Agreement (the “Agreement”) dated effective June 10, 2016;

WHEREAS, contemporaneously herewith, SAWS and the Project Company are entering into an amendment to the WTPA (as defined in the Agreement), which, among other things, contains revisions to real estate provisions, the subject matter of which is contained in the Agreement; and

WHEREAS, SAWS and the Water Supply Corporation desire to make certain conforming changes to the Agreement to bring it into accord with the WTPA, as amended;

NOW THEREFORE, in consideration of the mutual covenants herein, 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:

1. Definitions.

a. The definition of “WTPA”, as set forth in Section 1.2 of the Agreement, is hereby amended and restated to read as follows:

“WTPA” means the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement execution on November 4, 2014 (as amended on June 10, 2016, as further amended on November 2, 2016, and as further amended on ____, 2017), by and between Vista Ridge LLC (f/k/a Abengoa Vista Ridge, LLC), and includes all attached Transaction Documents and appendices as they exist on ____, 2017.
b. The defined terms “Project”, “Project Company Portion of the Transmission Pipeline Terminus Site”, “Project Company Storage Tank”, “SAWS Distribution System”, “Transmission Pipeline”, “Transmission Pipeline System” and “Transmission Pipeline Terminus Site” are hereby amended to be defined as such terms are defined the WTPA (as such term has been amended hereinabove).

2. **Acquisition of Transmission Pipeline System Real Property Interests.** Section 3.1 of the Agreement is hereby amended and restated to read as follows:

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. The Water Supply Corporation shall acquire the Transmission Pipeline System Real Property Interests pursuant to and in accordance with the terms of the WTPA. Without limiting the foregoing, in acquiring easements, the Water Supply Corporation shall comply with Section 26.1(G) (Right-of-Way Easements). As between the Project Company and the Water Supply Corporation, the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements. 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 greater 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. **Acquisition of Well Field Facilities Real Property Interests.** Section 3.3 of the Agreement is hereby amended and restated to read as follows:

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 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.
4. **Terminus Site Conveyances and Reciprocal Easement Agreement.** The Water Supply Corporation hereby agrees to comply with the provisions of Sections 26.1(D), (E) and (F) of the WTPA, and without limiting the foregoing, to provide such diligence materials, comply with platting obligations, convey to SAWS certain portions of the Transmission Pipeline Terminus Site, and enter into a Reciprocal Easement Agreement with SAWS, pursuant to and in accordance with said Sections 26.1(D), (E) and (F).

5. **Exceptions to Title Upon Conveyance to SAWS.** Section 4.1 of the Agreement is hereby revised to delete and remove the following text, being duplicative of Permitted Encumbrance number 10 in the Agreement and the WTPA: “and (b) such additional 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 value or operation of the Project for the purposes for which it is or may reasonably be expected to be used”. Permitted Encumbrance number 10 in the Agreement is hereby amended to add the phrase “or title commitment” after the term “Title Insurance Policy”.

6. **Other Terms.** All other terms, conditions and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the Effective Date, except as expressly modified hereby.

7. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

   *Signatures on following pages*
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 Amendment, and consents to its terms, 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 the Agreement as amended by this Amendment, and the applicable terms, provision and conditions of this Amendment pertaining thereto shall be interpreted as if written to apply to the Project Company.

PROJECT COMPANY:

VISTA RIDGE LLC,
a Texas limited liability company

By: _____________________________
Name:___________________________
Title:____________________________

2800853.2 038521 CTR
EXHIBIT B

FIRST AMENDMENT TO VISTA RIDGE PROJECT REAL PROPERTY CONVEYANCE AGREEMENT

This FIRST AMENDMENT TO VISTA RIDGE PROJECT REAL PROPERTY CONVEYANCE AGREEMENT (this “Amendment”) is entered into effective on the _____ day of ______, 2017 (the “Effective Date”), between the City of San Antonio, Texas (the “City”), acting by and through the San Antonio Water System Board of Trustees (“SAWS”), a component unit of the City established pursuant to the provisions of City Ordinance Number 75686, Chapter 552, as amended, Texas Local Government Code, and Chapter 1502, as amended, Texas Government Code, 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 Vista Ridge LLC, a Texas limited liability company (“Project Company”).

RECITALS

WHEREAS, SAWS and the Water Supply Corporation, joined by the Project Company, entered into that certain Vista Ridge Project Real Property Conveyance Agreement (the “Agreement”) dated effective June 10, 2016;

WHEREAS, contemporaneously herewith, SAWS and the Project Company are entering into an amendment to the WTPA (as defined in the Agreement), which, among other things, contains revisions to real estate provisions, the subject matter of which is contained in the Agreement; and

WHEREAS, SAWS and the Water Supply Corporation desire to make certain conforming changes to the Agreement to bring it into accord with the WTPA, as amended;

NOW THEREFORE, in consideration of the mutual covenants herein, 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:

1. Definitions.

a. The definition of “WTPA”, as set forth in Section 1.2 of the Agreement, is hereby amended and restated to read as follows:

“WTPA” means the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement execution on November 4, 2014 (as amended on June 10, 2016, as further amended on November 2, 2016, and as further amended on ______, 2017), by and between Vista Ridge LLC (f/k/a Abengoa Vista Ridge, LLC), and includes all attached Transaction Documents and appendices as they exist on ___, 2017.

b. The defined terms “Project”, “Project Company Portion of the Transmission Pipeline Terminus Site”, “Project Company Storage Tank”, “SAWS Distribution System”,

B-1
“Transmission Pipeline”, “Transmission Pipeline System” and “Transmission Pipeline Terminus Site” are hereby amended to be defined as such terms are defined the WTPA (as such term has been amended hereinafore).

2. **Acquisition of Transmission Pipeline System Real Property Interests.** Section 3.1 of the Agreement is hereby amended and restated to read as follows:

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. The Water Supply Corporation shall acquire the Transmission Pipeline System Real Property Interests pursuant to and in accordance with the term of the WTPA. Without limiting the foregoing, in acquiring easements, the Water Supply Corporation shall comply with Section 26.1(G) (Right-of-Way Easements). As between the Project Company and the Water Supply Corporation, the Water Supply Corporation is the sole entity responsible for acquiring the Transmission Pipeline Easements. 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 greater 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. **Acquisition of Well Field Facilities Real Property Interests.** Section 3.3 of the Agreement is hereby amended and restated to read as follows:

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 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.
4. **Terminus Site Conveyances and Reciprocal Easement Agreement.** The Water Supply Corporation hereby agrees to comply with the provisions of Sections 26.1(D), (E) and (F) of the WTPA, and without limiting the foregoing, to provide such diligence materials, comply with platting obligations, convey to SAWS certain portions of the Transmission Pipeline Terminus Site, and enter into a Reciprocal Easement Agreement with SAWS, pursuant to and in accordance with said Sections 26.1(D), (E) and (F).

5. **Exceptions to Title Upon Conveyance to SAWS.** Section 4.1 of the Agreement is hereby revised to delete and remove the following text, being duplicative of Permitted Encumbrance number 10 in the Agreement and the WTPA: “and (b) such additional 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 value or operation of the Project for the purposes for which it is or may reasonably be expected to be used”. Permitted Encumbrance number 10 in the Agreement is hereby amended to add the phrase “or title commitment” after the term “Title Insurance Policy”.

6. **Other Terms.** All other terms, conditions and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the Effective Date, except as expressly modified hereby.

7. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

*Signatures on following pages*
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: ________________________________
Date: ________________________________

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________
CONSENT AND JOINDER OF
PROJECT COMPANY

By its execution of this Consent and Joinder, Project Company hereby approves this Amendment, and consents to its terms, 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 the Agreement as amended by this Amendment, and the applicable terms, provision and conditions of this Amendment pertaining thereto shall be interpreted as if written to apply to the Project Company.

PROJECT COMPANY:

VISTA RIDGE LLC,
a Texas limited liability company

By: _____________________________
Name: ___________________________
Title: ___________________________
TO: San Antonio Water System Board of Trustees

FROM: Gail A. Hamrick-Pigg, P.E., Director, Pipelines, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AWARD OF CONSTRUCTION CONTRACT FOR THE 2016 LARGE DIAMETER CIPP CONSTRUCTION CONTRACT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $1,279,712.40 to PM Construction & Rehab, LLC dba IPR South Central, a local, non-SMWB firm, in connection with the 2016 Large Diameter CIPP Construction Contract.

- The contract that is the subject of the attached resolution will, if approved, authorize work that is required by the Consent Decree between the San Antonio Water System (the “System”), the United States of America and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This contract will be used to remediate sewer mains that have been identified by the Operations Department in need of rehabilitation due to condition including areas within the Edwards Aquifer Recharge Zone (EARZ). These sewer mains will be replaced using the cured-in-place pipe method.

- This contract is specified and will be for the construction of approximately 2,988 LF of pipes ranging from 8-inch to 36-inch in diameter, associated manhole replacement and rehabilitation.

- The attached resolution therefore finds that IPR South Central has submitted the low responsible bid of $1,279,712.40.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this expenditure included in the CY 2016 Capital Improvement Programs. This project is included in the Wastewater Core Business budget line item. The amount is $1,279,712.40 for wastewater related construction work under job number 16-4529.
SUPPLEMENTARY COMMENTS:

The bid proposal and specifications for this project were prepared by Lockwood Andrews & Newman, Inc. The estimated published construction cost for this project is $939,990.00 and the contractor’s construction cost is $1,279,712.40. The bid amount represents a 36.1 percent increase in the estimate.

This contract has 270 days for construction completion.

A bid opening was held on February 24, 2017 at 10:00 AM. The following bids were submitted:

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published – Estimated Cost</td>
<td>$939,990.00</td>
<td></td>
</tr>
<tr>
<td>PM Construction &amp; Rehab, LLC</td>
<td>$1,279,712.40</td>
<td>Local/Non–SMWB</td>
</tr>
<tr>
<td>Layne Inliner</td>
<td>$1,552,682.00</td>
<td>Non–Local/Non–SMWB</td>
</tr>
<tr>
<td>Insituform Technologies, Inc.</td>
<td>$1,742,587.50</td>
<td>Non–Local/Non–SMWB</td>
</tr>
<tr>
<td>SAK Construction, LLC</td>
<td>$3,270,782.00</td>
<td>Non–Local/Non–SMWB</td>
</tr>
<tr>
<td>Pronto Sandblasting and Coating and Oil-Field Services, Co.</td>
<td>$4,240,840.00</td>
<td>Local/MBE–Hispanic</td>
</tr>
</tbody>
</table>

*Lowest Responsible Bidder

Cruz Tec, Inc., the apparent low bidder, responded to the bid opening, but was deemed non-responsive. The contract documents required the apparent low bidder to provide evidence that they had worked on projects of similar scope (size and length). Lockwood Andrews & Newman, Inc., performed a thorough review of the Statement of Bidder’s Experience for Cruz Tec, Inc., and determined that they did not meet the minimum experience requirements for large diameter CIPP work required by the contract.

Staff met with Cruz Tec, Inc., to discuss concerns with lack of similar experience along with other information that was not provided per the bid. Cruz Tec, Inc., did not provide the information, but expressed interest in bidding in the future.
2016 Large Diameter CIPP Construction Contract

PM CONSTRUCTION & REHAB, LLC
DBA IPR SOUTH CENTRAL

SMWB ANALYSIS – BOARD AWARD

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
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</tr>
<tr>
<td>MBE–African American</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE–Asian</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE–Hispanic</td>
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</tr>
<tr>
<td>MBE–Other</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE–Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE–Non–Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td>SMWB Total</td>
<td>6.02%</td>
</tr>
</tbody>
</table>

Gail A. Hamrick-Pigg, P.E.
Director
Pipelines

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Genoveva G. Gomez, P.E.
Vice President
Engineering and Construction

Attachments:
1. Project Area Map
2. Project Site Map – Worksite I
3. Project Site Map – Worksite II
SAN ANTONIO WATER SYSTEM
PROJECT SITE MAP - WORKSITE II
ATTACHMENT III

Legend
- Project Limits

2016 Large Diameter CIPP Construction Contract
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE BID OF IPR SOUTH CENTRAL, IN THE AMOUNT OF $1,279,712.40 IN CONNECTION WITH THE 2016 LARGE DIAMETER CIPP CONSTRUCTION CONTRACT; AWARDING A CONSTRUCTION CONTRACT TO IPR SOUTH CENTRAL, IN THE AMOUNT OF $1,279,712.40 FOR THE PROJECT WORK; APPROVING EXPENDITURES AND MAKING AVAILABLE AN AMOUNT NOT TO EXCEED $1,279,712.40 FROM THE SYSTEM’S PROJECT FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION CONTRACT WITH IPR SOUTH CENTRAL, AND TO PAY IPR SOUTH CENTRAL, AN AMOUNT NOT TO EXCEED $1,279,712.40 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the contract is unspecified and will be for the construction of approximately 2,988 feet of pipes ranging from 8-inch to 36-inch in diameter, associated manhole replacement and rehabilitation; and

WHEREAS, work shall include but not be limited to the installation of all applicable appurtenances for the complete function of the wastewater mains; and

WHEREAS, this contract may be used to rehabilitate wastewater mains that have been identified by the Operations Department in need of rehabilitation due to condition; and

WHEREAS, the San Antonio Water System (the “System”) has solicited bids for the project work; and

WHEREAS, IPR South Central, a local, non-SMWB firm, is declared the lowest responsible bidder and has submitted the low responsible bid of $1,279,712.40 for the project work; and

WHEREAS, System funds in the amount of $1,279,712.40 are required for the project work; and
WHEREAS, the total amount of $1,279,712.40 is available from the System’s Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the bid of IPR South Central in the amount of $1,279,712.40 for the project work in connection with the 2016 Large Diameter CIPP Construction Contract, (ii) to award a construction contract to IPR South Central in the amount $1,279,712.40 for the project work, (iii) to approve a total expenditure and make available an amount not to exceed $1,279,712.40 from the System’s Project Fund for the project work, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with IPR South Central, and to pay IPR South Central an amount not to exceed $1,279,712.40 for the project work; now, therefore:

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

1. That the bid of IPR South Central in the amount of $1,279,712.40 for the project work in connection with the 2016 Large Diameter CIPP Construction Contract is hereby accepted.

2. That a construction contract in the amount of $1,279,712.40 for the project work is hereby awarded to IPR South Central.

3. That a total sum not to exceed $1,279,712.40 for the project work is hereby made available and is to be expended from the System’s Project Fund.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard contract for general construction with IPR South Central, and to pay IPR South Central the amount not to exceed $1,279,712.40 for the project work in connection with the 2016 Large Diameter CIPP Construction Contract.

5. It is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public, and that the 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 4\textsuperscript{th} day of April, 2017

_________________________________________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_________________________________________________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Gail A. Hamrick-Pigg, P.E., Director, Pipelines, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: RATIFICATION OF CHANGE ORDER NO. 1, CHANGE ORDER NO. 2, AND CHANGE ORDER NO. 3 IN CONNECTION WITH THE W-6: WESTERN WATERSHED SEWER RELIEF LINE (P3 AND P4 – MIDDLE SEGMENT) PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution ratifies the actions of the Vice President of Engineering and Construction in approving Change Order No. 1 in the amount of $1,320,329.57, Change Order No. 2 in the amount of $174,849.76, and Change Order No. 3 in the amount of $1,743,632.36. It further amends Resolution 16-214 by approving additional funds in the total amount of $3,238,811.69 payable to Spiess Construction Co., Inc., a non-local, SBE contractor, in connection with the W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project. This project is located in Council District 4.

- The change orders to the contract that are the subject of the attached resolution will authorize work that is required by Section V. B. Early Action Program of the Consent Decree between the San Antonio Water System (the “System”), the United States of America, and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- The W-6: Western Watershed Sewer Relief Line Project is being constructed in three segments: Lower, Middle, and Upper. The project consists of approximately eight miles of 78-inch to 96-inch sewer mains from a point on the south side of Highway 90 near Camargo Park then generally following a route parallel to Leon Creek flowing by gravity to a tie in point on the north side of Loop 410.

- This project was identified in the Wastewater Master Plan developed by the System’s Master Planning Division. This project will replace sewer pipe and associated siphons due to the condition and lack of capacity to handle the future needs of the sewer shed.

- W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project is a priority outfall improvement that will replace approximately 1.7 miles of existing 54-inch main with a 90-inch sewer main along Leon Creek from Quintana Road to SW Military.
On August 2, 2016, the System’s Board of Trustees, through Resolution No. 16-214, authorized a construction contract with Spiess Construction Co., Inc., in the total amount of $11,949,261.00. This contract was procured as a competitive sealed proposal under Chapter 2269 of the Texas Government Code.

A major failure occurred on the existing 54-inch sanitary sewer along Quintana Road. An emergency was declared and the System directed Spiess Construction Co., Inc., to perform the necessary repairs. Spiess Construction Co., Inc. mobilized to the site to address the emergency repair.

Change Order Nos. 1-3, in a total amount not to exceed $3,238,811.69, provided for the work associated with the Emergency Repair.

As this project is an emergency repair, there are no restrictions on the size of a change order under Chapter 252 of the Local Government Code, as emergency projects are exempt. In addition, Texas Government Code, Chapter 2269, under which this contract was procured, does not have any limitations on the size of change orders in relation to the original contract amount.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this expenditure, job numbers 14-2501 and 15-4504. This project is included in the CY 2014 and 2015 Capital Improvement Program wastewater core business, collection growth, W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project. The amount is $3,063,961.83 for Change Order Nos. 1 & 3. Funds will be transferred from the 2017 Owner Controlled Construction Changes line item. Change Order No. 2 will be expensed to Operations and Maintenance, Accounting Unit: 5044500 (Sewer Point Repair), Account: 511220 (Maintenance Expense).

The revised authorization for this project is as follows:

<table>
<thead>
<tr>
<th>Contract:</th>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 16-214)</td>
<td>$11,949,261.00</td>
</tr>
<tr>
<td>Proposed Change Order No. 1</td>
<td>1,320,329.57</td>
</tr>
<tr>
<td>Proposed Change Order No. 2</td>
<td>174,849.76</td>
</tr>
<tr>
<td>Proposed Change Order No. 3</td>
<td>1,743,632.36</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$15,188,072.69</td>
</tr>
</tbody>
</table>

The new contract amount for the System’s work as a result of these change orders is $15,188,072.69, which represents an increase of 27.1 percent to the original amount.
Ratification of Change Order Nos. 1, 2, and 3
Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project

Gail A. Hamrick-Pigg, P.E.
Director
Pipelines

Genoveva G. Gomez, P.E.
Vice President
Engineering and Construction

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF
TRUSTEES AMENDING RESOLUTION NO. 16-214 BY
APPROVING THE EXPENDITURE OF ADDITIONAL
FUNDS IN AN AMOUNT NOT TO EXCEED $3,238,811.69
PAYABLE TO SPIESS CONSTRUCTION CO., INC., IN
CONNECTION WITH THE W-6: WESTERN WATERSHED
SEWER RELIEF LINE (P3 AND P4 – MIDDLE SEGMENT)
PROJECT; APPROVING AN ADDITIONAL AMOUNT NOT
TO EXCEED $3,238,811.69 BE MADE AVAILABLE AND
EXPENDED FROM THE SYSTEM'S PROJECT FUND FOR
ADDITIONAL PROJECT WORK; RATIFYING
THE ACTIONS OF THE VICE PRESIDENT OF ENGINEERING
AND CONSTRUCTION IN APPROVING CHANGE ORDER
NOS. 1, 2, AND 3 IN THE TOTAL AMOUNT OF
$3,238,811.69; AUTHORIZING THE PRESIDENT/CHIEF
EXECUTIVE OFFICER OR HIS DULY APPOINTED
DESIGNEE TO PAY SPIESS CONSTRUCTION CO., INC.,
AN ADDITIONAL AMOUNT NOT TO EXCEED
$3,238,811.69 FOR ADDITIONAL PROJECT WORK;
FINDING THE RESOLUTION TO HAVE BEEN
CONSIDERED PURSUANT TO THE LAWS GOVERNING
OPEN MEETINGS; PROVIDING A SEVERABILITY
CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water system (the “System”) is undertaking to
construct wastewater facilities for the W-6: Western Watershed Sewer Relief Line (P3 and P4 –
Middle Segment) Project (the “project work”) as part of its Capital Improvements Program and
was identified in the Wastewater Master Plan developed by the System’s Master Planning Division
to replace sewer mains due to the condition and lack of capacity to handle the future needs of the
sewer shed; and

WHEREAS, the W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle
Segment) is a priority outfall improvement that will replace approximately 1.7 miles of existing
54-inch sewer main with a 90-inch sewer main along Leon Creek from Quintana Road to SW
Military; and

WHEREAS, the San Antonio Water System Board of Trustees (the “Board”) by
Resolution No. 16-214, adopted August 2, 2016, originally approved the expenditure of
$11,949,261.00 to pay for the System’s project work; and

WHEREAS, a major failure occurred on the existing 54-inch sanitary sewer; and
WHEREAS, an emergency was declared and the System directed Spiess Construction Co., Inc., to perform the necessary repairs; and

WHEREAS, Change Order Nos. 1-3 in the total amount of $3,238,811.69 provides for this additional project work; and

WHEREAS, additional System funds in an amount not to exceed $3,238,811.69 are required in connection with the project work; and

WHEREAS, the total amount of $3,238,811.69 is available from the System’s Project Fund; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to amend Resolution No. 16-214 by approving the expenditure of an additional amount not to exceed $3,238,811.69 payable to Spiess Construction Co., Inc., in connection with the W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project, (ii) to expend an additional sum not to exceed $3,238,811.69 from the System’s Project Fund for additional project work, (iii) to ratify the action of the Vice President of Engineering and Construction in approving Change Order Nos. 1-3 in the total amount of $3,238,811.69 for the additional project work, (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to pay an additional amount not to exceed $3,238,811.69 to Spiess Construction Co., Inc., for additional project work; now, therefore:

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

1. That Resolution No. 16-214 is hereby amended by increasing the amount approved for payment to Spiess Construction Co., Inc., in connection with the W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project by $3,238,811.69.

2. That an additional sum not to exceed $3,238,811.69 is hereby made available and is to be expended from the System’s Project Fund.

3. That the actions of the Vice President of Engineering and Construction in approving Change Order Nos. 1-3 in the total amount of $3,238,811.69 for the additional project work in connection with the W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project are hereby ratified.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to pay the Spiess Construction Co., Inc., an additional amount not to exceed $3,238,811.69 for additional project work in connection with the W-6: Western Watershed Sewer Relief Line (P3 and P4 – Middle Segment) Project.

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. In 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 4th day of April, 2017.

__________________________
Berto Guerra Jr., Chairman

ATTEST:

__________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Michael L. Myers, P.E., Director, Plants and Major Projects, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AWARD OF A PROFESSIONAL SERVICES CONTRACT FOR THE DOS RIOS WATER RECYCLING CENTER (WRC) ELECTRICAL SYSTEM IMPROVEMENTS – PHASE 2 PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Gupta and Associates, Inc., a non-local, MBE-Asian firm, and authorizes funds in the amount not to exceed $1,644,043.00 for the Dos Rios Water Recycling Center (WRC) Electrical System Improvements – Phase 2 Project (the “project”).

- The Dos Rios WRC was constructed in 1987. Much of the existing electrical infrastructure at the WRC is nearly 30 years old and has reached the end of its service life.

- An electrical assessment of the Dos Rios WRC was completed in 2012. The assessment investigated compliance with current codes and safety measures, and recommended upgrades and replacement to the electrical infrastructure including several substations, motor control centers and generators.

- The project will be done in multiple phases to minimize impacts to plant operations and the Capital Improvement Program budget. Phase 1 is currently in construction. Phase 2 of this project will provide the necessary recommended improvements for the electrical, instrumentation and control infrastructure that serves the Primary Clarifier and Aeration Basin process areas.

- A Request for Qualifications was issued on November 21, 2016 for professional services for this project. Four statements of qualifications were received. Gupta and Associates, Inc., was selected through the System’s Architect/Engineer selection process.

- Basic services to be provided include electrical, instrumentation and control, civil, mechanical, structural, preparation of design plans and specifications, assistance during construction including review of shop drawings and periodic field inspections. Basic services will be provided for a lump sum amount of $1,322,736.00.
Supplemental services include Texas Water Development Board coordination, field and special inspections, start-up services, necessary permitting, surveying and subsurface utility services, geotechnical services, on-site inspections and related services. Supplemental services will be provided for an amount not to exceed $321,307.00.

The total fee for professional services is not to exceed $1,644,043.00.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this expenditure included in the CY 2017 Capital Improvement Program. This project is included in the WW – Wastewater Core Business, Treatment Category, Dos Rios WRC Electrical System Improvements – Phase 2 project. The total amount is $1,644,043.00. The job number is 16-6501.

SUPPLEMENTARY COMMENTS:

Four firms responded to the Request for Qualifications. Gupta & Associates, Inc., was selected through the System’s Architect/Engineer Selection procedure as a qualified consultant. The submitting firms are as follows:

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBR Engineering Consultants, Inc.</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Grubb Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Gupta &amp; Associates, Inc.*</td>
<td>Non-Local/MBE–Asian</td>
</tr>
<tr>
<td>S. Kanetzky Engineering, LLC</td>
<td>Non-Local/Non–SMWB</td>
</tr>
</tbody>
</table>

*Selected Firm

Gupta & Associates, Inc., proposed to use the following sub-consultants for services on this contract:

<table>
<thead>
<tr>
<th>SUB-CONSULTANTS</th>
<th>SUB PARTICIPATION</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arias &amp; Associates, Inc.</td>
<td>1.00%</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>CP&amp;Y, Inc.</td>
<td>25.00%</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>JQ Infrastructure</td>
<td>1.00%</td>
<td>Non–Local/MBE–Asian</td>
</tr>
</tbody>
</table>
Dos Rios Water Recycling Center (WRC) Electrical System Improvements – Phase 2

GUPTA AND ASSOCIATES, INC.

<table>
<thead>
<tr>
<th>SMWB ANALYSIS – BOARD AWARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE – African American</td>
</tr>
<tr>
<td>MBE – Asian</td>
</tr>
<tr>
<td>MBE – Hispanic</td>
</tr>
<tr>
<td>MBE – Other</td>
</tr>
<tr>
<td>WBE – Minority</td>
</tr>
<tr>
<td>WBE – Non-Minority</td>
</tr>
<tr>
<td><strong>SMWB Total</strong></td>
</tr>
</tbody>
</table>

*This solicitation is grandfathered under the former SMWB program, therefore, Gupta & Associates’ participation, as a non-local, MBE-Asian firm, counts for SMWB credit.

The following is a summary of the current and planned future improvements:

Phase 1: The construction for the plant’s high voltage main electrical distribution system, headworks area, first stage aeration blowers and an area of the digester complex is currently in progress and scheduled for completion at the end of 2018.

Phase 2: This item is for the design services for improvements at the Primary Clarifiers and First Stage Aeration areas. The estimated construction cost is $18,000,000.00 and is planned for 2019.

Phase 3: This phase will include improvements at the Second Stage Aeration and Main Blowers areas. The estimated construction cost is $15,000,000.00 and is planned for 2022.

Phase 4: This phase will include improvements at the remaining areas of the Digesters, Solids Handling, Effluent Filters, Chlorine Contact Chambers and Disinfection areas. The estimated construction cost is $10,500,000.00 and is planned for 2025.

*Costs are in 2016 dollars; estimates are preliminary.
Michael L. Myers, P.E.
Director
Plants and Major Projects

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
SAN ANTONIO WATER SYSTEM
PROJECT SITE MAP
ATTACHMENT II

DOS RIOS WATER RECYCLING CENTER (WRC)
ELECTRICAL SYSTEM
IMPROVEMENTS - PHASE 2
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE PROPOSAL OF AND AWARDING A PROFESSIONAL SERVICES CONTRACT TO GUPTA AND ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $1,644,043.00 IN CONNECTION WITH THE DOS RIOS WATER RECYCLING CENTER (WRC) ELECTRICAL SYSTEM IMPROVEMENTS – PHASE 2 PROJECT; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $1,644,043.00 FROM THE SYSTEM’S PROJECT FUND FOR PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH GUPTA AND ASSOCIATES, INC., AND TO PAY GUPTA AND ASSOCIATES, INC., AN AMOUNT NOT TO EXCEED $1,644,043.00 FOR THE PROJECT ENGINEERING WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Dos Rios Water Recycling Center (WRC) was constructed in 1987 and much of the existing electrical infrastructure at the Dos Rios WRC is nearly 30 years old and has reached the end of its service life; and

WHEREAS, an electrical assessment of the Dos Rios WRC was completed in 2012 and investigated compliance with current codes and safety measures, and recommended upgrades and replacement to the electrical infrastructure including several substations, motor control centers and generators; and

WHEREAS, this project will provide the design and bid documents for these upgrades and replacement; and

WHEREAS, the project will be done in multiple phases to minimize impacts to plant operations and the Capital Improvement Program budget; and

WHEREAS, Phase 1 is currently in construction, and Phase 2 of this project will provide the necessary recommended improvements for the electrical, instrumentation and control infrastructure that serves the Primary Clarifier and Aeration Basin process areas; and

WHEREAS, the San Antonio Water System (the “System”) requires professional services (“project engineering work”) for the design of the Dos Rios Water Recycling Center (WRC) Electrical System Improvements – Phase 2 Project (the “project”); and
WHEREAS, a Request for Qualifications was issued November 21, 2016 for professional services for this project; and

WHEREAS, the System received four qualification statements and Gupta and Associates, Inc., a non-local/MBE-Asian firm was selected through the Architect/Engineer selection process; and

WHEREAS, basic services will be provided for a lump sum of $1,322,736.00; and

WHEREAS, supplemental services will be provided for an amount not to exceed $321,307.00; and

WHEREAS, the amount of $1,644,043.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System’s Board of Trustees desires (i) to accept the proposal of Gupta and Associates, Inc., in an amount not to exceed $1,644,043.00 for the project engineering work in connection with the Dos Rios Water Recycling Center (WRC) Electrical System Improvements – Phase 2 Project, (ii) to award a professional engineering services contract to Gupta and Associates, Inc., in an amount not to exceed $1,644,043.00 for the project engineering work, (iii) to authorize the expenditure of System funds in an amount not to exceed $1,644,043.00 for project engineering work, (iv) to make available for the project engineering work an amount not to exceed $1,644,043.00 from the System’s Project Fund for the project engineering work, and (v) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a professional services contract with Gupta and Associates, Inc., for the project engineering work and further to pay an amount not to exceed $1,644,043.00 to Gupta and Associates, Inc., for the project engineering work in connection with this project; now, therefore:

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

1. That the proposal of Gupta and Associates, Inc., for the project engineering work in connection with the Dos Rios Water Recycling Center (WRC) Electrical System Improvements – Phase 2 Project is hereby accepted.

2. That a professional services contract in an amount not to exceed $1,644,043.00 is hereby awarded to Gupta and Associates, Inc., for the project engineering work in connection with the project.

3. That the expenditure of System funds in an amount not to exceed $1,644,043.00 for the project engineering work is hereby approved.

4. That an amount not to exceed $1,644,043.00 for the project engineering work is hereby made available, and is to be expended from the System's Project Fund.

5. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract for architect/engineering services
with Gupta and Associates, Inc., and to pay an amount not to exceed $1,644,043.00 to Gupta and
Associates, Inc., for the project engineering work provided in connection with this project.

6. 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.

7. 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.

8. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April 2017.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. 31

TO: San Antonio Water System Board of Trustees

FROM: Julie Valadez, AIA, Project Manager, Development, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AWARD OF A DESIGN BUILD CONTRACT FOR PHASE 2 OF THE SERVICE CENTER PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a Design Build contract to Teal Construction Company, a local, non-SMWB firm, for Phase 2 of the Service Center Project, in the amount of $17,710,927.00 and authorizes the President/Chief Executive Officer or his duly appointed designee to execute a contract and make related expenditures.

- A series of projects associated with the Service Center Program (the “Program”) were deemed necessary based on a comprehensive in-house analysis. The Service Center Program, as currently planned, is divided into four phases that will provide for new and upgraded Service Centers planned and located to service the San Antonio Water System’s (the “System”) current and future customers.

- The Program was determined a necessity to the System due to an expanded service area and an increased customer base. The System’s existing service centers are at full capacity. New service centers and improvements of existing service centers are needed to more efficiently serve our customers and to reduce overcrowding at existing service centers.

- The Program’s concept was originally presented at the Policy and Planning meeting in December of 2010 and the Board directed staff to proceed with the Program.

- On June 14, 2016, Phase 1 of the Service Center Project was completed and is currently in full operation.

- The next phase of the program, Phase 2, will be completed by 2Q of 2019, and provide for new construction and renovation of buildings located on two existing System sites.

- Teal Construction Company was selected for the Design Build Contract for Phase 2 of the Service Center Project following interviews that were conducted February 9, 2017.

- Their scope of work includes the following four components:
General Design-Build Services
- Standard of Care
- Geotechnical and Surveying
- Commissioning support
- Meeting and reports
- Communication using CPMS

Design Phase Services
- Coordination of Design deliverables
- Coordination of Design meetings and reviews
- Pre-construction meetings
- Design Submittals to include drawings, specs and control estimates
- Construction document submittal to include drawings, specs, final GMP, and project schedule

General Conditions
- General office expenses
- Materials testing
- Training and health and safety plan
- Security

Construction Management
- Coordination of subcontractors
- Construction planning to include: procurement and scheduling
- Bidding plans and specifications
- Construction monitoring, observation and testing
- Shop drawing submittals
- Schedule and budget management

Closeout and Warranty Services
- Performance testing and functional testing
- Punch list
- Training operations and maintenance staff on all systems
- Develop Managing and maintain warranty plan

The Initial Guaranteed Maximum Price (IGMP) has been negotiated in the amount of $17,710,927.00 and includes all design services fees, construction services fees, costs of work, and insurance for the performance of the Design Build work and services in connection with and as required by the contract. Upon completion of the design phase, Teal Construction Company will submit final construction documents and its proposal to the System for the final GMP, which is required by the conditions of the contract to be at or below the IGMP. The GMP will establish a fixed cost and transfers various risks to the contractor.

Staff recommends that the Board approve this resolution.
FINANCIAL IMPACT:

The Project Fund will finance the total amount of $17,710,927.00 for these services that are budgeted in the 2016 budget. This additional work is included in the Water Delivery Core Business and Wastewater Core Business. The correlating job numbers are 16-7709 and 16-7710. Total value of this action is an amount not to exceed $17,710,927.00.

SUPPLEMENTARY COMMENTS:

On September 23, 2016, staff solicited qualification statements from firms desiring to provide Design Build services. On October 20, 2016, qualification statements were received.

The three teams listed below were invited to submit proposals for the design and construction of Phase 2 of the Service Center Project. Teal Construction Company and The Sabinal Group ultimately submitted proposals. Interviews were conducted on February 9, 2017.

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>LOCAL/SMWB</th>
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<tbody>
<tr>
<td>F.A. Nunnelly Company**</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Teal Construction Company*</td>
<td>Local/Non–SMWB</td>
</tr>
<tr>
<td>The Sabinal Group</td>
<td>Local/MBE–Hispanic</td>
</tr>
</tbody>
</table>

*Selected Firm
**Non-Responsive

Teal Construction has proposed to use Durand-Hollis Rupe, Inc., dba DHR Architect, a local, MBE-Hispanic firm, and DHR Architect’s subconsultants, for six percent of the contract. Some of DHR Architect’s subconsultants are non-SMWB, and so the SMWB participation of the design component of the contract is 3.42 percent. However, Teal Construction Company has proposed that 39 percent of the total contract value, including the construction phase, will use the services of SMWB subconsultants and subcontractors. The System’s SMWB participation goal for the program was 30 percent. Below is the SMWB breakdown for the Design Phase of the contract.

<table>
<thead>
<tr>
<th>Design Build Contract for Phase 2 of the Service Center Program</th>
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<tbody>
<tr>
<td><strong>TEAL CONSTRUCTION COMPANY</strong></td>
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<tr>
<td><strong>SMWB CONSTRUCTION COMPANY</strong></td>
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<tr>
<td><strong>SMWB ANALYSIS – BOARD AWARD</strong></td>
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<td>SBE</td>
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<td>MBE – African American</td>
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<td>MBE – Asian</td>
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<td>MBE – Hispanic</td>
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<tr>
<td>WBE – Minority</td>
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<tr>
<td>WBE – Non–Minority</td>
</tr>
<tr>
<td><strong>SMWB Total</strong></td>
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</tbody>
</table>
Julie Valadez, AIA, PMP  
Project Manager  
Development

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Genoveva G. Gomez, P.E.  
Vice President  
Engineering and Construction
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE PROPOSAL OF TEAL CONSTRUCTION COMPANY IN THE AMOUNT NOT TO EXCEED $17,710,927.00 FOR THE DESIGN AND CONSTRUCTION OF PHASE 2 OF THE SERVICE CENTER PROJECT; APPROVING A DESIGN BUILD CONTRACT WITH TEAL CONSTRUCTION COMPANY FOR DESIGN AND CONSTRUCTION FOR PHASE 2 OF THE SERVICE CENTER PROJECT; AUTHORIZING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $17,710,927.00 FROM THE PROJECT FUND FOR THE PERFORMANCE OF THE DESIGN BUILD CONTRACT; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE CONTRACT, AND TO PAY TEAL CONSTRUCTION COMPANY AN AMOUNT NOT TO EXCEED $17,710,927.00 FOR THE DESIGN BUILD SERVICES AND WORK IN CONNECTION WITH THE PROJECT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) has solicited Design Build proposals for the Phase 2 of the Service Center Project; and

WHEREAS, Teal Construction Company, a local, non-SMWB firm, is deemed to be the most qualified Design Build provider for these services and work on the basis of demonstrated competence, qualifications, and for the best value; and

WHEREAS, Teal Construction Company, has submitted a proposal for an initial guaranteed maximum contract amount not to exceed $17,710,927.00 to provide the Design Build services and work; and

WHEREAS, System funds in an amount not to exceed $17,710,927.00 are required for the Design Build work and services for Phase 2 of the Service Center Project; and

WHEREAS, the required amount not to exceed $17,710,927.00 is available from the Project Fund; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the proposal of Teal Construction Company, for an initial guaranteed maximum contract amount not to exceed $17,710,927.00 for the Design Build work and services in connection with Phase 2 of the Service Center Project, (ii) to approve a Design Build contract with Teal Construction
Company, in connection with Phase 2 of the Service Center Project, (iii) to authorize and make available expenditures in an amount not to exceed $17,710,927.00 from the Project Fund for the Design Build work and services in connection with Phase 2 of the Service Center Project, and (v) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract and to pay Teal Construction Company an amount not to exceed $17,710,927.00 for the performance of the Design Build work and services in connection with and as required by the contract for Phase 2 of the Service Center Project; now, therefore:

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

1. That the proposal of Teal Construction Company, in connection with Phase 2 of the Service Center Project is hereby accepted.

2. That the Design Build contract with Teal Construction Company, in substantial form as that attached hereto as Attachment I for the Design Build Services for the New Service Center Project is hereby approved.

3. That expenditures in an amount not to exceed $17,710,927.00 are hereby approved to be expended from the Project Fund for the performance of the Design Build work and services as required by the contract in connection with Phase 2 of the Service Center Project.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute in substantially similar form the contract attached as Attachment I, and to pay Teal Construction Company, in an amount not to exceed $17,710,927.00 for the performance of the Design Build work and services as required by the contract for the Design Build work and services in connection with Phase 2 of the Service Center Project.

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 a 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 shall become effective upon its passage.
PASSED AND APPROVED this 4th day of April, 2017.

____________________________________
Berto Guerra, Jr., Chairman

ATTEST:

____________________________________
Ernesto Arrellano, Jr., Secretary
This Design-Build Services Agreement ("Agreement") is made and entered into on this 4th day of April, 2017 between the SAN ANTONIO WATER SYSTEM, a public water utility created pursuant to the provisions of Ordinance No. 75686 of the City of San Antonio, Texas, and Texas Local Government Sections 402.141 et seq., in the State of Texas ("Owner") and Teal Construction Company, a Texas Corporation, having its principal place of business located at 1335 Brittmore Road, Houston Texas 77043 ("Design-Build Firm"). Owner and Design-Build Firm are collectively referred to herein as the "Parties."

RECITALS

This Agreement relates to the design and construction of the East Side Operations Center ("ESOC") and the North West Operations Center ("NWOC"), each of which are located on different sites as described in the attached Design Criteria Package (DCP) (Exhibit 1). These service centers constitute the Phase 2 of Owner’s Service Center Project, to be designed and constructed for overall management and operation by the Owner.

Owner has, with the assistance of APSI CONSTRUCTION MANAGEMENT ("Program Manager"), undertaken a program for the design and construction of Owner’s Phase 2: Service Center Project. The Owner's Program Manager will assist Owner’s Project Manager with respect to the Design-Build Firm’s performance of this Agreement and assist Owner to ensure the Project conforms to the requirements of this Agreement.

Owner, based upon the recommendations of the Program Manager and its architectural subconsultant, H MUÑOZ AND COMPANY, INC. d/b/a Muñoz and Company, Inc. ("Architectural Representative") has determined that the Phase 2: Service Center Project should be designed and constructed using the “design-build” delivery method in accordance with Chapter 2267, Section 3.01, et seq. of the Texas Government Code (the “Code”).

Architectural Representative has been designated to act as the Owner’s design representative for the duration of the Phase 2: Service Center Project and has assisted Owner with preparation of the design criteria that Owner considers necessary to describe the Project.

Architectural Representative is registered as an architect under Chapter 1051 of the Texas Occupations Code, and was selected along with the Program Manager based upon the Program Manager’s and Architectural Representative’s demonstrated competence and qualifications in conjunction with the original procurement of the services of Program Manager and its subconsultants. The Architectural Representative will (i) act independently of the Design-Build Firm, (ii) provide Owner independent professional design services as required by the Code for the delivery of the Project using the design-build delivery method; and (iii) assist Owner to ensure the Project conforms to the Owner’s design criteria.
Owner has, in accordance with the alternative project delivery procedures prescribed by the Code, determined that the Design-Build Firm is qualified to deliver the Project in conformity with Owner’s design criteria and the requirements of this Agreement.

Owner and Design-Build Firm agree that the Design-Build Firm shall deliver the Project as described herein, according to the standards, requirements, processes, and procedures required herein, for which Owner has agreed to compensate Design-Build Firm for its Work and Services subject to the terms and conditions set forth below, which are hereby accepted by the Parties.

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I. Definitions

A. The following definitions apply in this Agreement:

1. “Allowance” means a maximum amount Approved for expenditure by the Design-Build Firm for the Services and/or Work, or for certain materials and/or equipment to be installed in the Project, the cost of which may be unknown or undetermined at the time of establishing the Initial GMP, and such other allowances as are expressly described in this Agreement. Any Approved Allowances are included in the Initial GMP.

2. “Applicable Law(s)” means the laws, rules, regulations, codes, ordinances and restrictive covenants (whether federal, state or local) of any kind governing the Project or the development, approval, use or occupancy of the Project.

3. “Application(s) for Payment” means the Design-Build Firm’s invoices for payment for Services and Work performed hereunder, to be prepared and submitted in accordance with Article X. The term includes Applications for Progress Payments and the Application for Final Payment.

4. “Approval” or “Approved” means the written approval of Owner, and, as applicable, the Program Manager and/or Architectural Representative, where expressly required herein. Owner may exercise the right of Approval in its sole discretion. Owner’s Approval shall not require formal approval of Owner’s Board of Trustees whenever Board approval is expressly required by this Agreement, or is otherwise required by Owner’s policies. The act of an Approval shall not constitute a waiver of Owner’s rights hereunder or excuse the Design-Build Firm from fulfilling its obligations to perform in accordance with this Agreement.

5. “Architectural Representative” means H Muñoz and Company, Inc. d/b/a Muñoz and Company, Inc. (f/k/a Kell Muñoz Architects, Inc.), the firm designated by Owner to act as Owner’s independent representative for the duration of the Project.

6. “As-Builts” means the Design-Build Firm’s detailed record in the Building Information Model, and in AutoCAD format and in hard copy format, certified by the Design-Build Firm’s Design Professional of Record to show the accurate location of all elements of the Project as constructed, the delivery of which As-Builts shall constitute Design-Build Firm’s representation and warranty that such information is complete and accurate.

7. “Board” shall mean the San Antonio Water System Board of Trustees, which is the governing body of the Owner.

8. “Building Information Model” or “BIM” means a computable, parametric representation of all the physical and functional characteristics of the Project.
facilities and their related life-cycle information, to serve as a repository of related information, as required by the Building Information Modeling Protocols (Exhibit 2), for use by the Design-Build Firm and the Project Team during the Design Phase and Construction Phase of the Project, and for the Owner to continue to use and maintain the Project throughout its life-cycle.

9. “CIP-Aces” is a form of construction project management software that will be used by Owner and the Design-Build Firm to manage the Project via an Owner’s Project-specific website used to make all such records continuously available to Owner to view or print in electronic form from Owner’s offices and at the Site, including invoices for payment for Work and Services that the Design-Build Firm is required to perform on the Project.

10. “Claim(s)” shall mean any disputed liability, obligation, loss, harm, physical or economic damage, penalty, action, suit, judgment, cost, claim, expense or disbursement or other claim of any form of liability of whatsoever kind and nature, whether founded or unfounded (including without limitation reasonable attorney fees, expert witness fees and expenses, costs of discovery, and all other costs of defense) due to, arising out of or in any way relating to this Agreement, the Design-Build Firm Personnel’s operations in connection herewith, or the Work, whether due to bodily injury, sickness, disease, or death to any person, or to injury to or destruction of property or the loss of use thereof.

11. “Confidential Information” means all data and information of Owner, including all Work Product, that Owner owns as its proprietary and/or confidential property, including but not be limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, source code, schematics, designs (including Design Criteria Packages), BIM data and models, contracts, vendor and contractor lists, financial information, operational processes, plans and schedules and any of the Owner’s business information.

12. “Conflict of Interest” shall have the meaning set forth in Section VIII.A(12).

13. “Construction Change Directive” is a written order signed by Owner directing a change in the scope of the Services and/or Work.

14. “Construction Documents” (as a part of, but distinguished from, the “Contract Documents”) means the Design Professional of Record’s final approved-for-construction Plans, Drawings, and Specifications, setting forth in detail the requirements for design and construction of the Project and the levels of quality and functionality for the materials and systems to be incorporated into the Project, as accepted by Owner, Program Manager and Architectural Representative.

15. “Construction Phase” means that phase of the Project that follows issuance of Owner’s Notice to Proceed with the applicable Stage of construction of the Project, and during which physical execution of the Work, as required by the
Construction Documents occurs, and at the conclusion of which Final Completion of the entire Project occurs.

16. “Construction Services” (as distinguished from Design Services) shall mean all Services the Design-Build Firm is required to perform hereunder to physically execute the Work, as required by the Construction Documents.

17. “Construction Services Fee” means the Design-Build Firm’s fixed Fee for the performance of all Construction Services by Design-Build Firm’s field indirect staff, and related costs for such staff, as shown on the Pricing Schedule (Exhibit 3). The Construction Services Fee shall include as a subpart thereof the Design-Build Firm’s fixed General Administrative Fee, comprised of separately detailed line items, as shown on the Pricing Schedule (Exhibit 3), for home office overhead, profit, and all allowable general conditions costs (including costs of premiums for insurance, bonds and other security required herein) listed in the Pricing Schedule (Exhibit 3). The Construction Services Fee is part of the Initial and Final GMP, and not a part of the Cost of the Work.

18. “Contract Amendment(s)” shall mean any written amendment to this Agreement, in the form of a Contract Amendment (Exhibit 4), when executed by both Parties.

19. “Contract Documents” shall mean all of the Contract Documents comprising or made a part of this Agreement between the Owner and the Design-Build Firm, including the Exhibits to this Agreement, as more fully described in Section II.C, and includes any Contract Amendment signed by the Owner and the Design-Build Firm. Contract Documents shall also include the DPOR’s final approved-for-construction Construction Documents, upon Owner’s Approval thereof.

20. “Control Estimate(s)” means the series of working estimates that the Design-Build Firm prepares, in the same format as shown in the Pricing Schedule (Exhibit 3), which estimates are to be submitted at each design submittal during the Design Phase, and for which the total amount of any such Control Estimate shall not exceed the Initial Guaranteed Maximum Price initially established in the Pricing Schedule (Exhibit 3).

21. “Cost of the Work” shall generally mean all costs necessarily incurred by the Design-Build Firm to properly perform the construction of the physical Work, including all costs to manage, procure, construct, install, inspect, and test all Project components, in accordance with this Agreement. For clarity, the Cost of the Work does not include the Design Services Fee. The “Cost of the Work” refers only to the direct or indirect field costs the Design-Build Firm reasonably and necessarily incurs for the proper performance of the Work in strict compliance with the Contract Documents, and excludes any item of cost required to be covered by the Pre-Construction Services Fee or the Construction Management Fee. The Cost of the Work shall not include, and Design-Build Firm shall not obtain, receive or accept any remuneration for, any additional
mark-up on the value of any Work performed by Subcontractors, the management of which shall be compensated solely by the Design-Build Firm’s Construction Services Fee. The Cost of the Work shall only include the reasonable and necessary cost of those items shown on Exhibit 3, Pricing Schedule

22. “Day” as used in the Contract Documents shall mean Calendar Day, unless otherwise specifically defined. A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated.

23. “Design Criteria Package(s)” or “DCP(s)” shall mean one or more sets of documents developed by the Architectural Representative, and Approved by Owner and Program Manager, to provide information to the Design-Build Firm that describes the design criteria for the Project, including, as appropriate, the legal description of the site of the Project, site survey, site development requirements and other information related to the site of the Project, conceptual criteria for the Project, interior space requirements, special material requirements, material quality standards, special equipment requirements, performance specifications, item specifications, quality control requirements, applicable codes and ordinances, provisions for utilities, construction limits, block layouts showing affinities, or any other requirement applicable to the Project. The DCP shall control over the provisions of this Agreement in the event of any inconsistency in the description of the Owner’s requirements for the Project. The DCP specifies criteria the governmental entity considers necessary to describe the Project. The DCP includes certain preliminary design related information that has been developed by the Architectural Representative, and certain geotechnical analyses, including environmental survey findings and other information related to civil design, prepared by the Program Manager’s geotechnical engineering subconsultant, in the form of preliminary design drawings and specifications prepared to more explicitly delineate for the Design-Build Firm the requirements of Owner’s Design Criteria Package (DCP) for the delivery of the East Side Operations Center (“ESOC”) and the North West Operations Center (“NWOC”) that constitute Phase 2 of Owner’s Service Center Project. Such information should only be considered to be in the nature of “bridging documents” to define the Project and to provide information for the Design-Build Firm to consider in evaluating the risk that the Design-Build Firm must assume under this Agreement with respect to the Site, in accordance with Articles VII and XIII. The Design-Build Firm shall not, however, be entitled to make any claim to adjust the GMP or the Project Schedule based upon any error, omission, ambiguity, conflict or discrepancy in the DCP that may at any time become recognized or observed. The Design-Build Firm confirms that it has carefully considered the DCP and all such information in preparing its Proposal, and will consider the DCP to independently prepare its own Construction Documents for the design for delivery of the Project after the execution hereof and submit all design elements therein for Owner’s review and Approval as to scope compliance. The Design-Build Firm shall be solely responsible for all preparation, signing and sealing of the
Construction Documents and all construction means and methods for delivery of the Project.

24. “Design” means the DPOR’s preparation of the Construction Documents, and includes any phases the Design-Build Firm chooses to use to describe its process for preparation of the Construction Documents to meet the requirements of the DCP for the Project, taking into consideration the constraints established by the Budget. The Design also corresponds to the Services more particularly described in Article III, below. Design-Build Firm understands and agrees that Owner’s Approval of any design documents, including the Construction Documents, is conditioned on Design-Build Firm’s preparation of a design that will strictly adhere to the DCP. Any variation from the DCP must be specifically identified, described, and approved by Owner in writing prior to Design-Build Firm’s submission of Construction Documents for Owner’s Approval that are based upon any such variation.

25. “Design-Build Firm” means Teal Construction Company, the firm selected by the Owner as the Design-Build Firm for the Project.

26. “Design-Build Firm Personnel” means Design-Build Firm, its members, subconsultants, and subcontractors and suppliers of any tier, employed or contracted to provide Design Services, Construction Services, materials, supplies and systems (whether or not procured by Owner), and all providers of geotechnical, environmental, construction management, and other Services for the Project, and all of the foregoing shall be deemed to be, under the control or supervision of Design-Build Firm for all purposes in connection with the performance of this Agreement. Design-Build Firm shall bind all Design-Build Firm Personnel to the obligations stated herein.

27. “Design-Build Firm’s Contingency” means a sum that is not allocated to or included in the Cost of the Work, and which the Parties have established in the Initial Guaranteed Maximum Price as a sum to be available for the Design-Build Firm to use only for reasonable and necessary costs to overcome and resolve intervening disruptions to the Services and Work that the Design-Build Firm, despite the exercise of reasonable diligence:

(a) could not foresee at the time of Contract execution or Approval of the Final Guaranteed Maximum Price for the Work; and

(b) cannot prevent or mitigate in the exercise of reasonable diligence.

The Design-Build Firm’s Contingency will be adjusted as a part of the Final GMP to reflect the elimination of risk of unforeseeable costs.

28. “Design-Build Firm’s Pricing Schedule” is the schedule of the Design-Build Firm’s costs and Fees, attached as Exhibit 3.
29. “Design-Build Firm’s Staffing Plan” is the Design-Build Firm’s plan for staffing of the Project with the Design-Build Firm Personnel, the costs for whose Construction Services and Design Services are included in the Design-Build Firm’s Fees, as shown on the Pricing Schedule, attached as Exhibit 3.

30. “Design Professional(s) of Record” or “DPOR” means, the architectural and/or engineering professional(s) included in the Design-Build Firm Personnel and who the Design-Build Firm hereby certifies to Owner to have been selected by it as its design professional member(s), based on their demonstrated competence and qualifications, in the manner provided by Section 2254.004 of the Code, to perform all Design Services and to develop all design elements for the Project consistent with the Owner’s Design Criteria Package(s) and to prepare or cause to be prepared under the DPOR’s instruction, control, or supervision the architectural and engineering plans, Drawings, Specifications and other Construction Documents for the construction of the Project in accordance with the requirements of this Agreement, the Standard of Care, and Applicable Law. For greater clarity, the DPOR is responsible to perform Design Services during the Construction Phase.

31. “Design Services” (as distinguished from Construction Services) means all Services of the DPOR and the professional Design Services of all other Design-Build Firm Personnel for the design the Project, including, without limitation, the preparation of the architectural and engineering plans and all Drawings, Specifications, reviews and approvals of Submittals, BIM contributions, applications for governmental approvals and certifications (including the LEED Services required by Exhibit 10), reviews and responses to requests for information relating to Design and all other design-related documents and deliverables, including those contemplated to be prepared during each of the Design Phases and evaluations of the Work of the Design-Build Firm during the Construction Phase, reviews of Shop Drawing Submittals, responses to Requests for Information (“RFI(s)”), and clarifications of design intent.

32. “Design Services Fee” shall mean the Fee for the performance of the Design Services, as shown in the Pricing Schedule. The Design Services Fee is a fixed fee, inclusive of all Design Services required to properly complete the Project in accordance with this Agreement. The Design Services Fee is a part of the Initial and Final GMP, and is separate from the Construction Services Fee. The Design Services Fee includes all costs of designing and administration of the designing of the Project. The Design Services Fee is not part of the Cost of the Work, and shall not be used as a basis for the penal sum of the Payment Bond and Performance Bond.

33. “Drawings” means the graphic and pictorial portrayal of portions of the Construction Documents, and including all information required to maintain the BIM, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
34. “Earned Value” means, with reference to an “Earned Value Analysis Report,” a measure of the value of Work and Services actually completed in relation to the Project Schedule for their completion, to be reported in reference to the planned Schedule of Values. Earned Value compares the amount of Work that was planned to be completed with the Work actually accomplished to determine whether costs incurred and progress achieved are as-planned and in compliance with the Contract. The Earned Value analysis shall be based on the Initial GMP and the Approved Final GMP, as applicable, and the original Approved Project Schedule and it will be used to determine the Project’s Cost Performance Index (CPI) and Schedule Performance Index (SPI).

35. “Effective Date” means the effective date of this Agreement as stated on the first line of this Agreement, above.

36. “Excusable Delay” shall have the meaning set forth in Section VII.C.

37. “Fee” or “Fees” shall mean any one of the following, and Fees shall include the total sum of:

(a) the Design Services Fee;

(b) the Construction Services Fee (which includes the General Administrative Fee);

all of which Fees which are all inclusive of markups for overhead, profit and taxes (if any), and as shown on the Pricing Schedule (Exhibit 3). All Fees are fixed, lump sum fees for the Project, and are to be included in the Initial Guaranteed Maximum Price, but are not included in the Cost of the Work. Fees shall also be included in the Schedule of Values, according to Approved percentages of completion to be attained for the earning of the various portions of such Fees, and supported by such data as Owner and Program Manager may require for substantiating the earning of the Fees, for purposes of administration of Owner’s payments to the Design-Build Firm.

38. “Final Completion” means that phase of completion of the Project by which all Punch List Work and any deficiencies in the Work identified to the Design-Build Firm by the Owner, Program Manager, and/or Architectural Representative, as applicable, or by building inspectors or other governmental authorities having jurisdiction, have been corrected, completed, or otherwise addressed to their respective satisfaction, as applicable, as evidenced by the issuance of a Final Certificate of Occupancy by the governmental authority having jurisdiction and the issuance of Owner’s Certificate of Final Completion after fulfillment of all other conditions precedent to Final Completion as set forth in Section XIII.C. For the avoidance of doubt, Final Completion of the Project cannot occur until both Operations Centers achieve Final Completion.
39. “Final Completion, Certificate of” shall mean the certificate prepared by the Program Manager, in the Approved form, stating the actual date of Final Completion of the Project, and signed by the Owner, Program Manager, and Design-Build Firm, confirming that Design-Build Firm has achieved Final Completion of the Project as of such date.

40. “Final Completion, Scheduled Date of” means the dates shown as the Final Completion Dates in the Project Schedule (Exhibit 6), by which dates all Services and Work of Design-Build Firm shall have been completed and accepted by the Owner, and the dates by which the Design-Build Firm is required to have achieved Final Completion of each of the Service Centers according to the Project Schedule, or any Approved update thereto.

41. “General Administrative Fee” means that portion of the Design-Build Firm’s Construction Services Fee that includes separately detailed line item charges for general home office support, overhead and profit, as shown on the Pricing Schedule (Exhibit 3). The General Administrative Fee is a fixed fee.

42. “Guaranteed Maximum Price” or “GMP” means the Guaranteed Maximum Price for the Project, and also means and refers to the term “Guaranteed Maximum Price” as used in the defined terms of “Initial Guaranteed Maximum Price,” “Final Guaranteed Maximum Price,” and “Final Guaranteed Maximum Price Proposal.”

43. “Guaranteed Maximum Price, Final” or “Final GMP” means the sum for all Services and Work to accomplish the design, procurement and construction of the Project, including all Project components, in compliance with this Agreement which includes the Cost of the Design, the Cost of the Work, all Fees, the Design-Build Firm’s Contingency, the Allowances and all other costs and expenses for the performance of this Agreement all as identified on the Pricing Schedule (Exhibit 3). The Final GMP shall be established by Contract Amendment as the GMP for the Project after the Construction Documents Phase and submission of Design-Build Firm’s Final Guaranteed Maximum Price Proposal. The Final GMP shall supersede, but may not exceed, the Initial Guaranteed Maximum Price established at execution of this Agreement in the Pricing Schedule (Exhibit 3). The Final Guaranteed Maximum Price may thereafter be adjusted only by Contract Amendment or an Approved Construction Change Directive. At Final Completion, a Contract Amendment shall be used to adjust the Final GMP to include only the amounts of the Design-Build Firm’s Contingency and Allowances that Owner has Approved to be expended in the performance of this Agreement, and exclude any amounts thereof that were not so Approved. The total payment obligations of Owner for the Design-Build Firm’s Services and Work to complete the Project shall not exceed the Final GMP, as adjusted.

44. “Guaranteed Maximum Price, Initial” or “Initial GMP” means the amount established upon execution of this Agreement as the maximum sum Owner shall pay for the Project before any commencement of the Services and Work, as
further described in Section IX.A and in the Pricing Schedule (Exhibit 3). With the development of the design for the Project, Value Engineering Analysis and refinement of the estimated Cost of the Work, the Initial GMP will become superseded by the Final GMP as the GMP for the Project. Owner expects the Final GMP to be less than the Initial GMP, as further described in Section VII.L, below.

45. “Guaranteed Maximum Price Proposal, Final” or “Final GMP Proposal” means the amount of the Final GMP that the Design-Build Firm proposes in its final Control Estimate to be the GMP for the Project, which Final GMP Proposal shall be submitted with the Design-Build Firm’s final design submission at completion of the Construction Documents Phase. Such Final GMP Proposal shall be submitted in the same format as the final Control Estimate, and shall provide such supporting information as Owner may require for the Final GMP Proposal to serve as the basis for final negotiation of a Contract Amendment to establish the Final GMP for all Services and Work required hereunder as the GMP for the Project. The Final GMP Proposals shall be in the form attached hereto as Exhibit 7 and shall supersede, but is expected not exceed, the Initial GMP established at execution of this Agreement.

46. “Hazardous Substance(s)” shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act (“TSCA”), The Clean Water Act (“CWA”), The Clean Air Act (“CAA”), and the Marine Protection, Research and Sanctuaries Act (“MPRSA”), The Occupational Safety and Health Act (“OSHA”), The Superfund Amendments and Reauthorization Act of 1986 (“SARA”), or other state super lien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as “environmental laws”) Hazardous Substance(s) is defined to include but is not limited to the following:

(a) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite or actinolite, whether friable or non-friable;

(b) any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;

(c) Dioxins;

(d) radon;
(e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

(f) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

(g) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;

(h) the Texas Water Code Annotated Section 26.344 and Title 30 of the Texas Administration Code Sections 334.3 and 334.4, whether empty, filled or partially filled with any substance; and

(i) any other hazardous material, hazardous waste, Hazardous Substance, solid waste, and toxic substance; those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

47. “Minimum Certification Level” means the Owner’s requirement that certain facilities within the Project be certified by the DPOR as equivalent to no less than the Silver certification level formerly recognized by the United States Green Building Council (USGBC”) under the Leadership in Energy and Environmental Design ("LEED") 2009 for New Construction and Major Renovations Rating System, as further described in the DCP (Exhibit 1). The foregoing notwithstanding, Owner acknowledges that certification from the USGBC pursuant to the LEED 2009 for New Construction and Major Renovations Rating System is no longer available. The Design-Build Firm will only be required to achieve the equivalent to such past level of certification, and Design-Build Firm shall not be required to obtain certification from USGBC.

48. “Mockup(s)” means Design-Build Firm’s construction of a portion of the Work, or an example of the construction thereof, for purposes of confirming and/or testing the appropriateness and performance of the design, materials and/or construction thereof, before continuing with the actual physical construction thereof.

49. “Owner” means the San Antonio Water System and its authorized representatives, including its Board, and successors in interest.
50. “Owner Indemnified Parties” means Owner and Owner’s trustees, directors, officers, employees and any other persons or entities agents and employees or any third party under the Owner’s control or supervision, including Owner’s Program Manager and any other persons or entities expressly identified as Owner Indemnitees under Section XI.A. For the avoidance of doubt, Design-Build Firm, the DPOR and all other the Design-Build Firm Personnel, are not Indemnified Parties.

51. “Owner’s Notice to Proceed” or “Notice to Proceed” means Owner’s written notice to the Design-Build Firm to proceed with the applicable Stage of all or any portion of the Services and Work required under this Agreement on or before the date stated in such notice.

52. “Owner’s Project Manager” means the employee of Owner assigned to act on Owner’s behalf to oversee and manage the Program Manager, the Design-Build Firm, and Owner’s Separate Contractors in connection with the management of the Project. The person designated as the Owner’s Project Manager pursuant to Section XX.D, below, is authorized to act on behalf of Owner with respect to the day-to-day management of the Work and Services required under this Agreement.

53. NOT USED.

54. “Payment Bond” means the bond that the Design-Build Firm will provide at the time the Final GMP is established, in the form required in Exhibit 8.1. The penal sum of the Payment Bond excludes the Design Services Fee.

55. “Pending Third Party Claim(s)” means any Claim made or threatened by a third party against the Owner arising out of or relating in any way to the Project and/or this Agreement:

(a) which has been identified in writing to Owner prior to Design-Build Firm’s submission of its Application for Final Payment; and/or

(b) which the parties have agreed in writing to allow to remain pending following and notwithstanding the issuance of Final Payment, in accordance with Section XIII.G, below.

56. “Performance Bond” means the bond the Design-Build Firm will provide at the time the Final GMP is established, in the form required in Exhibit 8.2. The Performance Bond shall guarantee the performance of all covenants and stipulations of this Agreement, including those related to the Design-Build Firm’s warranty obligations. The penal sum of the Performance Bond excludes the Design Services Fee for all costs of design.

57. “Project” means the design and construction of the East Side Operations Center (“ESOC”) and the North West Operations Center (“NWOC”), each of which are located on different sites as described in the DCP (Exhibit 1). As used in this
Agreement, “Project” means and refers to the design and construction of the Operations Centers on both of these Sites and may refer to the whole or a part of the Project.

58. “Project Management Plan” or “PMP” is an overall management plan for the Project, developed by the Program Manager, which describes all protocols, processes and plans Design-Build Firm shall use on this Project in conjunction with the CPMS. Design-Build Firm’s plans and points of contact shall be incorporated into the Project Management Plan prior to issuance of Owner’s Notice to Proceed with the applicable Phase of any Services or Work. The PMP is attached hereto as Exhibit 9.

59. “Projectmates” is a form of construction project management software that is a web-based collaborative sharing, project communication and information management system that will be used by Owner and the Design-Build Firm for the Project, having the following features: communications and ‘ball-in-court’ tracking; collaboration capabilities allowing for upload and repository of CAD and BIM deliverables, submittals and project progress photos; cost reporting; scheduling; cost budget management, resource allocation; RFI/ASK/submittal transaction recording, change request tracking, pay request tracking, quality management; and all other documentation associated with the Projects, all as more fully described in the PMP. For the avoidance of doubt, Projectmates also includes all Work Product, Final As-Builts, and other Project-related information and data that is stored therein.

60. “Project Schedule” shall mean the cost-loaded, Critical Path Method (CPM) schedule Approved by Owner and Program Manager for execution of the Project, which has been developed and shall be continuously updated by the Design-Build Firm. The Project Schedule includes the control milestones for completion of the Design and Construction Phases of the Project, and is attached hereto as Exhibit 6. The Approved dates for Substantial Completion and Final Completion may only be adjusted by Contract Amendment.

61. “Project Team” means the Owner, Program Manager, Program Manager Personnel, Architectural Representative, and Design-Build Firm (including its Design-Build Firm Personnel). Subject to Approval, the Project Team members will be designated by each of the foregoing participants in the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from time to time by Owner, in its sole discretion. With Approval, the Project Team members may be changed from time to time.

63. “Program Manager Personnel” means and includes all Program Manager’s Approved subcontractors, subconsultants and vendors of any tier contracted by APSI to perform Program Manager’s Services hereunder, including the Architectural Representative.

64. “Punch List” or “Punch List Work” means a list of minor incomplete or incorrect items and/or repairs that must be done to achieve Final Completion, but which do not impair the Owner’s beneficial use and occupancy of a field dispatch, fleet, supply operations, or civil/site works facility within a Site of the Project, or the safety of individuals, and which items are identified during inspection of the Work or any portion thereof, whether at or before Substantial Completion thereof, and which must be completed as a condition precedent to Final Completion.

65. “Safety Incident” means any failure of the Design-Build Firm or any of the Design-Build Firm Personnel to safely manage performance of the Design-Build Firm Personnel in accordance with Applicable Law and as necessary to recognize and successfully prevent or avoid casualty losses to property and injury or death to persons (each such failure being a Safety Incident), including but not limited to:

   a. The reported observation of a potential safety hazard, unsafe work practice, or lapse in prudent safety management that can reasonably be expected to lead to injury or death to any person, or damage to any property;

   b. The presence of any unsafe working condition, including without limitation any unauthorized or improper usage of equipment or faulty equipment, that reasonably be expected to lead to injury or death to any person, or damage to any property; or

   c. The occurrence of bodily injury or death, or property damage arising out of or in connection with the Project or the performance of the Services and Work.

66. “Schedule of Values” means a schedule to be established in accordance with Section XII.A(2) for the calculation of and processing of the Design-Build Firm’s Applications for Payment. The Schedule of Values shows the values to be assigned to the completion of all Services and Work associated with each of the control milestones and construction line item numbers (or “CLINs”). The Schedule of Values shall allocate 100% of the Initial and Final Guaranteed Maximum Prices including at a minimum the same line items of information as shown in the Pricing Schedule (Exhibit 3).

67. “Separate Contractor(s)” means any contractor or other service provider engaged directly by the Owner (other than Design-Build Firm) to perform construction or other services relating to the Project or the operation or maintenance of Owner’s property.
68. “Service Centers” or “Operations Center(s)” means, collectively, the North West Operations Center and the East Side Operations Center.

69. “Services” means, collectively, all Design Services, Construction Services, and all other services related to the engineering, design, procurement, and/or construction of the Project, including all consultancy, managerial, budgetary control, scheduling, and other Services (professional or otherwise) to be performed by or on behalf of Design-Build Firm hereunder, as necessary to the completion and delivery of the Project in accordance with the requirements of this Agreement.

70. “Shop Drawings” or “Shop Drawing Submittals” means all submittals of drawing details, diagrams, product data, samples, Mockups and similar items, and any supporting schedules and other data prepared to demonstrate or illustrate the manner of installation of the Work and how the Design-Build Firm proposes to construct certain portions of the Project to the requirements of, and the design concepts expressed in, the Contract Documents, to ensure conformity to the DCP. Shop Drawings Submittals are to be submitted to the DPOR for its review and approval. Shop Drawing Submittals and the DPOR’s approvals thereof shall be filed in the CPMS.

71. “Site” has the same meaning as the term “Worksite.”

72. “Specifications” means that portion of the Construction Documents prepared by the DPOR in the current Master Format required, and consisting of the written technical requirements for materials, equipment, systems, standards and workmanship for the performance of the Work and related Services, in accordance with the requirements of this Agreement and applicable building and life safety code requirements.

73. “Stage(s)” means the three (3) stages of the Project (as distinguished from the Design Phases and the Construction Phase) listed below, each being subject to Owner’s Notice to Proceed and limited to the appropriation of incremental funding for each Stage pursuant to Section XX.H:

(a) Full Design of East Side and North West Operations Centers (Design Stage);

(b) Construction, and related renovation and demolition of the East Side Operations Center Construction (ESOC Construction Stage); and

(c) Construction and related demolition of the North West Operations Center Construction (NWOC Construction Stage).

74. “Standard of Care” shall have the meaning set forth in Section VIII.A(4).
75. “Substantial Completion” is the date on which the Project or a portion thereof is tendered by the Design-Build Firm as substantially complete and formally accepted by issuance of a Certificate of Substantial Completion. Partial use or occupancy shall not result in the Project being deemed substantially completed and shall not be evidence of Substantial Completion. For the avoidance of doubt, and notwithstanding any Owner’s partial occupancy of a portion of the Project, Substantial Completion as to the entire Project cannot occur until both Operations Centers achieve Substantial Completion.

76. “Substantial Completion, Certificate of” shall mean a certificate prepared by the Owner’s Program Manager, in form Approved by Owner, stating the actual date of Substantial Completion of the Project, and signed by the Owner, the DPOR, and also signed by the Program Manager or the Architectural Representative, confirming that Design-Build Firm has achieved Substantial Completion of the Project, or the applicable portion thereof, as of such date, and that the same is sufficiently complete, inspected, and approved by the Program Manager’s commissioning agent and the appropriate regulatory authority or authorities as evidenced by issuance of a Certificate of Occupancy, for Owner’s occupancy or partial occupancy for its intended purposes, excluding only Punch List Work that remains unfinished pending Final Completion and final inspection.

77. “Substantial Completion, Scheduled Date of” shall mean the dates shown as the Substantial Completion Dates in the Project Schedule (Exhibit 6), by which dates all Services and Work of Design-Build Firm shall have been completed and accepted by the Owner, and by which the Design-Build Firm is required to have achieved Substantial Completion of each of the Service Centers according to the Project Schedule, or any Approved update thereto.

78. “Value Engineering Analysis” means the process for the Design-Build Firm’s continuous evaluation of the Drawings, Specifications, related design concepts and design documents, throughout the Design and Construction Phases of the Project, whereby the Design-Build Firm proposes value-added design substitutions or solutions, with the goal of an integrated design that encompasses life cycle cost analysis and functional analysis according to evaluation criteria established by the guidelines of the Society of American Value Engineers (SAVE).

79. “Work” means the performance of the physical construction activities required by the Approved Contract Documents, whether completed or partially completed, to be managed by and through the Design-Build Firm’s performance of the Services, and the Work includes all labor, parts, supplies, skill, direct field supervision, transportation, construction related activities, and all other items of cost or value, and other facilities and things necessary, proper or incidental and required or reasonably inferable to produce, construct and fully complete the construction of the Project in strict accordance with the requirements of the Owner’s DCP and this Agreement (as it may be modified or amended). The Work also refers to the
performance of the physical construction thereof, as well as the incorporation of all material and equipment therein. The Work may refer to or describe the whole or a part of the Project.

80. “Work Product” shall mean all work product, including all Drawings, Specifications, Shop Drawing Submittals, Building Information Models, plans, data compilations or calculations, studies, reports, or other so-called instruments of service, in any form, including native format, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of Design-Build Firm or any Design-Build Firm Personnel in connection with the Project, PMP, the DCP, and/or the BIM, or other documents or information prepared in connection with the performance of the Work and Services hereunder, which Work Product shall be and remain, and is hereby assigned to Owner as its exclusive property, and which shall not be used by Design-Build Firm or Design-Build Firm Personnel, except in connection with the Phase 2: Service Center Project, without the Owner’s prior written consent.

81. “Worksite” means the means the land(s) or area(s) (as indicated in the Contract Documents), upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished or designated by Owner for Design-Build Firm’s use, and any offsite location owned or leased by Owner as a location Owner has Approved for the performance of Work and Services hereunder.

82. “Worksire Finds” shall mean the discovery at, on or near the Worksite of any archeological, paleontological, or cultural resources or any threatened or endangered biological species listed as such at the time of discovery by Applicable Law.

II. Project Description and Contract Documents

A. General Description of Project.

(1) The Project includes all aspects of the Phase 2: Service Center Project for the planning, development, design, engineering, procurement, demolition, and construction of the Service Centers and related improvements, including but not limited to all architectural, engineering, geotechnical, environmental, construction, commissioning and other Services, all as more fully described in the DCP(s) and Article III below. The Design-Build Firm acknowledges and understands the Owner’s requirement that certain facilities in the Project be designed and constructed equivalent to the standards of LEED 2009 New Construction and Major Renovations, as described in the DCP and the Scope of Design-Build Firm’s LEED Services and Work (Exhibit 10). Design-Build Firm’s failure to achieve an equivalent to such certification shall be considered a material breach of this Agreement. The foregoing notwithstanding, Design-Build Firm shall assist and, if requested prior to submission of the Construction Documents for Owner’s Approval, shall cause the DPOR to assist, the Owner to
evaluate the feasibility of achieving the equivalent of a higher level of LEED certification for the Service Centers. Services to re-design to such higher level of certification shall be subject to the provisions for the Approval thereof as additional services.

(2) The Project shall be implemented in accordance with the PMP and DCP(s). The Project is comprised of the design and construction of two (2) separate and distinct Operations Centers on separate and distinct Worksites, as described in the DCP(s).

(a) **East Side Operations Center**: The East Side Operations Center (ESOC) is comprised of a minimum of two (2) new freestanding buildings, renovated training and fleet space and associated façades, demolition of old administration building, landscape signage and landscaping, relocation of fuel pumps & islands with canopy, associated sitework including redesign/reconstruction of some site parking, storage areas and roadways and resurfacing and restriping of Personal Owned Vehicle (POV) parking, restriping of Ops and fleet parking in areas affected by the Project, and security/IT items as more fully described in **Exhibit 1**: Design Criteria Packet.

(b) **North West Operations Center**: The North West Operations Center (NWOC) is comprised of a minimum of one (1) building including two separate designated spaces within for field equipment and supply storage, demolition of existing service center building, sitework including a fully operational service yard, landscaping, redesign/reconstruction of site roadways and fleet and Personal Owned Vehicle (POV) parking in areas affected by the Project, designating an outside area for Owner provided ice machine and outdoor material storage, as more fully described in **Exhibit 1**: Design Criteria Packet.

B. **Correlation and Intent of Agreement Documents.** The Contract Documents form the entire Agreement, and they are as fully a part of this Agreement as if attached hereto or repeated herein.

(1) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Wherever stated in this Agreement, the following general terms shall be interpreted as follows:

(a) The term “provide” means to furnish, install, fabricate, deliver and erect, including all Services, materials, appurtenances and all other expenses necessary to complete the Work in place and ready the Work for operation or use;

(b) The term “shall” means the mandatory action of the Party to whom reference is made; and
(c) The terms “as required” and “as necessary” mean as prescribed in the Contract Documents, or by Applicable Law, or applicable construction codes.

(2) If a conflict, ambiguity or inconsistency among the Contract Documents arises, the following order of precedence shall apply:

(a) Contract Amendments to this Agreement;
(b) This Agreement;
(c) Exhibits to this Agreement; and
(d) Construction Documents.

(3) The foregoing notwithstanding, the Contract Documents are complementary and intended to include all items required for the proper execution and completion of the Work. The enumeration of any portion of the Work shall not be construed to exclude other items contemplated by or reasonably inferable from the Contract Documents. Where provisions in two or more of the Contract Documents are complementary, the more detailed provision shall control over the more general provision. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided.

(4) Design-Build Firm shall provide all materials and labor for the Work as shown or described in the Approved Construction Documents, or which is reasonably inferable therefrom as necessary to produce a finished and functional Project. The manner of organization of the Specifications into divisions, sections and articles, and arrangement of Drawings, does not control the Design-Build Firm’s division of the Work among Design-Build Firm Personnel or any trade.

(5) If the Contract Documents or the terms of any accepted written offer from Design-Build Firm contain differing descriptions of the Services and Work, then, notwithstanding Section II.B(2), and unless expressly excused by Owner in writing, the provision that establishes the higher quality, manner, method or standard of performing the Work, or are more advantageous or provide greater value to Owner, will prevail. The more stringent requirement shall govern as between the Contract Documents and any applicable standards, codes, and ordinances.

(6) The most recently issued document shall take precedence over previously issued forms of the same document. Dimensions on Drawings shall govern scale measurements. Items shown one place in the Drawings, but not another, or called for in the Construction Documents or the Specifications but not shown in the Drawings, or shown in the Drawings but not in another of the Construction Documents, are to be included. If existing conditions are inconsistent with dimensions shown on Drawings and Specifications, the Design-Build Firm shall
resolve such inconsistency prior to the time when the affected Work must be commenced.

(7) The current edition of standards, codes, ordinances, manufacturers’ instructions and guarantees at the time the Final Guaranteed Maximum Price Proposal is accepted by Owner shall apply to the Project and shall govern, even if a different edition or no edition is specified in the Construction Documents. If the Design-Build Firm becomes aware that any requirements set out in the Contract Documents (including the Construction Documents) are or will be inconsistent with later editions of applicable standards, codes, ordinances or manufacturer instructions and guarantees, the Design-Build Firm shall promptly bring such inconsistency to the attention of the DPOR, Program Manager and the Owner’s Project Manager for resolution.

C. Exhibits to Agreement. The Contract Documents include the following Exhibits, each of which are incorporated by reference as if fully stated herein:

(1) Design Criteria Package(s) for the Project, attached hereto as Exhibit 1;

(2) Building Information Modeling Protocols, attached hereto as Exhibit 2;

(3) Design-Build Firm’s Pricing Schedule attached hereto as Exhibit 3, which covers and includes all of Design-Build Firm’s Fees, hourly fee rates, and costs and expenses;

(4) Form of Contract Amendment, attached hereto as Exhibit 4;

(5) Design-Build Firm’s Staffing Plan, which includes an organizational chart identifying all Design-Build Firm Personnel in key positions and all subconsultants, attached hereto as Exhibit 5;

(6) Project Schedule, attached hereto as Exhibit 6;

(7) Form of Final GMP Proposal, attached hereto as Exhibit 7;

(8) Bond Forms, attached hereto as Exhibit 8:

(a) Form of Payment Bond, attached hereto as Exhibit 8.1;

(b) Form of Performance Bond, attached hereto as Exhibit 8.2; and

(c) Form of Security Bond, attached hereto as Exhibit 8.3;

(9) Project Management Plan (“PMP”), attached hereto as Exhibit 9;

(10) Scope of Design-Build Firm’s LEED Services and Work, attached hereto as Exhibit 10;
(11) Contract Data Requirements List (CDRL), attached hereto as Exhibit 11;
(12) Design-Build Firm’s Good Faith Effort Plan, attached hereto as Exhibit 12;
(13) Design-Build Firm’s Hourly Rate Schedule, attached hereto as Exhibit 13;
(14) Owner’s Requirements of Insurance, attached hereto as Exhibit 14;
(15) Design-Build Firm’s Confidentiality Agreement, attached hereto as Exhibit 15;
(16) Resolution in Support of Design Build Services Agreement, executed by Design-
    Build Firm’s Governing Board of Directors, attached hereto as Exhibit 16;
(17) Prevailing Wage Rate Schedule, attached hereto as Exhibit 17;
(18) Release of Claims Forms, attached hereto as Exhibit 18:
    (a) Affidavit of Payment of Debts and Claims, attached hereto as Exhibit 18.1;
    (b) Partial Claim Release, attached hereto as Exhibit 18.2; and
    (c) Final Claim Release, attached hereto as Exhibit 18.3;
(19) Warranty Protocol, attached hereto as Exhibit 19;
(20) Agreement to Adopt Dispute Resolution Procedures, attached hereto as Exhibit
    20;
(21) Owner’s Confirmation of Funding, attached hereto as Exhibit 21; and
(22) Owner’s Security Procedures, attached hereto as Exhibit 22.

III. Scope of Services and Work

A. General Design-Build Services.

The Design-Build Firm has overall responsibility for and shall provide and complete the Design
Services and Construction Services, and furnish all materials, equipment, tools and labor as
necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance
with the Owner’s requirements and the terms of this Agreement.

(1) Commitment. Design-Build Firm shall, in exchange for Owner’s agreement to
pay Design-Build Firm no more than the Initial Guaranteed Maximum Price, perform in accordance with the Design-Build Firm’s Standard of Care, and
oversee the proper performance of, all Services and Work, including architectural
and engineering, procurement, construction, and geotechnical Services, as
necessary for the execution and completion of the Project.
(a) **Geotechnical Engineering and Surveying Services.** Design-Build Firm shall, with respect to its representation in Section VIII.A(24), provide all geotechnical engineering and surveying Services necessary to support the successful planning, execution and completion of the Project, including but not limited to providing all geotechnical and subsurface reports, site surveys, tree surveys and topographical surveys, as necessary for the execution and completion of the Project.

(b) **Commissioning Support.** Design-Build Firm shall provide reasonable assistance to the Program Manager and Owner’s Project Manager in providing input in the Project Schedule for the performance of its independent commissioning services for the completed Project or systems therein. For the avoidance of doubt, it shall be the responsibility of the Design-Build Firm to provide independent testing and balancing Services, which will not be provided by the Program Manager in the Program Manager’s performance of its independent commissioning services, which commissioning services do not include Energy & Atmosphere Credit 3 (Enhanced Commissioning Services) under the LEED 2009 for New Construction and Major Renovation Rating System.

(c) **Selection of Design Professionals.** To the extent required by Applicable Laws, each member of the Design-Build Firm who is an architect or engineer, or a provider of professional services, including geotechnical engineering, surveying or other professional services in connection with the performance of the Services and Work, shall have been selected by the Design-Build Firm in the manner provided by Section 2254, Subchapter A, of the Texas Government Code.

(d) **Public Outreach.** The Design-Build Firm shall, if requested by Owner and at no additional cost to Owner, provide support to the Owner-led activities for public information publications, responses to media requests, and public outreach meetings including participation in such meetings and the preparation of necessary supporting documentation. The Design-Build Firm shall cooperate with Owner and its designated representatives to plan and develop a public outreach campaign that will promote and manage the establishment of positive community relations and public awareness about the Project within the community and with appropriately targeted audiences of community constituents in a manner that is appropriate to the success of the Project. The Design-Build Firm shall, at the request of Owner, attend all public meetings and hearings regarding the Project and, as directed by the Owner or Program Manager and, shall make presentations at such hearings and meetings.

(e) **Meetings and Reports.** The Design-Build Firm shall hold periodic meetings and conferences with the Owner and the Program Manager to verify and confirm that the performance of the Design Services:
(i) has the full benefit of the Owner’s experience and knowledge of existing needs and facilities;

(ii) is consistent with the Owner’s current policies and standards; and

(iii) is fully coordinated with the services being performed by the Program Manager and any other person engaged in performing work in connection with the Project or any related project.

The Design-Build Firm shall keep the Owner and the Program Manager regularly informed as to the progress of the Design Services through the submittal of a monthly report in accordance with the Contract Data Requirements List (Exhibit 11).

(2) Methodologies, Systems and Practices. Design-Build Firm shall consider and use best industry practice methodologies, systems and practices, to the extent reasonably and commercially appropriate, for:

(a) Contracting the design, construction and procurement services of the Design-Build Firm Personnel;

(b) Project communications, information management, and document control systems (to ensure full time, continuous communications of latest updated Project information among all participants in the Project, including Owner and Program Manager, and the maintenance of a log of the record date and time of transmittal and receipt of such information as between each sender and recipient, using Owner’s CIP-Aces and Projectmates software system);

(c) Quality control processes encompassing applicable code compliance to the Standard of Care through Final Completion;

(d) Cost and schedule performance reporting in Owner-provided CPMS such as Earned Values for Services and Work against the Approved Schedule of Values, with status updates to the Approved Project Schedule, and cost/time responses for any; and

(e) Regular updating of the accepted Design-Build Firm’s detailed design and construction schedule within the Owner-provided CPMS.

(3) Communication.

(a) The Design-Build Firm has designated on Design-Build Firm’s Staffing Plan (Exhibit 5) both a project manager and a design manager, each of whom shall be continuously available throughout the Design and Construction Phases of the Project to act as the points of contact for all matters related to design Services and the Project generally. These
designated representatives shall not be changed without advance written approval from the Owner, in accordance with Section VIII.A(5).

(b) Unless otherwise directed by Owner, the Design-Build Firm shall cause all communications between the Design-Build Firm Personnel and Owner to be directed to Program Manager, who shall act as the single point of contact between Owner and Design-Build Firm. The Owner’s Project Manager shall be copied on all such communications. Communications between Owner and Owner’s Separate Contractors, if any, shall be through Program Manager, with a copy to the Owner’s Project Manager.

(c) The foregoing provisions notwithstanding, Owner expressly reserves the right to communicate, and nothing in this Agreement shall be construed to limit or restrict the right of the Program Manager, Owner’s Project Manager, Architectural Representative or other Owner representatives, to communicate directly, but jointly and simultaneously, with both the Design-Build Firm, and the DPOR or any Design-Build Firm Personnel at any time if Owner believes such direct communications will help to expedite or clarify communications for the benefit of the Project. All contracts with the Design-Build Firm Personnel shall be expressly acknowledge Owner’s reservation of such right. In no event shall an election by Program Manager, Owner’s Project Manager, Architectural Representative, or any other Owner representative to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of Design-Build Firm, the DPOR or any Design-Build Firm Personnel, or an abrogation of any rights of Owner under this Agreement.

B. Description of Scope of Services and Work by Stage.

The Services and Work required of the Design-Build Firm for each Stage are described below and the specific time limitations for completion of each data deliverable for each Stage are set forth in the Project Schedule (Exhibit 6) and the Contract Data Requirements List (Exhibit 11). The Design-Build Firm shall employ and exercise the professional judgment of its experienced and qualified design and construction professionals to provide Owner confidence that the Project will be completed in conformity with design criteria and concepts established by the DCP and the Approved Construction Documents, and it is the intention of the parties that the Design-Build Firm shall, at all times, act in the Owner’s best interests with respect to the performance of the Services and Work.

(1) **Stage 1 – Design Stage.**

(a) The Design-Build Firm shall commence performance of the Design Services immediately after receiving Owner’s Notice to Proceed therewith.
(b) The DPOR and Design-Build Firm Personnel shall develop full and complete designs for each Operations Centers for the Construction Documents.

(c) General Responsibilities.

(i) During each Design Phase, the Design-Build Firm shall provide the following Services as appropriate:

- Architectural Services;
- LEED Services;
- Landscape Architectural Services;
- Civil Engineering Services;
- Structural Engineering Services;
- Mechanical Engineering Services;
- Electrical Engineering Services;
- IT and A/V Engineering Services;
- Interior Architectural Services;
- Coordination with Owner-furnished FF&E;
- Construction Cost Estimating Services;
- Scheduling Services;
- Constructability Review Services; and

(ii) The Design-Build Firm shall not proceed with any Stage or Phase of the Work and Services except as authorized by Owner’s Notice to Proceed, failing in which Design-Build Firm shall solely bear the financial risk of corrections or modifications due to any errors or changes in the Construction Documents or the Work.

(iii) DCP Acceptance and Design Approach Submittal (CDRL 2). The DPOR will review the Owner’s DCP and include in this Submittal the DPOR’s strategy for completing design and construction at each Worksite within the Initial GMP and within the Project Schedule. The DPOR shall include in this Submittal a narrative description of the approach for each Worksite and Operations Center facility, separately describing the major features of the facility, such as major materials to be used, and any perceived risks to cost and schedule. The DPOR shall also thoroughly review the DCP and provide any alternate room layout plans, building elevations, building materials or color selections that illustrate the Design-Build Firm’s own design solution based upon Owner’s DCP, for review and comment by Owner and Program Manager prior to finalizing the design and the Construction Documents for the Project for submission to Owner for its Approval. The DPOR shall enumerate the rationale for any variances from the DCP for Approval by Owner, knowing the Owner wishes to reuse prior
decisions/specifications reflected in the DCP as much as possible in order to have continuity across all Owner’s Service Center sites. Any proposed variances shall be organized in a spreadsheet with reference to drawing or specification section. Written acceptance of the DCP by the DB firm and Owner's approval of the proposed variances is required prior to moving to CDRL 3.

(iv) **Prepare Facility Designs.** Owner requires the overall concept, appearance, and finishes for each Worksite and Operations Center facility to be, to the greatest extent possible, consistent with the DCP and the Owner’s Approval of the design submittals during the Design Phase. Notwithstanding the foregoing, Owner reserves the right to require the DPOR to resolve differences between the overall concepts, appearances, and finishes as the designs for each Worksite and Operations Center facility are developed.

(v) Drawings shall be produced in CAD/BIM, and the Drawings and Specifications shall be uploaded as BIM files to the CPMS as they are updated. The Design-Build Firm shall assign a key team member as listed in the Design-Build Firm’s Staffing Plan (Exhibit 5) as a sole point of contact to manage and maintain the architectural and engineering elements of the CAD/BIM electronic files on a daily basis, and all updates of these files. The Design-Build Firm shall verify to Owner’s Program Manager at least weekly that all of Design-Build Firm’s design consultants have coordinated updates to respective drawings, communications and files in accordance with the Communication Plan, the BIM Execution Plan and the Design-Build Firm’s Quality Control Plan.

(vi) The Design-Build Firm shall provide, or subcontract with a geotechnical services firm as necessary in the DPOR’s sole opinion and responsibility to provide, soils analysis reports for the Design-Build Firm’s geotechnical engineering for, and final design and construction of the Project.

(vii) The Design-Build Firm shall provide, or subcontract with a licensed surveyor as necessary in the DPOR’s professional judgment to provide accurate and complete site surveys, tree surveys, topographical surveys as needed to properly evaluate all constraints and other conditions affecting the development of the Project Sites in accordance with the DPC and the Construction Documents.

(d) **Design Coordination.** Design-Build Firm shall adhere to the following coordination requirements throughout each Design Phase.
(i) **Review of Meeting Documentation.** The Design-Build Firm shall promptly review the Program Manager’s minutes of each meeting, and submit to Program Manager any comments to such meeting minutes, by the end of the second business day after receipt of such meeting minutes, failing in which Design-Build such meeting minutes shall be deemed an accurate record of the decisions, action items and other outcomes of the meeting.

(ii) **Weekly Reviews.** The Design-Build Firm shall schedule and participate in weekly status review meetings, which may include any updated Control Estimates or Project Schedules and Design or Construction Phase progress updates.

(iii) **Status Reviews.** The Design-Build Firm shall schedule and participate in periodic status review meetings to update the Owner on cost, schedule and design progress status.

(iv) **Presentation Reviews.** The Design-Build Firm shall schedule and make as many as six (6) formal presentations to Owner during the Design Phases as requested by Owner. These sessions shall be included in the Project Schedule and include but not be limited to: review of floor plan layout, elevations, design styles, elevation massing, and material palette.

(v) **Design Deliverable Reviews.** The Design-Build Firm shall include adequate time in its Project Schedule for Owner’s review of the required design deliverables, including review meetings with the Owner in accordance with Section III.B(1)(d)(viii).

(vi) **Design Revisions.** The Design-Build Firm shall be responsible for managing the Design Services so as to insure that the Project, as designed, can be constructed in accordance with the requirements of this Agreement, including the DCP, for an amount that is within the Initial GMP. Notwithstanding any of the foregoing provisions, if revisions to the design submittals as required by the Contract Data Requirements List (Exhibit 11) to correct errors or omissions in order to cause the design to conform to the DCP, the Initial GMP, the Final GMP, the Project Schedule, and Applicable Law or construction codes, then such revisions shall be made by the Design-Build Firm at no additional cost to the Owner and without adjustment to the Project Schedule.

(vii) **Meeting and Training on Owner’s Construction Project Management Software Systems.** The Design-Build Firm shall designate a member of the key personnel, as listed in Exhibit 5 (Design-Build Firm’s Staffing Plan), to be solely responsible for all updates to and management of documentation in the use of
Owner’s construction project management software systems defined in Section I.A.9. This designated individual shall attend training sessions with the Owner or Program Manager, as appropriate to understand and use each software system and shall receive access to each such software system. Owner reserves the right at any time to implement updates to, or different, construction project management software systems, in order to manage the Project, in which case the Design-Build Firm shall undergo training sessions at its own cost in the use thereof. The Design-Build Firm’s use of Projectmates shall be under the license of the Program Manager, for which the Design-Build Firm shall compensate the Program Manager based on the number of user seats the Design-Build Firm desires to have, at a rate of $2100 per year for 5 seats.

(viii) Drawing and Compliance Reviews

1. The Design-Build Firm, at its sole expense, shall provide Owner with the designated number of design document review sets required for each deliverable, as shown in the Project Schedule (Exhibit 6) and the Contract Data Requirements List (Exhibit 11).

2. The Design-Build Firm shall pay all costs for plans, specifications and other design and construction documents used by the Design-Build Firm and Design-Build Firm Personnel and all documents produced for review by the Owner.

3. The Design-Build Firm shall incorporate into the documents such corrections and amendments as the Owner requests for each deliverable, as shown in the Project Schedule (Exhibit 6) and the Contract Data Requirements List (Exhibit 11). Any additional cost incurred due to Design-Build Firm’s failure to incorporate Owner’s requested corrections shall be borne solely by the Design-Build Firm, without adjustment to the Project Schedule.

4. The Design-Build Firm shall allow in its Project Schedule no less than 14 Days for Owner’s review of any design submittal or Control Estimate shown in the Project Schedule (Exhibit 6) and the Contract Data Requirements List (Exhibit 11).

5. If the review indicates the Control Estimate exceeds the Initial GMP, the Design-Build Firm shall re-design the
Project at its own expense and re-submit the deliverables for another review, without adjustment to the Project Schedule.

6. If at any time during any Design Phase the Owner determines in its review of any design deliverable submitted by Design-Build Firm that the project size is less than the space program provided within the Design Criteria Package (Exhibit 1) or that any space designed by Design-Build Firm is less than that depicted in the DCP or that a performance criteria within the DCP is exceeded, ignored or not met, the Design-Build Firm shall re-design the Project at its own expense, without adjustment to the Project Schedule.

(ix) Pre-Construction Meeting(s). The Design-Build Firm shall schedule and participate in pre-construction meetings as necessary to provide advice and consultation to the Program Manager and Owner regarding: Site usage; earthwork; methods of delivery of materials, systems and equipment; construction sequencing; confining the Work to the construction limit boundaries of the Sites; availability of material, equipment, utilities and labor; time requirements for delivery, installation and construction; safety precautions and programs; temporary facilities; equipment, materials and services for common use by the Design-Build Firm, Design-Build Firm Personnel and any Separate Contractors; cost savings opportunities such as costs of alternative materials or designs and any other matters pertaining to the performance of the Work. All such information shall be provided in a timely manner to allow sufficient time for review and discussion while taking into account the overall Project Schedule.

(e) Preparation of the Construction Documents.

(i) Upon Owner’s Notice to Proceed with preparation of the Construction Documents, the Design-Build Firm shall prepare and submit to Owner for its Approval 80% and 100% Construction Documents, as described below, together with updated Control Estimates. The Construction Documents shall fix and describe the size and character of the entire Project, including site work, architectural, structural, mechanical and electrical systems, materials, and “Construction Document Specifications” and such other elements as may be appropriate. The detailed Control Estimate and Project Schedule for each submittal shall confirm adherence to the Initial GMP. The Construction Documents shall
set forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project within the Initial GMP.

The Design-Build Firm shall prepare required deliverables (CDRL 3A Drawings and Documents, 3B Cost Estimate, and 3C Schedule in the 80% CD submittal and then after Owner NTP CDRL 4A Drawings and Documents, 4B Cost Estimate, and 4C Schedule in the 100% submittal) as listed in the Project Schedule (Exhibit 6) and the Contract Data Requirements List (Exhibit 11) including but not limited to the following:

1. 80% Construction Documents shall be essentially complete, but not be signed and sealed. The submittal of such 80% Construction Documents shall represent a complete design (design analysis, specifications, and drawings) including annotated design submittal review comments that answer and/or incorporate review comments resulting from the review of this design submittal, including comments resulting from reviews by permitting authorities having jurisdiction. In addition, such submittal shall include delivery of:
   a. CADD files and a full size set of PDF files shall be delivered at this submittal. CADD Files will not contain the use of reference or cross-reference files. Each drawing file must be free standing and independent;
   b. A submittal report listing all design narrative chapters, drawings and specifications being delivered;
   c. Drawings and specifications shall be clean of all revisions, with no clouds or strike-through text changes/revisions (although notes can be clouded).

2. 100% Construction Documents shall be a complete set of signed and sealed 100% Drawings and Specifications, suitable and ready for issuance of permits and construction of the entire Project, without further design effort or further review by permitting authorities having jurisdiction. Design-Build Firm shall not be excused from any delay in the Project due to an incomplete submittal that delays issuance of permits needed for construction to proceed.

3. Proof of prior completion and prior submission of all
necessary permit applications and prior approvals of Drawings and Specifications by authorities having jurisdiction as required for commencement of construction upon Owner’s Notice to Proceed.

4. A completed BIM model suitable for Owner use after Substantial Completion and compliant with Building Information Modeling Protocols (Exhibit 2) with all elements dimensionally fixed.

5. An updated three dimensional computer model in rendered format with images around the overall site, exterior and interior of the buildings, including all major materials and building systems.

6. Updated Control Estimates (CDRL 5B) with quantities for all major cost drivers/components in the MasterFormat structure (except Division 00) through the second subdivision without allocations of more than $5,000 per line item, and with any contingencies or escalation separately tabulated and presented outside the MasterFormat format.

7. An updated Project Schedule (CDRL 5C) for each building or site works/utility work elements with detail no less than the second subdivision of MasterFormat (except Division 00) and by planned work area/floor/construction limits zone that shows all open/incomplete deliverables required to meet the completion dates listed in the Project Schedule (Exhibit 6).

8. A signed statement from an authorized representative of the Design-Build Firm confirming that the Design-Build Firm has thoroughly reviewed the Construction Documents and that such Documents are free from errors, omissions and defects, and adequate for construction in accordance with the terms of this Agreement.

(ii) Final Guaranteed Maximum Price Proposal (CDRL 5). Refer to Article IX, Design-Build Firm’s Compensation, for the terms and conditions regarding the Final GMP and Final GMP Proposal.

(2) CLIN 2 and 3 – Construction Stages. East Side Operations Center and North West Operations Center. As used herein, the acronym “CLIN” refers to Construction Line Item Number, and the term is used with reference to line items
required to be shown on the Schedule of Values for the performance of this Agreement.

(a) In CLINs 2 and 3, the Design-Build Firm shall fully construct the East Side Operations Center (ESOC) and the North West Operations Center (NWOC).

(b) Construction Authorization.

(i) Commencement of Construction Phase Services. The Construction Phase shall be deemed to commence upon the date specified in Owner’s Notice to Proceed which shall be issued by Owner in accordance with the requirements of this document, after Approval of the Final Guaranteed Maximum Price Proposal and shall continue until Final Completion of all Work. Upon issuance of the Owner’s Notice to Proceed, the Design-Build firm shall be proceed to undertake, perform and complete the Work in accordance with and subject to this Agreement.

(ii) Issuance of Owner’s Notice to Proceed. Owner shall issue separate Notices to Proceed for CLINs 2 and 3.

(iii) Early Work Package Amendments. The foregoing notwithstanding, Owner, at its discretion, may require Design-Build Firm to issue design packages ("Early Work Packages") for portions of the Work, including the purchase of long lead Items, prior to execution of the Final GMP Amendment to allow for commencement of portions of the Work prior to execution of the Final GMP Amendment. In such event, Design-Build Firm shall submit signed and sealed Construction Documents for such portions of the Work and an Early Work Package proposal to the Owner, which proposal amount shall not, for each cost item listed in such proposal, exceed the Approved amount for such cost items in the current Approved Control Estimate. If the Early Work Package proposal is acceptable to Owner, Owner shall issue a limited Notice to Proceed to Design-Build Firm for the Approved portions of the Work. Any compensation amounts Approved in connection with an Early Work Package shall be included in each subsequent Control Estimate, the Final GMP Proposal and the Final Guaranteed Maximum Price for the Project.

(iv) Overlap of Design and Construction Phases. Notwithstanding the issuance of the Owner’s Notice to Proceed with the Construction Phase, the Design-Build Firm shall continue to provide CLIN 1 (Design Stage) Services that are necessary for the fulfillment of the Design-Build Firm’s responsibilities under this Agreement. Design Phase Services may overlap with Construction Phase
Services. Payments for all Design Services performed after the date of Owner’s Notice to Proceed with Construction Services are subject to the Final Guaranteed Maximum Price. Design-Build Firm shall not incur any Design-Build Firm Personnel costs for construction of the Work prior to issuance by Owner of a Notice to Proceed with such Work. The Design-Build Firm shall perform the following Construction Phase Services.

(c) **Construction Planning.**

(i) **Assignment of Personnel.** The Design-Build Firm has identified on the Design-Build Firm’s Staffing Plan (Exhibit 5) the personnel, including the Design-Build Firm’s project manager, design manager and all Design-Build Firm Personnel, who Design-Build Firm will employ or otherwise engage for the Project. Design-Build Firm shall be responsible for the day-to-day management of the Project and the assignment of its personnel to the performance of the Services and the Work.

(ii) **Long Lead Items.** The Design-Build Firm shall identify all materials, equipment and other items requiring extended delivery times and shall recommend the early procurement of long lead items to the Program Manager and the Owner, as appropriate, in accordance with the Project Schedule and the Materials and Equipment Management Plan. Any determination to proceed with the early procurement of long lead items shall be made in accordance with Section III.B(2)(b)(iii) through the execution of an Early Work Package Amendment. Upon execution of the associated Early Work Package Amendment, the Design-Build Firm shall be responsible for expediting the procurement of such long lead items, including the preparation of all associated procurement documents and the overall management of the procurement, to ensure their delivery by the required dates. The Design-Build Firm shall conduct and manage any such procurement in accordance with the applicable terms and conditions of the Contract Documents.

(iii) **Temporary Project Site Facilities.** The Design-Build Firm shall be responsible for ensuring that adequate temporary facilities are provided as necessary to enable Design-Build Firm Personnel to perform their Work and provisions have been made for all Project Site facilities necessary for the Design-Build Firm to manage, inspect and supervise the Work. The Design-Build Firm shall plan for the provision of such temporary facilities during the performance of the Design Services so that all such facilities are available as necessary during the performance of the Construction Work.
(3) **Documents and samples at the Site.**

(a) Design-Build Firm shall maintain, on the Site and for Owner all documents required by the Contract Data Requirements List (Exhibit 11), and including without limitation the following categories of documents:

   (i) Daily log of progress of the construction, in Approved format, to be updated no less frequently than weekly for the immediately preceding week, submitted in Projectmates;

   (ii) Daily record of photographs to record progress of the construction, updated no less frequently than weekly for the immediately preceding week, submitted in Projectmates;

   (iii) Original and updated or amended Subcontracts, Drawings, Specifications, procurement transaction documents, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, submitted in Projectmates;

   (iv) Directory of all of Design-Build Firm’s Personnel, including all Subcontractors and Suppliers on the Project, submitted in Projectmates;

   (v) Project correspondence, inspection procedures (as prepared by others), testing laboratory reports (as prepared by others), submitted in Projectmates;

   (vi) Current documents of record, including Drawings, Specifications, Agenda, Construction Change Directives and other records of modifications, Submittal Log, Shop Drawings, Product Data, Samples and other similar submittals, Earned Value Analysis Reports, all meeting minutes applicable to the Project. Requests for Information (“RFIs”), instructions from Program Manager or Owner, and As-Builts, and Project Manual data, all in good order and marked to currently reflect field changes and selections made during construction and all information from Subcontractors and Suppliers referenced in or otherwise used to maintain and update the same, submitted in Projectmates.

   (vii) This Agreement and all related GMP Amendments and other amendment documents, including backup information and Project records reflecting Schedules, Construction Change Directives, progress payments, inspections, and acceptances or certificates relating to Substantial Completion or Final Completion of the Work or any portion thereof.
(viii) Warranties and guarantees related to the Work, and all documents pertaining to warranty claims, repairs, replacements, and related Work.

Design-Build Firm shall maintain, at all times, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, RFI’s, Earned Value Analysis Reports, and all meeting minutes applicable to the Project. Design-Build Firm shall make such reports and records available for inspection by Owner and/or its respective agents during normal business hours upon request by Owner.

(4) Performance of the Work. In performing the Work generally, the Design-Build Firm shall, in accordance with the DCP, the Construction Documents, and this Agreement, supervise and direct the Work, using the Design-Build Firm’s best skill and attention in accordance with the Standard of Care. This shall include Design-Build Firm’s obligation to:

(a) Manage and construct the Work in strict accordance with the DCP, Construction Documents and Specifications within the time required by the Approved Project Schedule;

(b) Timely obtain all permits, and coordinate all required governmental inspections and approvals of the Work in accordance with the Project Schedule;

(b) Adhere to procedures for coordination among the Project Team with respect to all aspects of the construction of the Project, and implement such procedures as required in the PMP;

(c) Organize and maintain a competent, full-time staff at the Project Site with clearly defined lines of authority and communication as necessary to coordinate construction activities, and monitor and direct progress of the Work;

(d) Unless otherwise provided in the Contract Documents, provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and Services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, in strict accordance with the requirements of the Contract Documents;

(e) Coordinate delivery, and designate staging or storage areas within the Worksite, if applicable, and protect and install new or relocated Owner-furnished material, equipment, vehicles, or FFE;
(f) Perform all necessary Site preparation, clearing, tree abatement, surveying and excavation activities; including coordination with all Applicable Laws in regard to tree abatement. Demolish and remove any existing items as needed to fulfill the Work, as required by the Construction Documents; modify, re-route, repair, extend or replace any utilities, as needed to fulfill the Work, as required by the DCP, Construction Documents; remove from the Site and dispose of any demolition or construction debris resulting from the performance of the Work, and any unused soil excavated there from in an environmentally safe manner;

(g) Provide for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly;

(h) Periodically conduct additional site visits and inspections of the Work, as reasonably necessary to monitor and observe (and to verify with reasonable certainty that the Design-Build Firm Personnel are accurately reporting) the progress and quality of the performance of the Services and Work so that all Work is being performed and executed according to the Approved Construction Documents and this Agreement;

(i) Inspect portions of Work already performed, to determine which such portions are in proper condition to receive subsequent Work;

(j) Review the submittals or other Services or Work of any Design-Build Firm Personnel to confirm it is appropriate to produce a completed, functioning project that conforms to the DCP and the requirements of this Agreement. Evaluate and determine the suitability and acceptability of any substitute or "or-equal" materials and equipment proposed by any Design-Build Firm Personnel for conformance with the requirements of, and compatibility with, the Approved Construction Documents and the DCP, recording such evaluation and rejection/decisions in Projectmates; and

(k) Promptly respond to Owner’s or Program Manager’s requests related to proposed and enacted Contract Amendments, Construction Change Directives, unforeseen conditions, updates to the Project Schedule, Claims or other information that Owner may reasonably request in relation to the Project.

(5) **Shop Drawings Submittals.**

(a) Shop Drawing Submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required by the Contract Documents, the way by which Design-Build Firm proposes to conform to the information given and the design concept expressed in the Contract Documents. Any review by Owner, Program Manager or Architectural Representative of Shop Drawing Submittals
shall not relieve Design-Build Firm of its obligations to strictly comply with the terms, conditions and requirements of the Contract Documents.

(b) Design-Build Firm shall review for compliance with the Contract Documents all required Shop Drawing Submittals with reasonable promptness and in such sequence so as to cause no delay in the Project. The Design-Build Firm shall be responsible to correct any defect, error or omission in the Work as a result of any failure to comply with the Contract Documents.

(c) Design-Build Firm’s approval of a Shop Drawing Submittals shall constitute Design-Build Firm’s representation that it has determined and verified materials, field measurements and filed construction criteria and coordinated with other trades related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(d) Design-Build Firm shall perform no portion of the Work without the DPOR’s review and approval of the related Shop Drawing Submittals.

(e) Program Manager shall review and may comment upon such submittals within ten (10) Days after posting to Projectmates. Design-Build Firm shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Owner’s or Program Manager’s review of Shop Drawing Submittals unless Design-Build Firm specifically has informed Program Manager in writing of such deviation at the time of Submittal and Owner has given written Approval of the specific deviation. Design-Build Firm shall not be relieved of responsibility for errors or omissions in Shop Drawing Submittals.

(f) Design-Build Firm shall give and cause the Design-Build Firm Personnel to give specific attention to any comments of the Owner, Program Manager, Architectural Representative or DPOR to a Shop Drawing Submittal. The resubmission of a Shop Drawing Submittal in and of itself shall not constitute Owner’s acceptance of the revisions to address such comments.

(g) Substitutions. If Design-Build Firm elects to propose to Owner a substitution of materials that departs from the DCP, or from the Approved Construction Documents, such substitution shall only be considered by Owner after Design-Build Firm has submitted the following documentation:

(i) a written request for approval of the substitution, including a complete description of the proposed substitution, including any deviation from the Construction Documents associated therewith,
and a written explanation of the reasons the substitution is necessary, including any and all benefits or risks associated with such substitution; and

(ii) a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution.

A proposed substitution shall be submitted to Owner and Program Manager in sufficient time to allow no less than twenty-one (21) Days for their review. Owner in its sole discretion may reject any substitution submitted by Design-Build Firm.

(6) Use of Worksite.

(a) Design-Build Firm shall confine operations to such areas within the Worksite as are permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably congest or encumber the Worksite with obstructions, materials or equipment;

(b) Design-Build Firm shall schedule and perform the Work in a manner that does not disrupt or interfere with Owner’s ongoing operations at a Worksite;

(c) Design-Build Firm will abide by all of Owner’s applicable rules, regulations, guidelines and procedures with respect to the conduct of Design-Build Firm and Design-Build Firm Personnel, including Owner’s drug and tobacco policies, parking of vehicles, security regulations and entry into any adjacent facilities owned or occupied by Owner;

(d) Design-Build Firm shall not load or unload or permit any part of any structure to be loaded or unloaded in any manner that will endanger the structure, nor shall Design-Build Firm subject any part of the Work or adjacent property to endangering stresses or pressures;

(e) Only materials and equipment to be used directly in the Work shall be brought to and stored on the Worksite by the Design-Build Firm. Any materials and equipment no longer required for the Work shall be promptly removed from the Worksite;

(f) Design-Build Firm is solely responsible for protection of all stored construction materials and equipment from weather, theft, damage or other harm;

(g) The Design-Build Firm shall not erect any sign on or relating to the Worksite, or permit others to do so, without Owner’s Approval;
(h) Prior to Notice to Proceed with any Stage or Phase of Construction, Design-Build Firm shall erect and maintain at each Worksite a Project bulletin board accessible to all Design-Build Firm Personnel’s employees, upon which Design-Build Firm shall post and maintain, throughout the Project’s duration, all employment and safety information required by Applicable Law and shall include information listing Design-Build Firm’s bonding and insurance agencies/providers, to include agency contact names, addresses and telephone numbers;

(i) Design-Build Firm shall ensure that the Work, at all times, is performed in a manner that affords safe and reasonable vehicular and pedestrian access through or around the Worksites and all adjacent areas. The Work shall be performed in such a manner that any areas outside the limits of the Worksites shall be free from all debris, building materials and equipment. Design-Build Firm shall not cause any interference with the occupancy or beneficial use of any area or buildings adjacent or in close proximity to the Worksites;

(j) The Design-Build Firm shall keep the premises and surrounding area free from accumulation of waste materials or rubbish;

(k) As of the date of the Owner’s Notice to Proceed with any Stage or Phase of construction, it will be Design-Build Firm’s responsibility to establish, protect, preserve and reestablish, when required any temporary bench marks and/or baselines on the Site. Construction staking and tolerances shall be in accordance with the Manual of Practice for Land Surveying in the State of Texas, Category 5; and

(l) Design-Build Firm shall establish and record baselines and temporary benchmarks for the design of the Project.

(7) Administration of the Project.

(a) The DPOR, and Design-Build Firm’s consultants, shall periodically inspect and observe the progress and quality of the Work at the Worksites as appropriate to monitor and confirm that the type and quality of construction and the progress of the Work is proceeding in accordance with this Agreement, including the Construction Documents and the Project Schedule, and they shall endeavor to protect Owner against defects and deficiencies.

(b) In addition to site visits for general inspection and observation, the DPOR shall visit the Site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the Work by others. The DPOR shall provide written reports of all site visits to the Owner, the Program Manager and the Design-Build Firm within three business days.
(c) The Design-Build firm shall establish and maintain a numbering and tracking system for all project records, including requests for information, submittals, and supplementary instructions and shall provide updated records at each progress meeting and when requested. DPOR shall post all RFI, ASK, and submittal transactions, including approvals within the Design-Build Firm’s chain of command/authority in Projectmates.

(d) The DPOR shall promptly respond to any RFI’s as necessary for the proper execution or progress of the Work and shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. The DPOR’s interpretations and recommendations shall be consistent with the intent of and reasonably inferable from the Contract Documents, including the Approved Construction Documents. The DPOR’s interpretations shall be made in written and/or graphic form including, if necessary or appropriate, supplemental documents to amplify or clarify portions of the Construction Documents and uploaded to Projectmates.

(e) The DPOR shall review and approve or take other appropriate action upon the Design-Build Firm’s submittals such as Shop Drawings, product data and samples.

(f) The DPOR shall identify to the Program Manager potential opportunities for cost savings based on submittal alternatives.

(g) All proposed changes to Drawings, plans and Specifications, regardless of how initiated, shall be fully described by the DPOR in the documents depicting changes to the scope of Work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes provided that all such revisions shall be separately recorded on media acceptable to Owner, including, without limitation, BIM and CAD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the Specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or Specifications will be identified by date of change, revision number and other customary identification references. Areas changed on Drawings will be “clouded” to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded.

(h) The DPOR shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Final Completion inspections to determine the dates of Substantial Completion and Final Completion including obtaining Certificates of Occupancy and turnover of all or a portion of the Project to the Owner. The DPOR and the key representative from the Design-Build Firm shall also participate in the
Owner’s final walk thru inspection 10 months after Final Completion, shall administer any needed warranty Work at that time, and resolve all warranty claims in consultation with the Owner and Program Manager.

(i) Prior to submission to the Program Manager, the Design-Build Firm shall review, for conformance with the Contract Documents, all guarantees and warranties.

(j) The Design-Build Firm and DPOR shall review final As-Builts for accuracy and completeness in the representation of the as-built conditions of the Work and for compliance of the completed Work with the Contract Documents.

(k) DPOR shall prepare a Punch List of all items, which Punch List shall include and provide for resolution of all comments from the Owner, Program Manager, and/or Architectural Representative. The resolution of Punch List items may include the reports of government authorities having jurisdiction that Punch List items have been satisfactorily corrected or completed in accordance with the Contract Documents.

(l) Prior to submission to the Program Manager, the Design-Build Firm shall review all submissions of operating and maintenance instructions, and all manuals, brochures, drawings, and all other close-out documentation furnished by the Design-Build Firm or Design-Build Firm Personnel, and shall confirm to the Owner in writing all such documentation conforms to the requirements of the Contract Documents.

IV. Subcontracting

Design-Build Firm shall award and enter into all subcontracts and purchase orders as necessary and appropriate to provide all labor and materials for the construction of the Project in accordance with this Agreement, and shall coordinate, monitor and inspect the Work of Design-Build Firm Personnel to ensure conformance with the Contract Documents.

A. Unauthorized Assignments Void.

Design-Build Firm shall not assign this Agreement in whole or in part or assign any monies due or to become due to Design-Build Firm, or delegate any of its duties and obligations hereunder, without Approval and the written assumption by the Approved assignee of all of Design-Build Firm’s duties and obligations hereunder. Design-Build Firm shall bind Design-Build Firm Personnel to this Agreement. Where appropriate, Design-Build Firm shall require each of its Design-Build Firm Personnel to enter into similar agreements with their sub-sub-consultants and sub-subcontractors. Any assignment or attempted assignment without Owner’s prior written Approval shall be void. No assignment or delegation by Design-Build Firm shall relieve Design-Build Firm of its obligations hereunder to Owner.

B. Collateral Assignments of Agreements.
Design-Build Firm hereby grants, transfers, and assigns to Owner all the right, title, and interest of Design-Build Firm in, to, and under any and all subcontracts, purchase orders or other agreements executed by or on behalf of the Design-Build Firm for the furnishing of Services and Work hereunder, including any materials, supplies, and equipment which are to be incorporated into the Work and, to the extent assignable, all leases entered into for equipment to be used in connection with the performance of the Work. Such assignments shall be exercisable by Owner, at its election, in the event that Design-Build Firm is in default hereunder and Owner has exercised its right to terminate the Work or this Agreement in whole or in part, or to take control of the Project. Owner may reassign such subcontracts, purchase orders or other agreements to another construction manager or any other person or entity as necessary to continue with the Work in such event, and such assignee may exercise Owner’s rights in the contracts and Design-Build Firm shall cause each contract to so provide. Design-Build Firm shall ensure that each such subcontract or other agreement relating to the Work with Design-Build Firm Personnel or other entity contains the consent of such Design-Build Firm Personnel or entity to the foregoing assignment, by insertion of the following provision, as appropriately modified with Owner’s Approval to conform the context thereof:

“[[INSERT NAME OF SUBCONTRACTOR OR OTHER ENTITY]] (“Lower-Tier Provider”) hereby irrevocably and collaterally assigns to San Antonio Water System (as “Owner”) this [Subcontract or Purchase Order] between Design-Build Firm and Lower Tier Provider to secure Design-Build Firm’s obligations to perform under the Design-Build Services Agreement, Contract No. [INSERT NUMBER], dated [INSERT DATE], between Design-Build Firm and Owner in connection with the Project. Lower-Tier Provider hereby consents to this assignment, and shall execute all documents reasonably required to evidence or facilitate the effectiveness of such assignment. Such assignment shall not, however, become effective until Owner delivers notice of intent to Lower-Tier Provider that Owner has elected to accept and assume such assignment, whereupon Owner may elect in writing within thirty (30) Days thereof, to require Lower-Tier Provider to (a) cease Work on and/or terminate the Project, or (b) continue performance hereunder. The Lower-Tier Provider agrees to notify Owner simultaneously with its issuance of any notice to the Design-Build Firm of the circumstances relating to the occurrence of any material default by the Design-Build Firm in its obligations to Lower-Tier Provider hereunder, which may lead to Lower-Tier Provider’s election to exercise any right to suspend or terminate hereunder, and Owner shall have an opportunity to cure such default by the Design-Build Firm, provided that such cure is effected within a reasonable period of time, but in no event later than thirty (30) Days after the date of Owner’s receipt of such default notice. The Lower-Tier Provider further agrees to extend to Owner directly any warranties and remedies required of Lower-Tier Provider hereunder; provided however, the foregoing shall not change Lower-Tier Provider’s rights and obligations hereunder, other than to provide to Owner the right to directly enforce against Lower-Tier Provider such warranties and remedies."

C. Design-Build Firm’s Good Faith Effort Plan.

Throughout the Project, the Design-Build Firm shall in good faith strive to adhere to the Design-Build Firm’s Good Faith Effort Plan (Exhibit 12).
V. Construction by Owner or By Separate Contractors

Duty of Cooperation with Owner’s Separate Contractors. Design-Build Firm shall afford Owner’s Separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment, and for the performance of their construction or operations. Design-Build Firm also shall properly coordinate its Work with that of the Separate Contractors, and cooperate in all respects with them. The Separate Contractors will be required to similarly cooperate with Design-Build Firm in all such respects. If any part of the Work depends upon proper performance of the construction or operations of Separate Contractors, Design-Build Firm shall inspect and promptly report to Owner any apparent discrepancies or defects that render the Work unsuitable. Failure of Design-Build Firm to so report shall constitute an acceptance of the Separate Contractor’s construction or operations as fit to receive the Work, except for:

A. Defects which may develop in the Separate Contractors’ construction or operations after the performance of the Work; or

B. Defects in the Separate Contractors’ construction or operations of which Design-Build Firm gives Owner notice immediately upon discovery and without then proceeding with the Work affected.

If Design-Build Firm or others engaged by or under the control of Design-Build Firm cause(s) physical damage to the construction or property of any Separate Contractor, the Design-Build Firm, upon notice from Owner, shall remedy such damage at its sole expense. If a dispute arises between Design-Build Firm and any Separate Contractor as to each other’s responsibility for cleaning up, Owner may clean up and charge the cost to Design-Build Firm or the Separate Contractor as Owner shall determine to be just.

(1) Owner’s Right to Perform Construction and to Award Separate Contracts.

(a) Owner reserves the right to perform construction or operations related to the Project with Owner’s own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

(b) Owner shall provide for coordination of the activities of the Separate Contractors and the Work of the Design-Build Firm and Design-Build Firm shall cooperate with the Separate Contractors. Design-Build Firm shall participate with the Owner and its Separate Contractors in reviewing construction schedules when directed by Owner to do so. Design-Build Firm shall make any revisions to the Project Schedule as deemed necessary after a joint review and mutual agreement with all such parties.

(2) Responsibility to Coordinate with Owner’s Separate Contractors.

(a) Design-Build Firm shall afford Owner and Owner’s Separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall coordinate the
Design-Build Firm’s construction and operations with theirs as required herein and, as applicable, by the contract documents applicable to Owner’s Separate Contractors.

(b) If part of Design-Build Firm’s Work depends, for proper execution or results, upon the construction or operations by Owner or Owner’s Separate Contractors, Design-Build Firm shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design-Build Firm to so report shall constitute an acknowledgment that Owner’s or Owner’s Separate Contractors completed or partially completed construction is fit and proper to receive Design-Build Firm’s Work, except as to defects not then reasonably discoverable.

(c) Design-Build Firm shall reimburse Owner for costs incurred by Owner and which are payable to Owner’s Separate Contractors because of delays, improperly timed activities or defective construction of Design-Build Firm.

(d) Design-Build Firm promptly shall remedy any damage wrongfully caused by Design-Build Firm Personnel to any completed or partially completed construction or to property of Owner or Owner’s Separate Contractors, as provided herein.

(3) Owner’s Right to Clean Up. If a dispute arises among or between Owner, Design-Build Firm or Owner’s Separate Contractors, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and those clean-up costs will be allocated by Owner amongst those responsible, in Owner’s sole discretion.

VI. Scheduling of Construction Phase Services

Design-Build Firm shall schedule the Construction Phase Services in the Project Schedule. The Project Schedule shall show all required activity sequences, specifically including precedence relationships and durations for all activities in Approved critical path format, which coordinates and integrates the Design-Build Firm’s Services and the development of Construction Documents, with the Services and Work of all Design-Build Firm Personnel and the activities within the Project Schedule for Owner and any Separate Contractors. The Design-Build Firm shall regularly review the Project Schedule for any Services and Work that have not been started or are behind schedule, and identify and disclose to Owner and Program Manager any potential or actual variance between any scheduled and probable completion date for such Services and Work, and recommend to the Owner scheduling adjustments to adhere to the Project Schedule. The Project Schedule, as necessary to manage the timely performance of the Services and Work, shall:
A. Provide a graphic representation of and incorporate all activities and events that will occur during performance of Work, including all activities of the Design-Build Firm Personnel, as well as others affecting the progress of the Work;

B. Incorporate activity sequences and durations, allocations of labor and materials, processing of Shop Drawings Submittals, and the expediting and delivery of long lead items. Schedules shall include Owner’s occupancy requirements and occupancy priorities;

C. Identify each Phase and Stage for the performance and completion of the Services and Work, and for Owner’s occupancy of the Operations Centers;

D. Set forth dates that are critical to ensuring the timely and orderly completion of the Services and Work in accordance with Approved control milestones and the requirements of the Contract Documents;

E. Provide for regular monitoring, updating, and reissuing of the Project Schedule as construction progresses, consistent with the Project Schedule and the requirements of this Agreement;

F. Be updated at least monthly with revisions to the Project Schedule being made more frequently if Owner considers this to be reasonably necessary. Updates shall provide summary reports to Owner for each update to explain all changes in the Project Schedule. Updates shall incorporate updated scheduling for all activities of the Project including without limitation:

   (1) Commencement, control milestone and completion dates for the Design submittals, submission of Final GMP, construction Notice to Proceed bidding activities, Substantial and Final Completion dates, construction phasing and Project stages;

   (2) Times of commencement and completion for all Design-Build Firm Personnel;

   (3) Required activity sequences and durations;

   (4) Subcontract activities for the Project, including bid preparation for Design-Build Firm’s applicable design packages, bid packages, bid dates, bid analysis, and award decision-making;

   (5) Sequences of Work by design package including: review periods, activities to obtain building and other permits, and review and Approval dates, completion dates, document review periods; and

   (6) Lists of materials and equipment items requiring long lead times to procure, including delivery dates and coordinating and expediting activities.
VII. Time for Performance; Excusable Delay; Schedule Limitations; Remedies for Inexcusable Delay; and Cost Limitations

A. Time for Performance. Design-Build Firm shall diligently prosecute and complete the Services and Work in accordance with the Project Schedule. Design-Build Firm shall use its best efforts to re-sequence or accelerate portions of the Work as and when necessary or appropriate to overcome and/or mitigate, to the greatest practicable extent, the effect of any delays. Costs incurred to resequence or accelerate the Work to overcome or mitigate delays may be included in the Cost of the Work, but only to the extent such delays were not caused or contributed to, in whole or in part, by the negligence or fault of any Design-Build Firm Personnel, and only to the extent such costs do not exceed the Guaranteed Maximum Price for the Project.

B. Time is of the essence. Time is of the essence with respect to all key dates in the Project Schedule, including the applicable Substantial Completion Dates and Final Completion Dates, as well as the intermediate control milestone dates shown therein. The Design-Build Firm’s failure to achieve the applicable Dates of Substantial Completion or Dates of Final Completion shall result in the assessment of Delay Liquidated Damages applicable to each such event under Sections VII.G and VII.H below, respectively. Design-Build Firm acknowledges and accepts as reasonable and appropriate the scheduling and cost constraints established by this Agreement.

C. Excusable Delays. Delays due to any circumstances that are beyond a Party’s reasonable control to avoid or mitigate, including, but not limited to, strikes, riots, wars, fires, flood, explosion, acts of nature, acts of government, and labor disturbances shall constitute Excusable Delays. Design-Build Firm shall keep Owner advised of any delay, whether or not it constitutes an Excusable Delay, which may affect the Project Schedule or any completion date. The Parties shall have no liability to each other for, and each Party shall bear its own costs due to the impact of, Excusable Delays in the performance of their respective obligations under this Agreement.

D. Weather Delays as Excusable Delay. The Design-Build Firm shall anticipate and include in the Project Schedule all days of weather delay that should be anticipated according to the 5-year climatic averages for San Antonio International Airport as determined by the National Oceanic and Atmospheric Administration (NOAA). Design-Build Firm shall only make requests for additional time for days that are considered lost due to adverse weather conditions that are in excess of days that should be anticipated in the Project Schedule on the foregoing basis. Adverse weather days will only be included in the schedule for periods when the critical path of the Project is subject to impact from adverse weather conditions. Design-Build Firm will only submit a time extension request for Excusable Delay for adverse weather delays in accordance with the requirements of this Section.

E. Equitable Adjustments to Add Time to the Project Schedule for Excusable Delay; Notice Requirement. Design-Build Firm shall submit written notice to Owner and
Program Manager advising of the risk or occurrence of any anticipated or unanticipated Excusable Delay, stating in detail any and all actions reasonably required of Owner to appropriately avoid, end or mitigate the Excusable Delay. Such notice shall be delivered to Owner and Program Manager within seven (7) Days after the day that Design-Build Firm knew of or, in the exercise of reasonable diligence, should have anticipated, the occurrence thereof. The foregoing notwithstanding, Design-Build Firm shall not be entitled to an equitable adjustment to add time to the Project Schedule to the extent that Excusable Delay occurs or continues because the Design-Build Firm failed to notify Owner thereof, and as a result of a lack of notice the Owner did not take reasonable and appropriate action as described in such notice to avoid, end, or mitigate such Excusable Delay. If Design-Build Firm submits the notice required hereunder, Owner in its sole discretion shall determine whether the delay constitutes an Excusable Delay, and whether, as a result of the Excusable Delay an extension of time to the Project Schedule should be granted. The Design-Build Firm’s entitlement to an equitable adjustment to the Project Schedule is absolutely conditioned upon Design-Build Firm’s timely submission of written notice as required herein. Subject to the foregoing, an equitable adjustment to the Project Schedule shall be the Design-Build Firm’s sole remedy for Excusable Delay. Owner shall make no adjustment to the Project Schedule and Design-Build Firm shall reimburse Owner for any additional costs incurred by Owner as a result of any delays deemed by Owner, in its sole discretion, to have been caused jointly or solely by the Design-Build Firm.

F. Equitable Adjustment to Fees and/or Project Schedule for Extended Performance Due to Owner’s Interference. The Design-Build Firm may, as hereinafter provided, claim an equitable adjustment to its Fees and/or the Project Schedule for extended performance that the Design-Build Firm demonstrates to have been caused by the Owner’s intentional interference with the Design-Build Firm’s performance of this Agreement. If Design-Build Firm has delivered to Owner and Program Manager written notice of the occurrence, impact consequences, and recommendations for the elimination of such interference, and the Owner, without justification, fails thereafter to cease such interference, the Design-Build Firm may claim an equitable adjustment to its Fees for the Design-Build Firm’s reasonable additional costs of extended performance during the period of the Design-Build Firm’s extended performance commencing on the business day next following Owner’s receipt of such notice and ending on the day that such interference ends. Such notice shall be a condition precedent to such a claim, failing in which any such claim shall be invalid. Except for Owner’s intentional interference despite the Design-Build Firm’s timely issuance of such notice, Design-Build Firm shall not be entitled to, and agrees not to seek additional compensation for, such extended performance. Promptly after receipt of such notice, the Parties shall seek to mutually agree upon the expected period of such extension and any equitable adjustment to the Design-Build Firm’s Fees for such extended performance. The Parties shall resort to the Dispute Resolution Process if they cannot agree upon such equitable adjustment. In no event shall Fees be adjusted for any delay caused or contributed to by the failure of Design-Build Firm or Design-Build Firm Personnel to perform in accordance with this Agreement, or for any amount that would cause the GMP for the Project to be exceeded.
G. Substantial Completion; Delay Liquidated Damages.

(1) Schedule for Achieving Substantial Completion. The Design-Build Firm shall achieve Substantial Completion by the applicable Scheduled Date of Substantial Completion to be established for each Service Center as shown in the Project Schedule (Exhibit 6). In the event of Excusable delay, the Scheduled Date of Substantial Completion shall be adjusted by adding the resulting aggregate number of days of Excusable Delay. In such event, Delay Liquidated Damages shall accrue from the Scheduled Date of Substantial Completion, as the same may be extended. Owner may deduct and offset from and against any amounts due Design-Build Firm a sum equal to the amount of any Delay Liquidated Damages due Owner through the date that Final Completion is achieved.

(2) Substantial Completion Achieved Prior to Scheduled Substantial Completion Date. In the event that Substantial Completion occurs on or prior to the Scheduled Date of Substantial Completion, the Design-Build Firm shall have no obligation to pay Delay Liquidated Damages under this Section.

(3) Substantial Completion Achieved Subsequent to Scheduled Substantial Completion Date; Delay Liquidated Damages. In the event that Substantial Completion occurs subsequent to the Scheduled Date of Substantial Completion, the Design-Build Firm shall pay Owner Delay Liquidated Damages in accordance with this subsection for each Day that the Substantial Completion is delayed beyond the Scheduled Date of Substantial Completion and continuing until the earlier of (i) the actual achievement of the Substantial Completion, or (ii) termination of this Agreement for default. The amount of Delay Liquidated Damages payable by the Design-Build Firm pursuant to this Section shall accrue as follows for each Operations Center:

(a) East Side Operations Center. $3,897.00 for each Day of unexcused delay in achieving Substantial Completion; and

(b) North West Operations Center. $3,827.00 for each Day of unexcused delay in achieving Substantial Completion.

Any accrued Delay Liquidated Damages shall be due and payable on the first Day of each month following accrual.

H. Final Completion Delay Liquidated Damages

(1) Schedule for Achieving Final Completion. The Design-Build Firm shall achieve Final Completion by the applicable Scheduled Date of Final Completion to be established for each Service Center in the Project Schedule (Exhibit 6), which dates may be extended in accordance with this Section. In the event of Excusable Delay, the applicable Scheduled Date of Final Completion shall be extended by adding the resulting aggregate number of days of Excusable Delay. In such event, Delay Liquidated Damages shall accrue from the Scheduled Date of Final Completion Date, as the same may be extended.
(2) **Final Completion Achieved Prior to Scheduled Final Completion Date.** In the event that Final Completion occurs on or prior to the applicable Scheduled Date of Final Completion, the Design-Build Firm shall have no obligation to pay Delay Liquidated Damages under this Section.

(3) **Final Completion Achieved Subsequent to Scheduled Final Completion Date: Delay Liquidated Damages.** In the event that Final Completion occurs subsequent to the applicable Scheduled Date of Final Completion, the Design-Build Firm shall pay Owner Delay Liquidated Damages in accordance with this subsection for each Day that the applicable Final Completion Date falls after the Scheduled Final Completion Date and continuing until the earlier of (i) the actual achievement of Final Completion, or (ii) any termination of this Agreement for default. The amount of Delay Liquidated Damages payable by the Design-Build Firm pursuant to this Section shall accrue as follows for each Operations Center:

(a) **East Side Operations Center.** $2,200.00 for each Day of unexcused delay in achieving Final Completion;

(b) **North West Operations Center.** $2,200.00 for each Day of unexcused delay in achieving Final Completion.

Any accrued Delay Liquidated Damages shall be payable on the first Day of each month following accrual.

1. **Liquiﬁed Damages Not a Penalty.** Each Party agrees that Owner’s actual damages for delay under the circumstances contemplated herein would be difficult or impossible to ascertain, and that the Delay Liquidated Damages provided for herein with respect to each such specific circumstance are intended to place Owner in the same economic position as it would have been in had the particular circumstance not occurred. Specifically, the Parties agree as follows:

   (1) the Delay Liquidated Damages provided herein are not a penalty, are fair and reasonable, and payment thereof would represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the specific circumstance associated with the Delay Liquidated Damage; and

   (2) in recognition of the acknowledgments above, the Design-Build Firm is expressly estopped from arguing, and waives any rights it may have to argue, that the Delay Liquidated Damages provided for herein are a penalty or that they are not enforceable.

The Delay Liquidated Damages set forth above shall constitute the only damages payable by the Design-Build Firm to Owner to compensate Owner for damages for the period of delay associated with the specific circumstance, regardless of legal theory. This limitation, however, is only intended to cover the period of delay during which the Design-Build Firm is permitted by Owner to continue performance to achieve Substantial
Completion or Final Completion, as applicable, and is not intended to limit or preclude Owner’s other remedies for breach specifically provided for in this Agreement, including Owner’s remedies associated with a termination of Design-Build Firm for default. The Parties acknowledge and agree that Owner’s damages associated with Design-Build Firm’s termination for default are not liquidated hereunder and that the additional remedies specifically provided for in this Design-Build Firm Agreement in the event of a termination for default are intended to address harms and damages which are separate and distinct from those which the Delay Liquidated Damages are meant to be a remedy for the period of delay prior to a termination for default.

J. Inexcusable Delays. Design-Build Firm acknowledges and understands that unexcused delay in achieving Substantial Completion of the Project will result in increased costs to Owner for extended services and performance of Owner’s management employees dedicated to management of the Project, Owner’s Program Manager, Owner’s Information Technology (“IT”) Personnel, Owner’s Migration Consultant, in the performance of their services relating to the Project, and other increased Project costs, such as insurance, temporary power, and the like, for which Design-Build Firm will be responsible to pay Delay Liquidated Damages for a period of inexcusable delay. Such costs have been taken into consideration in establishing the foregoing amounts of Delay Liquidated Damages.

K. Owner Changes to Scope of Services and/or Work. Owner may issue a Construction Change Directive to order a change to the scope of Services and Work, or to the Project Schedule. Design-Build Firm shall proceed with a change only after being directed to do so by Owner’s Construction Change Directive. Design-Build Firm warrants that it shall not proceed with any verbal or other request that would constitute a change to the scope of Services and Work included in the Approved Initial or Final GMP, as applicable, or to the Project Schedule, unless it has obtained Owner’s Construction Change Directive to do so, and complied with the following conditions to obtain formal Approval of the change. If Design-Build Firm considers a Construction Change Directive to require a change that warrants adjustment to Fees, the Initial or Final Guaranteed Maximum Price, as applicable, or to the Project Schedule, the Design-Build Firm must so notify Owner of not later than ten (10) Days following the date of issuance of Owner’s Construction Change Directive, and provide a detailed statement of the reasons why the Design-Build Firm believes the change warrants an adjustment, and the nature of the adjustment requested. Thereafter, the Parties shall promptly negotiate and, pending such negotiations and agreement in writing on any adjustment, Design-Build Firm shall not proceed with the change unless Owner expressly directs the Design-Build Firm in writing to do so thereafter. If Design-Build Firm fails to precisely follow these steps, Design-Build Firm shall be deemed to have waived its right to seek any adjustment. In the event of any Approved adjustment to the Initial or Final Guaranteed Maximum Price, as applicable, pursuant to a Construction Change Directive, Design-Build Firm shall use, as the basis for such adjustment, hourly rates no greater than the hourly rates established in the Design-Build Firm’s Hourly Rate Schedule attached hereto as Exhibit 13.
L. **Initial Guaranteed Maximum Price shall be a Limit on Final Guaranteed Maximum Price.** Design-Build Firm acknowledges and accepts that the total of all amounts Owner may pay to Design-Build Firm to complete the Project cannot and shall not exceed the Initial Guaranteed Maximum Price for the Project, as set forth in the Owner’s Request for Qualifications for the Project. The Final Guaranteed Maximum Price, and any adjustment that may be made by Owner to the Final Guaranteed Maximum Price, shall in no event exceed the Initial Guaranteed Maximum Price.

VIII. **Standard of Care, Representations and Warranties**

A. The Design-Build Firm hereby makes, and agrees Owner has entered into this Agreement based upon, and in reasonable reliance upon, the following representations, warranties and certifications:

1. **Familiarity with Project and the Sites.** Design-Build Firm has thoroughly reviewed the Request for Qualifications No: Q-16-007-DW for Design Build Phase II Service Center Project dated September 30, 2016 and the Request for Proposal No: P-16-007-DW dated November 18, 2016, the PMP, the Scope of Services and Design Criteria Package(s) for the Project, and visited and reviewed information available for each of the two sites. Design-Build Firm is thoroughly familiar with the local conditions under which the Services and Work are to be performed. Design-Build Firm has investigated and satisfied itself with respect to:

   a. the nature and locality where the Work is to be performed and the condition and difficulties to be encountered, including access thereto;
   
   b. the configuration and condition of the soil together with the character, quality and quantity of subsurface and surface materials or obstacles to be encountered;
   
   c. the availability of water, electricity or other utilities and access thereto;
   
   d. the type of equipment and facilities needed preliminary to and during performance of the Work;
   
   e. the availability of and need to make arrangements for Design-Build Firm’s purchase and use of materials, supplies and equipment;
   
   f. the conditions affecting transportation, disposal, handling and storage of materials, supplies and equipment;
   
   g. prevailing weather and climatological conditions as well as uncertainties of weather, river stages, or similar physical conditions at the jobsite; and
(h) any other factor(s) which may relate to the Sites for the Work, or otherwise affect Design-Build Firm’s performance of this Agreement.

(2) Design-Build Firm acknowledges that it is not entitled to rely upon or complain of any inaccuracies in any preliminary design related information in the DCPs, or the surveys and geotechnical reports, including those made available by Owner. Design-Build Firm has engaged its own geotechnical consultant and design professionals to evaluate such information and the Sites for purposes of evaluating the condition of the Sites, including any subsurface conditions therein, and any other risks that may affect or increase the difficulty of performance of this Agreement. DESIGN-BUILD FIRM ACKNOWLEDGES THAT ANY AND ALL TESTS, MAPS, REPORTS, AND DRAWINGS IN THE POSSESSION OF OWNER THAT REFLECT OR DEPICT SITE BOUNDARIES, RECORDED EASEMENTS, TOPOGRAPHY, UTILITY LOCATIONS, AND OTHER SITE CONDITIONS AND/OR RESTRICTIONS WHICH MAY IMPACT THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT WERE PREPARED SOLELY FOR OWNER’S BENEFIT AND FOR INFORMATION ONLY PURPOSES, AND THAT DESIGN-BUILD FIRM SHALL HAVE NO RIGHT TO RELY UPON SUCH AND THAT ANY RELIANCE THEREON SHALL BE AT DESIGN-BUILD FIRM’S OWN RISK. Design-Build Firm enters into this Agreement on the basis of its own examination, investigation and evaluation of the matters set forth above, and does not relying upon any representation of Owner or its agents or employees. Failure or refusal to properly or accurately consider and evaluate the factors set forth above shall not relieve Design-Build Firm from its responsibility to properly estimate the difficulty, cost and expense of performing this Agreement.

(3) Design-Build Firm has had an ample opportunity to examine all of the Contract Documents, including without limitation, the Drawings and the Specifications, and all information pertaining to the Work and the site of the Work and its surroundings. Prior to the submission of a GMP Proposal, Design-Build Firm will have again carefully examined all such information, and shall have also investigated the site of the Work to the degree that Design-Build Firm deems necessary and appropriate to fully acquainted itself with the scope of Work, the completeness of the design, the availability of materials, the presence of existing facilities (including underground utilities), the general topography, soil structure, subsurface or substructure conditions, or obstructions, adjoining property constraints, and all other conditions pertaining to related to the Work, the Site of the Work and its surroundings, and as necessary and appropriate to achieve a full understanding of the difficulties which may be encountered in performing the Work. Design-Build Firm acknowledges that SAWS has previously provided geotechnical analyses, including environmental findings and other information related to civil design, for each proposer, including Design-Build Firm, to consider and make an independent determination of the extent to which it would choose to rely upon such information or decide to undertake such additional investigation as it considered necessary in its professional judgment to submit its
proposal in response to the RFP and to develop GMP Proposal(s). Design-Build Firm understands and agrees that it is only entitled to rely upon such information to forego any additional investigation to the extent that it would be reasonable and prudent for a design professional to do so in the exercise of reasonable care under similar circumstances for the design of comparable facilities located in the vicinity of the Project. DESIGN-BUILD FIRM SHALL INCLUDE IN ITS GMP PROPOSAL(S) A REASONABLE AMOUNT AS DESIGN-BUILD FIRM CONTINGENCY FOR THE RISK OF ANY DIFFICULTIES OR CONDITIONS TO BE ENCOUNTERED AFTER DESIGN-BUILD FIRM COMMENCES CONSTRUCTION OF THE WORK, WHETHER OR NOT FORESEEABLE OR OBSERVABLE, WHICH MAY ADVERSELY IMPACT THE PERFORMANCE OR PROGRESS OF THE WORK OR COMPLETION OF THE PROJECT. DESIGN-BUILD FIRM AGREES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, THE OWNER DELIVERABLES, OR IN ANY REPRESENTATIONS, STATEMENTS OR OTHER INFORMATION MADE OR FURNISHED BY OWNER OR ITS REPRESENTATIVES, DESIGN-BUILD FIRM’S SUBMISSION OF ITS GMP PROPOSAL TO ESTABLISH A GMP FOR THE WORK SHALL CONSTITUTE DESIGN-BUILD FIRM’S REPRESENTATION TO OWNER THAT (i) DESIGN-BUILD FIRM HAS COMPLETED ALL ADDITIONAL INVESTIGATIONS NECESSARY OR APPROPRIATE TO FULLY EVALUATE SUCH RISK, (ii) DESIGN-BUILD FIRM HAS ESTABLISHED A REASONABLE DESIGN-BUILD FIRM CONTINGENCY FOR SUCH RISK IN THE GMP PROPOSAL, (iii) DESIGN-BUILD FIRM AGREES TO ASSUME SUCH RISK, (iv) DESIGN-BUILD FIRM SHALL REGARDLESS OF ANY CONDITIONS PERTAINING TO THE WORK, THE SITE OF THE WORK OR ITS SURROUNDINGS, COMPLETE THE WORK FOR THE GMP TO BE ESTABLISHED UNDER THIS CONTRACT NOTWITHSTANDING SUCH DIFFICULTIES OR CONDITIONS, AND (v) DESIGN-BUILD FIRM SHALL NOT BE ENTITLED TO REQUEST AN INCREASE IN THE GMP TO PAY FOR UNANTICIPATED COSTS TO OVERCOME ANY SUCH DIFFICULTIES OR CONDITIONS, TO THE EXTENT SUCH COSTS MAY CAUSE THE TOTAL OF ALL FEES AND COSTS OF THE PROJECT TO EXCEED THE GMP.

(4) Design-Build Firm’s Standard of Care. DESIGN-BUILD FIRM WILL PERFORM, OR CAUSE TO BE PERFORMED EXPEDITIOUSLY ALL SERVICES AND WORK REQUIRED HEREUNDER, AND IN NO EVENT LATER THAN IS REQUIRED TO CONFORM TO THE PROJECT SCHEDULE, AND DESIGN-BUILD FIRM SHALL DO SO WITH THAT DEGREE OF PROFESSIONAL SKILL AND CARE PRACTICED, AND IN ACCORDANCE WITH INDUSTRY STANDARDS CUSTOMARILY ADHERED TO, BY OTHER FIRMS EXPERIENCED IN THE PERFORMANCE OF SERVICES AND UNDERTAKINGS OF THE SAME
OR SIMILAR NATURE FOR OTHER SERVICE CENTERS AND FLEET
FACILITIES OF COMPARABLE VALUE.

(5) Design-Build Firm Personnel. All Design-Build Firm Personnel performing Services under this Agreement shall at all times be under Design-Build Firm’s exclusive direction and control and Design-Build Firm shall be responsible for proper supervision and examination of the performance of the Services and Work by the Design-Build Firm Personnel consistent with the requirements of this Agreement. Design-Build Firm Personnel assigned to the Projects shall possess sufficient skills and professional expertise as required to satisfactorily meet all obligations and requirements of this Agreement. Owner retains the right to reject or require Design-Build Firm to remove any Design-Build Firm Personnel who Owner determines in its sole judgment and discretion to fail to meet the standards for qualifications and performance established for performance of the Services hereunder. Owner hereby approves of the key positions listed on Design-Build Firm’s Staffing Plan (Exhibit 5) as the key positions to be occupied by Design-Build Firm Personnel, and Design-Build Firm’s assignments to such positions as shown thereon. Owner reserves the right to participate in the interview process and review resumes of all other Design-Build Firm Personnel who are being considered by Design-Build Firm for assignment to such key positions in the performance of Services hereunder. Design-Build Firm agrees that it will obtain the written consent of Owner and Program Manager prior to the assignment of any individual to such key positions for the performance of Services under this Agreement. Individuals of Design-Build Firm or Design-Build Firm Personnel assigned to such key positions shall not, without Owner’s prior written consent, be removed from their positions or reassigned except in the case of an employee’s voluntary or involuntary termination of employment, or due to serious illness, death, or a bona fide family emergency. Upon Design-Build Firm becoming aware of an individual’s imminent or actual vacancy from the Project for one of the foregoing reasons, Design-Build Firm shall notify Owner and Program Manager within three (3) Days of learning thereof.

(6) Familiarity with Applicable Laws, Rules, and Regulations. Design-Build Firm is knowledgeable of Applicable Laws and will diligently use all reasonable care to ensure that it and all its Design-Build Firm Personnel perform all of the Services and Work required hereunder in compliance therewith. Each of Design-Build Firm’s design submittals will be coordinated with all associated local, state, and federal agencies as required, including but not limited to City of San Antonio (CoSA), Texas Department of Licensing and Regulation (TDLR), Bexar County, Texas Department of Transportation (TxDOT), and Texas Commission on Environmental Quality (TCEQ), as applicable.

(7) No Material Change in Design-Build Firm’s Responses to Owner’s Requests Qualifications or Proposals. All information contained in Design-Build Firm’s Statement of Qualifications and Proposals, and all other information Design-Build Firm has furnished Owner in pursuit of this Agreement following Owner’s
Request for Qualifications Solicitation No: Q-16-007-DW for Design Build Phase II Service Center Project, dated September 30, 2016, and Owner’s Request for Proposals RFP# R-14-003-DD, dated November 18, 2016, including but not limited to Design-Build Firm’s statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, project approach, its ability to deliver the Project within the IGMP, and other qualifications are accurate and complete, and no material change in circumstances has occurred that would cause Design-Build Firm’s qualifications and proposal responses to be untrue or materially different than what was originally stated.

(8) Financial Ability, Insurance and Bonds. Design-Build Firm is financially solvent and possesses or is able to engage sufficient working capital to complete the Services as required by this Agreement. Design-Build Firm’s insurance policies and bonds are and will be maintained in the form required under the Owner’s Requirements of Insurance (Exhibit 14) and Design-Build Firm’s Bond Forms (Exhibit 8). Design-Build Firm’s insurance policies contain no exclusions or exceptions to coverage other than those allowed by Owner’s Requirements of Insurance (Exhibit 14). Design-Build Firm has submitted to Owner all policies of insurance, including all certificates of insurance, in strict accordance with the insurance requirements set forth in the Request for Qualifications for Design-Build Services Solicitation No: Q-16-007-DW, dated September 30, 2016 and in Owner’s Requirements of Insurance (Exhibit 14).

(9) Qualifications of Design-Build Firm Personnel. Design-Build Firm has taken into consideration the availability and adequacy of the types of personnel and prevailing wage scales relevant to the Project, and presently employs or is able to engage sufficient qualified and experienced Design-Build Firm Personnel as needed to perform the Agreement.

(10) General and Professional Licensing. Design-Build Firm and all Design-Build Firm Personnel and their respective employees and representatives hold in its and/or their names all current licenses and permits required to render the Services and Perform the Work required hereunder, and each of them is duly licensed as required by Applicable Law to perform the Services required hereunder. The Design-Build Firm’s design team includes LEED-certified professionals qualified to develop and administer all pertinent LEED requirements and stipulations to ensure the Project achieves the Minimum Certification Level, or other certification level as otherwise established by the Owner.

(11) Performance of Professional Services. Design-Build Firm has engaged the DPOR and other qualified professionals listed in Design-Build Firm’s Staffing Plan (Exhibit 5) as required for the performance of the professional design Services required herein. The Design-Build Firm certifies that the DPOR and all other professional consultants have been selected on the basis of demonstrated competence and qualifications in accordance with Section 2254 of the Texas Government Code.
(12) **Conflicts of Interest; Solicitation.** Design-Build Firm represents that it has advised Owner in writing of any past or present relationship or dealing between the Design-Build Firm, the DPOR, or Design-Build Firm Personnel and any third party, including competitors of Owner or Design-Build Firm, which could or could be perceived to impair or interfere with the their exercise of independent judgment and discretion in professionally and ethically rendering the Services and performing the Work for the sole benefit and enjoyment of Owner under this Agreement or which could cause Owner to change its evaluation of Design-Build Firm and the decision to enter into this Agreement with Design-Build Firm (“Conflict of Interest”). A Conflict of Interest shall be deemed to exist when, because of undisclosed activities or relationships with any a third party, Owner determines in its sole discretion that Design-Build Firm or the Design-Build Firm Personnel is/are unable to render impartial assistance, advice, or Services to Owner, or if the Design-Build Firm’s objectivity in performing the Services and the Work required hereunder is or might be otherwise impaired, or the Design-Build Firm gains an unfair advantage or receives undisclosed profits or benefits in addition to compensation for its performance of Services and Work under this Agreement. Design-Build Firm shall at all times during the performance of this Agreement remain free of any obligation of any kind to any person other than Owner where such obligation may cause or require Design-Build Firm to compromise or otherwise be in breach of its obligations to Owner, including without limitation its obligations with respect to proprietary rights and confidentiality and conflicts of interest. Design-Build Firm has not undertaken, and during the period covered by this Agreement, Design-Build Firm shall not undertake any relationship with any third party that could give rise to such a Conflict of Interest without the prior written consent of Owner. Design-Build Firm shall immediately advise Owner of any relationship that may give rise to a Conflict of Interest during the term of this Agreement. If Owner becomes aware of any such relationship through Design-Build Firm’s disclosure or otherwise, Owner shall have the option to terminate this Agreement in whole or in part without further liability to Design-Build Firm.

Design-Build Firm acknowledges that Owner adheres to the ethical requirements of the Charter of the City of San Antonio and its Ethics Code. Accordingly, no officer or employee of the San Antonio Water System shall have a financial interest, directly or indirectly, in any contract with the San Antonio Water System, or shall be financially interested, directly or indirectly, in the sale to the San Antonio Water System of any land, materials, supplies or service, except on behalf of the San Antonio Water System as an officer or employee. Design-Build Firm represents and certifies that it and its Design-Build Personnel, including the DPOR, and their respective officers, employees and agents are not members, officers or employees of the City or the San Antonio Water System or its Board. Design-Build Firm further represents and certifies that it has tendered to the San Antonio Water System all necessary disclosures and other documents in compliance with the City’s Ethics Code, including, without limitation, a Discretionary Contracts Disclosure Statement. Design-Build Firm agrees that
Owner has entered into this Agreement based upon, and that it is made in reasonable reliance upon, Design-Build Firm’s foregoing representations and certification.

The Design-Build Firm represents and certifies that it and its Design-Build Personnel, the DPOR, and their respective officers, employees and agents have not employed or retained any company or person other than a bona fide employee working solely for the Design-Build Firm, to solicit or secure this Agreement, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for the Design-Build Firm, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this covenant by Design-Build Firm, the Owner shall have the right to terminate this Agreement under the provisions of Section XVII.A below, in addition to Owner’s other rights and remedies under this Agreement.

Design-Build Firm and all Design-Build Firm Personnel shall report any suspected ethics violations impacting Owner by calling the Owner’s ethics hotline number, which is 1-800-687-1918.

(13) Protection of Confidential Information. All Owner’s information is confidential and shall be protected by Design-Build Firm and the Design-Build Firm Personnel, unless otherwise communicated by Owner in writing to Design-Build Firm. Design-Build Firm shall ensure that all Design-Build Firm Personnel execute and comply with the same form of Confidentiality Agreement in favor of Owner, obligating them to similarly protect Owner’s proprietary information in accordance with the terms and conditions of this paragraph and such Confidentiality Agreement (Exhibit 15). Owner has a proprietary interest in this Agreement and in the advisory and consulting services provided by Design-Build Firm. Accordingly, this Agreement, the Services, and any information obtained by Design-Build Firm through Owner in connection with its performance hereunder shall not be disclosed to any third party. In the event Design-Build Firm or Design-Build Firm Personnel is/are or may be subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Design-Build Firm in the performance of this Agreement, Design-Build Firm shall provide written notice to Owner of the request along with a copy of the request, and give Owner the opportunity to respond to the request prior to its release by Design-Build Firm. In no event shall Design-Build Firm or Design-Build Firm Personnel provide or participate in any public presentations or prepare or present any papers for public dissemination concerning any Project, or with information obtained in connection with any Project, without receiving the prior written Approval from the Owner, which Approval may be withheld in the sole and absolute discretion of the Owner. Design-Build Firm represents that it has at all times remained, and required and caused the Design-Build Firm Personnel to remain, in compliance with the requirements of this provision, has not disclosed
to third Parties any information concerning any Project, and will not do so without Owner’s prior written consent.

(14) Execution of Agreement Duly Authorized. Design-Build Firm’s execution and adoption of this Agreement has been duly authorized, approved and/or ratified, as set forth in the Resolution in Support of Construction Agreement, signed by Design-Build Firm’s members or its governing board of directors, confirming the authority of the person executing this Agreement on behalf of the Design-Build Firm to bind the Design-Build Firm to this Agreement (Exhibit 16).

(15) Compliance with Applicable Laws. Design-Build Firm warrants that all Services and Work shall be performed in strict compliance with all Applicable Laws and regulations and all other laws and regulations dealing with employer-employee relations, including, as amended, the “Fair Labor Standards Act” of 1938, the “Walsh-Healy Act,” and “Nondiscrimination in Employment,” Executive Order No. 11246 of September 24, 1964, and all code laws and regulations required to be incorporated in a contract of this character are hereby incorporated herein by reference. Compliance with the above shall include the adoption of all programs, making of all certifications and filing of all reports as required thereby. All terms required by any of the foregoing are hereby incorporated herein by reference. Design-Build Firm shall execute and deliver to Owner such documents as may be required to effect or evidence compliance.

(16) Workforce/Employee Composition. It is the policy of the Owner to assist in increasing the competitiveness and qualifications of Small, Minority and Women-Owned Businesses (“SMWB”) to afford greater opportunity for such groups to obtain and participate in Owner’s contracts. Design-Build Firm agrees to comply with its Good Faith Effort Plan (Exhibit 12). Design-Build Firm shall maintain records of all SMWB contracts and programs applicable to this Project, and shall submit a vendor/subcontractor report form to the Owner when submitting any Applications for Payment to the Owner. Owner acknowledges that the DPOR and its subconsultants identified in Design-Build Firm’s Good Faith Effort Plan, are non-signatories to this Agreement, provided, however, Design-Build Firm shall remain responsible for requiring all its Subcontractors, including the DPOR and the DPOR’s subconsultants to submit monthly subcontractor payment information utilizing the Subcontractor Payment and Utilization Reporting (S.P.U.R.) system, as required by the RFP, which shall remain an ongoing obligation hereunder, and to comply with any other obligation of this Agreement that expressly requires compliance by any entity that is a party to an agreement with the Design-Build Firm that relates to such party’s performance of any of the Work and Services required for this Project.

represents that it will comply with the Prevailing Wage Schedule (Exhibit 17).
Design-Build Firm, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Design-Build Firm agrees it will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This provision shall be included in its entirety in all agreements with Design-Build Firm Personnel entered into by the Design-Build Firm or by any lower tier contractor or subcontractor employed on the Project. Design-Build Firm shall use Owner’s LCP Tracker software system, a web-based system to track certified payrolls for prime and subcontractors. Each of Design-Build Firm Personnel who are independent contractors shall submit certified payrolls and labor compliance documentation electronically utilizing the LCP Tracker web-based application as of the first Certified Payroll Report (“CPR”) and with every CPR thereafter. Each such independent contractor will be provided with a logon identification and password to access Owner’s LCP Tracker reporting system. Training on the use of the system will be coordinated by Owner through the use of the LCP Tracker telephone support and online webinars. Electronic submittals will require data entry of weekly payroll information; employee identification, labor classification, total hours worked and hours worked on the Project, wage and benefit rates paid, etc. This electronic submission requirement also applies to all such independent contractors. Additional information on the LCP Tracker Software can be found at www.lcptracker.com.

(18) Royalties and Licenses to Use Intellectual Property. Design-Build Firm shall ensure that Owner shall have a non-exclusive right to use all software used in the planning, design, construction, maintenance, operation and use of the Project at no additional cost to Owner. Design-Build Firm shall pay all royalties and license fees due in connection with the Services. Design-Build Firm warrants that neither the Services nor use of Design-Build Firm’s Work Product will infringe any patent or other proprietary right. Design-Build Firm shall provide to Owner the Design-Build Firm’s proprietary information, data or systems used for, and hereby grants to Owner a license to enable Owner to use the same in connection with, the delivery, operation, use and/or maintenance of the Project, which license is non-exclusive and perpetual. Design-Build Firm shall, through agreement with the developer of any proprietary software system used by Design-Build Firm for the performance of the Services and Work, transfer of a non-exclusive right to use such software to the Owner without any limitation of Owner’s right of use thereof at no additional cost to Owner.

(19) Independent Contractor Status of Design-Build Firm. In performing the Services, Design-Build Firm shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Owner.
(20) Thorough and Careful Review of Construction Documents, Project Schedule and other Contract Documents. Before starting each portion of the Work, and throughout the performance of the Work, the Design-Build Firm shall carefully study and compare the various Construction Documents and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work, and shall investigate and observe any conditions at the Worksite that may affect performance of the Work. Such review and comparison shall be managed for the accomplishment of the Work in a manner that it is in accordance with the requirements of the Contract Documents and the DCP. These obligations are for the purpose of assuring the completeness, suitability and accuracy of the Construction Documents; any errors, inconsistencies or omissions discovered by the Design-Build Firm shall be reported promptly to the Owner and Program Manager. The Design-Build Firm shall be liable to the Owner for the costs of correcting and any damages resulting from errors, inconsistencies or omissions in the Contract Documents that Design-Build Firm should have avoided, discovered and reported, in the exercise of the Standard of Care, for which the Design-Build Firm may make use of Design-Build Firm’s Contingency with Owner’s Approval in accordance with Section IX.I. Design-Build Firm shall ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any non-conformity discovered, or which, in the exercise of the Standard of Care, reasonably should have been discovered, by the Design-Build Firm, or which is made known to the Design-Build Firm shall be reported promptly to the Owner and Engineer. Following commencement of the Work, the Design-Build Firm and its Design Build Firm Personnel, as appropriate, shall continue to evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

i. the location, condition, layout and nature of the Worksite and impact to the Worksite by surrounding areas;

ii. generally prevailing climatic conditions;

iii. anticipated labor supply and costs;

iv. availability and cost of materials, tools and equipment; and

v. other similar issues.

(21) Title to Goods, Materials, Equipment and Work. The Design-Build Firm warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. All Work specially fabricated for the Project shall be identified to this Contract as the property of Owner no later than the time of any payment made therefor, including any such Work constituting goods not yet delivered to the Worksite. The Design-Build Firm further warrants that upon submittal of its Application for Payment, all Work is and shall remain
free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Build Firm and any Design-Build Firm Personnel, or other persons or entities who might otherwise have any Claim by reason of having provided labor, materials and equipment relating to the Work.

(22) **Authority to Enter into Agreements; Legal Establishment of Business Entities.**

The Design-Build Firm, and all Design-Build Firm Personnel, with respect to their portions of the Services and the Work, are fully authorized to assume their contractual obligations to perform the same, and that each of them, with respect to its portion of the Services and the Work, is fully licensed, certified and authorized to perform the same as contemplated by the Contract Documents and any other Work performed on the Project, and will provide evidence of the same to Owner upon request. Neither the execution and delivery of this Agreement by Design-Build Firm nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, of any partnership agreement by which Design-Build Firm is bound, or any agreement, including a “Company Agreement” as defined under the applicable Texas Statutes, by which Design-Build Firm is bound, nor will it result in conflict with any order or decree of any court or governmental instrumentality relating to Design-Build Firm.

Each of the Design-Build Firm and the Design-Build Firm Personnel:

- if a corporation or limited liability company, is duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, having all necessary corporate power and having received all necessary corporate approvals required to execute and deliver their respective contracts (including this Agreement), and each of the individual signing such contracts (including this Agreement) has been duly authorized to act for and bind the entity for whom such signature is made; or

- if a joint venture, partnership, limited partnership, or limited liability partnership, has all necessary partnership power and has secured all necessary approvals to execute, deliver and perform all the obligations assumed under such contracts (including this Agreement) as such entity. The individual executing this Agreement on behalf of Design-Build Firm, and the individual executing any agreement with Design-Build Firm to assume any obligation under this Agreement, has been duly authorized to act for and bind its applicable principal(s), who shall be jointly and severally liable to SAWS for the performance of this Agreement.

(23) **Taxes and Federal Compliance.**

Design-Build Firm, whether a corporation, partnership, or sole owner, is current on its property taxes. If commercial personal property is located in any jurisdiction in Texas, current renditions of
these properties have been filed with the Chief Appraiser, as required by Chapter 22, Section 22.01, of the “Texas Property Tax Code,” and Design-Build Firm is current on all applicable ad valorem taxes owing to the appropriate jurisdiction. Design-Build Firm certifies it is not presently debarred, suspended for debarment, declared ineligible, or excluded from covered transactions by any Federal department or agency.

(24) **Worksite Conditions.** Design-Build Firm represents it has been provided unrestricted access to the existing improvements and conditions at the Worksites. To the extent Owner has furnished any information related to the Worksites, Design-Build Firm acknowledges and accepts that such information may not be accurate and that Design-Build Firm is not entitled to rely upon same to determine the Worksites’ conditions or the accuracy of any grades, elevations, dimensions, underground utilities (both public and private), or locations shown in such information. Design-Build Firm represents it has investigated all Worksite conditions and the general local conditions affecting the Work. The Design-Build Firm has relied and shall continue to rely solely upon its own investigation of the Worksites in preparing its Initial GMP proposal and Final GMP Proposal. Design-Build Firm shall not make or be entitled to claim any adjustment to the Project Schedule or the Initial or Final GMP arising from Worksite conditions actually encountered which differ from those anticipated. Design-Build Firm assumes full and complete responsibility for any conditions pertaining to the Work, the Worksites or their surroundings and all risks in connection therewith, notwithstanding anything in any of the Contract Documents or in any representations, statements or information made or furnished by Owner or its representatives.

IX. Design-Build Firm’s Compensation

A. **Initial Guaranteed Maximum Price.** The Initial Guaranteed Maximum Price for all Services and Work required under this Agreement, inclusive of the Design Services Fee and the Construction Services Fee, both as fixed below, is established in the amount of Seventeen Million Seven Hundred and Ten Thousand Nine Hundred and Twenty Seven and NO/100 Dollars ($17,710,927.00).

(1) **Design Services Fee.** Design Services Fee is a fee that is fixed at the time of this Agreement, in the amount of Nine Hundred and Twenty Two Thousand Two hundred and Ninety Nine and NO/100 Dollars ($922,299.00). The Design Services Fee covers all administrative, supervisory, and management personnel costs, and all direct overhead, and other on-site and off-site costs and expenses to be incurred by the Design-Build Firm in the performance of Design Services, as identified on the Pricing Schedule (Exhibit 3).

(2) **Construction Services Fee.** Construction Services Fee is a fee that is fixed at the time of this Agreement, in the amount of Two Million Three Hundred and Sixteen Thousand and Eighty Five and NO/100 Dollars ($2,316,085.00).
The Construction Services Fee covers all administrative, supervisory, and management personnel costs, and all direct overhead, and other on-site and off-site costs and expenses to be incurred by the Design-Build Firm, including the General Administrative Fee, in the performance of Construction Services, as identified on the Pricing Schedule (Exhibit 3). Any allowable general conditions costs associated with the performance of Construction Services shall be included only in the Construction Services Fee as shown on the Pricing Schedule (Exhibit 3), and not in the Cost of the Work.

B. Estimating the Final GMP during Design Phase. Prior to submitting its Final GMP Proposal, the Design-Build Firm shall review with Owner on an ongoing basis the Design-Build Firm’s submissions of updated Control Estimates of the Final GMP, showing changes to each of the following:

1. total pricing, with a breakdown of the allowable general conditions (as listed in Exhibit 3) and all items comprising the Cost of the Work for the Project, including all materials and labor, organized by trade, and including Approved Allowances and any taxes not avoidable by exemption;

2. total of all Fees earned and remaining to be earned for the performance of this Agreement; and

3. the amount of the Design-Build Firm’s Contingency for the Construction Phase, showing how it is allocated or distributed among the Cost of Work items.

All the foregoing shall be based upon the scope of the Services and Work, and the Project Schedule, and shall state the Design-Build Firm’s reasonable assumptions, qualifications, and other matters relevant to the establishment of the Final GMP, and the monetary amounts attributable thereto.

C. Design-Build Firm’s Fees Fixed in Initial GMP. The Design-Build Firm’s Fees are fixed and included in the Initial GMP, and cover and include all its costs and expenses to perform the Services and Work required by this Agreement, including without limitation those shown on the Pricing Schedule (Exhibit 3) and the following:

1. All Design and Construction Services;

2. Related Expenses;

3. Expenses to provide a fully equipped and functioning on-site office for Design-Build Firm’s use commencing no later than 30 Days from the issuance of an Owner’s Notice to Proceed with the Construction Phase. Such office shall include reasonable and fully equipped and functioning office space for use by Owner and Program Manager;

4. Expenses for all Home Office support, hardware, software, and licenses for the use thereof as required hereunder;
(5) Expenses for all equipment, computers, software, land line telephones, mobile phones, or other communication needs, all operating supplies and consumable, and other office facilities, including the cost of relocation thereof to the Sites for the duration of this Agreement;

(6) All costs related to administration of costs; and

(7) All costs of travel and subsistence in the performance of this Agreement; Design-Build Firm Personnel’s travel outside of San Antonio or their respective Home Office bases in the performance of this Agreement shall require advance Approval and shall be in conformity to Owner’s published reimbursement policies.

D. Time for Submission of Design-Build Firm’s Final GMP Proposal. Upon completion of the Construction Documents Phase, or earlier if the Parties agree that the design of the Project is sufficiently developed to enable Design-Build Firm to do so, the Design-Build Firm shall submit its final Control Estimate. Once all required items are submitted in accordance with Section III.B(1)(e) and all such Items are reviewed and Approved by the Owner and Program Manager, the Design-Build Firm shall, within 20 Days thereafter in accordance with Exhibit 11 (Contract Data Requirements List), submit the Design-Build Firm’s Final GMP Proposal to Owner, which shall be based on competitive bids received from Subcontractors for the Project and which shall not exceed the Initial GMP established by this Contract.

E. Time for Evaluation and Acceptance of Design-Build Firm’s Final GMP Proposal. Design-Build Firm shall state in the GMP Proposal any schedule constraints or assumptions that may be impacted with the passage of time pending Owner’s evaluation of and negotiations related to the GMP Proposal. Design-Build Firm’s GMP Proposal shall be provided to Owner such that Owner shall have at least 10 days of time for evaluation and negotiation of a Contract Amendment related to the GMP Proposal without impact to the scheduling constraints or assumptions stated in the GMP Proposal.

F. Negotiation of the Final GMP Proposal. The Final GMP Proposal shall include the same level of detail as the Design-Build Firm’s prior Control Estimates, and shall also include proposed dates for Owner’s Notices to Proceed with each Stage of the Project, the Scheduled Date of Substantial Completion, and the Scheduled Date of Final Completion, and any proposed adjustments to the Project Schedule to take into account reasonable periods of time for Owner Approvals of the Construction Documents and approvals of governmental authorities. The Design-Build Firm’s Final GMP Proposal shall be presented in accordance with the requirements of Exhibit 7 (Form of Final GMP Proposal), and shall include all Drawings, Specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other supporting documents relevant to the establishment of the Final GMP at the time of the Final GMP Proposal, which shall fully describe the Project. The Final GMP Proposal and its supporting documents shall be deemed complimentary and any ambiguity or conflict between or among them shall be resolved by the interpretation that provides Owner the higher quality. The Design-Build Firm’s Final GMP Proposal shall constitute an offer to complete the Project in
accordance with this Agreement for the Final GMP proposed therein; such offer shall not be withdrawn for ninety (90) Days following its submission to Owner for negotiation. If the Parties cannot agree on a Final GMP within such period, or agree in writing to extend such period, the Parties shall proceed to close out all current obligations between them and terminate the further performance of this Agreement. If the Parties agree upon a Final GMP for the Project, then the agreed Final GMP shall be confirmed by Contract Amendment to supersede the Initial GMP, and to become the GMP for the Project, subject only to Owner’s issuance of Notice to Proceed for commencement of the Construction Phase.

G. Design-Build Firm’s Final GMP to be Maximum Compensation. The Final GMP shall constitute the limit on the Owner’s obligation to pay for the Cost of the Work, Fees, and other costs and expenses to be incurred by Design-Build Firm in the performance of this Agreement. The Final GMP shall supersede the Initial GMP, to become the GMP for the Project. Any costs that exceed the Final GMP shall be borne solely by the Design-Build Firm without reimbursement or additional compensation by the Owner. Following establishment of the Final GMP, Design-Build Firm shall document and report monthly to Owner the value of all subcontracts, purchase orders and other cost commitments affecting the actual Cost of the Work for comparison to that shown in the Final GMP. Owner shall be provided reasonable opportunity to examine and give input into Design-Build Firm’s evaluation and selection of bids and proposals for subcontracting packages and purchase orders. All supporting documentation reflecting the amount of Fees earned shall be reviewed with the Owner and Program Manager on a quarterly basis.

H. Allowances for Certain Materials and/or Equipment. To the extent the Initial GMP includes Allowances to supply certain materials and/or equipment to be installed in the Project:

1. Allowances in the Initial GMP shall include the actual cost to Design-Build Firm of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, and all labor and other costs to ship, unload and handle at the Site, and install such items, including all overhead, profit and other expenses therefor. If the actual cost for such items will exceed the Allowance therefor, the Design-Build Firm shall suspend the order for such items until it has obtained Owner’s determination of whether to issue a Construction Change Directive to adjust the Final GMP for such increased cost. Unless otherwise Approved, there shall be no Allowances in the Final GMP other than the Allowance relating to Owner’s dispute resolution costs, pursuant to Section IX.k, below.

2. Design-Build Firm shall obtain Owner’s Approval of orders for materials and equipment to be procured under an Allowance within such time as is specified by Design-Build Firm in writing to be reasonably necessary to avoid delay in the Work and to control the Cost of the Work.

3. Only Approved amounts of Allowances shall be part of the Cost of the Work and the GMP for the Project. At Final Completion, a Contract Amendment
shall be used to adjust the Final GMP to include only the amounts of Allowances that Owner has Approved to be expended in the performance of this Agreement, and exclude any amounts thereof that were not so Approved.

I. Design-Build Firm’s Contingency to be Included in Final Guaranteed Maximum Price. The Design-Build Firm’s Contingency proposed for the Work shall be separately designated as such in the Final Guaranteed Maximum Price Proposal as a reasonable allowance for any costs not constituting significant and material changes in the scope of the applicable Work and related costs that could not, in the exercise of the Standard of Care, be anticipated to arise out of further design development and completion of the Construction Documents at the time of the Design-Build Firm’s submission of the Final Guaranteed Maximum Price Proposal. Owner’s approval of the use of the Design-Build Firm’s Contingency shall not be unreasonably withheld; provided, however, Owner is entitled to withhold its approval if such costs must be incurred because the Design-Build Firm has negligently failed to fulfill its obligations to Owner under this Agreement, in which case the Design-Build Firm shall bear such costs at its expense. Only the amounts of Design-Build Firm’s Contingency that are expended with Owner’s approval shall be charged to Owner as a Cost of the Work. At Final Completion, a Contract Amendment shall be used to adjust the Final GMP to include only the amounts of the Design-Build Firm’s Contingency of any Allowances that Owner has Approved to be expended in the performance of this Agreement, and exclude any amounts thereof that were not so Approved.

J. Limitation on Final GMP. Design-Build Firm acknowledges and understands that, while Owner’s Board has appropriated funding only up to the Initial GMP, to cover all of Owner’s payment obligations in connection with the Project, in no event shall the Owner have any payment obligations in excess of the Final GMP, which is expected to be less than and shall supersede the Initial GMP. Design-Build Firm’s entitlement to any payment in excess of the Initial GMP is subject to and contingent upon appropriation of additional sums by the Owner’s Board in accordance with Section XX.H.

K. Dispute Resolution Costs of Owner. Design-Build Firm shall include in the Initial and Final GMP an Allowance of $25,000.00 to be available for Design-Build Firm to issue payment to the Dispute Review Board Members and/or Mediator for Owner’s share of any reasonable and necessary dispute resolution costs upon Design-Build Firm’s receipt of Approval of the invoice of the Dispute Review Board Members and/or Mediator, as applicable. Design-Build Firm shall promptly issue payment of such invoices for Owner’s share of such dispute resolution costs to the Dispute Review Board Members and/or Mediator, as applicable, upon Approval. Payment of Owner’s share of any such Approved dispute resolution costs shall be considered a reimbursable cost to be invoiced to Owner and paid by Owner in accordance with the terms of this Agreement. For the avoidance of doubt, such allowance does not represent funding the Design-Build Firm may claim it is entitled to use to offset any cost for performance of any Services or Work if the allowance is not require or used, such allowance being set aside exclusively for the Owner’s use and benefit.
L. **Taxes.** Design-Build Firm acknowledges and agrees that Owner is a local government entity that qualifies for exemption from state and local sales tax. Owner will, upon request by the Design-Build Firm, furnish the Design-Build Firm with a tax exemption certificate, whereupon Design-Build Firm shall appropriately obtain and fully utilize such certificate, and shall not invoice or charge Owner for taxes avoidable by exemption. It is the Design-Build Firm’s responsibility to claim exemption from payment of applicable state and local sales taxes by complying with such procedures as may be prescribed by the Texas State Comptroller of Public Accounts. This Agreement separates the cost of materials and tangible equipment from skill, labor and other associated costs of construction. This is in accordance with the Texas Tax Code to allow tax exemption on the Contract price for materials. Certain construction equipment that is owned or rented by the Design-Build Firm and its Design-Build Firm Personnel may be subject to State and Local Sales Tax. The Design-Build Firm has not included in the Initial GMP, and will not include in the Final GMP or any modification thereto, any amount for sales, use or similar taxes for which Owner is exempt.

X. **Safety of Persons and Property**

A. Design-Build Firm shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to property.

1. Such precautions shall protect:
   
   (a) Design-Build Firm Personnel on or in the vicinity of the Worksite and all other persons that may be affected thereby;
   
   (b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Design-Build Firm and the Design-Build Firm Personnel, and including any portion of the Work that may be occupied or used by Owner prior to Final Completion and transfer of the risk of loss to Owner; and
   
   (c) Other property at the Worksite or adjacent thereto, such as trees, shrubs, lawns, walks, groundwater sources, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

2. Design-Build Firm shall give notices and comply with Applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss.

3. The Design-Build Firm shall, in accordance with Approved site plans and Applicable Laws pertaining to construction safety on the Worksite, erect and maintain reasonable safeguards for safety and protection, including posting of danger signs and other warnings or barriers to protect against, and to appropriately notify owners and users of adjacent sites and utilities of, safety hazards. The Design-Build Firm shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements
therein against loss or damage that may arise from the Design-Build Firm’s operations, the reasonable cost of which shall be included in the Cost of the Work. Any damage to such property or improvements shall be promptly repaired by the Design-Build Firm at its expense.

(4) Use or storage of explosives or other hazardous materials or equipment or unusual methods that are necessary for execution of the Work shall require advance Approval, in which event the Design-Build Firm shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Design-Build Firm shall give the Owner and Program Manager reasonable advance notice of the presence or use of such materials, equipment, or methods.

(5) The Design-Build Firm shall, in addition to any other of its obligations with respect thereto, promptly remedy any damage and loss to property caused in whole or in part by Design-Build Firm or Design-Build Firm Personnel, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

(6) Design-Build Firm shall be responsible for institution and enforcement of appropriate safety measures for the prevention of accidents at the Worksite.

(7) The Design-Build Firm shall not endanger the safety of the construction or the Worksite while conducting or permitting others to conduct loading or off-loading activities.

(8) When all or a portion of the Work is suspended for any reason, the Design-Build Firm shall do all things necessary to protect the Project, the Owner’s premises and all persons from damage and injury.

(9) The Design-Build Firm shall promptly report in writing to the Owner and Program Manager all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Program Manager. Design-Build Firm shall at its own expense cooperate with Owner’s request to consider the appropriateness of and establish as appropriate a joint defense agreement to enable the Parties to conduct joint investigation of such an accident.

(10) Design-Build Firm may, by written subcontract, delegate primary safety responsibility to its Design-Build Firm Personnel; provided, however, such delegation shall in no way diminish Design-Build Firm’s responsibility for safety on the Project, the Design-Build Firm’s duty to immediately and at all times require its Design-Build Firm Personnel to comply with applicable safety requirements, the Design-Build Firm’s regulatory responsibility under the Occupational Safety and Health Act or the regulations promulgated to enforce the same, or Design-Build Firm’s obligations to indemnify, defend and hold the
Owner Indemnitees harmless from liability arising out the Work in accordance with Article XI.

(11) Design-Build Firm is responsible for reviewing all emergency management plans included in the Safety Policy prepared for the Project and for obtaining Approval prior to commencing any Work in any area that Design-Build Firm knows or should know to contain asbestos or other hazardous materials. Design-Build Firm agrees that it shall not transport to, use, generate, dispose of, or install at the Worksite any Hazardous Substance, except in accordance with applicable environmental laws. Further, in performing the Work, Design-Build Firm and Design-Build Firm Personnel shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable environmental laws. In the event Design-Build Firm wishes to conduct any inspection or testing at the Project, it shall ensure that Owner is properly notified and gives Approval thereof.

(12) Owner may, in its sole discretion, at any time, order in writing a temporary stand-down of Design-Build Firm’s performance of the Services (“Safety Stand-Down Order”) as a result of any one or more Safety Incidents, whereupon Design-Build Firm shall immediately direct all Design-Build Firm Personnel to stop all Services and Work and to require Design-Build Firm to conduct a comprehensive review of Design-Build Firm’s safety management plan and any Site conditions affecting safety at any Project Site, for the purpose of (i) identifying any safety hazards and unsafe working conditions, (ii) conducting safety training of the Design-Build Firm Personnel involved in performance of the Services who were or may have been exposed to harm in connection with such Safety Incident(s), and (iii) taking any corrective action that Design-Build Firm determines to be necessary and appropriate to fulfill its obligations in accordance with this Agreement. Upon receipt of Owner’s Safety Stand-Down Order, Design-Build Firm shall not resume performance of the Services and Work until it has issued to Owner a written report, which shall be due within forty-eight (48) hours of the receipt of Owner’s Safety Stand-Down Order, detailing the course of action that Design-Build Firm has taken, or plans to take, to resolve the Safety Incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with Owner, Design-Build Firm shall, in the exercise of the Design-Build Firm’s reasonable judgment, propose the date by which Design-Build Firm will complete all corrective action. Services and Work shall resume only upon Owner’s delivery of further written notice to Design-Build Firm withdrawing the Owner’s Safety Stand-Down Order, which notice of withdrawal shall not be issued until the Owner is reasonably satisfied that Design-Build Firm has sufficiently implemented all appropriate corrective action as necessary to enable Design-Build Firm to safely resume Services and Work, fulfill its contractual obligations set forth in this Agreement, and thereby avoid recurrence of the Safety Incident(s). Design-Build Firm shall not be entitled to an adjustment of the Design-Build Firm’s compensation, or the Project Schedule, as the result of
Owner’s issuance in good faith of a Safety Stand-Down Order. If Design-Build Firm fails to implement the corrective action in the manner proposed by Design-Build Firm and determined by Owner to be reasonably acceptable, such failure shall be deemed a material breach of this Agreement and Owner may, without further notice, terminate this Agreement for cause. In responding to any Safety Stand-Down Order, Design-Build Firm’s evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to this subsection, and nothing herein shall be construed or interpreted to mean that Owner has assumed or agreed to assume any duty of care to the Design-Build Firm Personnel, or to provide guidance or instruction as to the Design-Build Firm’s means and methods for managing safety as required by this Agreement. Any action taken by Owner hereunder to enforce Owner’s rights to require Design-Build Firm to fulfill its safety obligations under this Agreement shall be deemed to be undertaken solely for the purpose of fulfilling Owner’s contractual expectation of results in terms of delivery of the Projects without causing injury or harm to persons or property.

(13) In the event Design-Build Firm encounters on the Worksite any significant Worksite Finds or Hazardous Substances, or what Design-Build Firm may reasonably believe to be Hazardous Substances existing on, at or near the Worksite, or at risk of being introduced into the environment as a result of the performance of the Work, and the presence of which is contrary to Design-Build Firm’s site evaluation, Design-Build Firm shall immediately stop the Work in the area affected and report the condition to Owner and Program Manager in writing, and, if required by Applicable Law, to the appropriate governmental regulatory authorities. The Work in the affected area shall not thereafter be resumed except by written authorization of Owner and Program Manager if in fact Worksite Finds or Hazardous Substances have been encountered, the presence of which have not been resolved, managed or rendered harmless, as applicable. Design-Build Firm shall be responsible for the consequences of any failure to stop Work under this Section 2.A(13).

(14) Design-Build Firm shall be responsible to resolve, manage, remediate and/or render harmless any Worksite Finds or Hazardous Substances, the presence of which it knew or should have known prior to execution of this Agreement, or any Contract Amendment establishing the Final Guaranteed Maximum Price, and shall not resume Work in any area affected by Worksite Finds or Hazardous Substances until such time as the same have been resolved, managed and/or remediated and/or rendered harmless, as applicable.

(15) It is the Design-Build Firm’s responsibility to comply with all requirements of this Agreement relating to any Worksite Finds or Hazardous Substances based on Applicable Law in effect at the time the Services and Work are rendered and to comply with any amendments to Applicable Law pertaining to such matters for all Services and Work rendered after the Effective Date.
XI. Indemnity, Insurance and Liability

A. General Indemnity. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN EFFECT AS OF THE EFFECTIVE DATE, DESIGN-BUILD FIRM AND ALL DESIGN-BUILD FIRM PERSONNEL SHALL FULLY DEFEND, INDEMNIFY AND SAVE HARMLESS OWNER AND ITS OFFICERS, DIRECTORS, BOARD MEMBERS, EMPLOYEES AND AGENTS (HEREINAFTER COLLECTIVELY AND SEVERALLY REFERRED TO AS "OWNER INDEMNITEES") FROM AND AGAINST ALL LOSSES, EXPENSES, LIENS, CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER, FOR INJURY TO OR DEATH OF ANY THIRD PARTY PERSONS (INCLUDING BUT NOT LIMITED TO THE DESIGN-BUILD FIRM PERSONNEL AND EMPLOYEES OF OWNER INDEMNITEES) AND/OR DAMAGE TO ANY PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY BELONGING TO THE DESIGN-BUILD FIRM PERSONNEL AND OWNER INDEMNITEES) AND/OR ANY OTHER LIABILITY, DAMAGES, FINES OR PENALTIES (EXCEPT WHERE REIMBURSEMENT FOR FINES OR PENALTIES IS PROHIBITED BY APPLICABLE LAW), INCLUDING ALL COSTS OF DEFENSE, ATTORNEY’S FEES AND SETTLEMENTS ARISING OUT OF OR IN ANY WAY CONNECTED WITH DESIGN-BUILD FIRM’S AND/OR ALL DESIGN-BUILD FIRM PERSONNEL’S NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF ITS OBLIGATIONS HEREUNDER, OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SERVICES AND WORK OR THE PERFORMANCE OR FAILURE TO PERFORM THE SERVICES AND WORK, INCLUDING ALL OF THE FOREGOING TO THE EXTENT CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH THE CONCURRENT, BUT NOT SOLE, NEGLIGENCE OF AN OWNER INDEMNITEE. THE OBLIGATIONS OF DESIGN-BUILD FIRM HEREUNDER SHALL SURVIVE TERMINATION OF THIS AGREEMENT FOR ANY REASON. THE FOREGOING NOTWITHSTANDING, IT IS AGREED THAT, WITH RESPECT TO ANY STATUTORY RESTRICTIONS AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREIN, IT SHALL BE SUBJECT TO SUCH RESTRICTIONS, AND THE INDEMNIFICATION AND DEFENSE OBLIGATIONS HEREIN SHALL BE DEEMED TO BE AMENDED, TO THE MINIMUM EXTENT NECESSARY TO CONFORM THEREWITH, AND SHALL OTHERWISE CONTINUE IN FULL FORCE AND EFFECT.

B. Other Indemnity and Defense Obligations of Design-Build Firm Personnel. Design-Build Firm shall notify Owner and Program Manager immediately upon knowledge of circumstances indicating a Claim has arisen, or is likely to arise, out of Design-Build Firm’s operations related to the performance of this Agreement. In addition Design-Build Firm shall indemnify, defend and hold the Indemnified Parties harmless from and against any and all Claims due to or arising out of the duty of the Design-Build Firm,
hereby assumed, and the Design-Build Firm Personnel, who shall be required to the duty to their failure to:

(1) Observe, and to not infringe upon, misappropriate, or violate any trade secret, copyright, trademark, trade name, service mark, patent or other intellectual or intangible property right in connection with this Agreement. Design-Build Firm shall, at its sole cost and expense, defend the Owner Indemnitees against, hold them harmless from, and indemnify, pay and discharge them in all suits, actions and proceedings for any actual or alleged infringement caused or permitted by Design-Build Firm’s acts or omissions and shall pay and discharge any and all judgments or decrees which may be rendered therein against them or any of them arising from such infringement;

(2) Timely pay any Pending Third Party Claims for materials and equipment furnished and/or work and/or labor performed hereunder, or to prevent the imposition or attempted imposition or filing of any lien or encumbrance affecting the Project or other property associated therewith. Failing in which Design-Build Firm shall also be liable for and pay promptly upon demand any cost Owner incurs to remove it;

(3) Obtain and pay for all permits, licenses and official inspections necessary to the performance of the Work, failing in which Design-Build Firm shall also be liable for and shall pay promptly to Owner upon written demand, all costs required to overcome such failure (in addition to any actual damages for resulting delay that may be assessed hereunder);

(4) Comply with all laws, ordinances and regulations bearing on the conduct of the Work, including any state or federal anti-discrimination law, or any anti-harassment policy (failing in which Design-Build Firm shall also be liable for and shall pay promptly to Owner upon written demand, all costs, including costs of any penalties, fines, levies, or sanctions, resulting from such failure); or

(5) Comply with any other provision or covenant of this Agreement.

C. Actual Damages of Owner. Design-Build Firm acknowledges, understands and agrees that the Owner will incur significant costs and damages if the Design-Build Firm fails to achieve Substantial Completion and Final Completion by the applicable dates established by Contract Amendment, including but not limited to the following types of damages in the event of Owner’s termination of Design-Build Firm for default:

Maintaining Owner’s personnel at another site;

Temporary relocation costs for displaced operations and personnel;

Increased costs related to additional permitting costs, temporary facilities, additional public relations costs, additional legal costs, extended costs for Owner’s staff, including
but not limited to personnel of Owner (including senior management) and the Program Manager and its subconsultants, financing and accounting personnel;

Extended or additional costs for Owner’s design team, consultants, engineers and inspectors;

Extended or additional costs for Owner’s facilities trailer, equipment rental, on-site computers, and related technology charges; and

Extended or additional vehicle, gasoline, and maintenance costs.

D. **Insurance.** Design-Build Firm shall provide insurance coverage in accordance with the Owner’s Requirements of Insurance (Exhibit 14). Design-Build Firm shall not commence Services under the Agreement until it has obtained all required insurance and until such insurance has been reviewed and Approved. Approval of such insurance shall not relieve nor decrease the liability of the Design-Build Firm hereunder. Prior to commencing any of the Services, Design-Build Firm shall provide evidence satisfactory to Owner that all insurance coverages for the limits and forms of coverage required under Owner’s Requirements of Insurance (Exhibit 14) are in full force and effect.

1. **Maintenance of Insurance.** Design-Build Firm shall not cause or allow any of its insurance to be cancelled, nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

2. **Right to Review Policies.** Owner reserves the right at any time to review the policies of insurance required hereunder, and all endorsements thereto. Owner may request reasonable adjustments to the insurance coverages and the limits of coverage on such policies when deemed necessary and prudent by the Owner, including endorsements for the deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation to be binding upon either of the Parties to such policies. If Owner determines that any policy of insurance required hereunder is deficient, Design-Build Firm shall reimburse Owner, or cause Owner to be reimbursed, for all costs Owner incurs, including fees of outside counsel, to evaluate and resolve such deficiencies, and Owner may withhold from payment due hereunder all such costs. Actual losses not covered by insurance as required by this Section XI.C shall be paid by the Design-Build Firm. The reasonable additional premium cost of any insurance requested by Owner to be borne by Design-Build Firm that is in addition to the coverages stated in the Insurance Requirements (Exhibit 14) shall be reimbursed by Owner.

3. **Pre-Condition to Commencement of Services.** The Design-Build Firm shall not knowingly, except by specific agreement or instruction of the Owner in writing, commence Services or Work prior to the date Design-Build Firm has fulfilled the Insurance Requirements (Exhibit 14).
E. Owner’s Right to Approve Counsel and Participate in Defense of Claims. Except to the extent that a pre-existing policy condition precludes Design-Build Firm’s right to approve legal counsel appointed by its insurer to defend a Claim against an Owner Indemnitee, the Design-Build Firm shall confer upon the Owner Indemnitee the right to approve such appointed counsel. If an Owner Indemnitee does not have the right to approve of such appointed legal counsel, the Owner Indemnitee shall have the right, at its sole cost and expense, to have independent legal counsel of its own choice participate with the appointed legal counsel in the defense of the Claim. In addition to the foregoing, an Owner Indemnitee shall have the right to assert against any third party any and all cross claims and counterclaims that an Owner Indemnitee has against the third party claimant, and to attend and participate in all conferences concerning the defense and or settlement of the Claim against the Owner Indemnitee through the Owner Indemnitee’s independent counsel and/or its own designated management representative; however, to the extent such participation is not otherwise required or requested by appointed counsel for the defense of the Claim, such participation shall be at Owner’s expense.

XII. Processing of Payments

A. Apportionment of Payments.

(1) Fees. Owner shall pay Design-Build Firm the Fees for performing Design Services and Construction Services as delineated in Section IX.A, the sum of which shall constitute a lump sum fee. Within each applicable monthly Application for Payment to Owner, Design-Build Firm shall specifically itemize and include appropriate documentation of the payment requested for Services.

(2) Payments for Construction. Within fourteen (14) Days after Owner approves the Final Guaranteed Maximum Price for the Project, the Design-Build Firm shall submit to the Program Manager for review and Approval an updated Schedule of Values fairly allocating payment of the Final Guaranteed Maximum Price, less amounts included in the Final Guaranteed Maximum Price for contingency.

(a) The Schedule of Values will be prepared in such form and supported by such data to substantiate its accuracy as is reasonably required by the Owner and Program Manager. The Schedule of Values shall not overvalue early Work activities. Once established, the Schedule of Values having been reviewed and Approved and in conformance with the Final GMP, shall not change throughout the completion of the Project.

(b) The Approved Schedule of Values shall not be considered evidence of market or other value, but shall also be used as the basis for reviewing the Design-Build Firm’s Applications for Payment.

(c) In determining the percentage of completion of the Work and Services, Design-Build Firm shall use the lesser of the percentage of the Work and Services actually completed for each classification on the Approved Schedule of Values, or the percentage of the Final Guaranteed Maximum
Price allocable to that item that has been actually incurred and demonstrated as a cost incurred by the Design-Build Firm, in either case not to exceed the line item value for such Work included in the Final Guaranteed Maximum Price. The Schedule of Values shall be maintained based on the Approved values therein for each Work and Service classification line item. The format, tracking method, and adjustment of the Schedule of Values shall be subject to Approval. If at any time, the amount shown on the Schedule of Values exceeds the Final Guaranteed Maximum Price the amount payable to Design-Build Firm by Owner shall exclude the amount of such excess. The total of all sums to become payable according to the Schedule of Values to perform the uncompleted and unpaid portion of the Work and Services (including applicable amounts of Fee) shall not exceed the unpaid balance of the Final Guaranteed Maximum Price (less retainage on Work previously completed) for the Project.

(3) Retainage. Retainage of 5% will be withheld on each Application for Payment until Final Completion has been achieved for the Work and Services or portion thereof and the Owner issues Final Payment to the Design-Build Firm. In addition, (i) Owner may withhold the value recommended by Program Manager for all Punch List Work, plus an additional amount necessary to protect Owner, in Owner’s sole discretion, against any loss or damage which may result from negligence by Design-Build Firm or failure of Design-Build Firm to perform Design-Build Firm’s obligations under this Agreement, and (ii) in no event shall retainage withheld by Owner at any given time be less than 5% of the value of the Work completed and materials stored to date but not yet installed, until Design-Build Firm has achieved Final Completion of the Project.

B. Applications for Payment.

(1) On or before the tenth (10) Day of each month during the performance of the Services and the Work, Design-Build Firm shall submit to Owner and Program Manager a monthly Progress Report and a complete and accurate Application for Payment for any Services and Work referenced in the Approved Schedule of Values that has been completed during the previous calendar month. Each Application for Payment shall have attached a sworn certification by Design-Build Firm that:

(a) the applicable activities have been achieved;

(b) the quality of all Services and Work for which payment is requested is in accordance with this Agreement;

(c) Design-Build Firm is entitled to payment of the amount invoiced less Retainage;
(d) title to all materials and equipment invoiced has passed or will pass to Owner in accordance with this Agreement;

(e) all Design-Build Firm Personnel have been paid in full or will be paid in accordance with the terms of their subcontracts, purchase orders or other agreements from the proceeds of the amount invoiced; and

(f) upon receipt of the amount invoiced, the Worksite will be free of liens for the Services and Work invoiced.

(2) Tasks for which payment is requested must be 100% complete or the task must be quantified into verifiable increments for partial payment to be due. Applications for Payment shall be prepared to include any modifications authorized by a Construction Change Directive under Section VII.K. Applications for Payment must reference any applicable Purchase Order Number. Each Application for Payment shall be submitted by the Design-Build Firm with the following supporting documentation:

(a) Summary of control milestones and items from Schedule of Values fully completed (100%) during the applicable payment period;

(b) Issues requiring resolution, including outstanding RFI's, Construction Change Directives and “ball-in-court” items;

(c) Two week look-ahead schedule;

(d) Earned Value analysis report;

(e) Any Design-Build Firm Personnel arrivals, departures, or substitutions;

(f) Safety report and project cumulative metrics (lost time, injuries);

(g) Quality control report (findings, corrective actions, metrics by MasterFormat division);

(h) Updated Project Schedule with status date matching pay request date and summary describing any logic changes, activity additions/deletions, or negative float at control milestones or potential impact to Scheduled Date of Substantial Completion; and

(i) Signed by authorized executive of the DB Firm, Partial or Final Claim Release, as applicable, by Design-Build Firm and all Design-Build Firm Personnel in the form required by Exhibit 18.

(3) Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Design-Build Firm with procedures satisfactory to the Owner to establish the Owner’s title to such materials and Equipment or otherwise protect the Owner’s interest, and shall include applicable
insurance, storage and transportation to the Site for such materials and Equipment stored off the Site.

(4) The Design-Build Firm warrants that title to all Work covered by a payment will pass to the Owner no later than the time of payment. The Design-Build Firm further warrants that upon submittal of a payment, all Services and Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Build Firm’s knowledge, information and belief, be free and clear of liens, claims for payment of compensation, security interests or encumbrances in favor of the of the Design-Build Firm and Design-Build Firm Personnel, and other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Project. However, a Certificate for Payment or partial or entire use or occupancy of the Project by the Owner shall not constitute Owner’s acceptance of the Work.

C. Payment by Owner.

(1) Design Build Firm’s monthly Applications for Payment shall be complete and accurate to be certified by the Program Manager or Architectural Representative. The Program Manager or Architectural Representative shall within (10) business days after receipt certify on the Application for Payment whether it has been determined to be properly due and payable under this Agreement, resulting in a certified Application for Payment. If the Program Manager, Architectural Representative and/or Owner believe payment should be withheld in whole or in part, the Design-Build Firm shall be so notified that it shall be required to correct and resubmit the corrected Application for Payment, upon which the Program Manager or Architectural Representative shall within (10) business days review and certify on the Application for Payment whether it has been determined to be properly due and payable under this Agreement.

(2) The issuance of a certified Application for Payment will not constitute a representation to Design-Build Firm that the Program Manager or Architectural Representative has:

(a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(b) reviewed construction means, methods, techniques, sequences or procedures;

(c) reviewed copies of requisitions received from Design-Build Firm Personnel and other data requested by the Owner to substantiate the Design-Build Firm’s right to payment; or
(d) made examination to ascertain how or for what purpose the Design-Build Firm has used money previously paid on account of the Cost of the Work and/or Design-Build Firm’s compensation.

The issuance of the certified Application for Payment shall only constitute a recommendation to the Owner in respect to the amount to be paid, which is not binding on the Owner if Owner knows of other reasons why payment should be withheld under this Agreement.

(3) Upon certification of the Application for Payment, the Program Manager or Architectural Representative shall forward to Owner the certified Application for Payment. Upon such certification, the Design-Build firm shall enter that data into the CIP-Aces, as a request for payment on a certified Application for Payment. Design-Build Firm expressly agrees that such Application for Payment shall be deemed submitted and received only upon Design-Build Firm’s entry thereof into CIP-Aces for processing of payment.

(4) Within thirty (30) Days after Owner’s receipt of the certified Application for Payment and the Design-Build Firm’s entering the pay request data into CIP-Aces, the Owner shall pay Design-Build Firm the amount set forth therein, less amounts withheld in accordance with this Agreement. Owner shall withhold an amount equal to five percent (5%) of the amount invoiced (“Retainage”) which shall be released as set forth in Section XII.A(3). Amounts shall be paid via electronic means (i.e., ACH or Federal Reserve Wire transfer of funds). The electronic payment shall be sent to Design-Build Firm’s account designated by Design-Build Firm in writing to Owner within the time stated above.

D. Decisions to Withhold Certification or Payment.

(1) The Owner and/or Program Manager may withhold issuance of a certified Application for Payment in whole or in part, or to withhold payment thereon, to the extent reasonably necessary to protect Owner, if in the Owner’s or Program Manager’s opinion, the representations to Owner in connection with the Design-Build Firm’s Application for Payment are not correct.

(2) The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the request for Final Payment submitted by the Design-Build Firm:

(a) The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the Owner. Upon completion of the Work or when no longer required, Design-Build Firm shall either credit the Owner for the fair market value (as approved by the Owner) for all surplus tools, construction equipment and materials retained by the Design-Build Firm or, at Owner’s option, use commercially reasonable efforts to sell the surplus tools, construction
equipment and materials for the highest available price and credit the proceeds to the Owner’s account.

(b) Discounts earned by the Design-Build Firm through advance or prompt payments funded by the Owner. The Design-Build Firm shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. The Design-Build Firm shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

(c) Rebates, discounts, or commissions obtained by the Design-Build Firm from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Design-Build Firm shall make provisions and take such actions so that they can be obtained.

(d) Deposits made by Owner and forfeited due to the fault of the Design-Build Firm.

(e) Balances remaining on any allowances, the Design-Build Firm’s Contingency, or any other identified contract savings.

(3) If the Program Manager or Architectural Representative are unable to certify payment in the amount shown on the Application for Payment, the Program Manager will notify the Design-Build Firm to revise the Application for Payment. If the Design-Build Firm and Program Manager or Architectural Representative cannot agree on a revised amount, the Owner will cause Program Manager or Architectural Representative to promptly issue a certified Application for Payment for that amount the Program Manager is able to certify to the Owner. The Program Manager may also withhold a certified Application for Payment because of subsequently discovered evidence, or Owner’s reports of dissatisfaction with the Work, which may nullify the whole or a part of a previously certified Application for Payment, to such extent as may be necessary in the Program Manager’s or Architectural Representative’s opinion to protect the Owner from loss for which the Design-Build Firm is responsible, including loss resulting from acts and omissions because of:

(a) Defective Work not remedied;

(b) Third Party Claims filed or reasonable evidence indicating probable filing of such Claims unless security acceptable to the Owner is provided by the Design-Build Firm;

(c) Failure of the Design-Build Firm to make payments properly to Design-Build Firm Personnel or for their labor, materials or equipment;
(d) Persistent and uncured Design-Build Firm non-compliance with the administrative provisions of the Contract Documents including, but not limited to, failure to electronically submit monthly subcontractor payment information utilizing the Subcontractor Payment and Utilization Reporting (S.P.U.R.) system;

(e) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Final Guaranteed Maximum Price;

(f) Damage to the Owner or to the Work of a Separate Contractor;

(g) Reasonable evidence that the Work will not be completed on time, or that the unpaid balance would not be adequate to cover actual damages and any Delay Liquidated Damages for an anticipated delay;

(h) Delay Liquidated Damages accrued pursuant to Article VII;

(i) Substantial failure to carry out the Work in accordance with the Contract Documents;

(j) Persistent and uncured Design-Build Firm non-compliance with the administrative provisions of the Contract Documents including, but not limited to, failure to obtain and properly maintain certified payrolls from Design-Build Firm Personnel, which shall be submitted bi-weekly in accordance with Section V.II.17.

Any applicable Delay Liquidated Damages shall be deducted and offset from and against any amount otherwise due on a certified Application for Payment.

(4) When Owner agrees the above reasons for withholding payment are removed, the Application for Payment shall be resubmitted to the Program Manager, for re-certification within ten (10) Days after resubmission for amounts previously withheld due to such reasons.

(5) If the Owner is entitled to reimbursement or payment from the Design-Build Firm under or pursuant to the Contract Documents, such payment shall be made as soon as reasonably practicable, but in no event later than thirty (30) Days after written demand by the Owner. Sums not reimbursed or paid to Owner when due shall accrue interest at the maximum rate allowed by Applicable Law. Notwithstanding anything contained in this Agreement to the contrary, Owner shall have a right to offset such amount against payment otherwise due to the Design-Build Firm if Design-Build Firm fails to promptly make such payment to Owner or if Owner incurs any cost and expense to cure a default of the Design-Build Firm or to correct defective Work. In such event, the Owner will deduct an amount equal to that which the Owner is entitled to deduct from any payment then or thereafter due to Design-Build Firm.
E. Payments to Design-Build Firm Personnel.

(1) The Design-Build Firm shall, in accordance with Chapter 2251 of the Texas Government Code, upon receipt of payment from the Owner, promptly pay the payments to Design-Build Firm Personnel, in the amount to which they are entitled out of the amount paid to the Design-Build Firm on account of their Services and Work, reflecting any retainage withheld from Design-Build Firm on account of their portion of the Work. The Design-Build Firm shall require each of its Design-Build Firm Personnel to similarly make and record payments to their sub-subcontractors and suppliers.

(2) The Design-Build Firm shall report the actual payments to all Design-Build Firm Personnel and electronically submit monthly Design-Build Firm Personnel payment information utilizing the Owner’s Subcontractor Payment and Utilization Reporting (S.P.U.R.) system, beginning with the first payment for Services or Work under the Contract, and with every payment thereafter (for the duration of the Contract). Electronic submittal of monthly Design-Build Firm Personnel payment information will be accessed through a link on Owner’s “Business Center” web page. The Design-Build Firm and Design-Build Firm Personnel will be provided a unique log-in credential and password to access the Owner’s S.P.U.R. system. The link may also be accessed through the following internet address: https://saws.smwbe.com/. Training on the use of the system will be provided by Owner. After the Design-Build Firm receives payment from Owner, Design-Build Firm shall electronically enter the amount paid to each Design-Build Firm Personnel listed on the Design-Build Firm’s Good Faith Effort Plan (Exhibit 12). This information will be utilized for subcontractor participation tracking purposes, and any inexcusable failure by Design-Build Firm to comply with the committed SWMB levels may be considered a breach of this Agreement. Notwithstanding the foregoing, Owner is not obligated to monitor payments to Design-Build Firm Personnel, and nothing in this Section shall create any right on the part of Design-Build Firm or its Design-Build Firm Personnel against Owner, Program Manager, or the Architectural Representative.

(3) The Program Manager will, upon request, furnish to Design-Build Firm information regarding percentages of completion or amounts applied for by the Design-Build Firm on account of Work done by any of its Design-Build Firm Personnel.

(4) Neither Owner nor Program Manager shall have any obligation to pay or see to the payment of any money to any of Design-Build Firm Personnel.

(5) Certificates for Payment, progress payments, and partial or entire use or occupancy of the Project by Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

(6) Design-Build Firm shall not withhold or permit the withholding from any Design-Build Firm Personnel retainage of a greater percentage on their payments than the
percentage Owner is entitled to withhold as retainage from payments to the Design-Build Firm.

(7) Design-Build Firm shall thoroughly review and submit using LCP tracker, as described in Section VIII.A(17), the certified payrolls of each of the Design-Build Firm Personnel who is an independent contractor to confirm such Design-Build Firm Personnel’s payment records support its certifications related to payment of at least the General Prevailing Wages required by Exhibit 17.

XIII. Substantial Completion and Final Completion of the Work

A. Substantial Completion of the Work.

(1) The Services and Work with respect to the Project, including each Service Center and its applicable facilities (including any areas or a Site within the designated limits of construction), shall be considered to have achieved Substantial Completion when:

(a) all Project systems included therein are operational;

(b) all required governmental inspections and certification required therefore have been made and posted;

(c) any required initial instruction of Owner’s personnel in the operation of the systems has been completed;

(d) all the finishes required therefore are in place;

(e) Owner has received Commissioning Agent’s report that all exceptions have been resolved and all systems and equipment are in proper operating order;

(f) Design-Build Firm has provided Owner confirmation of the submission of all documentation necessary to obtain the Minimum Certification Level for the applicable facilities of the Project; and

(g) A Certificate of Substantial Completion for the Project, Service Center, or any of its related facilities, as applicable, has been certified and is fully executed by signed by the Owner, the DPOR, and also signed by the Program Manager or the Architectural Representative, confirming that the Substantial Completion thereof has been achieved.

(2) The only remaining Work to achieve Final Completion shall be Punch List Work only, so that the Owner may occupy the applicable portions of the Project, pending the completion of the Punch List Work by the Design-Build Firm, the completion of which shall not materially interfere with or hamper the Owner’s operations. As a further condition of Substantial Completion of the Work or designated portion thereof, the Design-Build Firm shall certify that all remaining
Punch List Work with respect thereto will be completed within the time required for Final Completion.

(3) When the Design-Build Firm considers that the Project, or a Service Center and its applicable facilities (including any areas of a Site within the designated limits of construction), is Substantially Complete, the DPOR shall prepare for Program Manager’s review and approval a comprehensive list of items to be completed or corrected as Punch List Work prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Build Firm to complete all Work in accordance with the Contract Documents.

(4) When the Work or designated portion thereof has achieved Substantial Completion, the Program Manager or Architectural Representative will prepare a Certificate of Substantial Completion as soon as reasonably practicable thereafter, establishing the date of Substantial Completion, as Approved by Owner, and the respective responsibilities of the Owner and Design-Build Firm for security, maintenance, heat, and utilities, transfer of the risk of loss and insurance, and stating the time within which the Design-Build Firm shall finish all items on the Punch List accompanying the Certificate. The Design-Build Firm shall keep all required insurance in full force at least until the Certificate of Final Completion is issued, or any later date as otherwise required by this Agreement or Construction Change Directive.

(5) The Work will not be considered suitable for tender as having achieved Substantial Completion until all mechanical, electrical, plumbing and other building systems included in the Work are operational as designed and scheduled, all designated or required inspections and certifications by governmental authorities have been made and posted, designated instruction of Owner’s personnel in the operation of systems has been completed, and all final finishes required by the Contract Documents are in place. In general, the only remaining Work shall be minor in nature, so that Owner’s partial use or occupancy thereof, and the Design-Build Firm’s completion of the remainder of the Work therein, would not materially interfere or hamper the Owner’s operations.

(6) Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate of Substantial Completion or any Application for Payment (including, without limitation, the final Application for Payment) for any default of the Design-Build Firm. The Owner shall not be deemed in default by reason of withholding payment or exercising its right to require correction of any defect or deficiency in the Services and Work as a condition of any acceptance of the Project, or a Service Center or any of its applicable facilities.

B. Partial Occupancy or Use.

(1) The Owner may, as hereinafter provided, occupy or use any completed or partially completed portion of the Project, or a Service Center or any of its related facilities (including any areas of a Site within the designated limits of
construction) at any stage when such portion is sufficiently complete to enable Owner to commence such occupancy or use, provided such occupancy or use is consented to by the Owner’s insurer as required under Section XIII.C(1) and Exhibit 14 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete. Any modification in the responsibilities of Owner and Design-Build Firm with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, or the period for correction and Final Completion of the Work required by the Contract Documents shall be established either by Contract Amendment or Owner’s Construction Change Directive.

(2) When the Project, a Service Center or any of its related facilities (including any areas of a Site within the designated limits of construction) are sufficiently complete, or considered to have achieved Substantial Completion, Owner or Design-Build Firm may notify Program Manager and/or Architectural Representative, as appropriate, to schedule a site visit to confirm whether Owner may commence to make partial use or occupancy thereof. The scheduling of such a site visit with respect to a Service Center or any of its related facilities shall be limited to the extent to which Owner desires to assume partial use or occupancy thereof prior to Substantial Completion of the entire Project. If, following completion of a site visit of a Service Center or any of its related facilities for partial use or occupancy, Substantial Completion thereof has been determined to have been achieved, a Certificate of Substantial Completion shall be processed in accordance with this Contract. Owner’s partial use or occupancy of a Service Center or any of its related facilities prior to Substantial Completion of the entire Project and issuance of Final Payment shall not be deemed an acceptance of the Services and Work as finally complete nor shall such occupancy create an independent obligation of Owner to make Final Payment. If Owner elects to make partial use or occupy a Service Center or any of its related facilities prior to Substantial Completion of the rest of the Project, the two-year warranty period shall commence to run in accordance with Section XV.B, below.

(3) If, as a result of the inspection of any portion of the Project to determine whether Owner may commence partial use or occupancy thereof or that it has achieved Substantial Completion, the Program Manager and/or Architectural Representative identify any item, whether or not included on the list of Punch List Work, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Build Firm shall complete or correct such item and following correction Design-Build Firm shall submit such Work for another site visit by the Program Manager and/or Architectural Representative, as appropriate, to determine whether the Owner may commence partial use or occupancy thereof, whether same may have achieved Substantial Completion. Design-Build Firm shall, upon demand, pay or reimburse Owner the amount of any additional fees, and/or other damages that Owner incurs or
sustains by reason of Design-Build Firm’s failure to promptly correct and/or complete any items determined to be deficient by inspection to determine whether the Work has achieved Substantial Completion or Final Completion.

C. Final Completion of the Work.

(1) Upon receipt of written notice that the Project has achieved Final Completion and upon receipt of a final Application for Payment, the Program Manager and/or Architectural Representative, as appropriate, will promptly make a site visit and review the completeness of the Project. The Work shall be considered to have achieved Final Completion when the Owner and Program Manager find the Services and Work, including all Punch List items, to have been completed in accordance with the Contract Documents, all data deliverables made and accepted, and the Contract fully performed, and all close out procedures and requirements have been met, as described below. Owner has Approved the termination of coverage under the Builders’ Risk Insurance and the transfer of the risk of loss to the Project to Owner as described in Exhibit 14 Section 1.05. Thereafter, the Program Manager or Architectural Representative will prepare Certificate of Final Completion stating that to the best of the Program Manager’s or Architectural Representative’s knowledge, information and belief, and on the basis of the Program Manager’s on-site visits, the Services and Work have been completed in accordance with terms and conditions of the Contract Documents and that the balance found to be due the Design-Build Firm is correctly stated on the final Application for Payment and is certified to be due and payable. Payment of the Design-Build Firm’s final Application for Payment shall occur within thirty (30) Days after the Certificate of Final Completion has been signed by the Owner, Program Manager, and Design-Build Firm, confirming that Design-Build Firm has achieved Final Completion of the Project as of such date and Design-Build Firm has entered the final pay request in CIP-Aces.

(2) The Design-Build Firm shall follow the Owner’s Approved process for Project close-out, which shall include the following:

(a) Inform Owner and Program Manager when Substantial Completion of the Project, or completion of Work for significant Project components has been achieved in relation to the schedule milestones established therefor;

(b) Arrange for final inspections or tests of the Work of service providers for the Projects, and receive, review and comment on all certificates of inspections, tests and approvals required by applicable Laws and Regulations or the applicable contracts for the Project;

(c) Participate with Owner and Program Manager in Substantial Completion inspections and preparation of consolidated Punch Lists” of items needed for Final Completion for the Project;
(d) Cooperate with the Program Manager and Owner’s commissioning agent to complete all commissioning activities, including submission of all commissioning reports, plans and other verification documents needed to facilitate Owner’s taking of possession of the Project or completed portions thereof.

(e) Complete all Punch List items and participate in Final Completion inspections

(f) Tender to Owner in writing Design-Build Firm’s confirmation of Final Completion of the Project.

(g) Conduct all required training of Owner management personnel responsible for operation and maintenance of the Project in accordance with the Approved training plan.

(h) Deliver all warranties and guarantees and Project Manuals related to the Project and all equipment and products incorporated therein.

(i) Manage the warranty protocol included in Exhibit 19 throughout the warranty period to identify, enforce and promptly resolve all warranty claims in consultation with the Owner. If Design-Build Firm, within a seventy-two (72) hour period after receipt of notice of a defect covered by warranty, fails to correct or commence to the reasonable satisfaction of Owner diligent action on site to correct the defect, the warranty period for such item shall be extended, day-for-day, for each day beyond of such period until Design-Build Firm has commenced such appropriate corrective efforts.

(j) Cause and facilitate the transfer of operation of the Project to Owner, including the acquisition and transfer of ownership of all Work Product, Record Documents, project documentation, and BIM models from Project Team members to Owner.

(k) Prepare and timely submit, and obtain certifications or approvals from all utilities operators and local, state, and federal authorities as required for Owner’s use and operation of the Project.

(l) Develop and submit any documentation required to certify the Project is asbestos-free.

(3) Neither final payment nor any remaining retained percentage shall become due until the Design-Build Firm submits to the Program Manager:

(a) a notarized affidavit in the form of affidavit included herewith as Exhibit 18.1 stating under oath that all subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for
the Work have been fully paid or satisfactorily secured and that payrolls, bills for materials and equipment, and other indebtedness connected with the Services and Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, and all accrued Delay Liquidated Damages have been paid (whether by direct payment from the Design-Build Firm or by deduction and offset from and against any amount otherwise due on an Application for Payment);

(b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 Days’ prior written notice has been given to the Owner;

(c) a written statement that the Design-Build Firm knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

(d) consent of surety to final payment in a form acceptable to Owner, signed by the surety company who provided the Payment Bond for the Work, to the effect that such surety company consents to Final Payment to the Design-Build Firm; and

(e) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

(4) As a condition precedent to issuance of Final Payment, the Design-Build Firm shall simultaneously furnish to Owner and Program Manager:

(a) Design-Build Firm’s Application for Final Payment, resolving to the Owner’s reasonable satisfaction any charges determined by audit to be contrary to the provisions of this Agreement;

(b) Certificate of Final Completion signed by the Owner, Program Manager and Design-Build Firm, certifying that the Project is finally complete and that all Punch List Work has been satisfactorily performed;

(c) As-Builts produced by updating the BIM, accurately showing the Project as constructed in the format designated by the Owner. Such As-Builts shall be rendered so as to show all pre-existing conditions remaining as a part of the Project, and all modifications to existing conditions incorporated into the Project, and all new construction;

(d) Six (6) hard copy sets of As-Built Drawings and Specifications;
(e) Certified copies of reports of all tests performed by or for the Design-
Build Firm and the Design-Build Firm Personnel, as applicable;

(f) All warranties, guarantees and bonds required by and in compliance with 
the Contract Documents shall remain in effect and shall be managed 
throughout the warranty period to identify, enforce and resolve all 
warranty claims in consultation with the Owner in accordance with the 
warranty protocol included in Exhibit 19;

(g) All operations and maintenance data and/or other data and “closeout” 
documents required under the Contract Documents or otherwise 
reasonably required by Owner;

(h) Design-Build Firm’s written confirmation that all operations and 
maintenance training has been completed;

(i) Other data establishing payment or satisfaction of obligations such as 
receipts, final releases and waivers of liens, claims, and security interests 
or encumbrances arising out of the Agreement, including final releases of 
Design-Build Firm Personnel, all of which shall be in the form set forth in 
Exhibit 18.3. Provided, however, Design-Build Firm may submit its final 
Application for Payment with provision for Pending Third Party Claims 
that Owner has previously approved to leave pending after issuance of 
Final Payment, which Agreement shall include acceptable provisions for 
Owner Indemnitees to be fully defended, indemnified, and held harmless 
from such Pending Third Party Claims;

(j) The surety’s or sureties’ written consent with respect to the release of such 
final payment for purposes of the release of each Payment Bond and 
Performance Bond securing the obligations to perform the Services and 
work related to the Project;

(k) Receipt of evidence of the submission of complete documentation 
necessary to be prepared and submitted by Design-Build Firm in order to 
enable Program Manager to confirm in writing to Owner that the 
applicable facilities of the Project are capable of achieving no less than the 
Minimum Certification Level;

(5) Acceptance of Final Payment by the Design-Build Firm shall constitute a waiver 
of Claims by Design-Build Firm except for any Pending Third Party Claims then 
pending in accordance with Section XIII.G.

(6) Suppliers, any subcontractors, and persons claiming to have performed any labor, 
or to have supplied any equipment and materials toward the performance of this 
Contract, and who claim not to have received proper compensation from Design-
Build Firm or Design-Build Firm Personnel for same, shall be instructed by 
Design-Build Firm that written and documented claims must be sent directly to
Design-Build Firm and its surety in accordance with Chapter 2253, Texas Government Code. Upon written request by a claimant to Owner pursuant to Chapter 2253, Texas Government Code, a copy of the Design-Build Firm’s Payment Bond and Contract will be furnished to claimant. The Owner shall further furnish a statement to claimants that claimants are cautioned that no legal or equitable lien exists on Owner’s funds yet unpaid to Design-Build Firm, and that reliance on notices sent only to the Owner may result in loss of claimant’s rights to timely perfect recovery against Design-Build Firm and/or its surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any unauthorized representation by any agent or employee of Owner to the contrary.

D. Owner’s Right to Withhold Final Payment. Any provision hereof to the contrary notwithstanding, Owner shall, to the extent reasonably required to protect Owner, be entitled to withhold Final Payment if any one or more of the following conditions exists:

1. Design-Build Firm is in breach or default under this Agreement;

2. Any part of the Final payment is attributable to Services or Work not performed strictly in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof performed strictly in accordance with this Agreement; or

3. Release of the Final Payment would exceed the Final Guaranteed Maximum Price for the Project, which shall in no event be more than the Guaranteed Maximum Price for the Project.

E. Final Payment Subject to Final Accounting. In addition to the procedures contained in other provisions of this Agreement, Owner shall have no obligation to make Final Payment until Owner and Program Manager have received and verified the accuracy of the Design-Build Firm’s final accounting of the entire Cost of the Services and Work and all Fees as within the Guaranteed Maximum Price for the Project. Owner will complete the process of verifying the Design-Build Firm’s final accounting of the Cost of the Work and Fees within a reasonable time after the Design-Build Firm has submitted it to the Program Manager and Owner. The aggregate total of all payments to Design-Build Firm for all Services and Work under this Agreement, including all Fees, shall be limited to the Final GMP, which is expected to be less than, and shall in no event be more than, the Initial Guaranteed Maximum Price. Owner shall be entitled to recover any savings realized between the Final GMP and the buyout price for subcontracted work, provided however, that Design-Build Firm may, with the Owner’s consent (which consent will not be unreasonably withheld) use such savings to offset other buyout packages that exceed the amounts identified in the Initial GMP, so long as the excess is not due to fault or negligence of the Design-Build Firm, and the total Cost of the Work included in the Final GMP does not increase and does not cause the Final GMP to be exceeded. If any payments are made to Design-Build Firm that exceed the Final GMP, then Design-Build
F. Owner’s Right to Audit Design-Build Firm’s Books and Records. The Design-Build Firm shall keep full, auditable and detailed accounts and exercise such cost controls as may be necessary for proper financial management under this Agreement. The accounting and control systems shall be satisfactory to Owner, provided Owner’s Approval shall not be unreasonably withheld if the same conform to generally approved accounting practices. Owner, Owner’s accountants, Owner’s agents, or its authorized representative shall be afforded reasonable access upon Owner’s request, at reasonable times, as determined by Owner, to all records of Design-Build Firm and Design-Build Firm Personnel relating to the Project, and the Design-Build Firm shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law. In addition to the foregoing:

1. The Design-Build Firm’s records shall include: accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; Contract Amendment files (including documentation); general ledger entries detailing cash and trade discounts earned; insurance rebates and dividends; and any other supporting evidence necessary to substantiate charges related to this Agreement (all foregoing hereinafter referred to as “records”). All such records shall be opened to inspection and subject to audit and/or reproduction by Owner’s agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of Design-Build Firm’s compliance with this Agreement.

Those records which relate solely to the cost of items included in Design-Build Firm’s Fees that are fixed by this Agreement will not be subject to audit; provided, however, Design-Build Firm’s records necessary to evaluate and verify the Cost of the Services and Work and the allocations of Design-Build Firm’s Fees as they may apply to the Cost of the Work, shall be subject to audit;

2. Such audits may require inspection and copying from time-to-time and at reasonable times and places of any and all such information, materials and data as set forth above of every kind and character;

3. Owner’s agent or its authorized representative shall have reasonable access at reasonable times to the Design-Build Firm’s facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, may contact Design-Build Firm Personnel or other vendors related to the Project, shall have access to all necessary records, shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Section, and will be provided support from the Design-Build Firm’s staff as required. In the event that Design-Build Firm does not provide such access and/or all necessary records or support upon reasonable
notice to Design-Build Firm by Owner (at least 7 business days), Design-Build Firm shall be responsible for the reasonable actual cost of Owner’s fees and any associated expenses for any attempted audit which cannot be completed for such reasons;

(4) Owner shall, subject to the provisions of Section XIII.E, above, be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment; and

(5) If at the conclusion of any audit performed as set forth herein, the audit discloses overcharges by the Design-Build Firm to the Owner that are:

(a) proven; and

(b) in excess of one half percent (0.5%) of the Total Cost of the Work;

then the reasonable actual cost of the Owner’s audit shall be reimbursed to the Owner by the Design-Build Firm within thirty (30) Days of submission. Any adjustments and/or records due to the overcharges shall be made within a reasonable amount of time (not to exceed 90 Days) from presentation of Owner’s findings to Design-Build Firm.

G. Acceptance of Final Payment Constitutes Release. Design-Build Firm’s or Design-Build Firm’s successors’ acceptance of Final Payment under this Agreement, shall constitute a full and complete release of Owner from any and all Claims whatsoever, which Design-Build Firm or Design-Build Firm’s successors or assigns have or may have against Owner under the provisions of this Agreement, except for any Pending Third Party Claims that Owner has Approved to leave pending pursuant to Section XIII.C(4)(i), above.

XIV. Uncovering and Correction of Work

A. Uncovering of Work.

(1) If a portion of the Work is covered contrary to the Program Manager’s request or the requirements specifically expressed in the Contract Documents, it must, if required in writing by the Program Manager, be uncovered for the Owner’s, Program Manager’s and/or Architectural Representative’s examination and be replaced at the Design-Build Firm’s expense without change in the Scheduled Date of Substantial Completion.

(2) If a portion of the Work has been covered which the Program Manager has been notified of, but not specifically requested, the opportunity to examine a portion of the Work prior to its being covered, the Program Manager may request to see such Work and it shall be uncovered by the Design-Build Firm. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be at the Owner’s expense and shall be added to the Final GMP. If such
Work is not in accordance with the Contract Documents, correction shall be at the Design-Build Firm’s expense unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs. All nonconforming Work shall be retested after it has been corrected at the Design-Build Firm’s expense. Reasonable architectural or engineering services required to analyze and correct nonconforming Work shall be at the Design-Build Firm’s expense.

B. Correction of Work.

(1) Before or After Substantial Completion. The Design-Build Firm shall promptly correct Work rejected by the Program Manager for failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, inspections and architectural or engineering services made necessary thereby, shall be at the Design-Build Firm’s expense.

(2) After Substantial Completion.

(a) Pursuant to the Design-Build Firm’s warranty obligations under Article XV, if, within two (2) years after:

(i) the date of Substantial Completion of the Project, or Substantial Completion of any Service Center (if Owner elects to occupy such Service Center or any of its related facilities), or

(ii) the date for commencement of warranties established under Article XV,

or any special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of this Agreement, the Design-Build Firm shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Build Firm Approval of such non-conforming condition. The Owner shall give such notice promptly after discovery of the nonconforming condition. If the Design-Build Firm fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner or Program Manager, the Owner may correct it in accordance with Article XV. The foregoing notwithstanding, nothing in this Agreement shall be construed as a waiver by Owner of its right to assert a claim for breach of contract with respect to any breach hereof, including any latent defect in Design-Build Firm’s Services and Work, if the same was not actually discovered by Owner in sufficient time to report the same to Design-Build Firm during the applicable warranty period.
(b) The two (2) year warranty period (or other applicable warranty period) shall be extended with respect to portions of Services and Work performed after the Scheduled Date of Substantial Completion by the period of time between Scheduled Date of Substantial Completion and the date that Substantial Completion is actually achieved with respect to such portions.

(c) The two (2) year warranty period (or other applicable warranty period) shall be extended for a like period from the date of correction to apply to any corrective warranty Services and Work performed by the Design-Build Firm, pursuant to Section XV.C.

3. The Design-Build Firm shall remove from the Worksite portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Build Firm nor Approved by the Owner.

4. The Design-Build Firm shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors caused by the Design-Build Firm’s alteration of such construction contrary to the requirements of the Contract Documents. Nonconforming construction of Owner or Separate Contractors shall be corrected by Design-Build Firm at its expense, if such nonconforming construction was the result of, Design-Build Firm’s failure to perform its obligations under this Agreement.

5. Nothing contained in this Article shall be construed to establish a period of limitations with respect to any of Owner’s rights in connection with this Agreement. Nothing contained in this Article is intended to limit or modify any of Design-Build Firm’s obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

C. Acceptance of Nonconforming Work. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Design-Build Firm’s compensation will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made for such Work.

XV. Design-Build Firm’s Warranty Obligations

A. Design-Build Firm’s Warranty for Services and Work. Design-Build Firm warrants all Services rendered and Work performed hereunder shall be performed in accordance with Design-Build Firm’s Standard of Care, all Applicable Laws, and the requirements of this Agreement and any Contract Amendment or Construction Change Directive. Except as otherwise provided in Section XV.B, below, with respect to Owner’s partial use or occupancy of a Service Center or any of its related facilities prior to Substantial Completion of the rest of the Project, Design-Build Firm shall re-perform, at no cost to Owner, any Services and Work in accordance with this Agreement as required to correct any error, omission, defect or deficiency arising within a period of two (2) years (or such other longer warranty period as required by the Contract Documents), following Final
Completion of all Services and Work required hereunder to the extent any such error, omission, defect or deficiency arises as a result of Design-Build Firm’s failure to so perform the Services and Work as required hereunder. Owner shall have the right to reject any defective design Services or other defective Work on the Project of which Owner becomes aware and the Design-Build Firm shall promptly correct any such defect at the Design-Build Firm’s expense. Should any portion of the Project Work be damaged or defective due to an error or omission in the design Services, including errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by the Design-Build Firm, the Design-Build Firm shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-Build Firm refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

B. Design-Build Firm’s Warranty and Warranty Period. The Design-Build Firm warrants to the Owner the Services and Work will be performed and completed in a good and workmanlike manner and in accordance with the Contract Documents. For a period of two (2) years from Substantial Completion (or such other longer warranty period of time as required by the Contract Documents), the Work, and all materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, and will be free from defects and will conform to the requirements of, and reasonably inferable from, the Contract Documents. If, pursuant to Section XIII.B, above, Owner elects or agrees to assume partial use or occupancy of a Service Center or any of its related facilities prior to Substantial Completion of the entire Project, the two-year warranty period shall commence to run with respect to the Service Center and all of its related facilities upon Substantial Completion thereof and such warranty period shall run independently of the two-year warranty period with respect to the rest of the Project, and neither of such warranty periods shall be reduced or diminished by Owner’s partial use or occupancy. If Owner elects to issue to Design-Build Firm a Certificate of Final Completion and/or Final Payment for the Work prior to Design-Build Firm’s delivery of all of the documents required as a condition precedent to issuance of Final Payment under Section XIII.C(3) and (4), the issuance of either of the foregoing shall not relieve Design-Build Firm of its obligation or be deemed to waive its duty to deliver all such documents, which shall remain a continuing obligation and duty until fulfilled; furthermore, and notwithstanding the Design-Build Firm’s failure to have earlier delivered such documents, commencing on the expiration of thirty (30) days after issuance of the Certificate of Substantial Completion, the warranty periods established by this Agreement for the Work and for any item of equipment or component of the Work, shall be deemed to be extended day for day for each day following the issuance of the Certificate of Substantial Completion until such documents have been delivered to Owner.

C. Design-Build Firm’s Duty to Remedy Defects and Warranty of Replaced or Repaired Work. The Design-Build Firm shall, at the Owner’s reasonable election, either repair or replace any defects in any of the Design-Build Firm’s Work, Services or
related deliverables as soon as the Design-Build Firm becomes aware of such defects or is notified of such defects. Should the Design-Build Firm refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial warranty Work, then the Owner shall be entitled to make good such defective Work, Services or related deliverables at the Design-Build Firm’s expense. Design-Build Firm’s obligation hereunder is in addition to, and not in substitution of, any other remedy the Owner may have hereunder, or at law or in equity. Any warranty repair or replacement shall comply with the requirements of this Agreement and shall be verified by the Design-Build Firm’s performance of testing as Owner may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access to concealed areas, shall be borne by the Design-Build Firm. Design-Build Firm warrants such repaired or replaced Work against defective materials, and workmanship for a like period of warranty from the Owner’s acceptance thereof. Should Design-Build Firm fail to promptly make the necessary repair, replacement, and testing, Owner may perform or cause to be performed the same at Design-Build Firm’s expense. Design-Build Firm shall be liable for the satisfaction and full performance of the warranties required by the Contract Documents. The foregoing notwithstanding, if this Agreement has been terminated for any reason hereunder, Design-Build Firm shall remain liable to Owner for all reasonable costs Owner incurs to repair or replace defective Work discovered after termination, including reasonable fees and costs of SAWS’ staff, its attorneys and consultants to determine the nature of, and to correct such defective Work, inclusive of all material and labor costs to remedy such defective work, which liability shall survive termination hereof for any reason and shall be a continuing obligation covered by the Performance Bond.

D. Design-Build Firm’s Ancillary Warranty Obligations. All warranties include all Services and Work, and shall be in writing signed by the Design-Build Firm and countersigned by the Design-Build Firm Personnel performing the same and/or the manufacturer thereof, as applicable, and delivered to Owner prior to final payment. All original Shop Drawings, warranties, and operation manuals as required by the Specifications shall be electronically included in the BIM model six (6) months prior to completion of the Work for all new construction, or as soon thereafter as is reasonably practicable. As of the time of Final Completion of the Work, the Design-Build Firm agrees to assign to Owner any and all Design-Build Firm Personnel’s and any manufacturers’ warranties relating to labor, equipment and materials installed in the Work. Design-Build Firm further agrees to perform the Work in such manner so as to preserve any and all such manufacturers’ warranties. In addition to the foregoing, the Design-Build Firm shall comply with all other warranties referred to in any other provision of the Contract Documents. Where more than one warranty obligation applies hereunder, the more stringent warranty obligation shall govern.

XVI. Design-Build Firm’s Bonds

A. Security Bond Required Pending Establishment of Final Guaranteed Maximum Price. Within ten (10) Days of the Effective Date of this Agreement, Design-Build Firm
shall provide a Security Bond (Exhibit 8.3) in the form of such Exhibit for an amount not less than the Initial GMP less the amount of the Design Services Fee, which amount is the construction budget for the Project that is specified in the DCP. The Security Bond shall meet the same requirements as set forth for Payment Bond and Performance Bond. Owner shall be entitled to retain the Security Bond, which shall remain in effect, until issuance of the Payment and Performance Bonds based upon the Final GMP, as provided in Section XVI.B, below. If the Security Bond is cancelled, Design-Build Firm shall replace the Security Bond, or provide other financial security under terms substantially the same as the Security Bond and otherwise acceptable to Owner, in Owner’s sole discretion, within thirty (30) Days of Owner’s receipt of the surety’s notice of cancellation, failing which, Design-Build Firm shall be deemed to be in default of its obligations hereunder and to have committed a material breach of this Agreement, and Owner may proceed in accordance with the provisions of Section XVII.A, and/or be entitled to enforce any other remedy or right the Owner may have hereunder in relation to a breach of this Agreement by Design-Build Firm.

B. Payment and Performance Bonds Required Upon Establishment of Final Guaranteed Maximum Price. Payment and Performance Bonds shall be delivered to Owner within ten (10) Days after execution of the Contract Amendment establishing the Final GMP for the Project and prior to the commencement of any Work. The Payment and Performance Bonds shall be in the form and amount required by Texas Government Code § 2269.311 and as further required herein, which Bonds shall be issued in the forms prescribed in Exhibit 8. Such Bonds shall be:

1. Issued with the Owner as the named obligee;

2. Executed by a corporate surety company authorized to do business in the State of Texas with such financial standing to have a rating from A.M. Best Company (or other equivalent rating company) equal to or better than “A–” and on the current list of sureties published by the United States Department of Treasury and shall have a Power of Attorney attached. If the A.M. Best Company rating for a surety issuing either of said bonds falls below “B+,” Design-Build Firm shall replace the original bonds with bonds from a surety meeting the requirements of this Section XVI.B;

3. Issued in compliance with Texas Government Code § 2269, et seq.;

4. Issued each with the penal sums equal to the portion of the Final Guaranteed Maximum Price that applies to the sum of the Cost of the Work and the Construction Services Fee, but excludes the Design Services Fee, for the Project;

5. Maintained for the benefit of the Owner;

6. Furnished before any Work in the performance of the Construction Services is commenced; and
(7) Bond premiums shall be included in and charged as part of the General Administrative Fee at no more than the best rate available to Design-Build Firm for a project of similar magnitude, but in any event not to exceed 2.5% of the penal sum for the bonds established below.

C. Performance Bond Requirements. Performance Bonds shall be provided for one hundred percent (100%) of the Final GMP established for the Project, less any amount contained in the Control Estimate for the Design Services Fee. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover Design-Build Firm’s warranty obligations for a period not to exceed two (2) years from the Scheduled Date of Substantial Completion set within the Contract Amendment establishing the Final Guaranteed Maximum Price for the Project. Owner shall have no obligation to pay or to reimburse to Design-Build Firm for performance bond premiums for the issuance of subcontractor default insurance or bonds of subcontractors for the performance of the Services and the Work, which shall not be charged as a Cost of the Work.

D. Payment Bond Requirements. Design-Build Firm’s Payment Bond shall be provided for one hundred percent (100%) of the value of the Final Guaranteed Maximum Price established for the Project. Owner shall have no obligation to pay or to reimburse to Design-Build Firm for any additional costs for subcontractor payment bond premiums, which shall not be charged as a Cost of the Work. Owner shall not be charged for payment bonds of Design-Build Firm’s subcontractors if required by Design-Build Firm.

E. Subcontractor Bond and Security Costs. If the Design-Build Firm chooses to purchase subcontractor default insurance, or to require bonds of its subcontractors, the Design-Build Firm shall pay for such insurance and bonds out of its Fees. Performance by a surety of any of the obligations of Design-Build Firm set forth in the Agreement shall not relieve Design-Build Firm of any of its obligations hereunder.

F. Additional Security. If Owner receives notice of a Pending Third Party Claim that the third party claimant has acquired by assignment the right to receive payment of the Design-Build Firm’s receivables as they become due and payable under this Agreement, Design-Build Firm agrees that, as a condition of its right to continue to perform under this Agreement, Design-Build Firm shall furnish to Owner as security for the performance of its obligations hereunder an irrevocable standby letter of credit in favor of Owner issued by a national bank in form reasonably acceptable to Owner, in an amount equal to the sum of the current unpaid balance of the Contract plus any amounts in excess thereof that may be owed to Owner as a result of Design-Build Firm’s delay, deficiency, or failure to perform its obligations hereunder.

XVII. Suspension and Termination

A. Right of Either Party to Terminate for Cause. This Agreement may be terminated for cause by either Party for material breach by the other Party to perform (through no fault of the terminating Party) in accordance with the terms of this Agreement.

(1) Design-Build Firm’s Default.
(a) Material breach by Design-Build Firm shall include, but is not limited to the following:

(i) Design-Build Firm has made, or allows to be made, any material misrepresentation with respect to the Agreement;

(ii) Design-Build Firm materially fails to timely perform any obligation or duty of Design-Build Firm under this Agreement;

(iii) Design-Build Firm materially fails to timely cure any default or breach in accordance with the terms of this Agreement;

(iv) Design-Build Firm assigns its rights and/or obligations under this Agreement without the prior written consent of the Owner;

(v) Design-Build Firm ceases to continue to do business as a going concern employing the personnel performing Services on the Project; or

(vi) Design-Build Firm violates any rule, regulation or law applicable to the Project and/or the Agreement and fails to timely correct such violations following receipt of notice by Owner.

(b) When any of the reasons described herein exist, Owner may, without prejudice to any other rights or remedies, and after giving Design-Build Firm the notice required hereunder, and Design-Build Firm’s failure to cure, terminate this Agreement in whole or in part and do any one or more of the following, at the sole discretion of the Owner:

(i) take possession of all Work Product, including all documents and materials related to the Project or this Agreement that is in the possession of the Design-Build Firm;

(ii) accept assignment of contracts relating to the Design-Build Firm’s Services on terms and conditions acceptable to Owner;

(iii) finish the Design-Build Firm’s Services and Work by whatever reasonable method Owner may deem expedient, in which event, upon written request of the Design-Build Firm, Owner will furnish the Design-Build Firm with an accounting of the costs incurred by Owner in finishing Design-Build Firm’s Services; or

(iv) recover from the Design-Build Firm, or deduct from any sums then owed to the Design-Build Firm, the losses, costs and damages incurred by Owner, directly or indirectly arising from Design-Build Firm’s default, including attorneys’ fees.
If Owner terminates this Agreement for cause as set forth above, any amounts due for Services and Work performed shall be subject to offset in satisfaction of all amounts and damages due Owner.

(2) **Owner’s Default.** Design-Build Firm may terminate this Agreement by written notice to Owner upon Owner’s failure to cure default as hereinafter provided, if:

(a) Owner fails to timely pay Design-Build Firm any sums due under the Agreement, which are not then the subject of a good faith dispute;

(b) the Owner fails to timely cure any noticed default or breach under this Agreement; or

(c) the Owner fails to timely perform any obligation or duty of the Owner under this Agreement, which is not then the subject of a good faith dispute between Owner and Design-Build Firm.

(3) **Notice and Opportunity to Cure Default.** The Party not in default of this Agreement shall send the defaulting Party written notice of the alleged default. The Party alleged to be in default shall have a period of fifteen (15) business days from the date notice is received to cure the default. If the default is not cured within the fifteen (15) business day period, then the other Party may thereafter terminate the Agreement by sending the defaulting Party notice of termination, which termination is effective upon sending of the notice.

B. **Right of Owner to Terminate for Convenience.** The Owner reserves the right to terminate this Agreement in whole or in part for the convenience of the Owner by issuing a signed, written notice of termination for convenience, which termination shall become effective on the twentieth (20th) Day following receipt of notice, or upon the scheduled completion date of the next task, or phase or stage of the Project in which Design-Build Firm is then currently authorized to perform Services, whichever occurs first.

C. **Right of Owner to Suspend Services.** The Owner reserves the right to suspend Services under this Agreement in whole or in part at any time and from time-to-time for the convenience of the Owner by issuing a written notice of suspension (citing this paragraph), which notice outlines the reasons for the suspension and the then estimated duration of the suspension. The Owner’s estimated duration of the suspension shall in no way constitute a representation or guarantee of 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, then the date the notice of suspension is received by the Design-Build Firm. Upon receipt of a notice of suspension in excess of one hundred twenty (120) consecutive Days, the Design-Build Firm shall have the right as its sole and exclusive remedy, to terminate this Agreement by written notice to the Owner. Design-Build Firm may exercise this right to terminate any time after a suspension has continued for more than one hundred twenty (120) consecutive Days, but before the Owner gives Design-Build Firm written notice to resume the Services. Termination (under this
paragraph) by Design-Build Firm shall be effective immediately upon the Owner’s receipt of written notice from Design-Build Firm.

D. Legal Prohibition. If any state or federal law, rule or regulation is enacted, promulgated or interpreted to prohibit or preclude completion of the Project under normal expectations, then either Party may terminate this Agreement by giving the other Party not less than twenty (20) Days prior written notice of the effective date of termination. Design-Build Firm shall, to the extent permitted by Applicable Law, be paid for the portion of the Services completed through date of termination.

E. Procedures Design-Build Firm shall Follow upon Notice of Termination.

(1) Upon receipt of any notice of termination, unless the notice otherwise directs, Design-Build Firm shall immediately begin the phase out and the discontinuance of all Services and Work in connection with the performance of this Agreement and, unless otherwise directed by Owner, shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Owner under this Agreement. Within thirty (30) Days after receipt of such notice of termination, the Design-Build Firm shall submit a statement showing in detail the Services and Work performed under this Agreement prior to the effective date of termination. The Owner shall have the option to grant a written extension to the time period for submittal of such statement.

(2) All completed or partially completed designs, plans, specifications and reproducibles prepared under the Agreement, as well as all other documents, property records, tests, charts, reports and other materials, or information pertaining to the Project and/or Design-Build Firm’s Services and Work hereunder, including the Design-Build Firm’s most current documents stored on the CPMS (the “Project Documents”), shall be delivered to the Owner without further cost or charge to the Owner. Further payment to the Design-Build Firm is conditioned upon delivery of all such documents to the Owner.

(3) Upon the above conditions being met and Application for Payment being Approved, the Owner shall pay the Design-Build Firm in the event of a termination for convenience within thirty (30) Days following receipt of certified Application for Payment. Payment shall be limited to the unpaid portion of the Contract Price certified by the Program Manager or Architectural Representative to be due for Services and Work actually performed in accordance with the terms and provisions this Agreement to the date of the termination for convenience. If the termination is by the Owner for cause, further payment may be offset as provided above, or withheld, in whole or in part, until the Owner has achieved Final Completion of the Project by other means, paid all costs to achieve Final Completion, provided Design-Build Firm written notice of such costs, and determined whether the total of all costs and damages to achieve Final Completion following the termination is less than the amount withheld from Design-Build Firm’s payments due on Design-Build Firm’s prior Approved Applications for Payment.
(4) Failure of the Design-Build Firm to comply with the above requirements in this Section XVII.E, shall constitute a waiver by the Design-Build Firm of any and all rights or claims to collect monies that Design-Build Firm may rightfully be entitled to for services performed under this Agreement.

F. Procedures Design-Build Firm shall Follow upon Notice of Suspension.

(1) Upon receipt of written notice of suspension the Design-Build Firm shall, unless the notice otherwise directs, immediately begin to phase out and discontinue all Services and Work in connection with the performance of this Agreement and proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Owner under this Agreement.

(2) Design-Build Firm shall prepare a statement showing in detail the Services and Work performed by Design-Build Firm under this Agreement prior to the effective date of suspension and deliver the same to Owner within thirty (30) Days after the date of the suspension.

(3) Copies of all completed or partially completed designs, plans, specifications, RFI’s, ASKs, submittals, O&M manuals, warranties, and reproducibles prepared under this Agreement, prior to the effective date of suspension, and all other Project Documents shall be prepared for delivery to the Owner but shall be retained by the Design-Build Firm until such time as Design-Build Firm or the Owner may exercise the right to terminate this Agreement.

(4) In the event that Design-Build Firm exercises the Design-Build Firm’s right to terminate this Agreement for cause or following a suspension, Design-Build Firm shall submit to the Owner an updated final statement showing in detail the Services and Work performed under this Agreement prior to the effective date of suspension.

(5) Upon the above conditions being met, and the final determination that Design-Build Firm has the right to terminate for cause or as a result of such suspension, which final determination, to the extent possible, will be made within sixty (60) Days following the effective date of termination, the Owner shall promptly pay the Design-Build Firm the unpaid proportion of the Contract Price for the Services and/or Work actually performed in accordance with the terms and provisions of this Agreement. Final payment shall be made within thirty (30) Days of delivery of all Project Documents, the delivery of which shall be a precondition to final payment.

G. Remedies. The Owner’s termination of this Agreement, whether for cause or otherwise, shall not be an election of remedies. In addition to any right of termination, the Owner shall be entitled to pursue and enforce any other right or remedy available by contract, law or at equity, including the right to pursue damages. No termination of this Agreement shall relieve or excuse Design-Build Firm or any of Design-Build Personnel of its obligations and liability for violations of this Agreement, or for any act or omission,
or negligence of Design-Build Firm with respect to the Services performed prior to the date of termination. The remedies of the Owner set forth in this Agreement shall not be restrictive but shall be cumulative and in addition to all other remedies of Owner hereunder and under applicable state laws, including all laws related to fraud or latent defects. Nothing herein shall restrict, limit or otherwise diminish in any way the liability of the Design-Build Firm for errors, omissions, defects or deficiencies under the statutory and common laws of the State of Texas. Notwithstanding anything in this Agreement to the contrary, Design-Build Firm shall not be entitled to lost or anticipated profits should the Owner choose to exercise its option to terminate this Agreement for cause or convenience.

H. Owner, as a public entity, has a duty to document the expenditure of public funds. Design-Build Firm acknowledges this duty on the part of the Owner. To this end, Design-Build Firm understands that failure of Design-Build Firm to substantially comply with the requirements of this Agreement for the preparation and submittal of statements and documents required by this Agreement shall constitute a waiver by the Design-Build Firm of any portion of its Fees applicable to the preparation and submittal thereof.

XVIII. Equal Employment Opportunity Requirements

A. The Design-Build Firm 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 beliefs or affiliation. Specifically, the Design-Build Firm agrees to abide by all applicable provisions of the Nondiscrimination Clause and the Small and Minority Business Advocacy Clause as contained in the City of San Antonio’s current Affirmative Action Plan on file in the City Clerk’s Office. In the event non-compliance occurs, the Design-Build Firm shall, upon written notification by the Owner, commence compliance procedures within thirty (30) Days.

B. Design-Build Firm confirms for itself and all Design-Build Firm Personnel that Design-Build Firm and each of the Design-Build Firm Personnel who is an employer has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Design-Build Firm and each of such Design-Build Firm Personnel maintain no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap.

XIX. Dispute Resolution Procedures

A. Dispute Resolution Generally. The Design-Build Firm shall continue to timely and properly perform all Services and Work, and Owner will continue to pay for all Services and Work properly performed, in accordance with the requirements of this Agreement during the pendency of dispute resolution proceedings. The Parties agree that, except as provided in Section XIX.B, below, they shall attempt to resolve any dispute arising out of or related to this Agreement in accordance with the Dispute Resolution Procedures (Exhibit 20).
B. Exceptions to Dispute Resolution Procedures. The foregoing notwithstanding, the Dispute Resolution Procedures may be discontinued or disregarded by Owner at any time for the purposes of taking any action, including seeking immediate judicial relief, in order to pursue, enforce, enjoin or otherwise take action in regard to:

1. Liens filed or threatened against the Project or the Worksite;
2. Insurance claims for any loss or liability of Owner or an Owner Indemnitee;
3. Obligations to indemnify or defend an Owner Indemnitee against Pending Third Party Claims;
4. Warranty Claims;
5. Termination for default for failure to deliver documents required to be furnished to Owner hereunder;
6. Claims for fraud, trespass, conversion, intentional destruction of property or violation of trade secrets;
7. Claims for abandonment; and
8. Unsafe or illegal conduct of the Design-Build Firm or those for whom Design-Build Firm is responsible.

C. Prevailing Party. In any dispute arising under this Agreement, the following shall apply in the determination of which Party is the prevailing Party. If a Party claiming a right to payment of an amount is disregarded all or substantially all of such disputed amount, then such claiming Party shall be the prevailing Party. If a Party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the claiming Party, then the Party so defending against such claim shall be the prevailing Party. If both Parties prevail with respect to different claims by each of them, then the Party who is prevailing with respect to the substantially greater monetary sum shall be deemed the prevailing Party; otherwise, if both Parties prevail with respect to monetary sums on different claims, neither of which sums is substantially greater than the other, the tribunal having jurisdiction over the controversy, claims or actions shall in rendering the award determine in its discretion whether and to what extent either Party should be entitled to recover any portion of its attorney fees. The prevailing Party shall be entitled to recover reasonable attorney fees and costs to the extent provided in the Dispute Resolution Procedures (Exhibit 20.)

XX. Miscellaneous

A. Applicable Law. All questions relating to the validity, interpretation or performance of this Agreement shall be determined in accordance with the laws of the State of Texas, disregarding any conflict of law rules which may dictate the application of the laws of any other jurisdiction. Venue for any action or proceedings arising under or pertaining to this Agreement shall be in Bexar County, Texas.
B. Work Product. Design-Build Firm assigns, and shall cause Design-Build Firm Personnel to assign, to Owner without limitation the entire right, title and interest in and to the exclusive use or reuse of all Work Product, which shall be and remain the exclusive property of Owner; however, Design-Build Firm shall have no liability to Owner for Owner’s reuse of Work Product by others without the involvement of Design-Build Firm. Upon request of Owner, Design-Build Firm shall execute, assign to and assist Owner to pursue, apply for, obtain, register and enforce for Owner’s benefit all patents, copyrights, and other intellectual property rights, and all applications therefore, in and to the Work Product in any and all countries. Work Product shall be and remain Owner’s exclusive property, and shall not be used by Design-Build Firm or Design-Build Firm Personnel, except in connection with the Project or except as expressly provided further below, without the Owner’s prior written consent. If Design-Build Firm is selected to provide Design Services for a future project for the Owner based upon the Design Services developed by the Design-Build Firm for this Project, the Design-Build Firm agrees that it will only charge Owner Fees related to and reasonably necessary to modify its Work Product for the future development of the design criteria, scope of work, and or designs for the future project.

(1) The Owner acknowledges and agrees that Design-Build Firm shall, subject to the conditions in Subparagraph (2) below, have a right of co-ownership allowing Design-Build Firm to generally use, display or make reference to designated and identifiable design features or concepts included in the Work Product for the Project that Design-Build Firm has prepared and that are not specially unique to Owner’s Project, but rather are design features or concepts that are ordinary and customary, and generally used in the construction of industrial facility projects, and as to which disclosure will not reveal information or details that could in any way jeopardize security in the construction, operation and use of the Project, or reveal information that could compromise, diminish or impair the value of any aspect of Owner’s operations. Design-Build Firm shall not release or distribute to any third party copies of any design or design related information in digital form or other format that contain any references identifying the Owner and/or the Project without Owner’s full and express prior written consent, including but not limited to all Work Product used in marketing documents, press releases, brochures, websites, and all other documents or information sent to or accessed by third parties.

(2) The Design-Build Firm’s right of co-ownership in the Work Product described in Subparagraph (1) above shall, however, be subject to Design-Build Firm’s remaining in compliance with, and not defaulting in, its obligations to Owner under this Agreement. In addition, Design-Build Firm shall defend, indemnify and hold Owner Indemnified Parties harmless from and against all claims arising from use of such Work Product by Design-Build Firm, Design-Build Firm Personnel, or any third party to whom Design-Build Firm distributes the Work Product, for any purposes unrelated to this Project.
C. Authority to Execute Contract. Each Party represents to the other that it has the power and authority to enter into this Agreement, and that the person executing this Agreement on its behalf has the power to do so and to bind it to the terms of this Agreement.

D. Notices. Any notice, approval, or other communication or directive provided for or required of the Parties pursuant to this Agreement shall be in writing and shall be deemed to have been properly given and effective upon receipt, if such notice shall have been:

(1) delivered by hand; or

(2) mailed, postage prepaid, registered or certified, addressed to the following individuals, or any other person designated by either Party’s written notice to the other Party, each of whom shall be the Parties’ respective authorized agents:

To Owner and Program Manager, as follows:

Julie Valadez, RA, AIA
Project Manager
San Antonio Water System
2800 U.S. Hwy 281 North
San Antonio, Texas 78212

Steve Gatto
Senior Project Manager
APSI Construction Management, Inc.
12900 Elmington Drive
Cypress, Texas 77429

With a copy to:

Nancy Belinsky
Vice President and General Counsel
San Antonio Water System
2800 U.S. Hwy 281 North
San Antonio, Texas 78212

Genoveva G. Gomez
Vice-President, Engineering & Construction
San Antonio Water System
2800 U.S. Hwy 281 North
San Antonio, Texas 78212

To Design-Build Firm:

Teal Construction Company
Attn: Thad Miner
19915 FM 2252 – Suite 3
Garden Ridge, Texas 78266
thadminer@tealcon.com

With copies to:

Teal Construction Company
Attn: Jason Hogue
Roy Botard
Patricia Parker
1335 Brittmoore Rd.
Houston, Texas 77043

jasonhogue@tealcon.com
roybotard@tealcon.com
triciaparker@tealcon.com

E. Third Party Beneficiaries. No provision of this Agreement shall confer or be construed to create any right or benefit to any third party, including any Design-Build Firm Personnel or any other entity which has assumed any of Design-Build Firm’s obligations hereunder, or in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. Design-Build Firm shall be solely responsible for all contractual obligations to the Design-Build Firm Personnel, and shall pay for the Services and Work of its Design-Build Firm Personnel in accordance with Applicable Laws. Design-Build Firm shall provide that the Owner, the San Antonio Water System, may, at its election, assume the status of a third party beneficiary to any contracts, subcontracts, consulting agreements, purchase orders and other agreements executed by Design-Build Firm in connection with this Agreement and/or the Project, which election may be exercised as to any such agreement by Owner’s issuance of written notice of such election to the other party or parties to such agreement.

F. Non-Waiver. Failure of Owner to insist upon strict performance of any of the terms and conditions hereof, or Owner’s failure or delay to exercise any rights or remedies provided herein or to properly notify Design-Build Firm in the event of breach, or the acceptance of or payment for any of the Services and Work hereunder, or approval of any design or work product, shall not release Design-Build Firm of any of Design-Build Firm’s warranties, responsibilities or other obligations under this Agreement and shall not be deemed a waiver of any right of Owner to insist upon strict performance hereof or any of its rights or remedies as to the Services and Work, regardless when performed or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this Agreement by Owner operate as a waiver of any of the terms hereof. Design-Build Firm agrees that Owner does not waive sovereign immunity except to the extent required by the laws of Texas in effect as of the time of any claim or dispute hereunder.
G. **Severability.** Except as otherwise expressly provided in this Agreement, if any provision in this Agreement is held to be unenforceable, the remainder of this Agreement, shall continue in full force and effect and, to the maximum extent permitted by Applicable Law. This Agreement shall be interpreted so as to give the effect to the original written intent of the Parties. If any portion of a provision is held to be unenforceable, the remainder shall be reformed to provide Owner the greatest rights allowed by Applicable Law, and thereafter enforced to the maximum extent allowed by Applicable Law to give effect to the original written intent of the Parties.

H. **Non-Appropriation.** Design-Build Firm agrees that the Owner has projected costs for this Agreement and Owner expects to pay all obligations of this Agreement from projected revenues of the Owner. All obligations of the Owner are subject to annual appropriations by its Board. Accordingly, notwithstanding anything in this Agreement to the contrary, in the event that the Owner should fail to appropriate funds to pay any of Owner’s obligations under the terms of this Agreement, then the Owner’s obligations under this Agreement shall terminate, this Agreement shall be rendered null and void to the extent funds are not available, the Design-Build Firm’s sole option and remedy shall be to terminate this Agreement by written notice to Owner, and neither the Owner nor the Design-Build Firm shall have any further duties or obligations hereunder, except those which expressly survive. Owner agrees to use good faith efforts to provide written notice to Design-Build Firm when funds have been appropriated for expenditure under this Agreement, and if expected funds are requested and not appropriated, Owner agrees to use good faith efforts to provide written notice to the Design-Build Firm of the non-appropriation. Owner has obtained approval from its Board for funding for this Agreement, to the extent set forth in Owner’s Confirmation of Funding, attached hereto as Exhibit 21.

I. **Security Procedures.** Design-Build Firm shall comply with all security procedures set forth in Owner’s Security Procedures, attached hereto as Exhibit 22.

J. **Approval Not Release.** Approval by the Owner shall not constitute nor be deemed a release of the responsibility and liability of Design-Build Firm, or the Design-Build Firm Personnel for the accuracy and competency of the Services, Work and Work Product; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect, error or omission in the Services, Work or Work Product or other documents prepared by Design-Build Firm, Design-Build Firm Personnel, or their employees, subcontractors, agents and consultants. Owner’s approval or acceptance of Design-Build Firm’s tasks and/or Services or Work will not release Design-Build Firm from any liability for such tasks and/or Services or Work because Owner is, at all times, relying upon Design-Build Firm’s skill and knowledge in performing the Services and Work.

K. **Entire Agreement and Amendments.** This Agreement has been the result of joint negotiation of the Parties, each of whom has experience in the evaluation and assumption of risks and liabilities of the nature provided for herein, and each of whom has been represented and advised by legal counsel. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and shall not be
constructed more severely against one Party than against the other. This Agreement supersedes all prior or contemporaneous agreements and negotiations between them, and may not be modified orally or otherwise, other than by written instrument executed on behalf of each Party by its duly authorized representatives. Owner shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not expressly set forth herein and Design-Build Firm agrees it is not acting in reliance on any such extraneous matters.

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

Executed and Binding as of the Effective Date stated Above.

OWNER: San Antonio Water System  DESIGN-BUILD FIRM:

By: ________________________________  By: ________________________________
   Robert R. Puente,  
   President and CEO  
   Its: __________________

DRAFT
Exhibit 1

Design Criteria Package
EXHIBIT 1

DESIGN CRITERIA PACKAGE

The Design Criteria Package may be accessed at the following temporary link:

https://clicktime.symantec.com/a/l/dcR6Q7HzEekRQlKTGSC0dx_5msTHXm8VFIsSo6BTNLuo=\?d=EPL5htPaDGqHtkz5S60W9r3j-dMuS7yfdR-hdBViM98ct3KhRnhh7p0A-AfP7SGZJD_PnDShotZrF0d_17c8DC-AHPtSc7Nou6ndfMJRm8HFGNAEwz72h5AG31FCSYhAQrM92MSV04KzHy7HbtCzlxikXoE2-XMVLuiOpN3gf7CyrEyGP7IwxLM5ip_HCsb4JnjC9TD4G9p8yCOcEpXXz1_vV62reCPRhQds4lbNzwiH4V2w8oy30BOL414fuFIC6ceeB4r1W85Vlin8YugazPMS98-dLYLGlz4PQFTTNqZB6J6g7BGVIrglI0CAvXo2kEDHcaKoBDqr27aEz4JMPFLB5XTwNVro4j1qCfzAcErr&u=https%3A%2F%2Fclients.projectmates.com%2FProjectmates%2FCore%2FdownloadFile.aspx%3FAccessType%3DANAONLYMOUSEMAILVIEW%26amp%3BUserId=3D5924%26amp%3Banl%3D455FA7D6D2C7AB5723FECEA4665B052E9D2ED1F5D73895309AD4D039A4948%26amp%3BForceDialog%3D1%26amp%3Bdownload%3D1%26amp%3BSecureToken%3D7BBA3442CB5C46D771196FBD9D901DC5C02C47F9ED030EE2D21E946AF%26amp%3BprojectId%3D3121%26amp%3BId%3D3121%26amp%3BId%3D3460046

after which a Projectmates license will be issued to permit further access the Design Criteria Package at the following link:

https://clients.projectmates.com/Projectmates/Core/login.aspx?AccessType=EMAILVIEW&ProjectId=3121&download=1&Id=459800
Exhibit 2

Building Information Modeling Protocols
EXHIBIT 2
BUILDING INFORMATION MODELING (BIM) PROTOCOLS

1. General Principles

1.1 This Exhibit does not effectuate or require a restructuring of contractual relationships or shifting of risks between or among the Project Participants, except as otherwise set forth in the Governing Contract and this Exhibit.

1.2 This Exhibit is not intended to create privity of contract among any Project Participants beyond that which otherwise exists at law or by the terms of the Governing Contract.

1.3 Each Party to the Governing Contract shall append or incorporate, and shall cause each Project Participant with which it is in privity to append or incorporate, this identical Exhibit in all contracts for which any other Project Participants are to perform obligations to be modeled. All such contracts shall contain flow-down provisions requiring that the provisions of this Exhibit be passed downstream to subconsultants and subcontractors, as applicable.

1.4 Nothing in this Exhibit shall relieve the Design Professional of Record (“DPOR”) from its obligation, nor diminish the role of the DPOR, as the person responsible for and in charge of the design of the Project.

1.5 Participation of the Design-Build Firm, its subcontractors and suppliers in Contributions to a Model shall not constitute the performance of design services.

1.6 Unless otherwise agreed in the BIM Execution Plan, a Design Model is not intended to provide the level of detail needed in order to extract precise material or object quantities.

1.7 In the event of a conflict between the contents of a Design Model and any other Model, the Design Model shall take precedence.

1.8 If any Project Participant becomes aware of a discrepancy between a Model and either another Model or another Contract Document, such Project Participant shall promptly notify the other Party or Parties to that Project Participant’s Governing Contract and the Information Manager (IM).

1.9 Unless otherwise agreed in the BIM Execution Plan, the dimensional tolerances provided by the Contract Documents in the Governing Contract shall apply to dimensions in a Model.

1.10 In the event of an inconsistency between this Exhibit and the Governing Contract, the Governing Contract shall take precedence.
11. Definitions

2.1 Affiliated Contract means any contract relating to the Project to which an identical Exhibit is attached and in which that identical Exhibit is incorporated, other than the Governing Contract.

2.2 Construction Model means a Model that (a) consists of those aspects of the Project that are to be modeled as specified in the BIM Execution Plan prepared pursuant to this Exhibit; (b) utilizes data imported from a Design Model or, if none, from a designer’s Construction Documents; and (c) contains the equivalent of shop drawings and other information useful for construction.

2.3 Contract Documents, as defined in the Governing Contract, is modified to include all Design Models, unless otherwise specified in the BIM Execution Plan.

2.4 Contribution means the expression, design, data or information that a Project Participant (a) creates or prepares, and (b) incorporates, distributes, transmits, communicates or otherwise shares with other Project Participant(s) for use in or in connection with a Model for the Project.

2.5 Contributor means a Project Participant who makes a Contribution.

2.6 Design Model means a Model of those aspects of the Project that (a) are to be modeled as specified in the BIM Execution Plan prepared pursuant to this Exhibit and (b) have reached the state of completion that would customarily be expressed by an architect/engineer in two-dimensional Construction Documents. This shall not include Models such as analytical evaluations, preliminary designs, studies, or renderings. A Model prepared by an architect/engineer that has not reached the stage of completion specified in this definition is referred to as a Model.

2.7 Drawings mean (a) those two-dimensional plans, sketches or other drawings that are Contract Documents under the Governing Contract and are created separately from, and are not derived from, a Model and (b) those two-dimensional projections derived from a Model supplemented with independent graphics and annotations specified by the Parties to be Contract Documents.

2.8 Federated Model means a Model consisting of linked but distinct component Models, drawings derived from the Models, texts, and other data sources that do not lose their identity or integrity by being so linked, so that a change to one component Model in a Federated Model does not create a change in another component Model in the Federated Model.

2.9 Full Design Model means a Model consisting of coordinated structural, architectural, MEP and other Design Models designated in the BIM Execution Plan to be produced by the design team.
2.10 Governing Contract means the agreement to which this Exhibit is attached and in which it is incorporated, but excludes an Affiliated Contract.

2.11 Information Management means measures that protect and defend information and information systems with respect to their availability, integrity, authentication, confidentiality, and nonrepudiation. These measures include providing for restoration of information systems by incorporating protection, detection, and reaction capabilities.

2.12 Information Manager or IM means one or more individuals responsible for the BIM’s Information Management program.

2.13 MEP means mechanical, electrical and plumbing.

2.14 Model means a three-dimensional representation in electronic format of building elements representing solid objects with true-to-scale spatial relationships and dimensions. A Model may include additional information or data.

2.15 Project Model means a Model consisting of the federation of a Full Design Model and one or more Construction Models designated in the BIM Execution Plan, or the Governing Contract, to be produced by Project Participants.

2.16 Project Participant shall be, and Project Participants shall include, each Party to the Governing Contract and each Party to an Affiliated Contract.

III. Information Management

3.1 The DPOR shall serve as the IM as part of the Design-Build Firm’s Basic Services. The Owner and Program Manager may, in their sole discretion, replace the IM.

3.2 The role and responsibility of the IM with respect to a Federated Model of the Project, including the Project Model, shall be to perform or procure from a third party acceptable to the Owner the following functions:

3.2.1 Create, delete, modify and maintain user accounts;

3.2.2 Assign, delete and modify access rights to users;

3.2.3 Apply access controls to users so that only authorized users of the Model can access only the data they are authorized to access;

3.2.4 If appropriate, establish and maintain encryption-at-rest measures and encryption-during-transmissions measures;

3.2.5 Record, at a minimum, the following information about each data entry by Model users in the Federated Model (including downloading of Models to the Federated Model):

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

3.2.6 Backup and restore data;

3.2.7 Routinely run information system scans to maintain Model security;

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

3.2.9 Install patches to close documented vulnerabilities in the Model;

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

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

3.2.12 Provide authorized users with access instructions and system requirements;

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

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

IV. BIM Execution Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.11 Establishment of a common coordinate system;

4.3.12 Establishment of conventions as to units;

4.3.13 Conventions for defining critical dimensions and critical Model content;

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

4.3.16 File structure to be used;

4.3.17 Software to be utilized;

4.3.18 Measures needed to achieve interoperability of applications;

4.3.19 Two-dimensional reference Drawings;

4.3.20 Utilization of BIM for the RFI process, response protocol and timing, incorporation of responses into any Model;

4.3.21 Utilization of BIM for the Change Order process, response protocol and timing, incorporation of responses into any Model;

4.3.22 A schedule for BIM development, coordination and clash detection meetings among the Project Participants;

4.3.23 Engagement of the IM in these processes;

4.3.24 Utilization of a Project BIM website;

4.3.25 Procedures and protocols for confirmation of field changes through an as-built Project Model; and

4.3.26 Specification of Project close-out and final deliverables.

V. Risk Allocation

5.1 Each Party shall be responsible for any Contribution that it makes to a Model or that arises from that Party's access to that Model, and shall fully defend, indemnify and save harmless the Owner and its affiliates for all damages or claims that arise out of or are connected in any way to that Party's Contribution or access to a Model in accordance with the indemnification provisions of the Governing Contract. Such responsibility includes any Contribution or access to a Model by a Project Participant in privity with that Party and of a lower tier than that Party.

5.2 Contributor's Dimensional Accuracy Representation. Contributors make no representation with respect to the dimensional accuracy of the Contributor's Contribution to a Model. A Model can be used for reference only and all dimensions must be retrieved from the Drawings;

5.3 With respect to the issue of a waiver of consequential damages:

(a) The Governing Contract shall govern the issue of any waiver of consequential damages arising from a Contribution; and
(b) Each Party waives claims against the other Parties to the Governing Contract for consequential damages arising out of or relating to the use of or access to a Model, including but not limited to damages for loss of use of the Project, rental expenses, loss of income or profit, costs of financing, loss of business, principal office overhead and expenses, loss of reputation or insolvency.

5.4 To the extent that any or all Design Models are included as Contract Documents, Project Participants may rely upon the accuracy of information in those Design Models.

5.5 The standard of care applicable to each Party regarding that Party’s Contributions to or use of a Model shall be in accordance with that Party’s Governing Contract.

5.6 Each Party shall use its best efforts to minimize the risk of claims and liability arising from the use of or access to its Model or the Project Model. Such efforts shall include promptly reporting to the relevant Project Participants any errors, inconsistencies, or omissions it discovers in its Model or the Project Model; however, nothing in this paragraph shall relieve any Party of liability it would otherwise bear under Section 5.1.

5.7 No Party involved in creating a Model shall be responsible for costs, expenses, liabilities, or damages which may result from use of its Model beyond the uses set forth in this Exhibit.

5.8 Design-Build Firm shall procure and maintain insurance acceptable to Owner to cover the risk of loss to electronic data, with minimum limits no less than those required by Owner, which insurance must cover all of the Design-Build Firm’s and Design-Build Firm Personnel’s Contributions or intended Contributions. Such insurance must, at a minimum, provide coverage for electronic vandalism to electronic data, including coverage for willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations. Design-Build Firm shall include this requirement in its contract with any other Project Participant and provide Owner with the coverage forms demonstrating compliance with this paragraph.

5.9 A defect in the software used in the creation, modification, federation or other use of a Model, including the Project Model, may, at the Owner’s discretion, entitle a Party to a time extension or other excuse from performance, but only to the extent that the Party could not have avoided any delay or loss by the exercise of reasonable care. In addition, a Party has the duty to mitigate any such delay or loss.

VI. Intellectual Property Rights in Models

6.1 Each Party represents and warrants to the Owner that, at the time the Governing Contract was executed, the Party was the owner of all copyrights in all of that Party’s Contributions. Subject to waiver of subrogation clauses, if any, contained in the Governing Contract, each Party agrees to indemnify and hold the Owner harmless for claims of third parties arising.
6.2 Each Project Participant, including the Party to the Governing Contract, assign to the Owner without limitation the entire right, title and interest in and to the exclusive use or reuse of all of that Project Participant’s Contributions in a Model, Design Model, Project Model, Federated Model, and the Full Design Model, which all aforementioned models shall be and remain the exclusive property of Owner as set forth in the Governing Contract.

6.3 Subject to the Governing Contract and the provisions of Section 6.1, the Owner grants to the other Party or Parties to the Governing Contract (a) a limited, non-exclusive license to reproduce, distribute, display, or otherwise use that Party’s contribution for purposes of this Project only; (b) a limited, non-exclusive sublicense to reproduce, distribute, display, or otherwise use, for purposes of this Project only, the Contributions of the other Project Participants; and (c) a limited, non-exclusive license to reproduce, distribute, display, or otherwise use any Model containing such Contributions, or any other Model with which the Model containing such Contributions is federated or otherwise related, in each case for the sole purpose of carrying out the Project Participants’ respective duties and obligations relating to this Project. This limited license shall include any archival purposes permitted hereunder or in the Governing Contract, but does not allow the licensee to reproduce, distribute, display, or otherwise reuse all or part of that Party’s Contributions or any other Party’s Contributions except as permitted hereunder or in the Governing Contract.

6.4 Unless otherwise limited herein or by express license-limiting terms in the Governing Contract, the non-exclusive license granted in this BIM Exhibit shall remain in effect as permitted by law. In addition, after final completion of the Project, the non-exclusive license shall be solely limited to keeping an archival copy of the Project-related Contributions.

6.5 Each Party in privity with the Owner shall require all other parties with whom that Party is in privity, that may be a Contributor to any model, to agree to all provisions of Section VI.
Exhibit 3

Design-Build Firm’s Pricing Schedule
### Design Services Fee

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<td>NWOC Final GMP and Project Schedule</td>
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### Construction Services Fee - ESOC

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### Design-Build Firm's Pricing Schedule

#### Exhibits

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<th>Subtotals</th>
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**Notes:**
- $0 indicates no cost or included within another category.
- Costs are listed in thousands of dollars ($).
### Exhibit 3
Design-Build Firm’s Pricing Schedule

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**SUBTOTAL Cost of the Work:**

- Fixed Price - ESOC Admin Building: $5,432,985

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<tr>
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<tr>
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<td>Utilities (within 4 ft line)</td>
<td>1</td>
<td>LS</td>
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**SUBTOTAL Cost of the Work:**

- Fixed Price - Training Renovation: $1,067,736

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<tr>
<td>31 00 00</td>
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<td>LS</td>
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<tr>
<td>32 00 00</td>
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<td>1</td>
<td>LS</td>
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<td>$771,178</td>
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<tr>
<td>33 00 00</td>
<td>Utilities (outside 4 ft line)</td>
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<tr>
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<td>36 00 00</td>
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**SUBTOTAL Cost of the Work:**

- Fixed Price - ESOC Supply Building: $2,541,762

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<th>Title</th>
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<tr>
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<td>$771,178</td>
</tr>
<tr>
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<td>1</td>
<td>LS</td>
<td>$175,000</td>
<td>$175,000</td>
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<tr>
<td>35 00 00</td>
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<td>LS</td>
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<td>LS</td>
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**SUBTOTAL Cost of the Work:**

- Fixed Price - ESOC Supply Building: $2,541,762

**TOTAL Cost of the Work:**

- Fixed Price: $11,218,246
- Contingency: $606,077

**Design-Build Firm’s Contingency - ESOC**

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<th>UOM</th>
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<th>Subtotals</th>
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<td>32</td>
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<tr>
<td>33</td>
<td>Utilities (outside 4 ft line)</td>
<td>1</td>
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<td>$175,000</td>
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<tr>
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**SUBTOTAL Cost of the Work:**

- Fixed Price - ESOC Supporting Facilities: $1,569,686

**Construction Services Fee - NWOC**

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<td>$175,000</td>
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<td>36</td>
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**SUBTOTAL Cost of the Work:**

- Fixed Price - ESOC Supporting Facilities: $1,569,686

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<th>UOM</th>
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**SUBTOTAL Cost of the Work:**

- Fixed Price - ESOC Supporting Facilities: $1,569,686

**TOTAL Cost of the Work:**

- Fixed Price and Contingency - ESOC: $11,218,246
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<td>01 01 00</td>
<td>General Requirements (NWOC)</td>
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<td></td>
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<td>01 01 10</td>
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<tr>
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<td>Small Tools &amp; Consumables</td>
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<td>Temporary Heating &amp; Cooling</td>
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<td>Temporary Roads</td>
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<td>Security</td>
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<td>Examination &amp; Preparation</td>
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<td>Pre-construction Photo Documentation</td>
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<td>Progress Photos</td>
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<td>Temporary Protection (in-place work/adjacent structures)</td>
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<td>$2,000 $2,000</td>
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<td>Temporary Weather Protection/Enclosures</td>
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<td>Trash Chutes</td>
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<tr>
<td>Trash Chutes (site and field offices) and trash removal</td>
<td>1 LS</td>
<td>$4,800 $4,800</td>
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**01 02 30 Bonds (excluding any for sub-consultants)**

- Builder’s Risk Insurance | 1 LS | $11,775 $11,775 |
- Commercial General Liability Insurance | 1 LS | $8,166 | included in GL |
- Commercial Auto insurance | 1 LS | included in GL |
- Workman’s Comp & Employee Liability insurance | 1 LS | included in GL |
- Umbrella Policy | 1 LS | $9,277 $9,277 |
- Other general Project insurance | 1 LS | $3,370 $3,370 |
- Security, Payment & Performance Bonds | 1 LS | $36,760 $36,760 |

**01 03 10 General Home Office Support**

**SUBTOTAL List of Allowable General Conditions - NWOC** $466,408

**END List of Allowable General Conditions**

- Profits NWOC | 1 LS | $138,892 $138,892 |
- Price and Payment Procedures/Legal |
- Submittal Procedures |
- Quality Requirements |
- Starting, Testing Adjusting of Building systems - NWOC |
- Closeout Procedures |
- Closeout Submittals |
- Demonstration and Training – Owner’s operations training |
- Facility Operation (prior to Partial Occupancy) |
  - NWOC Admin building |
  - NWOC Fleet building |
  - NWOC Supply building |
  - NWOC Site, Parking and Fuel |
### Exhibit 3
Design-Build Firm's Pricing Schedule

<table>
<thead>
<tr>
<th>Numbers</th>
<th>Title</th>
<th>Quantity</th>
<th>UOM</th>
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<th>Subtotals</th>
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<tbody>
<tr>
<td>01 93 00</td>
<td>Facility Maintenance (prior to Partial Occupancy)</td>
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<tr>
<td></td>
<td>NWOC Admin building</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NWOC Fleet building</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NWOC Supply building</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NWOC Site, Parking and Fuel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Facility Maintenance (prior to Partial Occupancy)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SUBTOTAL Construction Services Fee: Fixed Price - NWOC**

**TOTAL Construction Services Fee - NWOC** $605,299.00

### Cost of the Work - NWOC

<table>
<thead>
<tr>
<th>Numbers</th>
<th>Title</th>
<th>Quantity</th>
<th>UOM</th>
<th>Cost</th>
<th>Subtotals</th>
</tr>
</thead>
<tbody>
<tr>
<td>03 00 00</td>
<td>Concrete</td>
<td>1</td>
<td>LS</td>
<td>$357,000</td>
<td>$357,000</td>
</tr>
<tr>
<td>04 00 00</td>
<td>Masonry</td>
<td>1</td>
<td>LS</td>
<td>$20,000</td>
<td>$20,000</td>
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<tr>
<td>05 00 00</td>
<td>Metals</td>
<td>1</td>
<td>LS</td>
<td>$35,000</td>
<td>$35,000</td>
</tr>
<tr>
<td>06 00 00</td>
<td>Wood, Plastics, and Composites</td>
<td>1</td>
<td>LS</td>
<td>$70,900</td>
<td>$70,900</td>
</tr>
<tr>
<td>07 00 00</td>
<td>Thermal and Moisture Protection</td>
<td>1</td>
<td>LS</td>
<td>$191,680</td>
<td>$191,680</td>
</tr>
<tr>
<td>08 00 00</td>
<td>Openings</td>
<td>1</td>
<td>LS</td>
<td>$165,072</td>
<td>$165,072</td>
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<tr>
<td>09 00 00</td>
<td>Finishes</td>
<td>1</td>
<td>LS</td>
<td>$75,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>10 00 00</td>
<td>Specialties</td>
<td>1</td>
<td>LS</td>
<td>$75,000</td>
<td>$75,000</td>
</tr>
<tr>
<td>11 00 00</td>
<td>Equipment</td>
<td>1</td>
<td>LS</td>
<td>$24,000</td>
<td>$24,000</td>
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<tr>
<td>12 00 00</td>
<td>Furnishings</td>
<td>1</td>
<td>LS</td>
<td>$2,500</td>
<td>$2,500</td>
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<td>13 00 00</td>
<td>Special Construction</td>
<td>1</td>
<td>LS</td>
<td>$222,800</td>
<td>$222,800</td>
</tr>
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<td>21 00 00</td>
<td>Fire Protection</td>
<td>1</td>
<td>LS</td>
<td>$20,650</td>
<td>$20,650</td>
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<tr>
<td>22 00 00</td>
<td>Plumbing</td>
<td>1</td>
<td>LS</td>
<td>$82,600</td>
<td>$82,600</td>
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<tr>
<td>23 00 00</td>
<td>Heating, Ventilating, and Air Conditioning (HVAC)</td>
<td>1</td>
<td>LS</td>
<td>$277,300</td>
<td>$277,300</td>
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<tr>
<td>26 00 00</td>
<td>Electrical</td>
<td>1</td>
<td>LS</td>
<td>$200,600</td>
<td>$200,600</td>
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<td>27 00 00</td>
<td>Communications</td>
<td>1</td>
<td>LS</td>
<td>$59,000</td>
<td>$59,000</td>
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<tr>
<td>28 00 00</td>
<td>Electronic Safety and Security</td>
<td>1</td>
<td>LS</td>
<td>$35,400</td>
<td>$35,400</td>
</tr>
<tr>
<td>33 00 00</td>
<td>Utilities (within 4 ft line)</td>
<td>1</td>
<td>LS</td>
<td>$30</td>
<td>$30</td>
</tr>
</tbody>
</table>

**SUBTOTAL Cost of the Work: Fixed Price - NWOC Admin Building** $2,029,002

### Cost of the Work - NWOC Supporting Facilities

<table>
<thead>
<tr>
<th>Numbers</th>
<th>Title</th>
<th>Quantity</th>
<th>UOM</th>
<th>Cost</th>
<th>Subtotals</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 00 00</td>
<td>Earthwork</td>
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<td></td>
<td>$200,107</td>
<td>$200,107</td>
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<tr>
<td>32 00 00</td>
<td>Exterior Improvements</td>
<td>1</td>
<td>LS</td>
<td>$33,910</td>
<td>$33,910</td>
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<tr>
<td>33 00 00</td>
<td>Utilities (outside 4 ft line)</td>
<td>1</td>
<td>LS</td>
<td>$48,000</td>
<td>$48,000</td>
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<tr>
<td></td>
<td>Demolition</td>
<td>1</td>
<td>LS</td>
<td>$71,590</td>
<td>$71,590</td>
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<tr>
<td></td>
<td>Utility Assessment Fees</td>
<td>1</td>
<td>LS</td>
<td>$25,000</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL Cost of the Work: Fixed Price - NWOC Supporting Facilities** $378,607

**TOTAL Cost of the Work: Fixed Price and Contingency - NWOC** $2,555,296

### Owner's Additive Alternate Allowance

- **Design-Build Firm's Contingency - NWOC** $134,687
- **ENOC - Construction Services Fee and Cost of Work** $12,929,032
- **NWOC - Construction Services Fee and Cost of Work** $3,160,599

**Initial Guaranteed Maximum Price (IGMP) for Project** $17,710,927
Exhibit 4

Form of Contract Amendment
EXHIBIT 4

FORM OF CONTRACT AMENDMENT

AMENDMENT No. ___
DESIGN-BUILD SERVICES AGREEMENT

THIS AMENDMENT TO THE ORIGINAL AGREEMENT (“Amendment”) with _________________ is made and entered into on this ___ day of ___________ 20___ by and between San Antonio Water System, a public water utility created pursuant to the provisions of Ordinance No. 75686 of the City of San Antonio, Texas, and Texas Local Government Sections 402.141 et seq., in the State of Texas, hereinafter called “Owner” and__________, a Texas corporation, having its principal place of business located at __________Texas ________________ (“Design-Build Firm”).

RECITALS

WHEREAS, the Owner and Design-Build Firm (“Parties”) entered into an Agreement on the ____ day of _________, 20______, (the “Agreement” or “Contract”) wherein the Owner engaged the Design-Build Firm to provide design and construction services for the Project, the terms and conditions of which are all incorporated by reference herein;

WHEREAS, both Parties agree that all capitalized terms herein shall have the same meaning as set forth in the Agreement;

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations contained herein and in the Agreement, it is hereby agreed to amend the Agreement as follows:

I. Amendments.

[USE SECTION 1 BELOW ONLY IF CONTRACT AMENDMENT RELATES TO MODIFICATIONS TO LANGUAGE IN THE CONTRACT.]

1. Section ______

The terms of Section _____ of the Agreement are hereby amended to now read as follows: [SHOW REVISIONS TO CONTRACT LANGUAGE AS INDICATED BELOW IN EXAMPLE TEXT.]

“The quick brown red fox jumps over the lazy dog pig.”
Final Guaranteed Maximum Price Number _____.

A. For Final Guaranteed Maximum Price Number _____ and in accordance with Article IX, the Parties agree to a Final Guaranteed Maximum Price of _______________________ for the Services and Work to be performed by the Design-Build Firm (as further described in the Elements of Final Guaranteed Maximum Price No. ____ [Attachment A to Amendment ____]) for the Project.

B. The Parties agree that Substantial Completion for the Project must occur on or before __________________, as set forth in the Project Schedule.

C. The Parties agree that Final Completion for the Project must occur on or before __________________, as set forth in the Project Schedule.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
3. **Adjustments to Design-Build Firm’s Initial GMP.** The amount of Design-Build Firm’s Initial GMP, which includes all Design-Build Firm’s Fees, is amended in accordance with the schedule below:

<table>
<thead>
<tr>
<th>DESCRIPTION OF ADJUSTMENTS</th>
<th>AMOUNT</th>
<th>APPROVALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial GMP</td>
<td>$_______</td>
<td>Accepted:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By: ________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Design-Build Firm</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Title: __________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date: __________</td>
</tr>
<tr>
<td>Final GMP</td>
<td>$_______</td>
<td></td>
</tr>
<tr>
<td>Net Amount of Any Adjustments to Final GMP by Contract Amendments or Construction Change Directives Preceding this Amendment (+/-)</td>
<td>$_______</td>
<td>By: ________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Program Manager</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Title: __________</td>
</tr>
<tr>
<td>Adjustment to Final GMP by this Amendment # ______ Construction Change Directive # ______ (+/-)</td>
<td>$_______</td>
<td>Approved:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By: ________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Owner</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Title: __________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date: __________</td>
</tr>
</tbody>
</table>

| AMENDED FINAL GMP AMOUNT | $________ |

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
4. **Adjustments to the Scheduled Dates of Completion.** The Scheduled Dates of Substantial and/or Final Completion shall be adjusted in accordance with the schedule listed below:

<table>
<thead>
<tr>
<th>DESCRIPTION OF DATE</th>
<th>SCHEDULED DATE OF SUBSTANTIAL COMPLETION</th>
<th>SCHEDULED DATE OF FINAL COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Scheduled Dates for the Project</td>
<td>______</td>
<td>______</td>
</tr>
<tr>
<td>Revised Scheduled Dates for the Project</td>
<td>______</td>
<td>______</td>
</tr>
</tbody>
</table>

II. **Special Exceptions.**

This Contract Amendment addresses all aspects of the Services and Work added by such Contract Amendment except as approved by Owner below:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
III. Full and Final Satisfaction. Except as specifically described above or as expressly otherwise stated in the Agreement, Design-Build Firm accepts the terms of this Amendment as full and final satisfaction to all claims, adjustments, and Contract revisions associated with such Amendment, and acknowledges that no further adjustment to the Design-Build Firm’s compensation or time for performance shall be allowed. Design-Build Firm otherwise waives any and all rights to future claims for additional adjustments to such compensation or time for performance and/or revisions to the Contract arising under, associated with, or in any way related to this Contract Amendment.

Except as hereby modified, amended, or changed, all of the terms and conditions of the Agreement and any amendments thereto shall remain in full force and effect.

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

EXECUTED ON THE DATE FIRST WRITTEN ABOVE

OWNER:
San Antonio Water System:

DESIGN-BUILD FIRM:

By: __________________________  By: __________________________
Name: ________________________  Name: ________________________
Title: __________________________  Title: __________________________
ATTACHMENT A TO AMENDMENT

ELEMENTS OF FINAL GUARANTEED MAXIMUM PRICE NO. ___

[USE ATTACHMENT “A” ONLY IF CONTRACT AMENDMENT IS FOR THE FINAL GMP.]
Exhibit 5

Design-Build Firm’s Staffing Plan
EXHIBIT 5
DESIGN-BUILD FIRM’S STAFFING PLAN

Owner
San Antonio Water System

Thad Miner
Project Executive

DeWayne Lucas
Preconstruction Director

Jason Hogue
Project Manager Scheduler

Tyler Killion
Asst. Project Manager QAQC

Project Administration

DESIGN TEAM

Gabriel Durand-Hollis
Principal

James Carleton
Project Manager

Robert Moritz
Lead Designer

Engineers Consultants

Jason Hogue
Project Manager Scheduler

Tyler Killion
Asst. Project Manager QAQC

Safety Manager

Project Administration

Wes Chapman
General Superintendent ESOC & NWOC

Edward Vargas
Superintendent NWOC

Asst. Superintendent ESOC

Preconstruction

Construction Consultants

Construction

Consultants

Design-Build Firm’s Staffing Plan P
Design-Build Services Agreement (Contract No. PS-00036-01)
| Teal Construction Company | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Thad Miner, Project Executive | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| DeWayne Lucas, Director of Preconstruction | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Jason Hogue, Project Manager | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Tyler Killion, Asst. Project Manager | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Wes Chapman, General Superintendent | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Edward Vargas, Superintendent | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

| Design Consultants | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| DHR Architects, Architects | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Pape-Dawson, Civil Engineers | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| TTG, MEP Engineers | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Lundy & Franke, Structural Engineers | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Bender Wells Clark Design, Landscape Architects | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
Exhibit 6

Project Schedule
EXHIBIT 6
PROJECT SCHEDULE

1.0 DESIGN STAGE

Completion of ESOC & NWOC Design 24 August 2017
(Issue of 100% approved CDs for permitting)

2.0 EAST SIDE OPERATIONS CENTER CONSTRUCTION (ESOC CONSTRUCTION STAGE)

Substantial Completion of Construction 12 November 2018
(sufficient for move-in)

Final Completion of Construction 18 December 2018

3.0 NORTH WEST OPERATIONS CENTER CONSTRUCTION (NWOC CONSTRUCTION STAGE)

Substantial Completion of Construction 9 August 2018
(sufficient for move-in)

Final Completion of Construction 20 September 2018
### Project Schedule

<table>
<thead>
<tr>
<th>Task Name</th>
<th>Duration</th>
<th>Start</th>
<th>Finish</th>
<th>Predecessors</th>
<th>Resource Names</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Notice to Proceed Issued</td>
<td>0 days</td>
<td>4/7/17</td>
<td>4/7/17</td>
<td></td>
<td></td>
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<tr>
<td>Initial Meetings with Owner and PM</td>
<td>1 day</td>
<td>4/7/17</td>
<td>4/7/17</td>
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<tr>
<td>DCP Acceptance and Design Approach Submittal</td>
<td>15 days</td>
<td>4/7/17</td>
<td>4/22/17</td>
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<td>Owner Review of the Design Approach Submittal</td>
<td>10 days</td>
<td>4/22/17</td>
<td>5/11/17</td>
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<td>80% CD's Notice To Proceed Letter Issued by Owner</td>
<td>0 days</td>
<td>5/11/17</td>
<td>5/11/17</td>
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<td></td>
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<tr>
<td>80% CD's</td>
<td>35 days</td>
<td>5/11/17</td>
<td>6/15/17</td>
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<td>Submittal</td>
<td>15 days</td>
<td>6/15/17</td>
<td>6/30/17</td>
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<tr>
<td>Design Estimate</td>
<td>10 days</td>
<td>6/30/17</td>
<td>7/10/17</td>
<td></td>
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</tr>
<tr>
<td>Project Schedule</td>
<td>5 days</td>
<td>7/10/17</td>
<td>7/15/17</td>
<td></td>
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<tr>
<td>Owner Review &amp; Comments on 80% CD's</td>
<td>10 days</td>
<td>7/15/17</td>
<td>7/25/17</td>
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<td>100% CD's</td>
<td>36 days</td>
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<td>NTP For 100% CD's</td>
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<td>8/30/17</td>
<td>8/30/17</td>
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<tr>
<td>Submittal</td>
<td>15 days</td>
<td>8/30/17</td>
<td>9/15/17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Design Estimate</td>
<td>10 days</td>
<td>9/15/17</td>
<td>9/25/17</td>
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<tr>
<td>Project Schedule</td>
<td>10 days</td>
<td>9/25/17</td>
<td>10/5/17</td>
<td></td>
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<tr>
<td>Owner Review &amp; Comments on 100% CD's</td>
<td>10 days</td>
<td>10/5/17</td>
<td>10/15/17</td>
<td></td>
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<tr>
<td>Design Team 100% CD's Comments Review and Response</td>
<td>3 days</td>
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<td>10/18/17</td>
<td></td>
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<td>Develop and Submit FOMP</td>
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<td>11/1/17</td>
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<td>Owner review of FOMP</td>
<td>5 days</td>
<td>11/1/17</td>
<td>11/6/17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Notice To Proceed Letter Issued by Owner</td>
<td>0 days</td>
<td>11/6/17</td>
<td>11/6/17</td>
<td></td>
<td></td>
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<tr>
<td>100% CD's for Permit</td>
<td>30 days</td>
<td>11/6/17</td>
<td>12/6/17</td>
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<td>Procurement (Purchasing Plan)</td>
<td>4 days</td>
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<td>12/10/17</td>
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<td>Reinforcing Steel</td>
<td>2 days</td>
<td>12/10/17</td>
<td>12/12/17</td>
<td></td>
<td></td>
</tr>
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<td>Teal Hired Surveyor</td>
<td>2 days</td>
<td>12/12/17</td>
<td>12/14/17</td>
<td></td>
<td></td>
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<tr>
<td>Building Steel - Structure</td>
<td>2 days</td>
<td>12/14/17</td>
<td>12/16/17</td>
<td></td>
<td></td>
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<tr>
<td>Earthwork Sub</td>
<td>2 days</td>
<td>12/16/17</td>
<td>12/18/17</td>
<td>12/14/17</td>
<td>Building Steel - Structure</td>
</tr>
<tr>
<td>Erosion Control &amp; SWPPP Permit</td>
<td>1 day</td>
<td>12/18/17</td>
<td>12/19/17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concrete Sub or Concrete Supplier</td>
<td>2 days</td>
<td>12/19/17</td>
<td>12/21/17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storefront / Window Sub</td>
<td>2 days</td>
<td>12/21/17</td>
<td>12/23/17</td>
<td>12/19/17</td>
<td></td>
</tr>
<tr>
<td>MEP Sub</td>
<td>2 days</td>
<td>12/23/17</td>
<td>12/25/17</td>
<td>12/21/17</td>
<td></td>
</tr>
<tr>
<td>Roofing Sub</td>
<td>2 days</td>
<td>12/25/17</td>
<td>12/27/17</td>
<td>12/23/17</td>
<td></td>
</tr>
<tr>
<td>Submittal Prep and Review (Plan)</td>
<td>75 days</td>
<td>12/27/17</td>
<td>3/12/18</td>
<td>12/25/17</td>
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</tr>
<tr>
<td>Reinforcing steel</td>
<td>15 days</td>
<td>12/27/17</td>
<td>1/9/18</td>
<td>12/25/17</td>
<td></td>
</tr>
<tr>
<td>Reinforcing steel SD's Prep &amp; submit</td>
<td>5 days</td>
<td>1/9/18</td>
<td>1/14/18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reinforce Steel review &amp; return</td>
<td>5 days</td>
<td>1/14/18</td>
<td>1/19/18</td>
<td></td>
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</tr>
<tr>
<td>Reinforce Steel Fab &amp; Ship</td>
<td>5 days</td>
<td>1/19/18</td>
<td>1/24/18</td>
<td></td>
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<tr>
<td>Pre-Engineered Metal Building</td>
<td>75 days</td>
<td>1/24/18</td>
<td>2/9/18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procure PEMB</td>
<td>15 days</td>
<td>2/9/18</td>
<td>2/23/18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arch. / Structural Coordination</td>
<td>5 days</td>
<td>2/23/18</td>
<td>2/28/18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepare Column Reactions</td>
<td>5 days</td>
<td>2/28/18</td>
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## SAWS Design Build Phase II Master Schedule

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<th>ID</th>
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<td>49</td>
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<td>MEP Underground Rough In</td>
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<td>Exterior Hm Frames &amp; Doors</td>
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<td>Interior wall layout and framing</td>
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<td>Thu 1/24/18</td>
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**Notes:**
- **Project Field Office Set Up**
- **Temporary Power**
- **Temporary Railing**
- **Temporary Door Installation**
- **Temporary Exterior of Building**
- **Temporary MEP Rough In**
- **Temporary MEP Rough In**
- **Temporary Exterior of Building**
- **Temporary MEP Rough In**
- **Temporary MEP Rough In**
- **Temporary MEP Rough In**
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## SAWS Design Build Phase II Master Schedule

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**Teal Construction Company**

**SAWS Design Build Phase II Master Schedule**

**Page 4**

**SAWS Design Build Phase II Master Schedule 3.21.2017**

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**Exhibit 6 – Project Schedule**

**Design-Build Services Agreement (Contract No. PS-00036-01)**
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<td>Wed 4/11/18</td>
<td>Fri 4/24/18</td>
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Teal Construction Company

SAWS Design Build Phase II Master Schedule

ID | Task Name | Duration | Start | Finish
---|-----------|----------|-------|-------
323 | Ceramic Tile and Floor Tile | 5 days | Thu 9/27/18 | Wed 10/3/18
324 | Moveable Partition Installation | 5 days | Thu 9/27/18 | Wed 10/3/18
325 | Millwork Installation | 1 day | Thu 10/4/18 | Thu 10/4/18
326 | Plumbing Fixtures | 5 days | Fri 10/5/18 | Thu 10/11/18
327 | Ceiling Grid | 5 days | Fri 10/5/18 | Thu 10/11/18
328 | Lighting and Mechanical Devices | 5 days | Fri 10/12/18 | Thu 10/18/18
329 | Install Interior Door Frames | 1 day | Fri 10/12/18 | Fri 10/12/18
330 | Overhead Inspection | 1 day | Fri 10/19/18 | Fri 10/19/18
331 | Commissioning | 25 days | Mon 10/22/18 | Fri 11/23/18
332 | Ceiling Tile | 5 days | Mon 11/26/18 | Fri 11/30/18
333 | Division 10 items | 1 day | Fri 10/12/18 | Fri 10/12/18
334 | Final Paint | 1 day | Mon 10/15/18 | Mon 10/15/18
335 | Flooring | 5 days | Fri 10/19/18 | Thu 10/25/18
336 | Door, Interior Glazing, Hardware | 1 day | Fri 10/26/18 | Fri 10/26/18
337 | Test and Balance | 5 days | Mon 10/29/18 | Fri 11/2/18
338 | Demonstrations | 3 days | Mon 10/29/18 | Wed 10/31/18
339 | Pre-Final Clean | 1 day | Thu 11/1/18 | Thu 11/1/18
340 | Building Finals | 5 days | Fri 11/2/18 | Thu 11/8/18
341 | Punch List | 21 days | Fri 11/9/18 | Fri 12/7/18
342 | Owner Punchlist Walk | 2 days | Fri 11/9/18 | Mon 11/12/18
343 | Incomplete Work Directives Issued To Subs | 1 day | Tue 11/13/18 | Tue 11/13/18
344 | Subs Complete Teal List | 10 days | Wed 11/14/18 | Thu 11/27/18
345 | Final Clean | 3 days | Wed 11/28/18 | Fri 11/30/18
346 | Final Punchlist Inspection | 5 days | Mon 12/3/18 | Fri 12/7/18
347 | TRAINING BUILDING SUBSTANTIALLY COMPLETE | 0 days | Mon 11/12/18 | Mon 11/12/18
348 | OFOI Installation | 1 day | Tue 11/13/18 | Tue 11/13/18
349 | Owner Move-In | 1 day | Wed 11/14/18 | Wed 11/14/18
350 | Close Out & Turnover | 26 days | Tue 11/13/18 | Tue 1/16/18
351 | Review and Mark-up As-Built Plans | 15 days | Tue 11/13/18 | Mon 1/1/18
352 | Review and Mark-up As-Built Specs | 15 days | Tue 11/13/18 | Mon 1/1/18
353 | Prepare Closeout Documents | 15 days | Tue 11/13/18 | Mon 1/1/18
354 | Issue As-Buills and Closeout Documents For Review | 11 days | Tue 12/4/18 | Tue 12/18/18
355 | Issue Letter to Owner - Job Complete | 1 day | Tue 12/18/18 | Fri 12/21/18
356 | Relocation of Fuel Pumps | 62 days | Fri 8/10/18 | Wed 11/15/18
357 | Coordination & Planning Meetings | 7 days | Fri 8/10/18 | Mon 8/20/18
358 | Demolition of Paving | 10 days | Tue 8/21/18 | Mon 9/3/18
359 | Connection to existing tanks | 15 days | Tue 8/21/18 | Mon 9/24/18
360 | Miscellaneous concrete work | 15 days | Tue 8/21/18 | Mon 9/24/18
361 | Installation of new fuel pumps | 5 days | Tue 10/16/18 | Mon 10/22/18
362 | Canopies | 10 days | Tue 10/23/18 | Mon 11/5/18
363 | ESOC SUBSTANTIALLY COMPLETE | 0 days | Mon 11/12/18 | Mon 11/12/18
364 | ESOC FINAL COMPLETION | 0 days | Tue 12/18/18 | Tue 12/18/18

Predecessors Resource Names

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<td>Plumbing Fixtures</td>
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<td>Ceiling Grid</td>
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<tr>
<td>Lighting and Mechanical Devices</td>
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<tr>
<td>Install Interior Door Frames</td>
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<tr>
<td>Overhead Inspection</td>
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<tr>
<td>Commissioning</td>
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<td>Ceiling Tile</td>
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<td>Division 10 items</td>
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Resource Names

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<tr>
<td>Lighting and Mechanical Devices</td>
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<tr>
<td>Install Interior Door Frames</td>
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Form of Final GMP Proposal
EXHIBIT 7

FORM OF GUARANTEED MAXIMUM PRICE PROPOSAL

Contract Number: _______________________
Contract Date: _______________________

Date:
Owner: San Antonio Water System
Construction Manager: _______________________

GMP Work Description: _______________________
GMP Tracking Number: _______________________
Design Package(s): _______________________

Construction Manager hereby proposes to Owner, pursuant to the provisions of Section _____ of the Construction Manager at Risk Agreement (“Agreement”) with Contract Number and Date as listed above, a Guaranteed Maximum Price (“GMP”) for the Design Package(s) referenced above as follows:

1. The proposed not-to exceed amount for the Cost of the Work (including Allowance items approved by Owner, and excluding General Requirements costs, which are to be included in the next item below) is: $ ___________________

2. The proposed not-to exceed amount for the General Requirements costs pursuant to the Agreement is: ___________________

3. The portion of the Construction Services Fee (as shown on the Elements of Construction Manager’s Fees, in the Pricing Schedule Exhibit 3) that will be allocated to the Guaranteed Maximum Price on a monthly basis is: ___________________

4. The proposed not-to exceed amount for the Construction Manager's Contingency pursuant to the Agreement is: ___________________

5. TOTAL PROPOSED GMP IS: $ ___________________

(Each line item amount above must exactly match the corresponding summary shown in the TAB 6 GMP Proposal Compensation Breakdown described in Attachment A)

6. Control Estimate established for this GMP $ ___________________
7. Construction Schedule:
   a. The date of Substantial Completion for this GMP is ___________________.
   b. The Scheduled Date of Substantial Completion for the Project is ___________________.

8. Savings, totaling $___________________, that are expected to be realized by Owner as a result of Value Analysis and/or substitution items recommended by Construction Manager under Tab 14.

Construction Manager hereby represents, warrants and guarantees that (i) the amount Owner shall pay for the Work and Services required in and/or reasonably inferable from the Design Package(s) referenced above shall not exceed the GMP amount listed in Line 5 above, and (ii) such Work and Services shall be completed by the proposed date of Substantial Completion for this GMP as listed in Line 6a above.

CONSTRUCTION MANAGER

__________________________

By: _______________________________
Name: [Insert Name] (print or type)
Title: [Insert Title] (print or type)
ATTACHMENT A TO EXHIBIT 7

GUIDELINES FOR THE PREPARATION OF THE
GUARANTEED MAXIMUM PRICE PROPOSAL

1. CONTRACT REQUIREMENTS

A) Refer to Section ___ of the Agreement. The provisions of the GMP are defined here and other related requirements are included throughout the Agreement. In the event of irreconcilable conflict between the GMP Proposal and the Agreement, or Construction Documents the interpretation that provides for the higher quality of material and/or workmanship shall prevail.

B) The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Agreement. Any exceptions to or modifications of such terms and conditions proposed shall not be effective unless they are expressly stated and conspicuously identified in the GMP Proposal and are specifically accepted and approved by the Owner. In general, proposed revisions or modifications to the language, terms or conditions of the Agreement will not be accepted.

2. PRE-SUBMITTAL REQUIREMENTS

A) Scope Definition. Prior to submission of the GMP, the Construction Manager shall thoroughly review the Design Package with the Owner, Program Manager and Project Manager to determine if the scope is sufficiently defined and to identify those areas in the Design Package requiring additional scope definition.

B) Schedule. The anticipated Notice to Proceed and Substantial Completion dates for Construction shall be coordinated and approved by Owner.

C) Value Analysis (VA). Proposed Value Analysis items included in the GMP Proposal shall be updated from previously submitted Value Analysis items. The VA schedule shall identify current acceptance and the date of acceptance in an adjacent column. VA items must be resolved and accepted by the Owner at the time of Owner’s acceptance of the GMP Proposal.

D) Pre-submittal Conference. As a part of the Pre-Construction Services Schedule the Construction Manager shall schedule Pre Submittal conferences with the Owner for each required GMP as required to meet Project objectives. Issues regarding the required information to be included in the GMP shall be reviewed to ensure there is a clear understanding of the format and contents of each division of Work to be submitted. Additionally, a review of acceptable General Requirements items, as defined in the Agreement, is required.

3. CONSOLIDATION OF REVIEW COMMENTS
The Owner will provide review comments, if any, in writing on the Construction Manager’s GMP Proposal within five (5) days. The Construction Manager shall, within ten (10) days, provide a response to the Owner’s comments in writing and schedule a conference with the Project Manager and Owner to reach agreement on all discrepancies and finalize a mutual understanding of the GMP to be submitted for Owner’s approval.

4. GENERAL REQUIREMENTS

The GMP Proposals shall be submitted in accordance with the Project Schedule as agreed between the Owner, Project Manager and Construction Manager at the phase specified by the Owner. The GMP Proposals shall be submitted in the format described below. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the Construction Manager and will not be the basis for extending the Scheduled Date of Substantial Completion.

5. GMP PROPOSAL PACKAGE - GENERAL

A) The GMP Proposal shall be bound in 3-ring notebook or spiral notebook (8-1/2" x 11" paper only). The cover and spine of the notebook are to be labeled to clearly show the Project, Design Package and Date of the proposal and is to be entitled “Guaranteed Maximum Price Proposal”. In addition to the bound notebooks, provide two (2) original executed copies secured with a binder clip and not bound into spiral notebooks.

B) In the event that a GMP Proposal is revised and resubmitted, the original date of submission is to be annotated with the word “Revised” and the new submission date indicated below it.

C) All pages within each tab shall be numbered.

6. ORGANIZATION AND CONTENT OF GMP PROPOSAL PACKAGE

The proposal shall be organized in the order described below:

TABLE OF CONTENTS AND GMP PROPOSAL

- List all the following items. Provide a brief summary of the major components within each Tab.
- Guaranteed Maximum Price Proposal (Exhibit __).

TAB 1- Individual’s Authority to Execute GMP Proposal

- Provide a cover sheet affirming or denying that the individual signing the GMP Proposal is the same individual who signed the Agreement.
• If a denial, provide evidence of the individual’s authority as required in Section XIV of the Agreement.

TAB 2 - Summary of GMP Related Work and Services

• Provide a brief summary defining the scope of the Design Package(s) issued for this GMP Proposal.
• Include the description of building type, size, character and general materials.
• Summarize any relationship with existing structures, unusual site conditions, utility issues, or conditions affected by other governmental agencies (i.e. right-of-way issues)
• State the proposed Date of Substantial Completion as listed in the GMP Proposal.

TAB 3 - Project Team

• List the various teams and the team members, in graphic and written form, including names, titles, job responsibilities, and contact information.
• Identify all consultants, Subcontractors and major Suppliers on whose bid(s) any portion of the GMP is based.
• Submit Exhibit _____, List of Construction Manager’s Key Personnel, as it relates to the overall project staffing plan.

TAB 4 - List of Documents

• Drawings Index - Drawings shall be organized by listing each sheet number, sheet title and current revision date.
• Specification Index:
  1. Provide a detailed listing of all Specification sections describing the Project.
  2. Each Specification shall be organized by CSI Division format listing each Specification section number, title and current revision date.

TAB 5 - Qualifications and Exclusions

• Qualifications - A summary of all qualifications and assumptions organized by Drawing sheet number or by Specification sections to match those in TAB 4.
• Exclusions - A summary of exclusions organized by Drawing sheet number or by Specification section.

TAB 6 - GMP Proposal Compensation Breakdown

• Provide a compensation breakdown in separate subsections for each of the following:
1. Cost of the Work less General Requirements costs based on anticipated subcontracts organized by subcontract bid package and within each bid package by CSI Division.
2. Cost of allowable General Requirements Line Items with estimated quantities, unit cost and extended amounts for each item.
   • Provide a comparison of the GMP proposal to the Control Estimate illustrating each affected line item, GMP cost, Control Estimate Cost, variance, and comment.

TAB 7 - Master Project Schedule (Summary Level)

• The summary level schedule shall be submitted electronically on a CD as a Gantt chart report showing the activity identification, activity name, original duration, early start, early finish, late start and late finish column titles, and shall be a complete Primavera P-6 compatible file within the GMP Proposal.

• Schedule Requirements
  1. The schedule shall comply with the requirements of the Specifications.
  2. The schedule shall be a computer generated CPM schedule developed in Primavera Version P-6 software.
  3. The schedule shall include detailed, logic driven activities for all construction activities.

TAB 8 - Bid/Proposal Package Strategy

• The Construction Manager shall provide a written bid/proposal package strategy for procuring subcontracts, including self-performance Work.

TAB 9 - Schedule of Values

• The Construction Manager shall provide a Schedule of Values in accordance with the Agreement.

TAB 10 - SMWBE Plan

• Complete the attachments required by Exhibit _____ of the Contract.
• For all first and second tier subcontractors currently under contract or anticipated to be contracted with, provide the information required in Exhibit ___.
• A completed SMWBE Subcontracting Plan shall be delivered to Owner at the time of final subcontracting buyout.

TAB 11 - Labor Burden Rates

• Provide Labor Burden Rates for Construction Manager’s General Requirements labor and for each trade category for each Subcontractor and Sub-subcontractor.
TAB 12 - Payment and Performance Bonds

- Provide fully executed Payment and Performance Bonds in the form required in Exhibit __.

TAB 13 - Responses to Review Comments

- For resubmitted GMP Proposals, include all review comments provided by the Owner regarding the GMP or GMP re-submittal.
- For each submittal the Construction Manager shall provide a written response below each original comment, stating the appropriate response to the issue and include that documentation in this section. A re-submittal may not be forwarded to Owner without responses to the previous review comments, which shall be included under this TAB 13.
- Any proposed deviations from the provisions or processes described in the Contract, contained in this Proposal, must be approved in writing by the Owner and included herein.

TAB 14 - Additional Value Analysis (VA) and/or Substitution Proposals

- The Construction Manager may include an additional list of unapproved VA items that, if accepted, would result in a reduction of the GMP. Each item is to include a description and related cost savings, as well as describe any impact on the scheduled Date of Substantial Completion, and shall also stipulate a date by which the Owner must accept such item without causing delay or reduction of the savings.
- Provide a detailed description and estimated cost savings for substitutions related to the Work included in the GMP that have not been approved through the substitution approval process. Include a schedule for review and approval of each substitution item as required to maintain the Project Schedule.
Exhibit 8

Bond Forms
EXHIBIT 8
PAYMENT, PERFORMANCE AND SECURITY BOND FORMS

Owner’s Payment Bond (2 Pages), Performance Bond (2 Pages) and Security Bond (2 Pages)
Forms are attached to this coversheet.
PAYMENT BOND

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF ________________

THAT WE, ____________________________, as Principal, hereinafter called “Principal” and the other subscriber hereto __________________________, a corporation organized and existing under the laws of the State of ______________, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called “Surety,” do hereby acknowledge ourselves to be held and firmly bound to the San Antonio Water System, “Owner,” in the sum of _________________ ($_______) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Principal has on _________________, executed Contract No. ____________, in writing with Owner for construction of Phase 2 of Owner’s Service Center Project in San Antonio, Texas (the “Project”), which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein, including but not limited to the dispute resolution procedures provided therein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.
IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST, SEAL: (if a corporation) ______________________________________
WITNESS: (if not a corporation) ________________________________ (Name of Contractor)

By: ____________________________________________________________
   Name: ______________________________________________________
   Title: _______________________________________________________
   Date: ________________________________

ATTEST/WITNESS (SEAL)

________________________________________________________________________
   (Full Name of Surety)

By: ____________________________________________________________
   Name: ______________________________________________________
   (Mailing Address of Surety for Notice)
   Title: _______________________________________________________
   Date: ________________________________

________________________________________________________________________
   (Physical Address of Surety)

Phone Number of Surety: ________________________________

By: ____________________________________________________________
   Name: ______________________________________________________
   Title: _______________________________________________________
   Date: ________________________________

Exhibit 8.1 – Payment Bond Form
Design-Build Services Agreement (Contract No. PS-00036-01)
EXHIBIT 8.2

PERFORMANCE BOND

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF ________________

THAT WE, ____________________________, as Principal, hereinafter called “Contractor” and the other subscriber hereto ____________________________, as Surety, do hereby acknowledge ourselves to be held and firmly bound to San Antonio Water System, “Owner”, in the sum of ________________ ($_______) for the payment of which sum, well and truly to be made to Owner and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on ________________, executed Contract No. ________________ in writing with Owner for the Project of Owner’s Service Center Project in San Antonio, Texas (the “Project”), of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the Owner, all of which are made a part of this instrument as fully and completely as if set out in full herein, including but not limited to the dispute resolution procedures provided therein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents, including but not limited to the plans and specifications contained therein referred to herein and shall comply strictly with each and every provision of Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof, as more fully set forth herein. The Surety understands and agrees that the provision in the Contract that Owner shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the Owner’s benefit, and Owner shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree. Provided, however, the preceding sentence shall not affect the surety's rights to collect such sums as are actually retained by the Owner, to the extent such sums are due under the Contract and applicable law. It is further expressly agreed by Surety that Owner or its representatives are at
liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom. It is further expressly agreed an understood that the Contractor and Surety will fully indemnify and save harmless Owner from any liability, loss, cost, expense (including attorneys fees), or damage arising out of or in connection with the work done by the Contractor under the Contract.

This bond and all obligations created hereunder shall be performable in _____________ County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

IN WITNESS WHEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation) __________________________________________
WITNESS: (if not a corporation) (Name of Contractor)

By: _______________________________     By: _______________________________
Name: _______________________  Name: _______________________
Title: _______________________  Title: _______________________
Date: _______________________  Date: _______________________

ATTEST/WITNESS (SEAL)
_____________________________________
(Full Name of Surety)

By: __________________________________ __________________________________
Name: _______________________ (Mailing Address of Surety for Notice)
Title: _______________________ ____________________________________
Date: _______________________ ____________________________________

(Physical Address of Surety)
Phone Number of Surety:
(___)________________

By: __________________________________
Name: __________________________
Title: __________________________
Date: __________________________
KNOOW ALL MEN BY THESE PRESENTS:

WE ARE

Principal, and hereinafter called the Principal, and

Surety, and hereinafter called the Surety, are held and firmly bound unto San Antonio Water System, as Obligee, and hereinafter called the Obligee in the penal sum amount of $____________, the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

WHEREAS, Principal has entered into a Design-Build Services Agreement ("Agreement") with Obligee in connection with the Service Center, Phase 2 (the "Project"), under the terms of which said Principal is obligated to timely submit to the Obligee one or more Guaranteed Maximum Price Proposal(s) to establish one or more Guaranteed Maximum Prices ("GMP(s)") for all Services and Work required under the Agreement, the total of which shall result in a final GMP for the Project; and

WHEREAS, upon the Obligee’s Approval(s) of the Principal’s GMP Proposal(s), and Principal’s receipt thereof, Principal is obligated to execute one or more GMP Amendment(s) establishing the GMP(s), and a Final GMP pursuant to the Approved GMP Proposal(s), and to thereafter to submit to the Obligee statutory payment and performance bonds for the total amount of the Final GMP in a timely manner, as required under the Agreement;

NOW THEREFORE, if Principal shall, in a timely manner and as required under the Agreement:

(i) submit one or more GMP Proposals as required by the Agreement for all Services and Work required under the Agreement; and

(ii) execute and deliver to the Obligee, within ten (10) days after receipt of Obligee’s Approval of each such GMP Proposal, a GMP Amendment in the same form as required by the Agreement to establish each such GMP and a Final GMP for all Services and Work required under the Agreement; and
(iii) thereafter submits to the Obligee the statutory payment and performance bonds for the Project based on the Final GMP, as required by the Agreement, or

(iv) if the Principal shall subsequently cure any failure on the part of said Principal to timely execute and deliver to Obligee the foregoing GMP Proposal(s) and GMP Amendment(s) and Payment and Performance Bonds, within ten (10) days after Obligee’s written notice of such default to the Principal and Surety, then,

this obligation shall be null and void, otherwise to remain in full force and effect. Principal’s failure either to perform in a timely manner or remedy any default within the cure period referenced herein shall entitle Obligee to immediate payment of the full penal sum of this Security Bond without further notice.

SIGNED, SEALED and DATED this __________ day of ____________________________ in the year.

(SEAL)

______________
Principal

ATTEST:

By: ____________________________
    (Typed Name and Title)

(SEAL)

______________
Surety

ATTEST:

By: ____________________________
    (Typed Name and Title)
Exhibit 9

Project Management Plan
EXHIBIT 9
PROJECT MANAGEMENT PLAN

Service Center Facilities Program
For
San Antonio Water System
San Antonio, TX

Project Management Plan (PMP)
For
Phase II: Design/Build ESOC and NWOC

Version 1.2
November 2016

Program Manager
Central Area Office
12902 Elmington Drive
Cypress, TX 77429
281-376-2190, fax 281-376-2178
www.apsicm.com

Design-Build Services Agreement (Contract No. PS-00036-01)
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  2. Pay Request Form (XL template form)
  3. Design-Build Firm’s contingency Request Form (W template form)
  4. Construction Change Directive Form

DRAFT
SECTION 1 - OVERVIEW

Objective and Purpose
The objective of the Project Management Plan ("PMP") is to provide uniformity in the application of project management practice, from the top owner level, for each project within the SAWS Service Centers Facilities program. APSI, SAWS’ Program Manager, has developed this PMP based on the Project Management Institute’s “Guide to the Project Management Body of Knowledge” (PMBOK® Guide) to provide broad overarching guidance for the development of Design-Build Services Agreement -specific PMPs and staff training in the general management of programs and projects.

This tailored SAWS Service Centers Facilities PMP applies to all projects managed by, subcontracted and/or performed by Program Manager on this program, to Program Manager team personnel, and third party contractors who join the program via specific project contract awards for services by SAWS.

This PMP delineates the project organization, the elements of Owner’s and Program Manager’s team, organizational and systems tools/support, and provides guidance on the management processes and procedures for this specific Design Build Services Agreement. This PMP will be updated in the future as additional contractors are added by SAWS for program works. At that time those members, roles, responsibilities, and authorities will be added to this document.

Definitions of terms not already defined in the Design-Build Services Agreement but that are used in this PMP are contained in Appendix B. In the event there is any inconsistency or disagreement between the Design-Build Services Agreement and this PMP, the Design-Build Services Agreement shall control. For purposes of clarification any process or procedure provided for in this PMP is to be considered as being in addition to the requirements of the Design-Build Services Agreement and shall not in any way supplant the requirements of the Design-Build Services Agreement.
SECTION 2 – SCOPE OF WORK

2.1 SAWS SERVICE CENTERS FACILITIES PROGRAM

The Service Center Facilities Program (as defined herein) includes all aspects of the Owner’s Program for the planning, development, engineering and design, procurement, demolition, renovation and construction of facilities and improvements related to the Projects, including but not limited to all program management services, project management services, architectural and engineering services, geotechnical, environmental, commissioning and other consulting services, and construction services in support of the Service Center Facilities Program.

The Program is a multi-year progressive development of 6 service center facility sites which is anticipated to be performed in five sequential project phases. The second phase, Phase II, is as follows:

Phase II – East Side Operations Center and North West Operations Center Projects

(a) East Side Operations Center Project. The East Side Operations Center (“ESOC”) is to be designed and constructed in Phase II. It consists of a service center operations facility located on an existing site of Owner. The ESOC will be comprised of a minimum of two (2) new buildings and the renovation of an existing crew quarters area, parking, and other site improvements, all of which are to be described and depicted with more particularity in the ESOC DCP.

(b) North West Operations Center Project. The North West Operations Center (“NWOC”) is to be designed and constructed in Phase II. It consists of a service center operations facility located on an existing site of Owner. The NWOC will be comprised of a minimum of one (1) new building, parking, and other site improvements all of which are to be described and depicted with more particularity in the NWOC DCP.

Phase II shall be designed and constructed in accordance with LEED 2009 New Construction and Major Renovations, such that these Program Phases achieve at least an equivalency of “Silver” certification by the USGBC and GBCI.

Phase II will undergo third party commissioning, performed by Program Manager, supported by the DB firm. In accordance with the Design-Build Services Agreement, a certificate of Final Completion shall not be issued until all that third party commissioning is successful.

2.2 PROGRAM MANAGER

The Program Manager has the obligation to assist the Owner in the oversight and management of the Service Center Facilities Program, and has authority to manage and communicate with the DB firm on Owner’s behalf in accordance with the Program Management Services Agreement. Unless otherwise directed by Owner, the communications of the DB firm with respect to the Services and Work shall be directed to the Program Manager, who shall be the single point of contact to Owner for the DB firm and DB Firm Personnel provided, however, nothing in this PMP shall be construed to limit or restrict the right of Owner to communicate directly with a DB firm at any time. All communications from the Program Manager or the Owner that direct any revisions to schedule cost, or scope in the DCP, or previously approved drawings or construction documents, or material changes or substitutions, shall be logged in a log called the “Program refinement Log” by the DB firm.
Firm and reviewed by the Owner prior to acceptance or implementation of any such directive by the DB Firm
SECTION 3 – COMMUNICATIONS PLAN

3.1 CONTACTS
Following are the main contacts on the project team. This list should be updated as necessary.

Owner:
San Antonio Water System (SAWS)
2800 US Hwy 281 North
San Antonio, TX 78212

- SAWS Project Manager: Julie Valadez, RA, AIA, Julie.Valadez@saws.org, (210) 233-3078

Program Manager:
APSI Construction Management
12902 Elmington Drive, Cypress, TX 77429

- Project Executive: Robert Morse, robert.morse@apsicm.com, 713-301-9157
- Sr. Project Manager (SPM): Steve Gatto, steve.gatto@apsicm.com, 830-431-1116
- Architectural Representative: Jim Sterner, RA, AIA, jsterner@munoz-co.com, 210-349-1163

DB Firm:
Teal Construction Company
19115 FM 2252 Ste.3
Garden Ridge, TX 78266

- Project Executive: Thad Miner, thadminer@tealcon.com, 210-714-5482
- Design Lead: Robert Moritz, robertmoritz@dhrarchitects.com, 210-308-0080
- ESOC Site Manager: Wes Chapman, weschapman@tealcon.com, 281-761-9883
- NWOC Site Manager: Eddie Vargas, edwardvargas@tealcon.com, 210-389-8264
- QC Lead: Jason Hogue, jasonhogue@tealcon.com, 832-578-9093
- Project Controls/Schedule Lead: Jason Hogue, jasonhogue@tealcon.com, 832-578-9093

3.2 INITIAL MEETINGS WITH OWNER AND PROGRAM MANAGER

Within seven (7) days of Notice to Proceed with Design Services, the DB firm shall meet with the Owner and PM to introduce all key personnel, become familiar with the communication protocol for the Project, and receive training in access and use of the CPMS. The communication protocol process/procedure shall be provided in writing and the DB firm staff shall receive training on it, specifically:

- the process for oral and written communications,
- proper points of contact and copies for major topics,
- CPMS use to further the communication process and to automatically perform proper distribution,
- Reviewing and establishing drawing exchange protocols CAD & BIM standards,
- Process to upload Project correspondence, documentation, and submittals in the project records (document control within the CPMS)
- formal plans and processes to be developed and followed in the Project, and
• Tracking of any deviation from the DCP in the Program Refinement Log

PROJECT and DCP REVIEW MEETINGS

Within seven (7) days of Notice to Proceed, the DB firm shall attend initial meetings with Program Manager and Owner as necessary to fully understand the Owner’s scope and DCP. In connection with such efforts, the Design-Build Firm shall provide the following:

- cost savings opportunities such as costs of alternative materials or designs, that would benefit the Project
- methods of verification for determining that the requirements and responsibilities of the DB Firm and all Program requirements in the DCP are accurately incorporated into the IGMP and Drawings and Specifications
- Subcontracts and any other Design-Build Services Agreement documents associated with the performance of Work in connection with the Project.
- Template and schedule for the next deliverable: DCP Acceptance and Design Approach Submittal Report

3.3 OTHER CONTRACTORS

As additional contractors are added to the Project or to the program by SAWS, the PM or the DB firm (such as for FF&E, specialty contractors, etc.), the contact information shall be provided to the APSI Senior Project Manager (SPM) within 10 days, and this contact information shall be added by the SPM or Program Manager team as the SPM authorizes and directs. This shall be updated in Projectmates so that the Project contact list is current and relevant.
4.2 ROLES, RESPONSIBILITIES AND AUTHORITIES OF ORGANIZATION

The project team key/lead personnel and functional assignments are shown below.

<table>
<thead>
<tr>
<th>KEY PERSONNEL</th>
<th>PROJECT ROLE</th>
<th>FIRM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Julie Valadez</td>
<td>SAWS Project Manager</td>
<td>SAWS</td>
</tr>
<tr>
<td>Steve Gatto</td>
<td>Senior Project Manager (SPM)</td>
<td>Program Manager</td>
</tr>
<tr>
<td>Jim Sterner</td>
<td>Architectural Representative</td>
<td>Munoz &amp; Co.</td>
</tr>
<tr>
<td>Jason Hogue</td>
<td>DB firm Project Manager</td>
<td>Teal Construction</td>
</tr>
<tr>
<td>Robert Moritz</td>
<td>DPOR Project Manager</td>
<td>DHR Architects</td>
</tr>
<tr>
<td>Ed James Carleton</td>
<td>DPOR Project Architect</td>
<td>DHR Architects</td>
</tr>
<tr>
<td>Wes Chapman</td>
<td>ESOC Superintendent</td>
<td>Teal Construction</td>
</tr>
<tr>
<td>Eddie Vargas</td>
<td>NWOC Superintendent</td>
<td>Teal Construction</td>
</tr>
<tr>
<td>Jason Hogue</td>
<td>CPMS/Document Control Coordinator</td>
<td>Teal Construction</td>
</tr>
<tr>
<td>Jason Hogue</td>
<td>ESOC QC Lead</td>
<td>Teal Construction</td>
</tr>
<tr>
<td>Jason Hogue</td>
<td>NWOC QC Lead</td>
<td>Teal Construction</td>
</tr>
<tr>
<td>Ziggy Garcia</td>
<td>Safety Officer</td>
<td>Teal Construction</td>
</tr>
</tbody>
</table>
4.3 KEY STAFF RESPONSIBILITIES

Program Manager SPM – Steve Gatto
The SPM is the senior program manager staff member at the Project sites, responsible for the performance of all Program Manager team personnel on the Project and for proper planning, coordination, and successful completion of all Design-Build Services Agreement activities for SAWS. The SPM is designated as the primary liaison of Program Manager team personnel with Project Manager or Owner and other SAWS groups, especially security and operations. As the primary liaison between the DB firm and SAWS, at a minimum, the SPM is directly responsible to the SAWS Project Manager and to the SAWS Contracting Officer for:

- Timely and accurate delivery of all DB Design-Build Services Agreement deliverable
- Design/construction and quality oversight
- Developing, managing and maintaining the Program master schedule
- Developing, managing and maintaining the Program master budget
- Performing managing and reporting on all Owner’s inspections
- CPMS setup, oversight and operation and ensures formal submittals are filed in CPMS by DB firm and only proper parties are allowed access
- Deciding, with Owner input, when CPMS material can be archived
- Ensuring that all RFIs, ASKs, Submittals, Change Requests/Orders/RFPs, Application for Payments and other key documents are processed through CPMS
- Assisting the SAWS SMWB office with the firm’s compliance with SMWB goals
- Coordinating and distributes meeting agendas and action item/decision result memos and posts on CPMS
- Managing Construction Change Directives including CCD tracking, recording, analysis, and reporting.
- Producing Program Manager’s Monthly Report and Overall progress reports
- Ensures receipt of and provides review/approval of DB firm’s schedule submissions
- Ensuring receipt of and provides review/approval of DB firm’s pay requests
- Performing regular safety compliance review and reporting on field efforts and issuing stop notices as appropriate
- Supporting briefings for senior SAWS executives, EMT, CCB and Board by Project Manager or Owner
- Coordinating Substantial completion inspections and prepares and monitors “punch list”
- Developing, managing and maintaining the Commissioning Plan and oversees commissioning and PM’s commissioning agent for the Program
- Conducting a Final Completion inspection, and submits a report to Owner confirming Final Completion of the Project.
- Developing, managing and maintaining the Warranty Plan for the Program
- Coordinating FF&E installation
- Providing ongoing implementation recommendations to SAWS.
- And all other items as required by the Program Management Services Agreement with the Owner

DB firm Project Executive - Thad Miner
- Overall responsibility for the project.
- Coordinate, oversee and manage the design team during the project design.
- Develop and oversee the Quality Control Program.
- Ensure timely and accurate delivery of all Design Build Services Agreement deliverables.
- Work in conjunction with the Project Superintendents to develop and manage the Project Schedule.
- Oversee the Project Safety Program.
- Prepare and submit all applications for payment.
- Ensure all closeout requirements are submitted in a timely manner.
- Develop and implement all required Project Management plans.
- Ensure timely and accurate delivery of all required reports.
- Oversee all procurement activities to include selection and award of all subcontracts and purchase orders.
- Manage job cost controls and monitor the project budget to ensure it is maintained.
- Conduct monthly Project Manager meetings with all subcontractors.
- Serve as the primary point of contact between SAWS, APSI, DPOR and all subcontractors.
- Spearhead all Value Engineering efforts on the project.

**DB firm Project Manager - Jason Hogue**

- Overall responsibility for the project.
- Coordinate, oversee and manage the design team during the project design.
- Develop and oversee the Quality Control Program.
- Ensure timely and accurate delivery of all Design Build Services Agreement deliverables.
- Work in conjunction with the Project Superintendents to develop and manage the Project Schedule.
- Oversee the Project Safety Program.
- Prepare and submit all applications for payment.
- Ensure all closeout requirements are submitted in a timely manner.
- Develop and implement all required Project Management plans.
- Ensure timely and accurate delivery of all required reports.
- Oversee all procurement activities to include selection and award of all subcontracts and purchase orders.
- Manage job cost controls and monitor the project budget to ensure it is maintained.
- Conduct monthly Project Manager meetings with all subcontractors.
- Serve as the primary point of contact between SAWS, APSI, DPOR and all subcontractors.
- Spearhead all Value Engineering efforts on the project.

**DPOR Project Architect - Ed James Carleton**

The DPOR Project Manager is the lead day to day manager of the design consultants and design activities. The DPOR PM reports to the DB firm Project Manager and is the primary liaison with the construction team. The DPOR PM is responsible for:

- Managing and maintaining the schedule for design activities and deliverables.
- Schedule planning and coordination work sessions with design consultants. Coordinate participation with DB team and Owner representatives as appropriate.
- Oversight of all design and design/construction related activities.
- Develop recommended agenda for design presentations and reviews.
- Responsible for accurate delivery of drawings and specifications for review sessions and project delivery milestones.
- Ensures that all project process documents (RFI's, ASKs, ASIs, Submittals, DB-internal change orders, etc.) are properly prepared and submitted for processing.
- Coordinate Design Team activities regarding constructability review with the SPM.
- Manage Design Team cost control activities with the SPM.
- Lead preliminary plan review meetings and permit response activities – coordinate with the SPM.
- Prepare Design Team progress reports.
- Participate in briefings to SAWS representatives as directed by the SPM.
- Coordinates and checks action item/decision memos with design team consultants for compliance.
- Attends all design and construction coordination conferences and schedules design team consultant participation as requested by SPM.
- Manages sustainability design efforts and coordinates with construction team.
- Oversees FF&E related activities.
• Provides recommendations as requested to SPM and SAWS representatives on design and project process.
• QC coordination during the design phase
• Participate in all LEED Workshops, perform all LEED services and prepare LEED Equivalency Plan in accordance with the Design Build Services Agreement.
• Ensures that all shop drawings and submittals are reviewed for compliance with the DCP.

DPOR Lead Designer - Robert Moritz
The DPOR Lead Architect is the lead day to day architect focused on the design of the project in terms of program adherence, compliance with DCP criteria, aesthetics and cost effectiveness. The DPOR Lead Architect reports to the DPOR Project Manager and coordinates with the design and construction team staff. The DPOR Lead Architect is responsible for:

• Supporting the DPOR PM in the effort to thoroughly understand the functional program requirements for the project and confirm with Design Team consultants.
• Overall design of the project to comply with program requirements and DCP criteria.
• Design leadership to integrate and coordinate building design with building systems and materials.
• Development of design strategies to control the cost of the project in coordination with Design-Build Team members.
• Preparation and participation in presentations on design to Owner representatives.
• Management of contract document preparation in coordination with DPORPM.
• Coordinates sustainability goal implementation in design of project components.
• Participate in all LEED Workshops and coordinate with the Project Architect to prepare LEED Equivalency Plan in accordance with the Design Build Services Agreement.
• Participates in design questions and coordination related to but not limited to RFI’s, ASKs, ASIs, Submittals, DB-internal change orders, Owner initiated CCDs in support of Design Team construction inspector and Construction Team personnel.
• Supports Design Team Quality Control Lead in project reviews, checks and constructability reviews.
• Assists in final punch lists and completion activities of project.

DB firm’s Superintendents - Wes Chapman (ESOC) & Eddie Vargas (NWOC)
• Manage the day-to-day operations of the project.
• Responsible to get the job built efficiently, on time and in a safe manner for all involved, consistent with the quality of work expected by SAWS.
• Ensure the constant flow of personnel and materials.
• Planning and implementing site mobilization and utilization; establishing site services, temporary utilities, trash removal, survey and security services.
• Direct the activities of the field engineering personnel.
• Coordinating and managing subcontractors.
• Managing the labor force, including accurately coding on-site costs and controlling them. Focusing on man-hours as well as overall budget cost.
• Planning the whole construction process with the project manager from start-up to completion and establishing the schedule with him.
• Directing and controlling all construction means and methods so the job is constructed according to the objectives in terms of quality, time, safety and budget.
• Responsible for the job site safety and quality control programs.
• Conducting jobsite meetings, including but not limited to weekly superintendent’s meetings with subcontractors and weekly safety meetings.
• Maintaining a daily log of major activities and problems and keeping the project manager aware of them, especially noting unusual events.
• Timely updating of on-site hardcopy project record drawings as needed (for end of contract incorporation by DPOR into an electronic set for submittal to Owner).
• Establishing a cooperative atmosphere with subcontractors, as well as the owner, architect and engineer.
• Conduct constructability reviews during the design phase.

DB firm CPM S/Document Control Coordinator - Jason Hogue
SAWS PM Services
Service Centers Facilities
Project Management Plan
Phase II: Design/Build ESOC and NWOC

- Solely responsible for all updates to and management of the DB Firm’s documentation in the CPMS and shall coordinate with the SPM and ensure accurate and timely processing and updating to the CPMS of all Project documentation throughout both the Design and Construction Phases.
- Updates shall include all requirements of the DB contract as well as, but not limited to: project progress photos; DPOR deliverables and approvals, cost reporting; project schedules; cost budget management; resource allocation; RFI/ASK/ASI submittal transaction recording, CCD tracking, pay request tracking, shop drawing submittals, quality management; and all other documentation associated with the Projects, Cost and schedule performance reporting in Owner-provided CPMS such as Earned Values for Services and Work against the Approved Schedule of Values, with status updates to the Approved Project Schedule, and cost/time responses.

DB Firm Quality Control Lead - Jason Hogue
- Responsibilities will include the administration of the quality control program.
- Ensures personnel and subcontractors assigned to quality control are in place to guarantee a correctly constructed product.
- Interfaces with SAWS or architects, quality control staff and project supervision to ensure specification and document requirements are adhered to.
- Directs the Request for Information (RFI) procedure to achieve timely answers to subcontractor and vendor
SECTION 5 - RESERVED FOR INTERNAL USE
SECTION 6 - REQUIREMENTS, PROCEDURES AND PLANS FOR DB FIRM’S PERFORMANCE OF SERVICES AND WORK

Notwithstanding any process described below, if the DB firm desires to make a substitution for whatever reason that significantly alters or does not conform with approved CD documentation and/or the DCP, they must submit the substitution to SAWS for permission via the Action ad Issues Tracking procedure G, but otherwise should process via the RFI/ASK/submittals procedures (but still flagging substitutions when proposed or approved).

REQUIREMENTS, CPMS, CAD/BIM AND PLANS

Table A: PLAN AND MANUAL DELIVERY SCHEDULE

<table>
<thead>
<tr>
<th>Para number</th>
<th>Plan/Manual</th>
<th>Initial due date</th>
<th>Update date</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1.5</td>
<td>Quality Control Plan</td>
<td>For negotiations</td>
<td>Prior to construction NTP</td>
</tr>
<tr>
<td>6.1.6</td>
<td>Cost Control Plan</td>
<td>With CDRL 2</td>
<td>Updated with Final GMP</td>
</tr>
<tr>
<td>6.1.7</td>
<td>Materials &amp; Equipment Mgmt Plan</td>
<td>With Final GMP</td>
<td>If required during construction</td>
</tr>
<tr>
<td>6.1.8</td>
<td>Health &amp; Safety Plan</td>
<td>For negotiations</td>
<td>Prior to construction NTP</td>
</tr>
<tr>
<td>6.1.9</td>
<td>Emergency Response Plan</td>
<td>With Final GMP</td>
<td>If required during construction</td>
</tr>
<tr>
<td>6.1.10</td>
<td>Project Site Logistical Plan</td>
<td>With Initial proposed plan to be negotiated - Final with the Final GMP</td>
<td>With Final GMP and as required during construction</td>
</tr>
<tr>
<td>6.1.11</td>
<td>Permitting Plan</td>
<td>With CDRL 2</td>
<td>Updated each design submittal</td>
</tr>
<tr>
<td>6.1.12</td>
<td>Risk Mgmt &amp; Mitigation Plan</td>
<td>With Final GMP</td>
<td>Prior to construction NTP</td>
</tr>
<tr>
<td>6.1.13</td>
<td>DB firm Procedures Manual</td>
<td>With CDRL 2</td>
<td>Updated each design submittal</td>
</tr>
<tr>
<td>10</td>
<td>LEED Equivalency Plan</td>
<td>Per Design Build Services Agreement</td>
<td>Per Design Build Services Agreement</td>
</tr>
</tbody>
</table>

6.1 Project Management. The DB firm will perform its Services and Work and manage the Project in accordance the Design-Build Services Agreement and with the following plans, procedures, guidelines and protocols:

6.1.2 Project Management Plan. DB firm will comply with the requirements and processes/procedures of the PMP, as developed and updated by Program Manager and approved by the Owner, for the organized and proper management of the Project. DB firm shall cooperate with Program Manager in the implementation of the PMP as it relates to the Project, with the objective of maintaining orderly and proper communication, proper document control, and compliance with the scope of the plans listed in Table A,, for quality, expedited delivery of the Project.

6.1.3 Use of the CPMS. The DB firm and DB firm Personnel shall use the CPMS, as specified by the Owner and implemented by Program Manager, to provide Owner, Program Manager, and their representatives real time access to all Project information, oversight of all Project data, and general communications throughout the completion of the Project. DB firm has included in its General Conditions the cost of licenses for the appropriate number of users (seats) for its use of the CPMS as required by the Design-Build Services Agreement. DB Firm shall comply with the requirement of Article III.B.(1)(d)(vii) of the Design-Build Services Agreement regarding CPMS Meeting and Training.
Program Manager will oversee and review all Project documentation in this system.

The DB firm and other contractors shall use the CPMS maintained by Program Manager. The DB firm shall, without exception, process and track prior to final approval and throughout final sign off, all RFIs, submittals, ASIs, ASKs, official correspondence, pay requests, complete design submittals, and current construction drawings and specifications through the CPMS. Responses from within the DB team, from the DPOR, from the Program Manager, Architectural Representative, and/or from SAWS will be transmitted via the CPMS.

6.1.4 Use of CAD and BIM Technology. The DB firm shall use and apply computer-aided design (CAD) standards, symbology, and compatibility requirements and building information modeling (BIM) shared file systems, and shall submit their firm’s CAD/BIM manual, which shall be a referenced supporting document of the PMP, once the DB firm is awarded. DB firm shall provide to the Project Team, free of charge, electronic access to use and make copies of BIM data and electronic files of Construction Documents, subject to their prior execution and compliance with the BIM Protocols (Exhibit 2 to the Design-Build Services Agreement), with respect to such data and electronic files, in accordance with the confidentiality restrictions set forth in Section VII.A.(11) (Confidentiality) of the Design-Build Services Agreement.

The DB firm shall comply with the BIM Protocols (Exhibit 2 to the Design-Build Services Agreement), and maintain and make available to the Project Team, at no additional cost, access to and the use of the data maintained in the BIM, to expedite, manage and coordinate the transfer and exchange of technical data, construction cost estimating and scheduling information among the Project Team with a view toward early identification and resolution of design conflicts, inconsistencies, and interface issues, to update the Control Estimate and Project Schedule where shown in Exhibit 11 (Contract Data Requirements List), and for the Final GMP.

DB firm shall use the CPMS system to coordinate and facilitate transfer to Owner of the complete BIM model and As-Built Drawings, in electronic native CAD format and in PDF printable format, in accordance with the Design-Build Services Agreement.

6.1.5 Quality Control Plan. DB firm will develop and submit its comprehensive Quality Control Plan to the Program Manager for review and Approval which must be obtained and Approved before issuance of the Owner’s Notice to Proceed. The DB firm shall make such improvements in its Quality Control Plan as required by Program Manager and as necessary to comply with the PMP and the Design-Build Services Agreement prior to issuance of Owner’s Notice to Proceed with the Design or Construction Phases. This plan will at a minimum describe and/or include:

a) DB firm’s key personnel, as designated in DB firm’s Staffing Plan (Exhibit 5 of the Design-Build Services Agreement), responsible for Quality Control during the Design and Construction Phases of the Project.

b) Performance of quality control of documents during the design stage including timing/frequency and all parties involved in internal peer review sessions

c) Process in which and frequency that drawing/spec discipline coordination is reviewed, monitored, and reported in both Design and Construction Phases, and the corrective
action to remedy any conflicts between disciplines while maintaining the Project Schedule;

d) Process in which and frequency that errors are reported, and how corrections are accomplished and confirmed in both Design and Construction Phases, and the corrective action to remedy such errors while maintaining the Project Schedule;

e) Process in which standard drawing symbols, specification terms, and discipline drawing coordination/conformance will be established, maintained and achieved in deliverables in both Design and Construction Phases,

f) Process(es) used to ensure compliance with quality and test requirements contained in the CD documents

g) Process in which quality of submittals and shop drawings and drawing/sec cross discipline coordination/conformance, and identification of any errors therein, will be established, maintained and achieved in deliverables in the Construction Phase, and the corrective action to remedy any such errors while maintaining the Project Schedule;

h) List of compliance and corrective action reports that are produced and available to the Program Manager and Owner in both Design and Construction Phases

i) List all responsible personnel, outside training groups, scheduling Owner witnessing events at least 2 weeks in advance, all tasks, applicable procedures, interfaces (including witness hold and inspection points) and documents recording attainment of quality, coordination and delivery of such items within the Project Schedule.

j) The process of timely delivery of QC reports together with field personnel’s completed forms as backup to such reports each month with the PM and Owner, to be more fully described in the QC Plan, and the availability of all QC reports and records for audit by the PM upon request

k) Methods to reconcile identified quality control items with project requirements, the current GMP and the Project Schedule

l) Procedure for incorporating subcontractor QC processes, procedures, and reporting into the DB firm’s QC Plan, and

m) Process for maintaining the quality of any inspections or tests of the Work of DB Firm Personnel as required by the Design-Build Services Agreement, and the corrective action to address any deficiencies in the Work identified by such inspections or tests while maintaining the Project Schedule;

n) Process to address construction observation issues throughout construction as noted by the Owner or PM

o) Process for Design-Build Firm’s key project manager and design manager to comprehensively and continuously review all Drawings and Specifications and to monitor the Services and Work of the DB firm, for determination of compliance with Design-Build Services Agreement (Contract No. PS-00036-01)
the Project requirements, the Approved Construction Documents, the DCP, the GMP, and the Project Schedule. (Such reviews, and the acceptance or rejection of any of the foregoing, by DB firm’s senior management shall be communicated to the Program Manager in a DCP Compliance communique via CPMS.)

p) Process for DPORs internal punch list, delivery of this to Owner and PM, and remedy of those items prior to scheduling Owner punch list walkthroughs.

The Owner and PM shall be notified of all updates to the Quality Control Plan, and supplemental logs and reports and progress logs associated with the Quality Control Plan, and these shall be properly identified, logged, dated and provided by the DB Firm to the Program Manager and posted in the CPMS.

Upon Notice to Proceed, DB firm shall implement the Approved Quality Control Plan for performance of the Services and the Work, and consider all aspects of quality from code and functional space program compliance, permitting, adherence to the DCP through Final Completion of the Project.

DB firm shall support on-call quality inspections, reviews, audits, commissioning and requests by the Program Manager or Owner through Final Completion of the Project in support of the PM’s scope to implement, coordinate and manage the quality control and quality assurance processes and all related plans and documents in accordance with the PM’s Program Manager Services Agreement with the Owner.

DB firm shall follow all processes and procedures described in its Approved Quality Control Plan, including delivery of a detailed monthly QC reports with supporting field forms, but separate from, the monthly summary report required in Procedure C.

6.1.6 Cost Control Plan: DB firm will implement, coordinate, and manage the approved Project cost and schedule control processes as described in the PMP, and shall provide each of the following:

a) Estimating: cost reporting, including a comprehensive system for tracking and predicting the cost of all items, whether in the design or construction process; independently formulated cost estimates and Applications for Payment projections from NTP through final completion;

b) Cost Control Measures: Ongoing cost control measures that include the identification of methods to reduce cost, shorten schedule, and/or utilize substitute materials and systems; These measures shall be tracked through a VE log.

c) Cost Estimating: During the Design Phase, the DB firm will prepare updates to the Control Estimate for each design submittal reflecting the anticipated Cost of the Work. All Control Estimates must follow the same template as the IGMP, and indicate change from the IGMP and/or from previous submittals, including use of DB Firm’s contingency and shall be submitted as an updated Exhibit 3. In addition, the DB firm shall include a narrative attached to each Control Estimate to include a general summary of how the development of the designs have resulted in any significant increases or decreases (i.e. greater than 5% of previous estimates) as well as the impact to the overall line item amount of the DB Firm’s contingency line item. Each Control Estimate submittal shall be within the IGMP as required by the Design Build Services Agreement.
d) **Earned Value analysis report:** During the Construction Phase, in the event the Earned Value analysis report indicates the Estimate at Completion (EAC) will exceed the GMP, DB firm shall:

   (i) Promptly notify the Owner and Program Manager of the variance in cost; and
   (ii) Identify cost control measures to conform the EAC to the GMP for Owner’s review prior to implementation of any such cost control measures.

e) **Contingency Control:** DB Firm shall provide monthly logs updating status of the DB Firm’s contingency, and cataloging all approved Contingency requests to date.

This Plan will be submitted to the Program Manager in accordance with Table A of this PMP. Any updates will be promptly provided to the Program Manager and posted in the CPMS.

6.1.7 **Materials and Equipment Management Plan.** DB firm will establish a Materials Management Plan in accordance with requirements and procedures set forth by the PM. The Materials Management Plan shall be specific to construction and installation activities at each Operations Center Project site that covers all activities associated with materials and equipment (M&E) supplied by DB firm and DB firm Personnel, as appropriate.

The DB firm must, as a task of the Materials and Equipment Management Plan, coordinate with the Program Manager’s procedures and list any additional procedures they will follow for their general M&E activities in a logical order and include references to applicable procedures, plans and documents/reports to be maintained for delivery, receipt, lead times, submittals, substitutions, and inventory protection/management of materials and equipment at the Project Site, or stored off-site, including without limitation records for material receipt, secure and insured storage, issue and surplus. The location on site of the materials and equipment, shall be coordinated within the Site Logistics plan. The Materials and Equipment Management Plan will be updated by the DB firm at the Program Manager’s request or as circumstances require in order remain current with site conditions and activities so as to not impact construction limits or interfere with any ongoing SAWS operations.

Receipt of Materials and procedure and billing for “Materials on Hand” but not installed shall be coordinated prior to construction in a meeting with the SAWS Contracting Manager and the SAWS PM.

This plan will be submitted to the Program Manager in accordance with Table A of this PMP. Any updates will be promptly provided to the Program Manager and posted in the CPMS.

6.1.8 **Health and Safety Plan.** The DB firm shall develop a Health and Safety Plan for the Project that describes the means by which DB firm will provide for the protection of persons and property in accordance with Article X (Safety of Persons and Property) of the Design-Build Services Agreement. This plan shall be compatible with all Owner Safety, Security and Emergency plans, and shall describe the DB firm’s safety management system and safety documents to include but not be limited to safe work practices, traffic control protocol, material handling and storage, environmental protections, excavation/trenching/demolition, heavy and critical lifts.

The Health and Safety Plan must include:
1) a safety procedure and reporting process which is a tabulation of the procedures to follow in all potential anticipated tasks and hazards for the Project that require a safety procedure, and accident reporting protocol.

2) a comprehensive manual on the DB firm’s safety Training and Personal Protective Equipment (PPE) given to all employees, including but not limited to Rules and Regulations of the United States Department of Labor, pertaining to Occupational Safety and Health Administration standards as presently existing or as may be modified or amended.

3) Staffing plan as part of the Staffing Plan (Exhibit 2 of the Design-Build Services Agreement), whereas the DB firm identifies all individuals and their roles in the Health and Safety Plan, to include their duties, response effort, reporting requirements and preventative measures.

The DB firm must obtain acceptance of its Safety Plan before Owner’s issuance of written Notice to Proceed for design and in accordance with Table A of this PMP. This may include, at the Owner’s request, a meeting with the SAWS Risk and Safety Managers and the SAWS PM.

Any updates to the Health and Safety Plan will be promptly provided to the Program Manager and posted in the CPMS.

6.1.9 Emergency Response Plan. The DB firm shall develop an Emergency Response Plan which shall be compatible with all Owner safety, security and emergency plans and procedures and which shall include but not be limited to emergency and incident response procedures, first aid and medical procedure, fire protections, evacuation, egress routes. The Emergency Response Plan must include Emergency Incident List which is a spreadsheet of all anticipated events and procedure for each. DB firm shall as part of the Staffing Plan (Exhibit 2 of the Design-Build Services Agreement) identify all individuals and their roles in the Emergency Response Plan, to include their duties, response effort, reporting requirements and preventative measures, and where Owner staff is onsite, include for their evacuation, safety and muster points.

The DB firm must obtain acceptance of its Emergency Response Plan before Owner’s issuance of written Notice to Proceed for design and in accordance with Table A of this PMP. This may include, at the Owner’s request, a meeting with the SAWS Risk and Safety Managers and the SAWS PM.

Any updates to the Health and Safety Plan will be promptly provided to the Program Manager and posted in the CPMS.

6.1.10 Project Site Logistical Plan- The DB firm will develop a Project Site Logistical Plan evaluating the logistical use during construction of each of the Worksites and all areas within the construction limits. This plan must be approved by SAWS and coordinated with the Project Schedule, the Materials and Equipment Management Plan, procurements, deliveries and sequencing, and at a minimum, must clearly describe and depict the following:

1) staging and mobilization
2) Construction/ delivery entrances
3) Ingress / egress for DB firm and for all SAWS operations
4) Parking areas for DB Firm and for all SAWS operations
5) permanent and temporary fencing.
6) silt fencing and erosion control,
7) wash out pits
8) crane locations (if applicable) and lay down areas
9) security and safety requirements and measures, emergency entrances,
10) location of construction trailer, storage containers and trash dumpsters
11) sequencing of construction and a series of sequenced site plans as needed to correspond with each construction sequence. The plan must minimize construction traffic by identifying clear controls of methods of delivery, removal of waste and all other environmental considerations.

The plan will be reviewed by the Program Manager and shall be subject to Owner approval. The proposed plan shall be presented to SAWS stakeholders and SAWS PM in a PowerPoint briefing. The plan must be finalized and accepted prior to Notice to Proceed for construction and in accordance with Table A of this PMP. Any proposed updates must be promptly provided to the Program Manager and Owner for review and approval at least 15 days prior to any impact to the site or proposed implementation. Once approved, updates to the Project Site Logistical Plan shall be posted in the CPMS.

6.1.11 Permitting Plan- The DB firm shall develop a Permitting Plan describing how the DB firm intends to ensure that all required permits and approvals, including Accessibility compliance, are obtained for every permit that is required for the Project. At a minimum, the plan must include:

1) procedures for managing all communications and submittals to the regulatory agencies, including consultation, formal applications, and the review process through to the receipt of all permits;
2) quality control and quality assurance procedures to ensure that the above procedures followed and verified through to the receipt of all permits;
3) roles and responsibilities of the DB firm Personnel tied to the Staffing Plan (Exhibit 2 of the Design-Build Services Agreement) that identifies all individuals and their roles in the permitting process;
4) a listing of any risks the DB firm foresees in performing the permitting process and securing all required permits;
5) detailed description of the scope and timing from the Owner that the DB firm requires to complete the permitting process;
6) a format for tracking the permitting process in a report format to be reviewed in conjunction with monthly status meetings.

This plan shall be coordinated with the Project Schedule, Substantial Completion, and Owner’s move sequencing. The Permitting Plan shall be reviewed by the Program Manager and is subject to the approval of the Owner.

The plan must be submitted per Table A, i.e. submitted with CDRL 2 and approved prior to submittal of CDRL 3.

6.1.12 Risk Management and Mitigation Plan - The DB firm shall prepare a Risk Management Plan which describes the system to be used for identifying, evaluating, assessing and mitigating all site risks of all types (e.g. financial, technical, safety, environment.). The Risk Management Plan must also describe how risk management is integrated and implemented into planning, work prioritization, and decision-making. The Risk Management Plan must include:
1) List of each identified risk
2) appropriate action items and innovative technologies used to mitigate the risks,
3) risk control methods and measure of each identified risk.
4) The Risk Management Plan must include a Risk Management Event Log which is a spreadsheet of all anticipated events and procedures for each event and/or successful mitigation of events and who is the assigned individual for each Risk mitigation.

The DB firm must obtain acceptance of its Risk Management and Mitigation Plan before Owner’s issuance of written Notice to Proceed for design and in accordance with Table A of this PMP.

6.1.13 DB firm Procedures Manual. The DB firm shall develop a Procedures Manual establishing and detailing the DB firm’s standard procedures and formats for subcontracting, purchasing, progress reporting and report formats, documenting meetings, field reports, RFI/ASK/submittal development & review, invoicing procedures and other matters that require uniformity with the Project Manager and Project implementation. The Procedures Manual shall be reviewed by the Program Manager and shall be subject to the approval of the Owner.

The Procedures Manual must be submitted with CDRL 2 and approved prior to CDRL 3 submittal.

Any proposed updates must be promptly provided to the Program Manager and Owner for review and approval at least 15 days prior to any impact to the Project. Once approved, updates to the Procedures Manual shall be posted in the CPMS.

6.1.14 Support for Implementation of Commissioning Plans. Program Manager in accordance with the Program Manager Services Agreement with the Owner shall establish and implement all commissioning protocols and commissioning plans for all Phases and for all impacted facilities. Enhanced Commissioning as described by LEED 2009 Energy and Atmospheric Credit 3, is not required as part of the Program Manager’s scope of Basic Services. Separate Commissioning Plans are developed for each phase during the Design Phase II in consultation with the DB firm. Each Commissioning Plan shall document activities in chronological order from the initial drawings of the Design Phase through the Construction Phase II including manufacturing/construction, process controls, final testing, and documentation/certification, in accordance with the Program Manager Services Agreement. The Program Manager shall develop the Commissioning Plan. The DB Firm shall be actively coordinating with the DB Firm on these efforts and shall provide input as required.

The first draft plan of the Commissioning Plan shall be developed after receipt of the Design Phase 80% CD deliverable, a second draft plan developed after receipt of the Design Phases 100% CD deliverable, and a final plan developed shortly after NTP for construction based upon the DB firm’s approved GMP and Project schedule.

A Warranty Plan shall be developed by the DB Firm and shall be updated after issuance of Substantial Completion certificates. DB firm will update the Plan after Final Completion.

Program Manager shall perform functional testing and startup of all Project components in accordance with the commissioning plan and as required by the Program Manager Services Agreement. DB firm shall cooperate with the Program Manager in its duty to have the PM’s commissioning agent implement the PM’s commissioning protocols and plans. The DB firm shall
support the PM’s commissioning services for the Project, in accordance with LEED 2009 New Construction and Major Renovations requirements.

DB firm must contract with a third party independent testing and balancing services for mechanical, electrical and plumbing systems and other equipment installed in the Project, and provide schedule of proposed testing to the PM and documentation of all test results to Owner and Program Manager, for the Program Manager’s preparation of a commissioning report in matrix format for each equipment item installed in the Project.

DB firm must cooperate with Program Manager in its performance of commissioning of the Project to enable Program Manager to timely complete all commissioning activities, including submission of all items for inclusion in Program Manager’s commissioning reports, plans and other verification documents.

A completed and approved Final commissioning report is required prior to the issuance of the certificate of Final Completion. It is incumbent upon the DB Firm to allow for adequate time in the Close out schedule for any remedies to their own, and the PMs third party testing and commissioning.

6.1.15 Warranty Plans. The DB Firm shall develop the Warranty plan, in accordance with the Design Build Firm’s Services Agreement, with input from the Program Manager and Owner, with a first draft plan developed after SAWS receipt of the 80% CD Design Phase deliverable, a second draft plan developed after receipt of the 100% CD Design Phase deliverable, and a final plan developed shortly after NTP for construction based upon the DB firm’s approved GMP and Project schedule. The Warranty Plan shall be updated after completion of commissioning services and issuance of Substantial Completion certificates. Separate Warranty plans are developed for each site during the Design Phase II in consultation with the DBfirm.

The Warranty plan, shall include each of the following:

(i) A comprehensive spreadsheet listing all Project items, systems, equipment, and materials under warranty, whether items were part of Commissioning Plan; any testing performed or required on equipment, installer and install date, warranty expiration date, follow-up date prior to warranty expiration;
(ii) Records/documentation produced for such warranted items; and
(iii) Approval signatures by Program Manager, DB firm and others as required.
(iv) Process for Owner to notify DB firm of warranty requests, completion and approval signatures that work was completed.
(v) Form for each Warranty request with description and signatures
(vi) A log of all warranty requests with requested date, description, completion date and status/remedy.

6.2 Requirements for Street, Parking area, Site, and Drainage Work. Design-Build Firm shall provide cut sheets, for review and coordination purposes, to the Owner and Program Manager, fourteen (14) calendar days prior to construction of any site utility work, street and drainage work, and shall not proceed with any such utility or street work without Owner’s prior approval.

Design-Build Firm shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for all required utility Work, including SAWS, CPS Energy and other
utilities, and including sewer profiles and water profiles, as applicable. Design-Build Firm shall provide staking and preparation of cut sheets after receiving notice to proceed from Owner. Design-Build Firm shall be responsible for maintaining and preserving baseline and temporary benchmarks indicated on the drawings for duration of construction. If such marks are destroyed, Design-Build Firm shall replace them at its own expense. At the end of construction of the Project, Design-Build Firm shall provide Owner a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state that the infrastructure is constructed in accordance with the Construction Documents, as prepared by the DPOR, and approved by Owner.

6.3 Testing by Owner. Through the Program Manager, the Owner shall provide independent testing of the Work as required by Applicable Law and the specifications. Owner may also designate one or more construction inspectors of its own who shall be given access to the Work as requested or needed. DB firm shall not be relieved of its obligations, responsibilities or duties to perform the Services and Work in strict accordance with the Design-Build Services Agreement either by any activities or duties of Owner in Owner’s administration of the Design-Build Services Agreement by tests, inspections or approvals required or performed by Owner or any person other than the Design-Build Firm.

6.4 Use of Design Build Firm’s Contingency.

Prior to FGMP and during the Design phase – In accordance with the Design Build Services Agreement, the Owner shall Approve Design-Build Firm’s reasonable requests to allocate the Design-Build Firm’s Contingency to the final cost of items in the Cost of the Work for the Final GMP. The Design-Build Firm’s Contingency shall be kept in a separate line item according to Exhibit 3 – Pricing Schedule. Any changes in the Design-Build Firm’s Contingency shall be indicated with each Control Estimate submittals and described in narrative form as indicated herein in Section 6.1.6 Cost Control Plan and logged and tracked throughout the Project in a comprehensive spreadsheet, with the starting amount being the amount as listed on the FGMP.

Upon Approval of the FGMP and throughout the Construction Phase or in reference to expending cost for Early Work Packages:

1) DB Firm shall submit Exhibit 3 – Pricing schedule with the FGMP for Owner review and Approval prior to NTP into the Construction Phase II in accordance with the Design Build Services Agreement. This Exhibit 3- shall show the DB Firm’s Contingency allocated amongst each correlating line item in a separate “Contingency” columns.

2) DB Firm shall prepare and submit the DB Firm’s Contingency Request form (Appendix C.3) prior to shifting or applying any funds during the Construction Phase or during any approved Early Work Packages from the DB Firm’s Contingency Column in Exhibit 3 Cost of Work to any other line item in Exhibit 3. This form shall be fully completed by the DB Firm and submitted to the Program Manager who will review and submit with recommendations to the Owner.

3) DB Firm shall record any Approved DB Firm’s Contingency Requests on all subsequent Application for Payments.
4) DB Firm’s Contingency funds shall remain unchanged on Exhibit 3 if a DB Firm’s Contingency Request is rejected.

5) DB Firm shall number, date and track all DB Firm’s Contingency Requests and keep a comprehensive numerical log that is current and accessible to the Project Team on the CPMS.
PROCEDURES
The procedures below apply to all transactions of participants within the DB firm and DB firm personnel as well as to interactions of the DB firm with other parties such as Owner, Program Manager, and governmental authorities, particularly interactions between the DB firm’s executives, DPOR, and DB firm personnel.

PROCEDURE A: CONSTRUCTION CHANGE DIRECTIVES

In accordance with the Design Build Services Agreement, the Owner may issue a CCD to the DB Firm. The Owner will use the Construction Change Directive (CCD) form (Appendix C.3). The DB firm shall confirm receipt on the form and return within one day. If the DB firm determines the CCD necessitates an adjustment in Design Build Services Agreement time or schedule they must indicate so in this form, attach justification for adjustment, and return to the Program Manager within 10 days or the DB firm’s option to obtain adjustment will be waived per the DB Design Build Services Agreement. DB Firm shall number, date and track all Construction Change Directives (CCDs) and keep a numerical log that is current and accessible to the Project Team on the CPMS.

Owner may request a preliminary estimate from the DB Firm in the Owner’s internal preparation of a proposed CCD. DB Firm shall provide the preliminary estimate in a timely manner for the Owner’s use, and prior to the Owner issuing an approved CCD to the DB Firm.

PROCEDURE B: APPLICATIONS FOR PAYMENT

DB firm shall make progress payment applications in accordance with Article XII.B of the Design-Build Services Agreement.

Additional supporting info to that described in the Design-Build Services Agreement is:

VII.B.(1) The format for the Application for Payment is an Excel spreadsheet version of the form shown in Section D Reports and Forms.
XII.B.(1).(d) Should be CSSR format
XII.B.(1).(h) Must be provided in one hardcopy (11x17 format) and complete electronic copy in native format (MS Project or Primavera) plus one pdf version
XII.B.(2) Shall be in accord with DB firm’s approved Materials and Equipment Mgmt Plan and such stored materials not yet installed must be witnessed by Program Manager within 3 days of receipt of Application for Payment

Payment by Owner will be in accordance with Article XII.C of the Design-Build Services Agreement.

Additional procedures:
- DB firm will submit two original signed copies of their applications for payment and copies of all subcontractors and vendors applications for payment.
- For materials’ applications for payments where the material is not yet installed, copies of vendor invoices shall be included with the pay request and all paperwork shall be included and Approved and signed in accordance with the Materials Management Plan.
- A monthly payment meeting including DB Firm and PM, will be held, at least five days prior to issuing applications for payment, to discuss the amount of prospective payment and review the
supporting documentation. Schedule activity dates, percent complete and applications for payment amounts will be confirmed or revised at this meeting. The Program Manager will review the documentation and witness the claimed material but not installed, that is listed in the applications for payment. All documentation shall be submitted in accordance with the Design Build Services Agreement and the Materials Management Plan.

- If required, DB firm will promptly revise & resubmit their schedule update and cost reports as necessary to reflect those dates and amounts agreed to in the payment meeting prior to submitting applications for payment.

- In accordance with the Design-Build Services Agreement, DB firm shall ensure proper data is filed in SAWS SWMB system.

**PROCEDURE C: MONTHLY REPORTING & SCHEDULE UPDATING**

The DB firm shall in accordance the Design-Build Services Agreement submit to Owner and Program Manager a Monthly Progress Report and an Application for Payment for any Services and Work referenced in the approved Schedule of Values that has been completed during the previous calendar month.

All requirements of reporting and schedule updates, shall be copied into the CPMS, without exception, using the full WBS referenced in the documents and shall be within the CPMS RFI/submittal system or placed in the appropriate WBS enumerated project folder under document.

The monthly Progress Report shall be in accordance with the Design-Build Services Agreement Section XIIB and shall address the status of the work, cost/schedule performance to plan, issues and accomplishments, quality control, and arrivals/departure of major subcontractors for the work by each site.

Specifically, this Progress Report shall include all items per the Design Build Services Agreement as well as:

- **Summary Report.** A not more than 4 page narrative summary of the Project works to date, near term forecast, and any key personnel changes from the project executive. This summary report shall at a minimum, also include the following supporting documents (beyond the 4 page narrative):
  - The SAWS Variance Report (in section D Reports and Forms, an Excel file to be provided by Program Manager)
  - The total project schedule, showing planned and current progress on both bars in a Gantt format and columns with start and finish dates and showing total float for:
    - Design submittals, or
    - Construction works, delineated by site, each building and all site works (collectively) as well as all control milestones as per Design-Build Services Agreement to at least the division level of Masterformat
  - Time scaled cost curves from the current cost loaded schedule showing PCWS, BCWP and ACWP
  - Industry standard CSSR report format
  - Quality control issues found, to be corrected and corrected, and
  - A separate safety report of safety training and any incident reports.
  - Action Items Log and status of each item from the OAC meeting from the previous month.
• Report by Each Site. A structured set of information for each site, each building and overall siteworks, and, if active, major Masterformat divisions within those buildings or siteworks using:
  o The SAWS Variance Report
  o Industry standard CSSR report format, and
  o Quality control issues found, to be corrected and corrected
• Electronic submission in CPMS. A pdf version of the complete report will be filed in the CPMS at the same time as hardcopy delivery to the Program Manager (2 copies) and PROJECT MANAGER OR OWNER (1 copy).

PROCEDURE D: CORRESPONDENCE & TRANSMITTALS

All correspondence and transmittals, including full distribution lists, shall be copied into the CPMS, without exception; using the full WBS referenced in the document and shall be within the CPMS RFI/submittal system or placed in the appropriate WBS enumerated project folder under document control.

E-Mails: Significant Incoming and Outgoing E-mails shall be filed in the applicable WBS enumerated correspondence file under document control. This includes any emails regarding change in cost, change in schedule, change in scope, emails directed to the AR, actual or possible delays, any personnel changes of DB Firm or DPOR, any safety accident reports, Design Build Services Agreement discussions or disputes, SMWB discussions, or any other items significant in nature that resulted in the items appearing in the Action Items Log from the OAC meeting.

Transmittals: Transmittals are memos or cover letters that accompany project documents or items, such as material samples. Use transmittals to accompany items to indicate what, when, and why they were forwarded; communicate efficiently with vendors and contractors; create a permanent record of the action taken regarding an issue; trace an item if it is lost, misplaced, or not delivered; and track the status of items that are the responsibility of others.

All Transmittals including full distribution lists of parties sending or sent to, shall be managed, transmitted and logged via the CPMS, without exception, using the full WBS which shall be referenced in each document and shall be within the CPMS Transmittal subsystem.

• Transmittals are to be produced for all items sent, except for general correspondence.
• Transmittals shall be sequentially numbered.
• Transmittals shall clearly identify all items being sent, the method(s) of delivery, the quantity of items being delivered, the date sent and any specific information the recipient may need to know about the items.

PROCEDURE E: REQUESTS FOR INFORMATION

All Requests for Information (RFIs), including full distribution lists of parties sending or sent to, shall be managed, transmitted and approved via the CPMS, without exception, using the full WBS which shall be referenced in each document and shall be within the CPMS RFI subsystem.
All RFI’s shall be addressed to a particular named party for action and recorded in the CPMS Ball-in-Court log with a desired response date from that particular party. If there is a cost or time impact if a response is not received by that response date, the impact shall be described in the RFI request. If an RFI comes to the PM or Owner- the proposed solution by the DB Firm and/or DPOR, and cost/schedule impact, if known, must be included.

- RFIs shall be sequentially numbered, dated and a brief description with outcome given in a spreadsheet “RFI log” that can be queried
- An Approved RFI form and log shall be added to this PMP upon selection of the DB Firm and no later than acceptance of the final GMP.

**PROCEDURE F: SUBMITTALS**

All submittals, including full distribution lists of parties sending or sent to, shall be made via the CPMS, without exception, using the full WBS referenced in the document and shall be within the CPMS submittal. If supporting material is too large for loading as attachments to the submittal itself, then those attachments must be uploaded into the appropriate WBS delineated document control folder and referenced as such in the submittal document.

Any substitution requests to the DPOR must be processed as a submittal, flagging that it includes a substitution request, and requires formal acceptance by the DPOR.

Document deliverables, such as design deliverables, and plans shall be uploaded in full in both pdf and native file modes. For submittals that include physical samples, the shipping label/airbill shall be included with the submittal overview/description paper and will show when shipped, recipients, and other relevant data.

- Submittals shall be sequentially numbered, dated and a brief description with outcome given in a spreadsheet “Submittal log” that can be queried

An Approved Submittal form and log shall be added to this PMP upon selection of the DB Firm and no later than acceptance of the final GMP.

**PROCEDURE G: ACTIONS AND ISSUES TRACKING**

Issues, or action items, including issues between the DB firm’s design and construction teams, will be recorded and tracked in the CPMS Ball-in-Court system. Issues can be originated by any party to/in the CPMS system.

**General Definition:** An issue is any occurrence that may have an impact on project cost, time, deliverables or goals or working out how to fulfill and comply with the DCP.

Issue tracking numbers and files are created as a method to document and organize all applicable information concerning the issue, into one easy to reference file. Examples of issues are:

- Answers needed from the structural engineer on placement of HVAC equipment
- Request for pre-review layout of rooms by PROJECT MANAGER OR OWNER prior to a submittal
- Delivery of incorrect material/equipment
- Rework/correction of improper construction or QC discovery
- Requests for time extension for non-compensable or non-excusable delays.
- Delays caused by poor coordination or scheduling of subcontractors
- Supplier delays
- Failure to aggressively prosecute the work
- Weather delays

If the issue has potential cost or time impact to the approved project baseline, the Project participant must give written notice to the SPM and PROJECT MANAGER OR OWNER in addition to the party from whom action/response is being requested.

**Issue Process and Issues Log:** Upon noticing a potential Issue, create an Issue Tracking Number in the CPMS and, if necessary, create a new Issue file to collect all relevant documentation related to that issue.

- Issue files should contain the following:
  - Detailed Description of the issue
  - Date(s) of occurrence
  - Parties involved
  - All related correspondence, drawings, photos, and other relevant documentation

- Following the identification of an issue during the actual work in the field, the DB firm should pay close attention to the affected area. This may involve videos/photos and notification of field inspectors to watch the area.

- When logged into the CPMS Ball-in-Court system, action/response dates should be established according to the following guidance:
  - If life or public safety is in flux, the DB firm shall proceed in accordance with Article X of the Design-Build Services Agreement.
  - For issues that have the potential to affect the current project budget, control estimate, IGM or GMP by 10% or more, or cause schedule delay in excess of 1 month, the Owner and PM shall be notified in writing and via the CPMS within 24 hours of the DB firm's knowledge of the issue and the response by the involved parties shall be reported via the CPMS within 3 business days.
  - Typical response times shall be not more than 5 business days.
  - All issues shall be resolved or moved to an RFI or other procedures within 10 business days.
  - If there are any questions about adequate response time, ask the SPM for guidance.

Any issues tracking log sheets internally generated by contractor(s) shall be appended to their Monthly Report to the Program Manager.

**Meeting Minutes:** For all OACs and quarterly executive review meetings on the project, the DB firm will develop the meeting agendas, take minutes and issue the draft minutes to attendees within one business day. After a two day time period for receipt of comments, the DB firm shall post the final minutes in the CPMS.

**PROCEDURE H: AS-BUILT DOCUMENT MANAGEMENT**

**As-Built Drawings and Specifications:** The DB firm will update drawings (as-built drawings) and specifications (as-built specifications), at least monthly, to document changes that occur during the project.
construction. As part of the Closeout Phase, the DB firm will update CAD & BIM construction drawings and electronic specifications to document changes that occurred during construction (such drawings will be provided in native BIM format and pdf as B-size drawings) along with one hardcopy set.

DB firm will maintain current as-built record documents on the site at the DB Firm’s site trailer during construction, making the as-builts available to the Program Manager, SAWS and/or Architectural Representative personnel on that project, upon request. Such documents will be maintained in a current status by implementing the following procedures.

- **Bulletins** - All drawing sheets revised and issued by the DPOR as Bulletins, are to be incorporated into the final set of drawings by the DB firm.
  - Highlight all of the items that were changed on the revised sheets included in the Bulletin.
  - Insert the revised Bulletin sheets into the final set of drawings by placing the new sheet on top of the old sheet, so the most current plan sheet is always on top. Fold the bottom right-hand corner of the old sheet over and note “Superseded by Bulletin#XX”.
  - Update the Drawings Log to note the latest changes to each drawing sheet.
  - Note any changes to the Specifications - use a red pencil to cloud the changed specification sections and reference the applicable Bulletin or RFI.

- **Post RFI’s** – any changes made through the RFI process should be noted on the final set of documents by the DB firm.
  - If the change made in the RFI can be easily noted on the drawings, such as a dimension change, simply use a red pencil and make the change to the final set. Cloud the changes made and reference the applicable RFI.
  - If the changes made on the RFI are too extensive to clearly transfer, or if a sketch has been provided in the RFI response, make a copy of the RFI (reduced by 50%) and tape it to the back of the sheet adjacent to the one you are updating for quick and easy reference to the RFI. The changed areas should still be clouded on the drawing and the applicable RFI referenced.
  - Posted RFI’s / Modifications Log – keep a log of all RFI’s and modifications that have been posted to the final set to ensure that all are incorporated.

- **Submittals** – any changes made through the submittal process should be noted on the final set of documents by the DB firm.
  - If the change made via the submittal can be easily noted on the drawings, such as a dimension change, simply use a red pencil and make the change to the final set. Cloud the changes made and reference the applicable submittal.
  - If the changes made on the submittal are too extensive to clearly transfer, or if a sketch has been provided in the submittal response, make a copy of the submittal (reduced by 50%) and tape it to the back of the sheet adjacent to the one you are updating for quick and easy reference to the submittal. The changed areas should still be clouded on the drawing and the applicable submittal referenced.
  - Posted submittal’s / Modifications Log – keep a log of all submittals and modifications that have been posted to the final set to ensure that all are incorporated.

**PROCEDURE I: QUALITY CONTROL**

The PM shall develop, implement, manage, and enforce a state of the art Quality Plan in accordance with the Program Manager Services Agreement and with Section 6.1.5 of this PMP. This Quality
Plan shall include project and site specific quality assurance processes that considers all aspects of quality from code and functional space program compliance through Project completion for all Phases and all impacted facilities.

DB firm shall, in coordination with the PMs Quality Plan, develop implement manage and enforce a state of the art Quality Control Plan. This Quality Control Plan is separate from the PMs Quality Plan, but shall be coordinated with and shall follow the processes and procedures developed in the PM’s Quality Plan. The DB Firms Quality Control Plan shall also include at a minimum the following:

1) Identification of Project team, the Quality Control Manager and their role and tasks related to Quality.

2) Specifically define each function of the plan. Determine the role of each individual performing accountability evaluations for DB Firm’s Quality Control. Describe their credentials and responsibility. Determine corrective measures and who will evaluate and correct deficiencies.

3) Review of the specifications, and determine what materials will be tested and the physical location where they will be tested. Specify the frequency with which the tests will be conducted.

4) A list of testing equipment. Describe the equipment and how it is capable of determining the properties of the materials. Describe how the equipment will be calibrated, maintained and used for the duration of the Project.

5) Incorporate testing procedures. Attach any relevant procedures used to report contractor compliance.

6) Incorporate performance monitoring procedures during design and construction. Attach any relevant procedures used to report performance for all DB firm personnel, DPOR and Subcontractors.

7) Incorporate permitting and code compliance requirements and process for measuring performance of those plans.

8) Define the processes and activities in place for verification of the DCP during design phases to include 1) internal QC and QA processes of the DPOR 2) intermittent and continuous inspections by the DB firm of DPOR processes, 3) reviews prior to major deliverable of design phase benchmarks.

9) Define the processes for inspections and verification activities during construction phases to include intermittent and continuous inspections by the DB firm, 2) inspections prior to major deliverable or construction phase benchmarks 3) QC and QA testing.

10) Describe the Quality Control record-keeping system and documentation. Define the types of reports generated and the frequency of reporting, to include documentation of QC and QA in daily reports and in inspection and testing report forms.

11) Production and implementation of Quality Control Reports which shall be a detailed monthly report with field forms at the same time, but separate from, the Monthly Report of Procedure C.

12) Methodology to incorporate Quality Control Plan to all Subcontracts.

13) Process for identification of deficiencies to include deficiency identification, non-conformance reporting, deficiency correction and preventative actions.

Once Approved, the PMs Quality Plan and the DB’s Quality Control Plan shall be referenced as a supporting document to the PMP in accordance with TABLE A of this PMP. Any updates will be promptly provided to the Program Manager and posted in the CPMS.
The PM shall audit and oversee the DB firms’ Services and Work for adherence to the Approved Quality Control Plan, this oversight by the PM include the receipt and review of the DB firms’ QC reports and exceptions, the PM’s witnessing efforts and review the DB’ 3rd party testing services, the PM’s assurance of coordinated and completed commissioning efforts in accordance with both the PM and DB firm’s contracts. The PM shall provide SAWS with a total start to finish QA process, ensuring all was provided properly through construction, FF&E installation, and commissioning.

**PROCEDURE J: SAFETY PROCEDURES**

The DB firm shall enact and follow the processes and procedures described in its accepted Health and Safety plan, and in accordance with article X of the Design-Build Services Agreement. The Monthly Report of Procedure C shall include a separate safety report of safety training and any incident reports.

**PROCEDURE K: CLOSEOUT PROCEDURES**

Substantial Completion and Final Completion shall be in accordance with Article XIII. of the Design-Build Services Agreement.
SECTION 8 - APPENDIX

A Program WBS
B Definitions
C Forms and Templates
A PROGRAM WBS

Following is the major levels of the Program Work Breakdown Structure (WBS) that will be used to manage the document control, cost, schedule, and communications throughout the program execution.

New contracts will originate at these levels or lower. If a new professional services or design/build contract is executed later, then the WBS number will be assigned.

1.1 Total Program
1.2 Program Manager Services
1.3 Reserved
1.4 Reserved
1.5 Reserved
1.6 Reserved
1.7 Reserved
1.8 Phase II ESOC/NWOC
   1.8.1 ESOC/NWOC Design-Build
      1.8.1.1 Design Phase
      1.8.1.2 ESOC Construction
      1.8.1.3 NWOC Construction
   1.8.2 ESOC/NWOC FF&E and Move-in
      1.8.2.1 ESOC FF&E
      1.8.2.2 ESOC Move-in
      1.8.2.3 NWOC FF&E
      1.8.2.4 NWOC Move-In
1.9 Reserved
1.10 Reserved
B DEFINITIONS

Refer to the Design-Build Services Agreement and the Program Manager Services Agreement for primary Definitions.

1. "Projectmates" a form of construction project management software (CPMS) that is a web-based collaborative sharing, project communication and information management system that will be used by Owner and the Design-Build Firm for the Project, having the following features: communications and ‘ball-in-court’ tracking; collaboration capabilities allowing for upload and repository of CAD and BIM deliverables, submittals and Project progress photos; cost reporting; scheduling; cost budget management; resource allocation; RFI/ASK/submittal transaction recording, change request tracking, pay request tracking, quality management; and all other documentation associated with the Projects, all as more fully described in the PMP. For the avoidance of doubt, Projectmates also includes all Work Product, Final As-Builts, and other Project-related information and data that is stored therein.

2. “CIP-Aces” is a form of construction project management software that will be used by Owner and the Design-Build Firm to manage the Project via an Owner’s Project-specific website used to make all such records continuously available to Owner to view or print in electronic form from Owner’s offices and at the Site, including invoices for payment for Work and Services that the Design-Build Firm is required to perform on the Project.

3. “Program” means the Service Center Facilities Program, which is the Program to be developed by the Program Manager and approved by Owner in conjunction with development of the individual Projects, including development of the Program Management Plan (PMP) and Project Implementation Plan (PIP), which will include all appropriate components for the implementation of each Project.

4. “Program Master Schedule” shall mean a comprehensive schedule prepared by the Program Manager for the Owner, incorporating the Project Schedules for each of the Project(s)(to include but not limited to the New Service Center Project), and integrating all major Project activities, including the following: (i) phasing and alternatives for accelerating completion based on detailed phasing plans developed by the Program Manager; and (ii) establishment of schedule milestones and procedure relationships to a level of detail acceptable to the Owner.

5. “Project” means the design and construction of the East Side Operations Center (“ESOC”) and the North West Operations Center (“NWOC”), each of which are located on different sites as described in the DCP (Exhibit 1). As used in this Agreement, “Project” means and refers to the design and construction of the Operations Centers on both of these Sites and may refer to the whole or a part of the Project.
### C. REPORTS AND FORMS

#### 1. PROJECT/CWBS VARIANCE REPORT (XL TEMPLATE FORM)

**SAWS Variance Report**

<table>
<thead>
<tr>
<th>WBS:</th>
<th>Title:</th>
<th>CUM To Date</th>
<th>Report Date:</th>
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<th>Overall: Green</th>
<th>Yellow</th>
<th>Red</th>
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| Technical:     |        |     |
|               |        |     |

| Cost:          |        |     |
|               |        |     |

| Schedule:      |        |     |
|               |        |     |

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<tr>
<th>Actual Start:</th>
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<table>
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<tr>
<th>Scheduled Finish:</th>
<th>CV:</th>
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| Actual Finish:    | | |
|                   | | |

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<th>Cost % Complete:</th>
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</thead>
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#### Accomplishments, Milestones, Decisions

#### Variance Discussion

#### Corrective Actions

#### Open Issues, Actions for Next Month

---

Design-Build Services Agreement (Contract No. PS-00036-01)
2. PAY REQUEST FORM (XL TEMPLATE FORM)
APPLICATION AND CERTIFICATE FOR PAYMENT

To (Owner):
From (Design-Build Firm):
Contract No.:
Contract Date:
Application Period:
Application Date:

Owner's Project No.:
D-B Firm's Project No.

Design-Build Firm's Application for Payment

Change Order Summary

Approved Change Orders

Number
Additions
Deductions

TOTAL

NET CHANGES BY CHANGE ORDER $ VALUE

1. ORIGINAL CONTRACT SUM ......................................................... $ 1
2. NET CHANGES BY CHANGE ORDER ........................................ $ 2
3. CONTRACT SUM TO DATE (Line 1 + Line 2) ............................. $ 3
4. TOTAL EARNED ON WORK COMPLETED & STORED TO DATE (Column G Total on Continuation Sheet) $ 4
5. RETAINAGE:
   a. 5% % of Completed Work
   (% RET x Column D Total on Continuation Sheet)
   b. 5% % of Stored Material
   (% RET x Column F Total on Continuation Sheet)
   Total Retainage (Column I Total on Continuation Sheet) $ 5
6. TOTAL EARNED LESS TOTAL RETAINAGE WITHHOLD TO DATE ................................ $ 6
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT ................................ $ 7
8. CURRENT PAYMENT DUE ........................................................ $ 8
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 Less Line 6) $ 9

Design-Build Firm:

Design Professional of Record:

AMOUNT CERTIFIED: $____________________________

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are charged to conform with the amount certified.)

Design Professional of Record:

APPROVAL OF CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, the undersigned hereby certifies to the Owner that to the best of the undersigned's knowledge, information and belief the Design-Build Firm is entitled to payment of the AMOUNT CERTIFIED.

Program Manager or Architectural Representative:

Program Manager or Architectural Representative:

DRAFT

Design-Build Services Agreement (Contract No. PS-00036-01)
## CONTINUATION SHEET OF APPLICATION FOR PAYMENT

**APPLICATION AND CERTIFICATE FOR PAYMENT**, containing Design-Build Firm's signed Certification is attached.

In the blank below, amounts are stated to the nearest dollar.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION OF WORK</th>
<th>GMP SCHEDULED VALUE</th>
<th>CURRENT SCHEDULED VALUE W/O &amp; CUDS</th>
<th>WORK COMPLETED FROM PREVIOUS APPLICATION (D+E)</th>
<th>MATERIALS PRESENTLY STORED (NOT IN D+E)</th>
<th>TOTAL EARNED ON WORK COMPLETED AND STORED TO DATE (D+E+F)</th>
<th>PERCENT COMPLETE (D+C)</th>
<th>BALANCE TO FINISH (C-G)</th>
<th>RETAINAGE 5%</th>
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</tr>
</tbody>
</table>

**APPLICATION NUMBER:**

**APPLICATION DATE:**

**PERIOD TO:**

**OWNER'S PROJECT NO:** 0

**DESIGN-BUILD FIRM'S PROJECT NO:**

---

$0.00 0% $0.00 0.00 0%
3. **DESIGN-BUILD FIRM’S CONTINGENCY REQUEST FORM (W TEMPLATE FORM)**

**Design Build Firm’s Contingency Request Form**

<table>
<thead>
<tr>
<th>New Service Center Project</th>
<th>Request No.</th>
<th>Date:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>WBS Number</th>
<th>Service Center</th>
<th>Building/Site Segment</th>
</tr>
</thead>
</table>

**Contingency Request**

Cost of Work Line Items Related to this Request

**Summary Justification For Request**
[Describe why implementing this change is appropriate or necessary]

**Impact of Not Approving the Request**
[Describe what would happen if this request was not approved]

Attach additional pages and reference documents as needed

**DB Firm’s Analysis of this Request (as Both Service Centers)**

- Approval will not alter the DCP requirements.
  - Yes □ No □ If no, provide explanation.
- Approval will not alter Project Schedule.
  - Yes □ No □ If no, provide explanation.
- Approval will not cause costs to exceed the current forecast for the final Cost of the Work or the Final GMP.
  - Yes □ No □ If no, provide explanation.
- Alternatives if this Request is disapproved: ___

**Program Manager’s Review of above Request and Analysis**

Program Manager’s Comments: ___

<table>
<thead>
<tr>
<th>Scope Recommendation</th>
<th>Cost Recommendation</th>
<th>Schedule Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Approve □ Revise □ Deny</td>
<td>□ Approve □ Revise □ Deny</td>
<td>□ Approve □ Revise □ Deny</td>
</tr>
</tbody>
</table>

DCP Compliance Review By: ___

<table>
<thead>
<tr>
<th>Cost Compliance Review By:</th>
<th>Schedule Compliance Review By:</th>
</tr>
</thead>
</table>

Name: ___ Date: ___

Name: ___ Date: ___

**Owner’s Decision**

<table>
<thead>
<tr>
<th>□ Approved</th>
<th>□ Revise &amp; Resubmit</th>
<th>□ Denied</th>
<th>Decision Date:</th>
</tr>
</thead>
</table>

Owner Comments: ___

Owner’s Representative — Printed Name: ___ Signature: ___

Page 1 of 1

(Attach additional pages if necessary.)
6. CONSTRUCTION CHANGE DIRECTIVE FORM

Construction Change Directive

New Service Center Project

To Design-Build Firm: Spaw Glass Contractors, Inc.
9331 Corporate Drive, Selma, Texas 78154

<table>
<thead>
<tr>
<th>WBS Number</th>
<th>Service Center</th>
<th>Building/Site Segment</th>
</tr>
</thead>
</table>

1. Design-Build Firm shall perform the Services and/or Work described below:

Attach additional pages and reference documents as needed.

2. Owner authorizes the following adjustments to the GMP and/or Project Schedule in connection with this CCD:

<p>| | |</p>
<table>
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<th></th>
</tr>
</thead>
</table>

This CCD will result in (check one of the following):

- [ ] increase
- [ ] decrease

The GMP, as adjusted by this CCD, will be ____________________________ $ ____________

The Date of Substantial Completion prior to this CCD is ____________________________ 20

The Date of Final Completion prior to this CCD is ____________________________ 20

The Project Schedule will be adjusted by this CCD to (check one of the following):

- [ ] [ ] increase
- [ ] [ ] decrease
- [x] make no change to

The time to perform, as shown below by ____________________________ Calendar Days

This CCD will result in a Date of Substantial Completion of ____________________________ 20

This CCD will result in a Date of Final Completion of ____________________________ 20

Issued by:

SAWS Project Manager

Name ____________________________

Signature ____________________________ Date ____________________________

Receipt Acknowledged by Design-Build Firm:

Name ____________________________

Signature ____________________________ Date ____________________________

Acceptance of Above CCD Adjustments Confirmed by Design-Build Firm:

Name ____________________________

Signature ____________________________ Date ____________________________
Exhibit 10

Scope of Design-Build Firm’s LEED Services and Work
EXHIBIT 10

SCOPE OF DESIGN-BUILD FIRM’S LEED® SERVICES AND WORK

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

Section 1 – General LEED® Requirements

1.1 Design-Build Firm acknowledges that the Owner has advised the Design-Build Firm of the Owner’s requirement that the Project achieve no less than the minimum credits necessary to attain the Minimum Certification Level. Accordingly, the Design-Build Firm's performance of the Services and Work shall be conducted and completed in accordance with all applicable requirements of these credits related to design and construction in order for the Project to achieve no less than the minimum credits necessary to attain the Minimum Certification Level.

1.2 The Design-Build Firm represents and warrants that, as part of its LEED® Services and Work, it (i) will coordinate with the Project Team, including the Program Manager’s Commissioning Agent, throughout all phases of the Project, and (ii) implement the LEED® credits necessary to demonstrate achievement of the Owner’s Minimum Certification Level in accordance with the requirements of the Design-Build Services Agreement (the “Agreement”) and this Exhibit, as further set forth herein.

Section 2 - LEED® Equivalency Services

2.1 The Design-Build Firm’s DPOR shall review applicable criteria for achieving the Minimum Certification Level and shall advise the Owner with regard to achieving such Certification Level. The DPOR’s LEED® Coordinator, as designated in Design-Build Firm’s Staffing Plan (Exhibit 5), shall schedule and conduct meetings during the Design and Construction Phases, communicate with members of the Project Team, and issue progress reports on a monthly basis to manage and facilitate the process of achieving LEED® equivalency for the Project.

2.2 The Design-Build Firm shall manage and coordinate the LEED® Services provided by the DPOR and the other Design-Build Firm Personnel’s with those services provided by the Owner and the Owner’s consultants, including the Program Manager, Architectural Representative and the Program Manager’s Commissioning Agent. The Design-Build Firm shall verify the accuracy and completeness of any services and information furnished by the Owner and the Owner's consultants related to demonstration of the LEED® equivalency of the Project. The Design-Build Firm shall provide prompt written notice to the Owner if the Design-Build Firm becomes aware of any error, omission or inconsistency in such services or information related to the LEED® equivalency of the Project.
2.3 NOT USED.

2.4 LEED® Equivalency Workshop

No later than the conclusion of the Schematic Design Phase, the Design-Build Firm and its DPOR shall conduct a LEED® Equivalency Workshop with the Owner, the Program Manager, the Architectural Representative, the Program Manager’s Commissioning Agent and the Owner's other consultants, during which the attendees will: (1) review the LEED® Green Building Rating System; (2) examine LEED® credits to be targeted, utilizing the appropriate Green Building Rating System Project Checklist, and identify potential LEED® points associated with those credits; (3) examine strategies for implementation of the targeted LEED® credits; and (4) discuss the potential impact of the targeted LEED® credits on the Project schedule and Owner's program and budget. Design-Build Firm shall evaluate and inform Owner and Program Manager of the costs, benefits and return-on-investment analysis for each potential LEED® credit, and prepare cost estimates for achievement of each such credit.

2.5 LEED® Equivalency Plan

2.5.1 Following the LEED® Equivalency Workshop, the DPOR shall prepare a LEED® Equivalency Plan based on the targeted LEED® credits. The LEED® Equivalency Plan shall consist of, at a minimum: (1) the appropriate Green Building Rating System Project Checklist indicating the targeted LEED® credits; (2) the Owner's Minimum Certification Level requirement; (3) information describing the Design-Build Firm's, the Design-Build Firm Personnel’s, and the Commissioning Agent’s responsibilities for each LEED® requirement, prerequisites and credit; (4) a list of the LEED® documentation required from each of them; and (5) all information required by the criteria established for the LEED Equivalency Report, which criteria is attached hereto and incorporated by reference herein as Attachment A. The Design-Build Firm shall submit the updated LEED® Equivalency Plan to the Owner and Program Manager for the Owner's approval with each Design Phase submittal. The Design-Build Firm shall update and submit to the Owner the LEED® Equivalency Plan, in accordance to this Agreement, at regular intervals for the duration of the Project to reflect any Approved changes thereto.

2.5.2 Following the Owner's approval of the LEED® Equivalency Plan, the Design-Build Firm and Design-Build Firm Personnel shall provide the services identified as the responsibility of the Design-Build Firm in the LEED® Equivalency Plan, as may only be changed by the Design-Build Firm after receipt of Owner’s written approval of any changes to the LEED® Equivalency Plan. The Design-Build Firm shall make adjustments to the LEED® Equivalency Plan, as the design and construction of the Project progresses, to reflect any changes approved by the Owner. Throughout the Design and Construction Phases, the DPOR shall conduct monthly LEED® status work sessions with the Owner and Program Manager to: (i) review, evaluate, and update as
necessary the LEED® Equivalency Plan; (ii) and confirm each applicable Project participant is fulfilling its responsibilities pursuant to the LEED® Equivalency Plan.

2.5.3 The DPOR shall prepare Construction Documents that incorporate the requirements of the LEED® Equivalency Plan.

2.6 NOT USED.

2.7 LEED® Services during Construction

2.7.1 The DPOR shall review, and respond in writing to, written requests by the Design-Build Firm, Design-Build Firm Personnel, Program Manager or Owner for additional information about the Construction Documents related to LEED® equivalency and shall include the Owner and Program Manager on all such correspondence. The DPOR shall include the Owner and Program Manager on any such correspondence with the Design-Build Firm.

2.7.2 The DPOR shall prepare supplemental Drawings, Specifications and other information in response to requests for information (RFIs) by the Design-Build Firm or any Design-Build Firm Personnel related to LEED® equivalency, and shall submit copies of such documents to the Program Manager.

2.7.3 The DPOR’s designated LEED® professional, as a representative of the Owner, shall visit the site at the intervals required by the Agreement, to become generally familiar with and to keep the Owner informed about the progress of the portions of the Work related to LEED® equivalency, and shall submit a field report of each visit verifying that the Project is being constructed in accordance with the LEED® Equivalency Plan.

2.7.4 The DPOR shall review, and approve or take other appropriate action upon the Design-Build Firm’s submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with applicable LEED® credit requirements. The DPOR’s action shall be taken with such reasonable promptness as to cause no delay in the Work, in the Project Schedule or in the activities of the Owner, Program Manager, Owner’s consultants or Design-Build Firm, and in no event shall exceed the amount of time for review of submittals allowed by the Agreement.

2.7.5 The DPOR shall review requests by the Owner, Design-Build Firm, Design-Build Firm Personnel, Program Manager, Commissioning Agent, or Owner’s or Program Manager’s subcontractors or consultants for changes in the Work that may affect LEED® equivalency. The DPOR shall be responsible for making a determination whether the requested changes in the Work are materially different from the requirements of the LEED® Equivalency Plan. If the DPOR determines that implementation of a requested change in the Work would result in a material effect on achievement of the Minimum Certification Level, the DPOR shall notify the Owner and Program Manager, who may
authorize further investigation of such change. Based upon the DPOR’s investigation and information furnished by the Project participant requesting the changes, if any, the DPOR shall make recommendations to the Owner regarding the implementation of the requested changes.

Section 3 - Project Commissioning

3.1 The Parties agree that the Program Manager’s Commissioning Agent shall act as Commissioning Authority (CxA) to lead, review, and oversee the completion of all commissioning process activities for LEED® equivalency. The CxA shall conduct, consistent with the review requirements of the LEED® rating system, the necessary commissioning design reviews of the DPOR’s Basis of Design Documents and design documents prior to completion of the Construction Documents, and back-check the review comments in the DPOR’s subsequent design submissions. The CxA shall also review the Design-Build Firm’s submittals applicable to systems being commissioned for compliance with the DPOR’s LEED® Basis of Design Documents. Without impacting the GMP, the Design-Build Firm and its DPOR shall cooperate with the CxA and make revisions to design documents throughout the design and construction phases of the Project, as required by the CxA to comply with the LEED® Equivalency Plan.

Section 4 - Miscellaneous Provisions

4.1 The Design-Build Firm represents and warrants, which representation and warranty shall survive the execution and delivery of this Agreement, any termination of this Agreement and the Final Completion of the Work, that it has the expertise, experience and knowledge to construct the Project in accordance with the USGBC’s LEED® 2009 for New Construction and Major Renovations in order for the Project to achieve the minimum credits necessary to attain the Minimum Certification Level.

4.2 Design-Build Firm acknowledges and understands the Owner will suffer irreparable financial and other harm unless the Project achieves the minimum credits necessary to attain the Minimum Certification Level.

4.3 The Design-Build Firm hereby represents and warrants to the Owner that the Design-Build Firm accepts responsibility for the coordination and implementation of all LEED® credits required by the LEED® Equivalency Plan and the Design-Build Firm further guarantees to undertake its best efforts in order to achieve the minimum credits necessary to attain the Minimum Certification Level.

4.4 Notwithstanding anything contained herein or in the Agreement to the contrary, Owner and Design-Build Firm agree that any additional construction interest and financing costs, lost rental income, lost property value, and increased construction costs incurred by
Owner as a result of Design-Build Firm’s default under the Contract Documents with respect to LEED® requirements shall constitute actual damages and shall not be considered consequential damages.

4.5 It shall be a condition precedent to Final Completion that the DPOR shall have submitted to the Program Manager the Approved LEED® Equivalency Report in accordance with the requirements of Attachment A, evidencing that the Project has achieved the minimum credits necessary to attain the Minimum Certification Level. The issuance of a Certificate of Final Completion shall be subject to revocation by Owner if it is determined within two (2) years of Substantial Completion that Design-Build Firm failed to demonstrate achievement of the minimum credits necessary to attain the Minimum Certification Level in accordance with Attachment A.
ATTACHMENT A TO EXHIBIT 10

LEED® EQUIVALENCY REPORT CRITERIA

The final version of the LEED® Equivalency Plan shall be submitted to the Owner prior to Final Completion as a LEED® Equivalency Report in a three-ring binder with a table of contents, section dividers, and all documentation and information required hereunder and by Exhibit 10. The report shall include information supporting each of the LEED® referenced credits that have been incorporated into the Project pursuant to the LEED® Equivalency Workshop. The supporting information included in the report will include the following for each prerequisite and credit as applicable.

1. USGBC credit or prerequisite name.

2. USGBC reference guide intent.

3. USGBC reference guide requirements.

4. A general description of implementation of each credit into the Project and a narrative explaining how compliance with the credit requirements has been achieved, based on the Design Build Firm’s interpretation and experience, with such requirements.

5. For credits and prerequisites requiring calculations to determine achievement (for example, water use reduction, optimize energy performance, minimum energy performance, maximize open space), calculations will be included.

6. For credits requiring certain types of materials (for example, recycled content, low-emitting materials), the report will reference specifications and shop drawings/submittals for materials incorporated into the Project, with verification those materials were installed by Design-Build Firm.

7. For credits where USGBC documentation would require diagrams, drawings or photography prepared specifically for USGBC format/templates (for example, daylighting, views), the report will reference Drawings included in the Construction Documents.

8. For Sustainable Site credits requiring offsite drawings for identification of adjacent services, the report will indicate that compliance has been evaluated and determined and will, in narrative form, define specific services and distances that confirm this evaluation.

9. For credits requiring the Owner to adopt certain processes (for example, use of “green cleaning products”), report will include recommended process/procedure/
implementation.

10. For credits requiring sustainability programs, report will identify recommended Owner exhibits or education programs (“green education exhibits” to be posted in building as an example).

11. During construction, Design-Build Firm will track and submit information required to obtain credits from USGBC. Credits requiring contractor input include:
   a. SS Pre. 1 SWPPP.
   b. MR 2 Construction Waste Management.
   c. MR 4 Recycled Content.
   d. MR 5 Regional Materials.
   e. MR 7 Certified Wood.
   f. IEQ 3.1 IAQ During Construction.
   g. IAQ 3.2 IAQ Before Occupancy.
   h. IAQ 4.1-4.5 Low Emitting Materials.

All construction-related LEED® credits will be documented and verified in accordance with the requirements set forth herein, as applicable.

12. The Design-Build Firm shall collect and include with the report any documentation required of the Commissioning Agent or Owner’s other consultants such that all documentation related to LEED® compliance is included in the LEED® Equivalency Report.

13. As part of Design-Build Firm’s Final Pay Application, Design-Build Firm shall prepare and submit a final report for all of the above, demonstrating how the Project satisfies the requirements to attain the Minimum Certification Level. Design-Build Firm shall include in the final report the following certification of the information to be contained in such report:

“The Design-Build Firm and the DPOR hereby certify that (i) each portion of this report prepared by any Design-Build Firm Personnel that are design professionals has been sealed by such professional as a duly licensed design professional, (ii) all information contained in this report is accurate, true and correct, and (iii) it is the professional opinion of the DPOR and as such the professional opinion of the Design-Build Firm, that the Project is in compliance with the Minimum Certification Level.”
Exhibit 11

Contract Data
Requirements List
# EXHIBIT 11
## CONTRACT DATA REQUIREMENTS LIST

### Basic Services

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<th>CLIN</th>
<th>CDRL</th>
<th>Sub</th>
<th>Description</th>
<th>Completion By (calendar days)</th>
<th>References</th>
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<td>DCP Acceptance and Design Approach Submittal Report</td>
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<td>ESOC/NWOC 80% CD Submittal</td>
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<td>ESOC/NWOC 100% CD Design Estimate</td>
<td>30 DA CDRL 1</td>
<td>b</td>
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<td>4 C</td>
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<td>ESOC/NWOC Final GMP and Project Schedule</td>
<td>10 DA Accept CDRL 4</td>
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<td>Final GMP and Schedule for ESOC</td>
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<td>8 A</td>
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### 2 ESOC Construction

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<td>Erosion Control Layout</td>
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### 3 As-Built Plans and specifications

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<td>4 B</td>
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<td>AJH Occupancy Permits</td>
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<td>LEED Submission</td>
<td>At substantial completion</td>
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<td>Lessons Learned Report</td>
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<td>Erosion Control Layout</td>
<td>Within 10 DANTP</td>
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<td>1 month prior to substantial completion</td>
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<td>B</td>
<td>O&amp;M/Operating Training</td>
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<td>AJH Occupancy Permits</td>
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<td>LEED Submission</td>
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<td></td>
<td>Lessons Learned Report</td>
<td>Within 3 months after substantial completion</td>
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**Additional Services** (if required – CDRLS to be defined in Task Order)

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<th>Ref</th>
<th>Description</th>
<th>Completion By</th>
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**Reference Notes**

a. Submittal includes 4 hardcopies to Program Manager and 1 electronic package filed in the CPMS-Projectmates (all in pdf format except drawings to be in both pdf and native Autodesk...
file format). Hardcopies of drawings are to be B size, with one of the 4 in D size, in a separate package but drawings are to be developed to D size in electronic format. Remainder of submittal is to be in letter-sized 3-ring binder volume, with 11x17 folded inserts allowed. Document pages will have light gray, semi-transparent watermark stating SD submittal. Supporting analyses, material spec/cut sheets, reports, and calculations to be in separate bound 3-ring volume marked as SD supporting data. Text in documents (other than drawing volume) shall be Times New Roman not less than 11pt in document, 9 pt in any graphic, including notation in drawings.

b. Weekly updates shall be contractor format, filed in CPMS-Projectmates in pdf. Notice of filing shall be logged to PM staff as periodically directed by PM.

c. Schedule to be in Primavera or MS Project native file format with all matching WBS numbering, control milestones with IMS milestone item numbers, and area, responsibility, or other codes required by Program Manager and delivered at Initial Meeting with Owner and PM.

d. Estimate/GMP shall be in Excel 2010 format per the required estimate breakout format (Masterformat). Data, costing and quantities will be provided to at least 2 additional levels of Masterformat than that required by the SOW.

e. Meeting minutes shall use the standard format provided by PM and will be filed in the CPMS-Projectmates with notice of filing and to make any corrections within 3 days sent to all attendees with CPMS-Projectmates logins.

f. Weekly updates shall be filed in CPMS-Projectmates in pdf and native Primavera or MS Project files. Notice of filing shall be logged to PM staff as periodically directed by PM.
Exhibit 12

Design-Build Firm’s Good Faith Effort Plan
SECTION A - DESIGN-BUILD FIRM INFORMATION:

Name of Firm: TEAL CONSTRUCTION COMPANY

Address: 19115 FM 2252, SUITE 3

City: GARDEN RIDGE State: TEXAS Zip Code: 78266

Contact Person: THAD MINER Telephone No.: 210-704-5482

Email Address: THADMINER@TEALCON.COM Fax No.: 210-501-0170

Is your firm Certified? Yes _____ No X Certification Agency that has granted SMBW certificate/s:

Type of Certification: _____ SBE _____ MBE

SMWBS Points will be earned as follows:

GFEP Section 1. DB’s Team of Design Services Subcontractors (Up to 6 Points)
- SMWBS Participation Percentage between 0% to 10.99%: 1 Point
- SMWBS Participation Percentage between 11% to 19.99%: 2 Points
- SMWBS Participation Percentage between 20% to 24.99%: 3 Points
- SMWBS Participation Percentage between 25% to 29.99%: 4 Points
- SMWBS Participation Percentage between 30% to 34.99%: 5 Points
- SMWBS Participation Percentage at 35% or greater: 6 Points

GFEP Section 2. DB’s Team of Pre-Construction Services Subcontractors (Up to 6 Points)
- SMWBS Participation Percentage between 1% to 10.99%: 1 Point
- SMWBS Participation Percentage between 11% to 19.99%: 2 Points
- SMWBS Participation Percentage between 20% to 24.99%: 3 Points
- SMWBS Participation Percentage between 25% to 29.99%: 4 Points
- SMWBS Participation Percentage between 30% to 34.99%: 5 Points
- SMWBS Participation Percentage at 35% or greater: 6 Points

GFEP Section 3. Situational Questions (Up to 3 Points)
- How do you envision calculating your organization’s SMWBS goal for each design and/or bid package so as to meet the 30% overall goal, and how will you communicate the opportunities of the DB project to local SMWBS firms? (1 Point)
- Do you have a policy for prompt payment and prompt release of retainage funds for small business subcontractors, or do you have a standard payment and retainage release policy that applies to all subcontractors, regardless of size? (1 Point)
- Identify a firm with whom you will establish a Mentor-Protégé relationship for the duration of the project, how your mentorship will benefit the protégé firm with measurable benchmarks, and how you will report the effects of the Mentor-Protégé relationship to the SAWS SMWB Program Manager. (1 Point)

1. SMALL, MINORITY, AND WOMAN-OWNED BUSINESS (SMWB) PARTICIPATION PERCENTAGE OF THE DB’S OWN TEAM OF DESIGN SERVICES SUBCONTRACTORS (UP TO 6 POINTS):
Please list all subcontractors/sub-consultants/suppliers, whether SMWB or not, in the chart below. Please include the subcontractors’ business name, address, point of contact, and what percentage of the overall project that they will perform. Do not include proposed goals for work packages that have yet to be solicited. The listing of design team subcontractors/sub-consultants/suppliers in the Good Faith Effort Plan is solely for the DB’s exclusive team of design subcontractors/sub-consultants/suppliers. Please indicate whether design subcontractors/sub-consultants/suppliers have any SMWB certifications (HABE, MBE, SBE, WBE), and which entity they were certified by: South Central Regional Certification Agency, Texas Historically Underutilized Business "HUB", or the federal government.

- SMWB Participation Percentage between 1% to 4.99%: 1 Point
- SMWB Participation Percentage between 5% to 9.99%: 2 Points
- SMWB Participation Percentage between 10% to 29.99%: 3 Points
- SMWB Participation Percentage between 30% to 44.99%: 4 Points
- SMWB Participation Percentage between 45% to 99.99%: 5 Points
- SMWB Participation Percentage at 35% or greater: 6 Points

<table>
<thead>
<tr>
<th>Name, Address &amp; Point of Contact of Subcontractor</th>
<th>Scope of Work/Supplies to be Performed/Provided by Firm</th>
<th>Estimated Contract Amount on this Project</th>
<th>Certification Type &amp; Certification Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DHR ARCHITECTS</td>
<td>ARCHITECT DESIGN FIRM</td>
<td>UNKNOWN</td>
<td>DBE, MBE, SBE</td>
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<tr>
<td>2. DUE TO REGULATIONS IN THE RFP, WE ARE UNABLE FOR THE DESIGN PHASE OF THE PROJECT. OUR DESIGN CONTRACT WILL BE WITH DHR ARCHITECTS, WHO ARE DBE, MBE, SBE, AND HUB.</td>
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AS PER RFP, NO PRICING IS TO INVOLVED IN THIS PHASE OF THE PROPOSALS.
2. SMALL, MINORITY, AND WOMAN-OWNED BUSINESS (SMWB) PARTICIPATION PERCENTAGE OF THE DB’S OWN TEAM OF PRE-CONSTRUCTION SERVICES SUBCONTRACTORS (UP TO 6 POINTS):
Please list all pre-construction services subcontractors/sub-consultants/suppliers, whether SMWB or not, in the chart below. Please include the subcontractors’ business name, address, point of contact, and what percentage of the overall project that they will perform. Do not include proposed goals for work packages that have yet to be solicited. The listing of pre-construction services subcontractors/sub-consultants/suppliers in the Good Faith Effort Plan is solely for the DB’s exclusive team of pre-construction services subcontractors/sub-consultants/suppliers. Please indicate whether pre-construction services subcontractors/sub-consultants/suppliers have any SMWB certifications (AAEB, MBE, SBE, WBE), and which entity they were certified by: South Central Regional Certification Agency, Texas Historically Underutilized Business “HUB”, or the federal government.

- SMWB Participation Percentage between 1% to 10.99%: 1 Point
- SMWB Participation Percentage between 11% to 19.99%: 2 Points
- SMWB Participation Percentage between 20% to 24.99%: 3 Points
- SMWB Participation Percentage between 25% to 29.99%: 4 Points
- SMWB Participation Percentage between 30% to 34.99%: 5 Points
- SMWB Participation Percentage at 35% or greater: 6 Points

<table>
<thead>
<tr>
<th>Name, Address &amp; Point of Contact of Subcontractor/Supplier</th>
<th>Scope of Work/Supplies to be Performed/Provided by Firm</th>
<th>Estimated Contract Amount on this Project</th>
<th>Certification Type &amp; Certification Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DUE TO THE PROJECT BEING PUBLIC, WE ARE UNABLE TO PROCURE ANY SUBCONTRACTORS FOR PRECONSTRUCTION AT THIS TIME WITHOUT ESTABLISHING A GMP. THE FIRM IS COMMITTED TO MEETING OR EXCEEDING THE 30% OVERALL GOAL FOR CONSTRUCTION.</td>
<td>1. DUE TO THE PROJECT BEING PUBLIC, WE ARE UNABLE TO PROCURE ANY SUBCONTRACTORS FOR PRECONSTRUCTION AT THIS TIME WITHOUT ESTABLISHING A GMP. THE FIRM IS COMMITTED TO MEETING OR EXCEEDING THE 30% OVERALL GOAL FOR CONSTRUCTION.</td>
<td>1. DUE TO THE PROJECT BEING PUBLIC, WE ARE UNABLE TO PROCURE ANY SUBCONTRACTORS FOR PRECONSTRUCTION AT THIS TIME WITHOUT ESTABLISHING A GMP. THE FIRM IS COMMITTED TO MEETING OR EXCEEDING THE 30% OVERALL GOAL FOR CONSTRUCTION.</td>
<td>1. DUE TO THE PROJECT BEING PUBLIC, WE ARE UNABLE TO PROCURE ANY SUBCONTRACTORS FOR PRECONSTRUCTION AT THIS TIME WITHOUT ESTABLISHING A GMP. THE FIRM IS COMMITTED TO MEETING OR EXCEEDING THE 30% OVERALL GOAL FOR CONSTRUCTION.</td>
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</table>
3. Situational Questions (Up to 3 Points)

- How do you envision calculating your organization's SMWB goal for each design deliverable package so as to meet the 30% overall goal, and how will you communicate the opportunities of the DB project to local SMWB firms? Please provide your answer to this question as a narrative in the space provided below. (1 Point)

WE HAVE ALREADY CHOSEN OUR DESIGN TEAM PER RELATIONSHIP AND PROJECT/LOCATION EXPERTISE. OUR DESIGN CONTRACT WILL BE WITH DHR ARCHITECTS WHO IS DBE, MBE, SBE, AND HUB. THE CONTRACT SHOULD EXCEED THE 30% OVERALL GOAL, AT THIS TIME WE ARE UNABLE TO PROVIDE PRICING FOR THE PROPOSAL DUE TO REGULATIONS STATED IN THE RFP.

- Do you have a policy for prompt payment and prompt release of retainage funds for small business subcontractors, or do you have a standard payment and retainage release policy that applies to all subcontractors, regardless of size? Please provide your answer to this question as a narrative in the space provided below. (1 Point)

WE DO NOT HAVE A PROMPT PAYMENT/RETAINAGE FUNDS FOR SMALL BUSINESS. THERE HAVE BEEN SITUATIONS WHERE WE HAVE HAD PROMPT PAYMENTS, BUT IT IS AS PER PROJECT AND SUBCONTRACTOR. TEAL IS PAID WHEN PAID GENERAL CONTRACTOR AND IN TYPICAL PROJECTS ALL SUBCONTRACTORS ARE TREATED THE SAME REGARDLESS OF SIZE.

- Identify a firm with whom you will establish a Mentor-Protégé relationship for the duration of the project, how your mentorship will benefit the protégé firm with measurable benchmarks, and how you will report the effects of the Mentor-Protégé relationship to the SAWS SMWB Program Manager. Please provide your answer to this question as a narrative in the space provided below. (1 Point)

TEAL DOESN'T HAVE A MENTOR-PROTEGE RELATIONSHIP.
4. The undersigned proposer has satisfied the requirements of the RFP specification in the following manner (please check the appropriate space):

   X   The DB is committed to a minimum of 30% SMWB utilization on this contract.

   ___ The DB, if exceeding the SMWB goal of 30%, is committed to _____% of SMWB utilization on this contract.
   ___ The DB, if unable to meet the SMWB goal of 30%, is committed to _____% of SMWB utilization on this contract. (if contractor is unable to meet the goal, please fill out Section B and submit documentation demonstrating good faith efforts).

5. Name and phone number of person appointed to coordinate and administer the SMWB requirements on this project.

   Name: JENNIFER KING
   Title: DIRECTOR OF MARKETING
   Phone Number: 713-465-8306

   IF THE SMWB GOAL WAS MET, PROCEED TO SECTION C. IF GOAL WAS NOT MET, PROCEED TO SECTION B.

SECTION B – GOOD FAITH EFFORTS (Fill out only if the SMWB goal was not achieved).

1. List all subcontractor/sub-contractor/supplier firms that the DESIGN-BUILD contacted about opportunities for this project that will not be utilized for the contract by choice of the proposer, subcontractor, or supplier. (Use additional sheets as needed)

<table>
<thead>
<tr>
<th>Name &amp; Address of Company</th>
<th>Scope of Work/Supplies to be Performed/Provided by Firm</th>
<th>Is Firm SMWB Certified?</th>
<th>Date Written Notice was Sent &amp; Method (Fax, Letter, E-Mail, etc.)</th>
<th>Reason Agreement was not reached?</th>
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In order to verify a proposer’s good faith efforts, please provide to SAWS copies of the written notices to all firms contacted by the proposer for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above-named project.

Page 29 of 35
2. List all SMWB listings or directories, contractor associations, and/or any other associations utilized to solicit SMWB subcontractors/suppliers.

3. Discuss efforts made to define additional elements of the work proposed to be performed by SMWBs in order to increase the likelihood of achieving the goal:

4. Indicate advertisement mediums used for soliciting bids from SMWBs. (Please attach a copy of the advertisement(s):

SECTION C - AFFIRMATION

I hereby affirm that the above information is true and complete to the best of my knowledge. I further understand and agree that, this document shall be attached hereto and become a binding part of the contract.

Name and Title of Authorized Official:

Name: LES CHIPMAN

Title: VICE PRESIDENT

Signature: __________________________ Date: 01/25/2017

NOTE: This Good Faith Effort Plan is reviewed by SAWS Contracting Department. For questions and/or clarifications, please contact Susan Rodriguez, SMWB Program Specialist, at 210-233-2950.
Attachment “F”
Range of General Conditions Cost

Pursuant to Section 2269.307(e) of the Texas Government Code, the Respondent’s proposed range of all items of cost for General Conditions is:

$ 839,936.00 to $ 1,024,588.00

Respondent represents and warrants that such range of cost is based, and covers all items listed, on the List of Allowable General Conditions Items included herewith as Exhibit “A”, List of Allowable General Conditions, which, for purposes of this RFP, Respondent considers to be all items of cost of General Conditions.

TEAL CONSTRUCTION COMPANY
Name of Respondent

LES CHIPMAN
Printed Name

[Signature]

VICE PRESIDENT
Title

01/25/2017
Date
Exhibit 13

Design-Build Firm’s
Hourly Rate Schedule
EXHIBIT 13

DESIGN-BUILD FIRM’S HOURLY RATE SCHEDULE

<table>
<thead>
<tr>
<th>Labor/Price Category</th>
<th>UOM</th>
<th>Rate</th>
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<tbody>
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<td>Project Executive</td>
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<td>$712.06*</td>
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<tr>
<td>Project Manager</td>
<td>Day</td>
<td>$525.60*</td>
</tr>
<tr>
<td>Asst. Project Manager</td>
<td>Day</td>
<td>$365.00*</td>
</tr>
<tr>
<td>Administration</td>
<td>Day</td>
<td>$343.84*</td>
</tr>
<tr>
<td>Superintendent (per jobsite)</td>
<td>Day</td>
<td>$393.00*</td>
</tr>
<tr>
<td>Asst. Superintendent (per jobsite)</td>
<td>Day</td>
<td>$408.80*</td>
</tr>
<tr>
<td>QA Technician</td>
<td>Day</td>
<td>$365.00*</td>
</tr>
<tr>
<td>Estimator</td>
<td>Hour</td>
<td>$6*</td>
</tr>
<tr>
<td>DPOR Principal</td>
<td>Hour</td>
<td>$160*</td>
</tr>
<tr>
<td>DPOR Project Manager</td>
<td>Hour</td>
<td>$110*</td>
</tr>
<tr>
<td>DPOR Lead Project Architect</td>
<td>Hour</td>
<td>$120</td>
</tr>
<tr>
<td>DPOR Interior Designer</td>
<td>Hour</td>
<td>$100</td>
</tr>
<tr>
<td>DPOR Architect Intern III</td>
<td>Hour</td>
<td>$95</td>
</tr>
<tr>
<td>DPOR CAD tech/ Intern I</td>
<td>Hour</td>
<td>$75</td>
</tr>
<tr>
<td>DPOR Admin</td>
<td>Hour</td>
<td>$75*</td>
</tr>
<tr>
<td>Pipeworker (journeyman)</td>
<td>Hour</td>
<td>NA</td>
</tr>
<tr>
<td>Electrician (journeyman)</td>
<td>Hour</td>
<td>NA</td>
</tr>
<tr>
<td>Steelworker (journeyman)</td>
<td>Hour</td>
<td>NA</td>
</tr>
<tr>
<td>Common laborer</td>
<td>Hour</td>
<td>$30</td>
</tr>
</tbody>
</table>

Notes:

1. In the event of an Approved adjustment to the Initial or Final GMP, as applicable, these rates shall not be adjusted for escalation or for any other reason for the entire term of the Contract.

2. All salaried personnel of Design-Build Firm and Design-Build Firm Personnel are designated with an asterisk in the schedule above. For all such salaried personnel, Design-Build Firm shall use no more than 8 hours per day as the multiplier for the hourly rates of such salaried personnel.
Exhibit 14

Owner's Requirements of Insurance
EXHIBIT 14

OWNER’S REQUIREMENTS OF INSURANCE

1.01 Duty to Purchase Insurance. Commencing on the Effective Date (except as otherwise provided below, with respect to Builders’ Risk insurance coverage), Design-Build Firm shall, at its own expense, keep in full force and effect such lines of insurance coverage as Design-Build Firm considers necessary and adequate to protect Design-Build Firm and Owner from claims (other than claims asserting professional liability of the Owner or workers’ compensation claims of Owner’s employees), which may arise out of or result from Design-Build Firm’s Services or Work, regardless of whether the Services or Work are performed by Design-Build Firm, Design-Build Firm Personnel, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, at a minimum, the insurance coverages and limits stated below (or such other greater insurance coverage or limits expressly required under any other provision of the Contract Documents). Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage. If Design-Build Firm maintains broader coverage and/or higher limits than the minimum limits set forth below, Owner requires and shall be entitled to the broader coverage and/or the higher limits of insurance maintained by Design-Build Firm.

1.02 Design-Build Firm’s Duty to Review Its Insurance. Design-Build Firm represents and acknowledges: (1) it has carefully reviewed its insurance program with its legal and risk advisors and (2) its insurance policies comply with the insurance requirements in this Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by Owner, Design-Build Firm shall direct Design-Build Firm’s broker, agent, or its applicable insurance carrier representative to submit true and complete copies of Design-Build Firm’s policies of insurance in .pdf format, and a signed letter certifying that the electronic copies of the policies as furnished are true and correct copies. If Owner’s consultants determine Design-Build Firm’s insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Agreement, Design-Build Firm agrees to reimburse Owner for all costs and fees of its consultants incurred in attempting to resolve such policy deficiencies. Owner’s review of Design-Build Firm’s policies of insurance shall not excuse Design-Build Firm from the requirements set forth herein. In the event Owner executes this Agreement with Design-Build Firm before all deficiencies are resolved, Owner does not waive, but explicitly reserves, the right to bring, after: (i) the occurrence of any loss or damage for which insurance is required hereunder; or (ii) after the denial of a claim for coverage for such loss or damage, an action or Claim against Design-Build Firm to recover directly from Design-Build Firm any damages, including attorney’s fees and other costs, Owner incurs as a result of Design-Build Firm’s failure to secure and maintain the insurance required hereunder. Design-Build Firm acknowledges and agrees that any period of limitations shall not begin to run or, alternatively, shall be tolled until the time of the later of such occurrence or denial.
1.03 **Statutory Worker’s Compensation and Employer’s Liability Insurance.** The policy must be in the name of Design-Build Firm and contain an endorsement naming Owner as the Alternate Employer.

a. **Design-Build Firm’s Certification.** By execution of the Agreement, Design-Build Firm thereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that Design-Build Firm provides workers’ compensation and employers’ liability insurance for all employees employed on this public project with limits of not less than those required below.

b. **Subcontractor’s Certification.** Pursuant to Texas Labor Code, Section 406.096(b), Design-Build Firm shall require each Subcontractor to certify in writing to Design-Build Firm that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. Design-Build Firm shall forward said certifications to Owner within ten (10) days of the Effective Date of the Agreement.

c. **Other States Endorsement.** The policy must include an Other States Endorsement to include the State of Texas if Design-Build Firm’s business is domiciled outside the State of Texas.

Minimum Limits of Coverage:

<table>
<thead>
<tr>
<th>Worker’s Compensation</th>
<th>Statutory Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer’s Liability</td>
<td></td>
</tr>
<tr>
<td>Bodily Injury by Accident</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>Bodily Injury by Disease Each Employee</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>Bodily Injury by Disease Policy Limit</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

1.04 **Commercial General Liability ("CGL") Insurance.** The CGL policy shall be written on the most current commercially available edition of the ISO CG 00 01 coverage form.

a. **CGL Minimum Coverages.** The CGL policy shall at a minimum include the following coverages: (i) Bodily Injury and Property Damage on an “Occurrence” basis; (ii) Premises & Operations Liability; (iii) Products/Completed Operations Liability (to be maintained for the later of ten years after Substantial Completion or until expiration of the statute of repose); (iv) Personal and Advertising Injury Liability; (v) Electronic Data Liability coverage under an endorsement equal to ISO CG 04 37 with a minimum sublimit of liability equal to the minimum amount required hereunder for the CGL policy; and (vi) the policy shall include ISO
endorsement CG 2503, Designated Construction Projects General Aggregate Limit, or its equivalent.

b. **CGL Prohibited Exclusions, Limitations, Endorsements, and Policy Forms.** The CGL policy shall not contain any exclusions, limitations, endorsements or policy forms unacceptable to Owner, including but not limited to the following coverage exclusions and limitations: (i) liability assumed by Design-Build Firm under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent; (2) explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse and Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent; (3) cross-liability on claims between any insureds, other than claims between named insureds; (4) injury to independent contractors and employees of independent contractors; (5) any exclusion relating to damage to work performed by Subcontractors on behalf of Design-Build Firm such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent; (6) any type of classification or business description limitation endorsement; (7) any type of endorsement excluding coverage for construction defects in the completed operations phase; (8) any type of endorsement modifying the employer’s liability exclusion; (9) any type of habitational or residential exclusion; (10) any type of punitive, exemplary or multiplied damages exclusion; and (11) any type of subsidence exclusion if Design-Build Firm is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains; and

**Minimum Limits of coverage required:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>General Aggregate</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>Products &amp; Completed Operations Aggregate</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>Personal and Advertising Injury</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

1.05 **Builders’ Risk Insurance.** Before commencement of the construction and up until the time Owner has Approved the transfer of the risk of loss to the Project as further provided below, Design-Build Firm shall maintain, and shall be entitled to invoice Owner for reimbursement as a Cost of the Work the premium paid for “All-risk” Builders’ Risk Insurance, with a minimum limit of coverage not less than the amount of the Guaranteed Maximum Price to be established for the Project. Coverage shall be increased for the amount of any Change Orders or Amendments that increase the replacement value of the Project. Coverage shall also cover per occurrence the cost of debris removal equal to the lesser of: (i) 25% of the
amount of loss, or (ii) $5,000,000. The Coverage shall be written on the ISO CP 00 20 10 12 Builders’ Risk Coverage Form, or its equivalent, and an unmodified ISO Special Causes of Loss Form (ISO# CP 10 30 10 12). The Builders’ Risk Insurance shall include coverage for theft, collapse, flood and earthquake. Any exclusions to these Builders’ Risk coverage forms requires Owner Approval. Such insurance shall (a) designate the Owner, Design-Build Firm, all Subcontractors of any tier (as their interests appear), and all Loss Payees and Mortgagees (as their interests appear) as additional named insureds on the policy; and (b) be primary and non-contributing to any other insurance coverage available to the additional named insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by this Builders’ Risk Insurance. The Builders’ Risk Insurance shall not include any requirement that protective safeguards are in-place or maintained on the Project. The termination of coverage provision shall be endorsed to permit coverage to continue during any interim period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until the earlier of the following dates: (i) the date on which termination of coverage has been Approved after Final Payment has been issued to and accepted by Design-Build Firm, as provided for in the Contract Documents; or (ii) the date on which the insurable interests in the covered property of all insureds other than the Owner have ceased. Such insurance shall cover at a minimum the following:

a. All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling, or filling;

b. All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;

c. All property including materials and supplies on site for installation;

d. All property including materials and supplies at other locations but intended for use at the site;

e. All property including materials and supplies in transit to the site for installation, by all means of transportation other than ocean transit; and

f. Other property for which an insured is liable in connection with the Project, including Owner furnished or assigned property.

g. Deductibles shall not exceed:

   (i) All Risks of Direct Damage, Per Occurrence, except $10,000.

   (ii) Delayed Opening Waiting Period: 5 days.

   (iii) Earthquake and Earthquake Sprinkler Leakage, Per Occurrence $100,000.
(iv) Flood. The deductible per occurrence shall be 5% of the value-at-risk-at-time-of-loss (“VARTOL”) with a minimum VARTOL of $250,000. If flood insurance is purchased through the National Flood Insurance Program, the deductible shall be the maximum amount of insurance purchased thereunder.

Coverage for each of the following shall be included in the policy with sub-limits or additional limits not less than those shown below:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Sublimit/Additional Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Additional expenses due to delay in completion of project (where applicable)</td>
<td>To be determined via GMP Amendment</td>
</tr>
<tr>
<td>2. Agreed Value (not less than the most current GMP)</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>3. Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>4. Debris removal (additional coverage limit)</td>
<td>25% of loss or $5,000,000 whichever is less</td>
</tr>
<tr>
<td>5. Earthquake and Earthquake Sprinkler Leakage</td>
<td>$1,000,000 minimum</td>
</tr>
<tr>
<td>6. Flood</td>
<td>$10,000,000 minimum</td>
</tr>
<tr>
<td>7. Freezing</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>8. Mechanical breakdown including hot production of feed stock, catalyst or similar media for processing &amp; handling or commencement of supply to a system) and cold (hydrostatic, pneumatic, electrical, hydraulic or mechanical) testing, where applicable</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>9. Occupancy pre-completion</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>10. Ordinance or law</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>11. Pollutant clean up and removal</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>12. Preservation of property</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>13. Replacement cost</td>
<td>Included without sublimit</td>
</tr>
<tr>
<td>14. Theft</td>
<td>Included without sublimit</td>
</tr>
</tbody>
</table>

1.06 **Business Automobile Insurance.** Business Automobile Insurance with the limits of coverage shown below to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of: (i) any auto, including owned, hired and non-owned autos; and (ii) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.

Minimum Limits of coverage required:

- Combined Single Limit Bodily Injury & Property Damage: $1,000,000.00
1.07 **Excess Liability Insurance.** Excess Liability Insurance over Employers’ Liability, CGL, Commercial Automobile Liability Policies following form over and affording coverage no less broad than the coverage in such underlying policies, including, but not limited to electronic data liability and designated construction project(s) aggregate limit.

Minimum Limits of coverage required:

| Excess Liability Insurance | $12,000,000.00 |

1.08 **Contractor’s Pollution Liability Insurance.** Contractor’s Pollution Liability Insurance, providing occurrence based coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character, including but not limited to claims for bodily injury or death, property damage, environmental or natural resource damage, and any civil fines, fees, civil assessments or civil penalties or punitive, exemplary or multiplied damages assessed by any governmental department, agency, commission or court, arising out of any Pollution Condition(s) (as defined below) that is in any way related to Design-Build Firm’s or Design-Build Firm Personnel’s operations, actions, or inactions, or completed operations associated with any Work and Construction Services (other than Design Services) performed by Design-Build Firm or Design-Build Firm Personnel. If coverage is written on a Claims Made & Reported Policy form, the policy retroactive date for prior acts coverage shall be no later than the Contract Effective Date. The pollution liability policy shall be continuously maintained for a period of 10 years after completion of the project or termination of the agreement, whichever occurs later. Design-Build Firm’s purchase of an extended discovery period or an extended reporting period will not be sufficient to comply with Design-Build Firm’s obligations hereunder. The Pollution Liability policy shall provide coverage for “sudden & accidental” and gradual occurrences arising from the work performed under this Contract. The Business Automobile Liability policy shall either be endorsed to provide coverage under the ISO CA9948 endorsement (Broadened Pollution Liability Coverage) and Motor Carrier Endorsement (MCS-90), or Design-Build Firm’s Contractor’s Pollution Liability policy shall be endorsed to provide transportation coverage beyond the boundaries of the job site, if Design-Build Firm’s activities involve hauling excavated spoil. The Contractor’s Pollution Liability policy shall also include coverage for: (1) the full scope of Design-Build Firm’s operations (on-going and completed), as described in the Agreement; (2) losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall; (3) third party liability for bodily injury, property damage, clean up expenses, and defense costs arising from Design-Build Firm’s operations; (4) diminution of value and natural resources damages; (5) contractual liability; (6) claims arising from Design-Build Firm’s use of any owned or non-owned disposal sites arising out of Design-Build Firm’s activities in connection with the Agreement; (7) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (8) all costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind, including attorney’s fees, expert witness fees, costs, charges and expenses of any kind or
character, that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a 7-day minimum occurrence period for emergency response costs. “Pollution Condition(s)” means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low-level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (a) insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable); (b) impaired property that has not been physically injured; (c) materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner’s review and approval; (d) property damage to the work performed by a contractor; (e) faulty workmanship as it relates to clean up costs; (f) punitive, exemplary or multiplied damages; (g) work performed by Subcontractors; or (h) contractual liability incurred as a result of an injury to an employee of the insured.

Minimum Limits of Insurance:

Pollution Liability Insurance $5,000,000.00 Occurrence/$5,000,000.00 Aggregate

1.09 Contractor’s Professional Liability Insurance. Contractor’s Professional Liability Insurance with the minimum limits of coverage not less than shown below shall be provided by Design-Build Firm to cover Design-Build Firm’s professional liability arising out of or in connection with any negligent act, error or omission of all Design-Build Firm Personnel, including all design professionals and any non-professional Design-Build Firm Personnel, and all members of any subconsultant firm or any joint venture or other firm of Design-Build Firm acting for, in combination with, on behalf of, or under the direction or control of Design-Build Firm in the performance of any Design Services required under this Agreement, or arising from or in connection with the coordination, management or oversight of such Design-Build Firm Personnel in the rendering of the Design Services. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or Subcontractors; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) professional liability of Design-Build Firm arising out of the negligence of Design-Build Firm Personnel; or (vi) design/build services.

Professional Liability Insurance $5,000,000.00 Occurrence/$5,000,000.00 Aggregate

1.10 Cyber/Privacy Liability Insurance Policy. Cyber/Privacy Liability Insurance shall be provided by Design-Build Firm to cover risk of loss to electronic data. The policy must
include coverage for electronic vandalism to electronic data, including coverage for a third party’s willful electronic alteration of data, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security, introduction of viruses which impact electronic data, unauthorized use of or access to electronic data, or denial of service to Project-related web site or email destinations. The policy shall provide coverage for data breach response costs, as well as regulatory fines and penalties (where allowed by law) with a limit of coverage shown below.

Cyber Liability Insurance  $1,000,000 Claim/$1,000,000 Aggregate

1.11 **Endorsements.** Design-Build Firm’s commercial auto liability, CGL, excess liability, professional liability and pollution liability insurance policies shall be endorsed to provide that they are primary to and non-contributing with, any other insurance carried by, or for the benefit of Owner. The primary and non-contributing endorsement for Design-Build Firm’s Commercial General Liability Policy shall be written under the ISO CG 20 01 04 13 coverage form and the Excess Policy shall follow form thereof. It is the specific intent of the parties to this Agreement that all such insurance policies shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner, with Owner’s insurance being excess, secondary and noncontributing. Within thirty (30) days following receipt of Owner’s request, Design-Build Firm shall furnish to Owner a letter issued by any insurer of Design-Build Firm confirming the extent to which the insurer’s coverage of Design-Build Firm is at risk of being reduced, diminished or exhausted by claims thereon.

1.12 **Subrogation.** Design-Build Firm’s workers’ compensation, employers’ liability, commercial automobile liability, CGL, excess liability, professional liability, builders’ risk and pollution liability insurance policies shall be endorsed to waive all rights of subrogation in favor of Owner. With respect to all such policies, Design-Build Firm waives any and all rights of recovery or subrogation against Owner.

1.13 **Additional Insureds.** Owner shall be named as an additional insured without limitation on Design-Build Firm’s commercial general liability, commercial automobile liability and excess liability policies. Owner shall be named as an additional named insured on Design-Build Firm’s Builder’s Risk policy. Design-Build Firm shall include Owner as additional insured on its CGL and Excess Liability policies on a combination of unmodified ISO endorsements CG 20 10 10 01 and CG 20 37 10 01, or manuscripted endorsements identical thereto. Design-Build Firm represents and warrants that:

a. **Maximum Extent Permitted.** Design-Build Firm’s policies of liability insurance specified above name Owner as an additional insured (or additional named insured, in the case of the Builders’ Risk insurance policy) to the maximum extent permitted by applicable law, or as otherwise set forth herein, with respect to liability arising out of Work performed by or for Design-Build Firm, including ongoing and completed operations in connection with this Contract (and such coverage provides
for the protection of each insured against claims of liability by another insured under a separation of insureds clause).

b. Third Parties. Such policies of insurance shall have also been endorsed to cover as an additional insured any third party to the extent required by the Contract Documents.

c. Indemnified Party. Any additional insured endorsements required hereunder shall provide as to each additional insured coverage to the limits of the applicable endorsed policy for indemnity and defense of each Claim that is no less broad than the obligations of Design-Build Firm to indemnify, defend and hold harmless the additional insured as an Indemnified Party under the Contract.

d. Original Policies. Access to the original certified copies of required insurance policies will be provided to Owner for review upon request.

e. Attachments. Attached hereto are true and correct copies of the following:

   (i) Current certificates of insurance describing each of the policies of insurance required hereunder; and

   (ii) All policy endorsements required hereunder.

1.14 Notification. All policies shall obligate the insurer to notify the San Antonio Water System (Attn: Contract Administration, P.O. Box 2449, San Antonio, Texas 78298-2449, of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, at least 30 days prior to any such non-renewal, cancellation or change. All policies shall require at least ten (10) days’ notice of cancellation to Owner in the event of non-payment of premiums by Design-Build Firm.

   a. Material Change. “Material change” means any of the following changes to the Policy during the term of the Policy:

      (i) a change in the policy period;

      (ii) a material revision to, or removal of, a coverage section;

      (iii) a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or

      (iv) an increase of the amount of any self-insured retention(s).

   Design-Build Firm shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.
1.15 **Insurance Carriers.** All Design-Build Firm’s insurance shall be issued by insurance carriers authorized to do business in Texas at the time the policy is issued (and at all times during the term of this Agreement) and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates conforming to the following requirements:

a. **Acord Form.** Certificates of insurance shall be prepared on an Acord 25 (2010/05) form, or any later edition of this form.

b. **Certificate Holder.** Certificates shall designate Owner as certificate holder, together with Owner’s mailing address.

c. **Name of Insured.** The named insured’s name must match Design-Build Firm’s name as shown in this Agreement.

d. **List of Insurance Companies.** Certificates shall list each insurance company producing each form of coverage, together with the applicable policy number and policy date.

e. **Contact Information of Issuing Producer.** Certificates shall include the name, address, phone number, fax number and email address of the issuing producer, and the signature of the authorized representative of the producer.

f. **Additional Insured/Additional Named Insured Endorsements.** Certificates for all applicable policies shall attach copies of all applicable additional insured/additional named insured endorsements.

g. **Deductibles.** All deductibles and self-insured retentions shall be disclosed on the certificate and shall be paid by, assumed by, for the account of, and at Design-Build Firm’s sole risk without any right of reimbursement. No deductible shall exceed $25,000, without prior written approval of Owner, except as otherwise specified herein. Any self-insured retentions must be approved by Owner. Owner may require Design-Build Firm to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Any policy with a self-insured retention shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner. If Design-Build Firm elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, Design-Build Firm shall be obligated to grant Owner all rights against Design-Build Firm to the same extent as if Design-Build Firm had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status (as to liability policies other than Workers’ Compensation Insurance and Professional Liability Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. Design-Build Firm shall pay from its assets the costs,
expenses, damages, claims, losses and liabilities, including attorney’s fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had Design-Build Firm maintained the insurance required hereunder with a commercial insurer.

h. **General Aggregate Limit.** Certificates of applicable policies shall disclose any designated construction project(s) general aggregate limit. Owner requires notice of replenishment and placement of supplemental coverage if any aggregate limit is exhausted during the applicable policy period.

i. **Primary and Non-Contributory Endorsements.** Certificates shall attach all primary and non-contributory endorsements required herein.

j. **Waivers of Subrogation.** Certificates shall attach waivers of subrogation applicable to all coverages required herein.

k. **Notice of Cancellation Terms.** Certificates shall attach copies of all notice of cancellation terms from all policies required herein.

l. **Project Names.** Name(s) of the Project(s) as described in this Contract shall be listed in the certificate.

m. **Contractor’s Professional Liability Policy.** Include in writing on the certificate the “Retroactive-date” for this coverage.

n. **Project and Contract Number(s).** Owner’s 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 certificate forms.

o. **Certificate Holder.** Owner shall be shown as the certificate holder in the certificate holder section located in the bottom half of the certificate form as follows:

San Antonio Water System  
2800 U.S. Hwy 281 North  
San Antonio, Texas 78212

p. **Distribution of Completed Certificates.** Completed Certificates shall be distributed by Design-Build Firm and shall be provided to Owner upon execution of this Contract and upon each renewal, replenishment, or supplementation of the coverage thereunder, and certificates, as follows:

Original shall be sent:

By Mail:
1.16 **“Claims-Made” Policy Forms.** With respect to any coverage maintained on a “claims-made” policy form, Design-Build Firm shall maintain such coverage for a minimum of ten (10) years after completion of the project or termination of the agreement, whichever occurs later. Coverage under any such policy form shall include a retroactive date based on the effective date of contract for the first performance of Work or Services for the Project. Design-Build Firm’s purchase of an extended discovery period or an extended reporting period on a “claims-made” policy will not be sufficient to comply with Design-Build Firm’s obligations hereunder.

1.17 **Design-Build Firm’s Obligations.** The insurance and insurance limits required herein shall not be deemed as a limitation on Design-Build Firm’s liability to perform and fulfill Design-Build Firm’s duties and obligations of indemnity and defense owed to any member of the Owner Group. Design-Build Firm’s obligations for loss or damage arising out of Design-Build Firm’s Services and Work or operations are not limited to the types or amounts of insurance set forth herein. Losses not covered by the insurance required hereunder shall be paid by Design-Build Firm.
1.18 **Attorney’s Fees.** To the extent Applicable Law allows recovery of attorney’s fees in any action or proceeding commenced to enforce the rights of Owner as an additional insured under this Contract, Design-Build Firm agrees to pay Owner as the prevailing party in any such action, in addition to any other relief granted, the actual reasonable attorney fees Owner has paid or is obligated to pay, and all costs and expenses to enforce such rights, not merely recoverable costs. This provision is independent and severable from any other provision of this Contract and shall be enforceable as a separate contractual agreement and applies to any limited liability company entity liable to Owner under this Contract.

1.19 **Compliance.** Owner shall not be under any duty to advise Design-Build Firm in the event that Design-Build Firm’s insurance is not in compliance with the Contract. Unless otherwise set forth herein, Design-Build Firm shall not cause or permit any required insurance to be cancelled or to lapse prior to the expiration of all common law, statutory and contractual warranty periods. Design-Build Firm shall require all Design-Build Firm Personnel to carry the types and limits of insurance coverage Design-Build Firm determines to be necessary and appropriate to protect Owner and Design-Build Firm from the risk of loss, taking into consideration the scope of services and work performed by each Design-Build Firm Personnel. Excepting only Workers’ Compensation and Professional Liability insurance policies, Design-Build Firm shall cause all Design-Build Firm Personnel to include Owner as an additional insured under each policy of insurance maintained by Design-Build Firm Personnel. Design-Build Firm will require evidence of this insurance and additional insured status to be provided by all Design-Build Firm Personnel prior to their commencement of any work or services, or entering onto any Site in connection with the Project, and copies of this evidence shall be provided to Owner by Design-Build Firm.

1.20 **Policy Limits.** Design-Build Firm is responsible for determining what policy limits in excess of the stated minimum limits of each line of insurance required herein are adequate, and the length of time each line of insurance coverage shall be maintained beyond any lengths of time set forth herein. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the required insurance coverages and limits will necessarily be adequate to fully protect Design-Build Firm. Design-Build Firm is also responsible for determining and requiring appropriate and reasonable policy limits of professional liability insurance coverage from any design professional who is a subconsultant to Design-Build Firm.

1.21 **Erosion of Aggregate Limits.** Design-Build Firm shall provide Owner with thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Agreement. If any insurance Design-Build Firm furnishes is reduced diminished or exhausted for any reason, Design-Build Firm agrees to supplement, increase and/or replace such insurance with other insurance to ensure that Design-Build Firm has available at all times the coverage required hereunder for the continuation of its Services or Work.

1.22 **Covenants.** Design-Build Firm covenants and agrees that: (i) the failure of Owner to demand certificates of insurance, or proof of compliance with the insurance requirement
herein, or failure of Owner to identify a deficiency in any policy required hereunder will not be construed as a waiver of Design-Build Firm’s obligation to maintain the insurance required under this Agreement; (ii) the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect Design-Build Firm, nor shall the limits of coverage stated herein be deemed a limitation of Design-Build Firm’s liability to Owner in this Agreement; (iii) and Design-Build Firm may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance.

1.23 Release and Waiver. Design-Build Firm hereby waives all rights of recovery and releases, and shall cause its Design-Build Firm Personnel to release, Owner from any and all claims or causes of action whatsoever which Design-Build Firm and/or Subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Design-Build Firm and/or its Subconsultants or Subcontractors pursuant to the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF OWNER.

1.24 Compliance with the Insurance Requirements. Certain of Design-Build Firm’s insurance policies (the “Policies”) will require the conforming endorsements in order to comply with the insurance requirements of this Agreement. Owner’s obligations under this Agreement are and shall remain expressly conditioned upon and subject to the issuance and receipt of valid, current and conforming Policies that comply with the insurance requirements of this Agreement, including any conforming endorsements, within 30 calendar days after the Effective Date hereof. Such conforming endorsements and policy forms shall be in form sufficient to enable Owner to receive the independent confirmation of its outside legal counsel that the Policies, as amended by such conforming endorsements, strictly comply with the insurance requirements of this Agreement, which insurance requirements shall remain in full force and effect, and shall not be deemed waived by the execution of this Agreement. The furnishing of such conforming endorsements and compliant policy forms shall be accomplished at no additional cost to Owner. Design-Build Firm acknowledges and agrees that Owner expressly reserves all rights to enforce the failure to comply with insurance requirements herein as a material default by Design-Build Firm under this Agreement.
Exhibit 15

Design-Build Firm’s Confidentiality Agreement
EXHIBIT 15

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made by and between the San Antonio Water System, an agency of the City of San Antonio in the State of Texas ("Owner") and Teal Construction Company ("Design-Build Firm"), in connection with the Contract for design and construction services dated April 4, 2017 (the "Contract"), pursuant to which Design-Build Firm is to provide services for Owner’s benefit in connection with the architecture, engineering, design, procurement and construction of the Phase 2 Service Center Project to be located in San Antonio, Texas (the “Project”).

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

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

1. Disclosure of Confidential Information. Owner will allow access to or may disclose the Confidential Information to Design-Build Firm, either orally, in writing, or through data transfer.

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

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

(c) the Confidential Information of Owner can be established by written evidence to have been in the possession of Design-Build Firm at the time of disclosure;

(d) the Confidential Information of Owner is received by Design-Build Firm from a third party without similar restrictions and without breach of this Agreement;

(e) the Confidential Information of Owner was developed by employees or agents of Design-Build Firm independently of Design-Build Firm’s planning for the performance of Services and Work without reference to any Confidential Information of Owner (Design-Build Firm shall bear the burden of proving such independent development); or

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

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

4. No License. This Agreement does not grant Design-Build Firm any license to use Owner’s Confidential Information.

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


(a) This Agreement shall be governed by and construed in accordance with the laws of the United States and of the State of Texas.
(b) Notwithstanding any other dispute resolution provision in any agreement pertaining to the performance of Services, Owner shall have the right to obtain preliminary relief on any equitable claim in any court of competent jurisdiction, where such judgment is necessary to preserve its property and/or proprietary rights under this Agreement.

(c) Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, (b) sent by confirmed telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this section. Such notice will be treated as having been received upon the earlier of actual receipt or five days after posting.

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

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

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

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

(h) Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall (a) be deemed a commitment to engage in any business relationship, contract or future dealing with the other party, or (b) limit either party’s right to conduct similar discussions or perform similar work to that undertaken pursuant hereto, so long as said discussions or work do not violate this Agreement.
(i) This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date this ___ day of ____, 2017.

DESIGN-BUILD FIRM: Teal Construction Company

By: ____________________________

Printed Name: ____________________________

Title: ____________________________
Exhibit 16

Resolution in Support of Design Build Services Agreement
RESOLVED, that ____________ is authorized, empowered, and directed, as the authorized representative of Teal Construction Company, to take all actions and to execute, deliver, and perform for or on behalf of Teal Construction Company, all instruments, documents, agreements, certificates, or writings, and any amendments thereof, as such authorized representative deems advisable in connection with the formation of that one Design-Build Agreement, dated April 4, 2017 (“the Contract”), by and between the San Antonio Water System (“Owner”) and Teal Construction Company.

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

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

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

[SIGNATURES ON NEXT PAGE]
ATTACH SECRETARIAL CERTIFICATE WITH COPIES OF PUBLICLY FILED DOCUMENTS DESCRIBED IN LAST PARAGRAPH ABOVE
Exhibit 17

Prevailing Wage Rate Schedule
General Decision Number: TX170280 01/06/2017 TX280
Superseded General Decision Number: TX20160280
State: Texas
Construction Type: Building
County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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**ASBE0087-014 01/01/2016**

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<td>ASBESTOS WORKER/HEAT &amp; FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)</td>
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**BOIL0074-003 01/01/2014**

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**ELEC0060-003 06/01/2016**

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**ELEC0060-004 06/01/2016**

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**ELEV0133-002 01/01/2016**

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<td>ELEVATOR MECHANIC</td>
<td>$37.76 29.985+a</td>
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Footnote: A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.


**ENGI0450-002 04/01/2014**

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### IRON0066-013 06/01/2015

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### IRON0084-011 06/01/2015

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### * PLUM0142-009 07/01/2016

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<tr>
<td>HVAC MECHANIC (HVAC Electrical Temperature Control Installation Only) $30.25</td>
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<td>HVAC MECHANIC (HVAC Unit Installation Only) $30.25</td>
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<tr>
<td>PIPEFITTER (Including HVAC Pipe Installation) $30.25</td>
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<td>PLUMBER (Excludes HVAC Pipe Installation) $30.25</td>
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### SFTX0669-002 04/01/2016

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### SHEE0067-004 04/01/2016

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### SUTX2014-006 07/21/2014

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<td>CARPENTER (Form Work Only) $13.63</td>
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<td>TRUCK DRIVER: Water Truck</td>
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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).
The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "Identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. Example: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling
On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice materials, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

 Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

================================================================
END OF GENERAL DECISION

Exhibit 18

Release of Claims Forms
EXHIBIT 18
RELEASE OF CLAIMS FORMS

[Release of Claims Forms Follow on the Next 7 Pages]
EXHIBIT 18.1

DESIGN-BUILD FIRM’S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF __________ §

___________________ (hereinafter referred to as “Design-Build Firm”), pursuant to the Contract dated ______________, 20__, between the San Antonio Water System (hereinafter referred to as “Owner”) and Design-Build Firm for design and construction of the ______________ Project located at ________________________, hereby certifies and warrants on this ____ day of __________, 20___, acting by and through its undersigned representative, that, except as expressly listed by the Design-Build Firm below:

(1) payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor, and services performed, and for all known indebtedness and claims against the Design-Build Firm for damages arising in any manner in connection with the performance of the Contract referenced above for which a bond or the Owner’s property might in any way be encumbered, or for which a surety or the Owner might in any way be obligated or held responsible;

(2) true and correct copies of the Surety’s consent to final payment and all waivers and releases required by the Contract are attached hereto, inclusive of all waivers and releases of the Design-Build Firm, all Subcontractors, all Sub-Subcontractors, all suppliers of materials and equipment, and all performance of work, labor or services who have or may have claims, liens or encumbrances or the right to assert claims, liens or encumbrances against any bonds arising in any manner out of the performance of the Contract referenced above;

(3) TO THE MAXIMUM EXTENT PERMITTED BY LAW, DESIGN-BUILD FIRM SHALL INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE TO OWNER), AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, AND COSTS (INCLUDING, WITHOUT LIMITATION, COURT COSTS, FEES OF ATTORNEYS AND CONSULTANTS) NOW OR HEREAFTER INCURRED OR PAID BY OR ASSERTED AGAINST OWNER WITH RESPECT TO THE CLAIMS, LIENS, AND RIGHTS HEREIN WAIVED AND RELEASED OR ARISING OUT OF ANY BREACH OR UNTRUTH OF ANY REPRESENTATION HEREBIN MADE; and

(4) all of the provisions of this document shall bind the Design-Build Firm and the Design-Build Firm’s affiliates, shareholders, directors, managers, officers, members, employees, agents, heirs, successors, and assigns and shall inure to the benefit of the Owner and the Owner’s affiliates, shareholders, directors, managers, officers, members, employees, agents, heirs, successors, and assigns.

(5) the Design-Build Firm specifically waives and releases any claim for damages due to delay, hindrance, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have as of the date of this Affidavit, except as follows:

______________________________________________________________________________________________
______________________________________________________________________________________________.
REQUIRED DOCUMENTS ATTACHED HERETO:

1. Consent of Surety to Final Payment.

2. Design-Build Firm’s Waiver and Release on Final Payment.

3. Separate Waivers and Releases from Subcontractors, Sub-Subcontractors and Suppliers on Final Payment, accompanied by a list thereof.

DESIGN-BUILD FIRM: (Name and address)

BY: ______________________________________________
(Signature of authorized representative)

____________________________________________
(Printed name and title)

Subscribed and sworn to before me, the undersigned authority on this date:

Notary Public: ______________________________

My Commission Expires: __________________________

NOTICE OF POTENTIAL CRIMINAL AND PERSONAL LIABILITY: Funds paid to the Design-Build Firm may be trust funds under the Texas Trust Fund Act (the “Act”) and the Design-Build Firm’s failure to pay trust funds it owes its artisans, laborers, mechanics, contractors, subcontractors, or materials who labor or who furnish labor or material for this project may constitute a violation of the Act and may subject the Design-Build Firm and/or its owners, officers, directors, or agents to prosecution for a criminal misdemeanor or felony under the Act, as well as personal civil liability.
PARTIAL WAIVER AND RELEASE OF CLAIMS

THE STATE OF TEXAS

COUNTY OF ___________  

The undersigned is an original contractor who has furnished labor and/or material (“Work”) in the construction of improvements upon real property owned by San Antonio Water System, including its directors, managers, officers, employees, subsidiaries, heirs, legal representatives, affiliates, agents, successors, assigns, and parents (“Owner”) located at _____________________ in the City of San Antonio, Bexar County, Texas (the “Property”).

The undersigned has furnished Work in connection with the Property as reflected in its current Application for Payment dated ________________, 20___ (the “Current Payment Application”) which covers Work furnished for the period ending on ________________, 20___ and is requesting payment in the amount of ($____________________________) on account of such Work.

For Work in connection with the Property, the undersigned has received $_______________________ for Work through ________________, 20___ (the “Release Date”), the receipt and sufficiency of which the undersigned acknowledges and agrees to be payment in full (less retainage, if any) for all Work provided through the Release Date, except as specifically identified in paragraph 5 below.

Therefore, in consideration of the payment to be received from Owner pursuant to the Current Payment Application and except as specifically identified in paragraph 5 below, the undersigned:

1. Waives and releases, all claims of every kind against Owner or the Property, including, but not limited to, all causes of action, demands, liens and claims of liens, whether statutory, at law, or under the Texas constitution, whether currently known or unknown, whether arising in tort, contract, or otherwise, which the undersigned may have as a result of or in connection with the Work reflected in its Current Payment Application;

2. Represents and warrants that all of its prior waivers and releases for the cumulative amount of sums previously invoiced in connection with the undersigned’s prior applications for payment are no longer conditional and are full and final (subject only to release of amounts withheld from the payment thereof as retainage), and that all persons and entities have been proportionately paid all amounts incurred by the undersigned, whether or not due and owing, for all work or labor performed, for all equipment rental, and for all materials, specially fabricated materials, services or supplies furnished in connection with the Work.

3. Has been paid in full (less retainage, if any) for all sums owed for Work concerning the Property through and including the Release Date;

4. Agrees to indemnify, defend, with counsel acceptable to Owner, and hold harmless Owner from and against all claims of every kind (including, but not limited to, all causes of action, demands, liens and claims of liens, whether statutory, at law, or under the Texas constitution, whether currently known or unknown, whether arising in tort, contract, or otherwise, which the undersigned may have as a result of or in connection with the Work).
constitutional, whether currently known or unknown, whether arising in tort, contract, or otherwise), liability, loss, cost (including without limitation court costs and other dispute resolution costs), expense and fees (including, but not limited to, attorneys' fees and witness fees, including those of experts and consultants) now or hereafter incurred, paid or suffered by or asserted against Owner or the Property because of any claim or action by the undersigned, or by any person or entity claiming by, through or under the undersigned, with respect to the claims, liens and rights herein waived and released or arising out of any breach or untruth of any representation herein made.

5. Notwithstanding the foregoing to the contrary, the undersigned does not waive any of the following claims, causes of action, and demands for which the undersigned has given prior written notice to Owner:

[Identify specific unresolved matters of which Design-Build Firm has given written notice to Owner.]

The person signing this document represents that he or she is duly authorized to do so on behalf of the undersigned original contractor.

All of the provisions of this document shall bind the undersigned original contractor and the undersigned’s directors, managers, officers, employees, subsidiaries, heirs, legal representatives, affiliates, agents, successors, assigns, and parents and shall inure to the benefit of Owner.

NOTICE: Funds paid to the Contractor may be trust funds under the Texas Trust Fund Act (the “Act”) and Contractor's failure to pay trust funds it owes its artisans, laborers, mechanics, contractors, subcontractors, or materialmen who labor or furnish labor or material for the Project may constitute a violation of the Act and may subject Contractor and/or its owners, officers, directors, or agents to prosecution for a criminal misdemeanor or felony, as well as a civil suit for money damages, under the Act.

EXECUTED this ___ day of ____________, 20__

By:

Name: ____________________________
Title: ____________________________

THE STATE OF TEXAS §

COUNTY OF ____________ §

This instrument was acknowledged before me on the _____ day of ________________, 20__, by ____________________, ____________________, of ________________, a ____________________, on behalf of said ____________________.
EXHIBIT 18.3

FINAL WAIVER AND RELEASE OF CLAIMS

THE STATE OF TEXAS

COUNTY OF ________

The undersigned is an original contractor who has furnished labor and/or material ("Work") in the construction of improvements upon real property owned by San Antonio Water System, including its directors, managers, officers, employees, subsidiaries, heirs, legal representatives, affiliates, agents, successors, assigns, and parents ("Owner") located at ______________________ in the City of San Antonio, Bexar County, Texas (the "Property").

For Work in connection with the Property, the undersigned:

(i) Received $_______________ through ________________, 20___; and
(ii) Is not owed any amounts, and no amounts have been retained.

Therefore, in consideration of the payment to be received from Owner pursuant to the final Application for Payment, the undersigned:

1. Represents and warrants to Owner that the Work has been completed;
2. Represents and warrants to Owner that the undersigned has been paid in full for all sums owed for Work concerning the Property;
3. Acknowledges complete satisfaction of, and forever waives and releases, all claims of every kind against Owner or the Property, including, but not limited to, all causes of action, demands, liens and claims of liens, whether statutory, at law, or under the Texas constitution, whether currently known or unknown, whether arising in tort, contract, or otherwise, which the undersigned may have as a result of or in connection with the Work;
4. Represents and warrants to Owner that all persons and entities have been proportionately paid all amounts incurred by the undersigned, whether or not due and owing, for all work or labor performed, for all equipment rental, and for all materials, specially fabricated materials, services or supplies furnished in connection with the Work;
5. Agrees to indemnify, defend, with counsel acceptable to Owner, and hold harmless Owner and its directors, managers, officers, employees, agents, successors and assigns (collectively, the "Indemnitees") from and against any and all claims of every kind (including, but not limited to, all causes of action, demands, liens and claims of liens, whether statutory, at law, or under the Texas constitution, whether currently known or unknown, whether arising in tort, contract, or otherwise), liability, loss, cost (including without limitation court costs and other dispute resolution costs), expense and fees (including, but not limited to, attorneys' fees and witness fees, including those of experts and consultants) now or hereafter incurred.
paid or suffered by or asserted against any one or more of the Indemnitees or the Property because of any claim or action by the undersigned, or by any person or entity claiming by, through or under the undersigned, with respect to the claims, liens and rights herein waived and released or arising out of any breach or untruth of any representation herein made.

The person signing this document represents that he or she is duly authorized to do so on behalf of the undersigned original contractor.

All of the provisions of this document shall bind the undersigned original contractor and the undersigned’s directors, managers, officers, employees, subsidiaries, heirs, legal representatives, affiliates, agents, successors, assigns, and parents and shall inure to the benefit of Owner and Owner’s heirs, legal representatives, successors, assigns and sureties.

NOTICE: Funds paid to the Contractor may be trust funds under the Texas Trust Fund Act (the “Act”) and Contractor’s failure to pay trust funds it owes its artisans, laborers, mechanics, contractors, subcontractors, or materialmen who labor or who furnish labor or material for the Project may constitute a violation of the Act and may subject Contractor and/or its owners, officers, directors, or agents to prosecution for a criminal misdemeanor or felony, as well as a civil suit for money damages, under the Act.

EXECUTED this ___________ day of ________________________, 20___.

[Signature]
Name: ____________________________
Title: ____________________________

THE STATE OF TEXAS
COUNTY OF ______________

This instrument was acknowledged before me on the _____ day of ____________________, 20__, by ____________________________ of ______________, a ______________, on behalf of said ________________________.

_________________________________
Notary Public, State of Texas

My Commission Expires: ____________________________

_________________________________
Printed or Typed Name of Notary
Exhibit 19

Warranty Protocol
Please complete this form and email to warranty@tealcon.com. Please try to be as specific as possible with your request. Teal Construction will contact the appropriate subcontractor and schedule meeting with the Owner and the site's designated representative to go over the issue. At the time of the meeting Teal will provide an estimated schedule for getting the work completed.

WARRANTY WORK REQUEST

PROJECT: SAWS Project
Service Center Facilities
San Antonio, TX

SPECIFY CENTER: Northwest Operations Center
Eastside Operations Center

SUBSTANTIAL COMPLETION DATE:

WARRANTY EXPIRES:

We are experiencing a warranty problem (described below). Your immediate attention to correcting this problem is appreciated.

TO:
COMPANY NAME: Teal Construction
CONTACT: Warranty Department
PHONE NUMBER: 210-714-5482
EMAIL: warranty@tealcon.com

FROM:
COMPANY NAME: 17-5004 SAWS Project
CONTACT:
PHONE NUMBER:
EMAIL:

STATEMENT OF PROBLEM:

ALL PARTIES AGREE THAT THE WARRANTY REQUEST WORK WAS COMPLETED ON THE FOLLOWING DATE

________________________
OWNER, Name & Title

________________________
SUBCONTRACTOR, Name & Title

________________________
TEAL CONSTRUCTION, Name & Title
Warranty Plan

Teal Construction provides close out documents with warranty protocol information at Final Completion of the project. These documents will include the subcontractor contact list, warranty protocol, and warranty work request. When a warranty request is made, the Owner will fill out the warranty work request and send it to Teal Construction to be forwarded to the subcontractor responsible for the work. Teal Construction will meet with the Owner Representative and Subcontractor, and any other responsible parties, on specified site to go over the warranty claim. The work will be scheduled with the subcontractor to work with the Owner’s schedule.

Teal Construction will respond to Owner with 24 hours that the Warranty Requests has been received and communicate the plan to address the item. Teal Construction follows industry best practices to respond with a work order for all warranty requests within 5 business days, and to close out all outstanding warranty requests within 30 business days of the original request, pending any delays for parts or other reasonable delays.

If investigation of the warranty request is needed Teal Construction will contact Owner or designated site representative for approval prior to doing any investigations that will disrupt the site’s day to day activities. Teal Construction will work with the Owner on putting a schedule together for the investigations.

Once work is complete the Warranty Work Request Form will be signed by the Owner, Teal Construction and the Subcontractor and, if required, photo documentation and description of the work that was completed will be included by Teal Construction. All parties will receive a copy of the completed form. Teal Construction will log all requests and return to Owner at end of warranty period. One month prior to the warranty period being completed Teal Construction’s Project Manager, Superintendent, and Owner will walk the project to document any outstanding warranty work requests.
Exhibit 20

Agreement to Adopt Dispute Resolution Procedures
AGREEMENT TO ADOPT DISPUTE RESOLUTION PROCEDURES

This AGREEMENT TO ADOPT DISPUTE RESOLUTION PROCEDURES (“Agreement”) is made and entered into this ___ day of _______, 2017, (the “Effective Date”) by and between the San Antonio Water System (“Owner”) and Teal Construction Company, the Design-Build Firm. Owner and Design-Build Firm may be referred to individually herein as a “Party” and collectively as the “Parties.”

The Parties enter into this Agreement pursuant to their contract, entitled Design-Build Services Agreement (the “Contract”), dated April 4, 2017, 2017, for the planning, development, engineering and design, procurement, demolition, renovation and/or construction of the East Side Operations Center (“ESOC”) and the North West Operations Center (“NWOC”), constituting Phase 2 of the Owner’s New Service Center Project (referred to herein as the “Project”).

In consideration of the terms, conditions, covenants and agreements contained both herein and in their Contract, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as hereinafter set forth. Except as expressly provided otherwise in Section XIX of the Agreement, the following procedures (“Dispute Resolution Procedures”) shall apply to the resolution of any contested claim, controversy or demand, including any demand for damages, specific performance, or any other legal or equitable remedy, arising out of or relating to the Agreement, or the breach thereof, (hereinafter referred to as a “Dispute”):

(A) First Step: Direct Negotiation of Parties’ Senior Executives. The Parties shall cause their senior executives to convene within five (5) days after the date that a Party invokes these Dispute Resolution Procedures in writing (the “Invocation Date”) to attempt to resolve the Dispute by direct negotiation. Each senior executive who participates in the negotiation shall be deemed to have unlimited authority to bind his/her Party.

(B) Second Step: Non-Binding Mediation. If the Parties’ senior executives fail to convene such negotiations within such five (5) day period, or if the Parties’ senior executives fail to resolve the Dispute within fifteen (15) calendar days from the Invocation Date, the Dispute shall be deemed resolved unless one Party delivers to the other Party within such ten (10) day period a written request for mediation (“Mediation Request”). Submission of a Mediation Request within such ten (10) day period shall be a condition precedent to any further proceedings on the Dispute. Mediation shall be administered by the American Arbitration Association under its Commercial Mediation Procedures. Mediation shall take place in San Antonio, Texas, with a Mediator approved by the Parties, who shall equally share the costs of Mediation. Attachment A to these Dispute Resolution Procedures is a listing of dispute resolution neutrals the Parties agree to consider appointing as Mediator, subject to disclosure and resolution of any conflicts of interest that may relate to a neutral’s impartiality. Any Mediator who is not listed on
Attachment A must be a duly licensed attorney who is an active member of the State Bar of Texas or other state bar of one of the United States or a Registered Professional Engineer or Architect who has not been subject to disciplinary action within the past ten years, and who has at least fifteen (15) years prior experience acting as a mediator, arbitrator and/or dispute review board member for construction contract disputes and the negotiation, interpretation and/or adjudication of contract rights and claims involving the design and construction of commercial construction projects having a value comparable to that of the Project. Upon Owner’s request, the Design-Build Firm shall arrange for third parties having a contractual relationship with the Design-Build Firm to participate in the Mediation if such third parties may have responsibility or liability in connection with the Dispute and their involvement in or connection with the Project may give rise to common or interrelated questions of fact, law and contract interpretation. The Mediation of the Dispute must be completed within thirty (30) days from the date a Mediation Request has been delivered to the other Party, unless the Parties and the Mediator agree in writing to extend the period to be allowed for the Mediation. Any Party may, at any time after delivery of a Mediation Request, elect to terminate the Mediation process by delivering to the other Party a written notice of such election, whereupon the Mediation step of these Procedures shall be deemed to have been completed, and either party may proceed to the next step in these Dispute Resolution Procedures, as provided in Subparagraph (iv), below.

(C) Third Step: Litigation. Any Dispute that is not otherwise resolved under these Dispute Resolution Procedures, as set forth above, shall be resolved by litigation.

Each Party shall bear its own costs arising out of or in connection with these Dispute Resolution Procedures. The Parties acknowledge that they have established a fixed allowance in the GMP for funding of Owner’s share of the costs of dispute resolution hereunder. Such costs remain subject to recovery by Owner if Owner is the prevailing party under Section XIX of the Contract.

Miscellaneous Provisions

Nothing in this Agreement shall alter the liability of either Party as provided under the Contract, or by law.

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

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

[SIGNATURES ON FOLLOWING PAGE]
<table>
<thead>
<tr>
<th>OWNER: San Antonio Water System</th>
<th>DESIGN-BUILD FIRM:</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: ____________________________</td>
<td>Teal Construction Company</td>
</tr>
<tr>
<td>Robert R. Puente, President and CEO</td>
<td>By: ____________________________</td>
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<tr>
<td></td>
<td>____________________________</td>
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</tr>
<tr>
<td>Name</td>
<td>Contact Information</td>
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<tr>
<td>------------</td>
<td>--------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| George Baldwin | Peckar & Abramson PC  
111 Congress Avenue, Suite 1010  
Austin, Texas 78701  
Tel: (512) 236-0009  
Email: gbaldwin@pecklaw.com | Attorney |
| Joe Canterbury | Canterbury, Stuber, Elder, Gooch & Surratt  
Occidental Tower 5005 LBJ Freeway #1000  
Dallas, Texas 75244  
Tel: (972) 239-7493  
Email: jcanterbury@canterburylegal.com | Attorney |
| Wes Johnson | The Gardner Law Firm  
745 East Mulberry Avenue, Suite 500  
San Antonio, Texas 78212-3154  
Tel: (210) 733-8191  
Email: nwj@tglf.com  
Catherine Perez - cs@tglf.com | Attorney |
| Dean Kilgore | 1301 West 25th Street, Suite 540  
Austin, Texas 78705  
Tel: (512) 478-6120  
Email: kilgorelaw@msn.com | Attorney |
| Dan Naranjo | Dan A. Naranjo, P.C.  
P.O. Box 781828  
San Antonio, Texas 78278  
Tel: (210) 344-9878  
Email: Dnaranjo@texas.net | Attorney |
| Richard O'Neill | Law Offices of Davidson & Troilo  
7550 W IH-10 Suite 800  
San Antonio, Texas 78229  
Tel: (210) 348-6484  
Email: roneil@davidsontroilo.com | Attorney |
| John Specia | Plunkett, Griesbeck & Mimari, Inc.  
1635 E. Commerce, Suite 900  
San Antonio, Texas 78209  
Tel: (210) 734-7092  
Email: jspecia@pg-law.com | Attorney |
| Phyllis Speedlin | Dykema Cox Smith  
112 E. Pecan, Suite 1800  
San Antonio, Texas 78205  
Tel: 210-554-5594  
Email: pspeedlin@coxsmith.com | Attorney |
| Robert Wachsmuth | Robert W. Wachsmuth & Associates  
9311 San Pedro, Suite 707  
San Antonio, Texas 78216  
Tel: (210) 342-2707  
Email: Bob@rwattorneys.com | Attorney |
Exhibit 21

Owner’s Confirmation of Funding
DATE: ________________

OWNER: San Antonio Water System

DESIGN-BUILD FIRM:

PROJECT: Phase 2 Service Center Project ("Project")

CONTRACT: Design-Build Services Agreement, Contract No PS-00036-01, dated April 4, 2017

1. Owner’s full legal name, physical and mailing address, and business telephone number:

   Philip C. Campos, Jr., CPA
   Director, Contracting
   San Antonio Water System
   2800 U.S. Hwy 281 North
   San Antonio, Texas 78212
   Phone: 210-233-3871

2. Owner has authorized and approved funding for the Project in the amount of $17,710,927.00 (the Initial Guaranteed Maximum Price), which includes funding available to pay for all Work and Services under and in accordance with the Agreement.

   San Antonio Water System:
   By: _________________________________
   Robert R. Puente,
   President and CEO

The name and address of Design-Build Firm’s Payment Bond Surety to whom a claim may be sent:

Chubb Group of Insurance Co.
1330 Post Oak Blvd.
Houston, TX 77056-3011
Exhibit 22

Owner’s Security Procedures
EXHIBIT 22

OWNER'S SECURITY PROCEDURES

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

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

Design-Build Firm, its employees, and agents, and all Design-Build Firm Personnel shall obtain an Owner’s photo identification badge (Contractor's Badge) and parking tag, prior to commencement of any Services or Work on Owner’s property, which shall be used only for purposes necessary to perform the Services or Work under this Agreement. Owner’s Badge Office hours are Monday, Wednesday and Friday 8:00 AM to 12:00 PM excluding Owner’s 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, Design-Build Firm shall return all badges and parking tags to the Security Office. In the event Design-Build Firm fails to return all security badges and parking tags, in addition to any other rights or remedies to which Owner may be entitled at law or in equity, Owner may withhold from payment to the Design-Build Firm the sum of $500.00 dollars per badge or parking tag as liquidated damages. Design-Build Firm agrees that the actual amount of damages for failure to return the badges and/or parking tags are difficult to determine, and the liquidated damages herein are not a penalty, but are a reasonable estimate of the costs and expenses that may be incurred by Owner for failure to return the badges or parking tags.
Owner facilities require an Owner’s employee to physically escort Design-Build Firm at all times. Owner may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of Design-Build Firm are approved by Owner’s Security.

Design-Build Firm Personnel must always be under escort of the Design-Build Firm while performing Services or Work on any Owner designated primary facility (list with Owner’s Security). Design-Build Firm Personnel must display either a company photo badge, with name, or a valid driver’s license at all times while present on any Owner’s property. Design-Build Firm is solely responsible for the actions of its employees, agents, contractors and Design-Build Firm Personnel.

Design-Build Firm MUST be prepared for additional security requirements at its expense if violations of Owner’s Security Procedures set forth herein are noted. Some examples of additional requirements include hiring of Owner approved security guards, temporary fencing, mobile Closed Circuit Television Monitoring trailer(s), or extra lighting. Notwithstanding anything herein to the contrary, these Security Procedures are for the exclusive benefit of Owner, and do not constitute an attempt by Owner to direct the Design-Build Firm in the performance of its Services or Work or in its own security measures, for all of which the Design-Build Firm remains solely and exclusively responsible.

Advance coordination by Design-Build Firm with Owner Security for these security requirements is necessary to ensure no delays with timely performance of the Services and Work. In the event Design-Build Firm fails to comply with Owner Security requirements, Owner may, with no penalty or claim against Owner:

- Issue a Work Stoppage Order until the security violation(s) are remedied
- Ask any unidentified or improperly identified person or equipment to leave Owner’s site immediately and not return until items are remedied.
TO: San Antonio Water System Board of Trustees

FROM: Julie A. Valadez, Project Manager, AIA, PMP, Development, and Genoveva G. Gomez, P.E., Vice President, Engineering and Construction

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: APPROVAL OF CONTRACT AMENDMENT NO. 5 AND AUTHORIZATION OF ADDITIONAL PROGRAM MANAGEMENT SERVICES FOR PHASE 2 OF THE SERVICE CENTER PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Contract Amendment No. 5 and amends Resolution No. 12-325 by authorizing additional funds to an existing Program Management Services contract with APSI Construction Management in the amount not to exceed $958,465.00 for additional Program Management Services related to Phase 2 of the Service Center Project.

- The Service Center Program’s concept was originally presented at the Policy and Planning meeting in December of 2010 and the Board of Trustees (the “Board”) directed staff to proceed with the Program.

- On January 9, 2012, a Request for Qualifications was issued for the required professional services. Nine qualification statements were received. APSI Construction Management was selected through the Professional Services selection process.

- On June 5, 2012, by Resolution No. 12-325, the Board approved the staff recommendation to enter into a contract with APSI Contruction Management in the amount of $3,643,635.00.

- On June 14, 2016, Phase 1 of the Service Center Project was completed and in full operation.

- Since the initial length of this Project was expected to end in 2014, additional services are required to ensure Program Management Services continue through February of 2019 to include the completion of the Phase 2 construction and occupancy.

- To date, APSI Construction Management has completed Program Management Services for the Design and Construction of Phase 1 and the Design phase portions of Phase 2.

Staff recommends that the Board approve this resolution.
Approval of Contract Amendment No. 5 and Authorization of Additional Funds for Program Management Services Service Center Project

FINANCIAL IMPACT:

The Project Fund will finance this expenditures included in the 2016 Capital Improvements Program. The work is included in the Water Delivery Core Business and Wastewater Core Business. The total contract amount will not exceed $4,602,100.00. The correlating job numbers are 16-7709 and 16-7710. Total value of this action is an amount not to exceed $958,465.00 for the additional Program Management Services.

<table>
<thead>
<tr>
<th>Amount Authorized</th>
<th>Original Contract Amount (Resolution No. 12-325)</th>
<th>$3,643,635.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contract Amendment No. 1 (No Board Action Required)</td>
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<tr>
<td></td>
<td>Contract Amendment No. 2 (No Board Action Required)</td>
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<td>Contract Amendment No. 3 (No Board Action Required)</td>
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<td></td>
<td>Contract Amendment No. 4 (No Board Action Required)</td>
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<tr>
<td></td>
<td>Proposed Contract Amendment No. 5</td>
<td>958,465.00</td>
</tr>
<tr>
<td></td>
<td>Revised Contract Amount</td>
<td>$4,602,100.00</td>
</tr>
</tbody>
</table>

SUPPLEMENTARY COMMENTS:

This contract was amended with the no-cost Contract Amendment No. 1 on August 23, 2013. Contract Amendment No. 1 was to add specific language to address the Design-Build delivery method, extended the completion date from February 2015 to September of 2017 and to remove Phase 3 North East Operations Center (NEOC) and North West Operations Center (NWOC) from their scope of work.

This contract was amended with the no-cost Contract Amendment No. 2 on February 14, 2014. Contract Amendment No. 2 was to extend the completion date of Phase 1 from September 2015 to March 2016.

This contract was amended with the no-cost Contract Amendment No. 3 on February 26, 2015. Contract Amendment No. 3 was to include the Northwest Operation Center into Phase 2.

This contract was amended with the no-cost Contract Amendment No. 4 on July 5, 2016. Contract Amendment No. 4 was to include Design Guide Illustrations into the Phase 2 Design Criteria Package, and to extend the completion date of Phase 2 from September 2015 to March 2016.
Approval of Contract Amendment No. 5 and Authorization of
Additional Funds for Program Management Services
Service Center Project

Julie A. Valadez, AIA, PMP
Project Manager
Development

Genoveva G. Gomez, P.E.
Vice President
Engineering and Construction

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING CONTRACT AMENDMENT NO. 5 TO PROVIDE FOR ADDITIONAL PROGRAM MANAGEMENT SERVICES TO THE EXISTING CONTRACT WITH APSI CONSTRUCTION MANAGEMENT FOR ADDITIONAL FUNDS IN AN AMOUNT NOT TO EXCEED $958,465.00 IN CONNECTION WITH THE SERVICE CENTER PROJECT; AMENDING RESOLUTION NO. 12-325 BY APPROVING ADDITIONAL EXPENDITURES IN AN AMOUNT NOT TO EXCEED $958,465.00 FOR A TOTAL AUTHORIZATION AMOUNT NOT TO EXCEED $4,602,100.00 FROM THE PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE AN AMENDMENT TO AN EXISTING CONTRACT WITH APSI CONSTRUCTION MANAGEMENT FOR PROGRAM MANAGEMENT SERVICES, AND TO PAY APSI CONSTRUCTION MANAGEMENT AN AMOUNT NOT TO EXCEED $958,465.00 TO PERFORM ADDITIONAL PROGRAM MANAGEMENT SERVICES FOR THE PERIOD APRIL 5, 2017 THROUGH FEBRUARY 28, 2019 FOR THE SERVICE CENTER PROJECT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING FOR A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the San Antonio Water System (the “System”) Board of Trustees approved a contract with APSI Construction Management on June 5, 2012 by Resolution No. 12-325 in an amount not to exceed $3,643,635.00 for Program Management Services related to the Service Center Project; and

WHEREAS, APSI Construction Management has provided quality Program Management Services to the System throughout the Service Center Project, Phase 1 and Phase 2 and additional Program Management Services are needed; and

WHEREAS, Contract Amendment No. 5 included additional Program Management Services in the amount of $958,465.00 for the total contract amount not to exceed $4,602,100.00; and
WHEREAS, the Project Funds are required and available in an amount not to exceed $958,465.00 for services from April 5, 2017 through February 28, 2019; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Contract Amendment No. 5 by amending the existing contract with APSI Construction Management for additional funds in an amount not to exceed $958,465.00 for Program Management Services for the Service Center Project, (ii) to authorize that expenditures in an amount not to exceed $958,465.00 be expended from the Project Fund, (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute an amendment to the contract with APSI Construction Management for Program Management Services for the period of April 5, 2017 through February 28, 2019, in an amount not to exceed $958,465.00, and to pay APSI Construction Management an amount not to exceed $958,465.00 to perform Program Management Services for the period from April 5, 2017 through February 28, 2019; now, therefore:

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

1. That Contract Amendment No. 5 is hereby approved to provide additional Program Management Services related to the existing contract with APSI Construction Management, LLC in an amount not to exceed $958,465.00 for the Service Center Project.

2. That expenditures in an amount not to exceed $958,465.00 are hereby approved and to be expended from the Project Fund to perform Program Management Services.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute an amendment to the existing contract with APSI Construction Management, for Program Management Services for the Service Center Project in an amount not to exceed $958,465.00, and to pay APSI Construction Management an amount not to exceed $958,465.00 for the additional Program Management Services.

4. 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.

5. If any part, section, paragraph, sentence, phrase, or work 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.

6. This resolution becomes effective immediately upon its passage.
PASSED AND APPROVED this 4th day of April, 2017.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Alissa R. Lockett, Director, Construction and Maintenance, and Michael S. Brinkmann, Vice President, Distribution and Collection Operations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AWARD OF A CONSTRUCTION CONTRACT IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT - PACKAGE 1

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $1,961,575.00 to Facilities Rehabilitation, Inc., a local, MBE-Hispanic firm, in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 1.

- The San Antonio Water System (SAWS) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313.

- One of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, SAWS and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the SAWS Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet.

- SAWS Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028.

- SAWS can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss. The contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs.
• In 2016, SAWS had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System. In comparison to the industry average of 9 leaks per 100 miles, SAWS has workload challenges due to the aging infrastructure.

• Beyond the water leaks reported to SAWS by water-conscious public citizens, many leaks are discovered by in-house leak detection crews, leak detection and valve assessment contractors, and through SAWS’ proactive conservation program.

• This contract will allow for SAWS staff to identify, prioritize, and manage the leak repair work orders to be issued to the contractor to maximize efficiency.

• The standard construction bidding process was used for this contract.

• Facilities Rehabilitation, Inc., submitted the lowest responsive bid of $1,961,575.00.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Under the Program and Interlocal Contract with the EAA, SAWS is entitled to be paid $18,631,400 by the EAA over the first five (5) years of the contract. SAWS would be obligated to transfer 2,372.5 acre-feet of Edwards Water Rights into the EAA Groundwater Trust annually in the years of 2016-2019, and 316.0 acre-feet in 2020. SAWS has already received the 2017 funding from the EAA in the amount of $4,507,750.00. Any applicable water leak repair charges incurred under this contract, and similar contracts, will be paid from these funds.

The construction cost will be paid from the System Fund in the 2017 Distribution and Collection Operations budget (Company: 1000, Accounting Unit: 5047600, Account: 511220) in the total amount of $1,961,575.00. The SAWS job number for the replacement of any water service lines, valves or fire hydrants is 17-1401 (CIP). The SAWS job number for all other types of work is 17-0104 (O&M).

SUPPLEMENTARY COMMENTS:

SAWS staff prepared the contract documents for this project. The bid opening was held on March 1, 2017 at 10:00 a.m. The following bids were submitted:
The bid amount by Facilities Rehabilitation, Inc., represents a 7.7% decrease from the estimated construction cost. This contract provides for 365 calendar days for completion of this contract or until funds have been exhausted.

The SMWB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilities Rehabilitation, Inc.*</td>
<td>$1,961,575.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>D. Guerra Construction, LLC</td>
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<td>Nerie Construction, LLC</td>
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</tr>
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<td>Engineer’s Estimate</td>
<td>$2,125,000.00</td>
<td></td>
</tr>
<tr>
<td>National Power Rodding Corp.</td>
<td>$2,256,812.00</td>
<td>Non-Local/Non-SMWB</td>
</tr>
<tr>
<td>Pronto Sandblasting &amp; Coating &amp; Oil-Field Services Co., Inc.</td>
<td>$2,528,100.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
</tbody>
</table>

* Lowest Responsible Bidder

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**SMWB ANALYSIS – BOARD AWARD**

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<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
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<tbody>
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<td>SBE</td>
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<tr>
<td>MBE – African American</td>
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<tr>
<td>MBE - Asian</td>
<td>0.00%</td>
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<tr>
<td>MBE - Hispanic</td>
<td>98.47%</td>
</tr>
<tr>
<td>MBE - Other</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE - Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE – Non-Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td><strong>SMWB Total</strong></td>
<td><strong>98.47%</strong></td>
</tr>
</tbody>
</table>

Alissa R. Lockett, P.E.  
Director, Construction and Maintenance

Michael S. Brinkmann  
Vice President, Distribution and Collection Ops

**APPROVED:**

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE BID OF FACILITIES REHABILITATION, INC., FOR A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,961,575.00 IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 1; AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,961,575.00 TO FACILITIES REHABILITATION, INC., IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 1; APPROVING THE EXPENDITURE OF FUNDS AND TO MAKE AVAILABLE THE AMOUNT OF $1,961,575.00 FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONTRACT WITH FACILITIES REHABILITATION, INC., AND TO PAY FACILITIES REHABILITATION, INC., THE AMOUNT OF $1,961,575.00 FOR THE SYSTEM'S OBLIGATIONS UNDER THE TERMS OF THE CONTRACT FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the San Antonio Water System (the “System”) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313; and

WHEREAS, one of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, the System and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the System’s Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet; and

WHEREAS, the System’s Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective
January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028; and

WHEREAS, the System can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss; the contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs; and

WHEREAS, in 2016, the System had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System; in comparison to the industry average of 9 leaks per 100 miles, the System has workload challenges due to the aging infrastructure; and

WHEREAS, the System requires construction services to perform the necessary water distribution system repairs (the "project work"); and

WHEREAS, Facilities Rehabilitation, Inc., a local, MBE-Hispanic firm submitted a bid in the amount of $1,961,575.00 for the project work, and this bid has been determined to be the lowest responsible bid; and

WHEREAS, System funds in the amount of $1,961,575.00 are required for the project work; and

WHEREAS, the total amount of $1,961,575.00 is available from the System Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the bid of Facilities Rehabilitation, Inc., for a construction contract in the amount of $1,961,575.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 1, (ii) to award a construction contract in the amount of $1,961,575.00 to Facilities Rehabilitation, Inc., in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 1, (iii) to approve the expenditure of funds in the amount of $1,961,575.00 from the System Fund for the project work, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with Facilities Rehabilitation, Inc., and to pay Facilities Rehabilitation, Inc., the amount of $1,961,575.00 for the System’s obligations under the terms of the contract for the project work; now, therefore:

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

1. That the bid of Facilities Rehabilitation, Inc., in the amount of $1,961,575.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 1 is hereby accepted.
2. That the contract is hereby awarded to Facilities Rehabilitation, Inc., in the amount of $1,961,575.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 1.

3. That the expenditure of funds in the not to exceed amount of $1,961,575.00 for the project work is hereby approved and made available from the System Fund.

4. That the System's President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a contract with Facilities Rehabilitation, Inc., for the project work and to pay an amount of $1,961,575.00 for the System’s obligations under the terms of the contract to Facilities Rehabilitation, Inc., for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 1.

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 4th day of April, 2017.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________
Ernesto Arrellano, Jr., Secretary
TO: San Antonio Water System Board of Trustees

FROM: Alissa R. Lockett, Director, Construction and Maintenance, and Michael S. Brinkmann, Vice President, Distribution and Collection Operations

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AWARD OF A CONSTRUCTION CONTRACT IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT - PACKAGE 2

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $1,961,575.00 to Facilities Rehabilitation, Inc., a local, MBE-Hispanic firm, in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 2.

- The San Antonio Water System (SAWS) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313.

- One of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, SAWS and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the SAWS Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet.

- SAWS Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028.

- SAWS can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss. The contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs.
In 2016, SAWS had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System. In comparison to the industry average of 9 leaks per 100 miles, SAWS has workload challenges due to the aging infrastructure.

Beyond the water leaks reported to SAWS by water-conscious public citizens, many leaks are discovered by in-house leak detection crews, leak detection and valve assessment contractors, and through SAWS’ proactive conservation program.

This contract will allow for SAWS staff to identify, prioritize, and manage the leak repair work orders to be issued to the contractor to maximize efficiency.

The standard construction bidding process was used for this contract.

Facilities Rehabilitation, Inc., submitted the lowest responsive bid of $1,961,575.00.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Under the Program and Interlocal Contract with the EAA, SAWS is entitled to be paid $18,631,400 by the EAA over the first five (5) years of the contract. SAWS would be obligated to transfer 2,372.5 acre-feet of Edwards Water Rights into the EAA Groundwater Trust annually in the years of 2016-2019, and 316.0 acre-feet in 2020. SAWS has already received the 2017 funding from the EAA in the amount of $4,507,750.00. Any applicable water leak repair charges incurred under this contract, and similar contracts, will be paid from these funds.

The construction cost will be paid from the System Fund in the 2017 Distribution and Collection Operations budget (Company: 1000, Accounting Unit: 5047600, Account: 511220) in the total amount of $1,961,575.00. The SAWS job number for the replacement of any water service lines, valves or fire hydrants is 17-1401 (CIP). The SAWS job number for all other types of work is 17-0104 (O&M).

**SUPPLEMENTARY COMMENTS:**

SAWS staff prepared the contract documents for this project. The bid opening was held on March 1, 2017 at 2:00 p.m. The following bids were submitted:
The bid amount by Facilities Rehabilitation, Inc., represents a 7.7% decrease from the estimated construction cost. This contract provides for 365 calendar days for completion of this contract or until funds have been exhausted.

The SMWB analysis is shown in the following table:

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<th>BIDDER</th>
<th>BID AMOUNT</th>
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<td>$2,528,100.00</td>
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</table>

* Lowest Responsible Bidder

2017 Annual Water Distribution Leak Repairs Contract - Package 2

FACILITIES REHABILITATION, INC.

SMWB ANALYSIS – BOARD AWARD

<p>| | |</p>
<table>
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</tr>
</thead>
<tbody>
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<td>SBE</td>
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<tr>
<td>MBE – African American</td>
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</tr>
<tr>
<td>MBE - Asian</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE - Hispanic</td>
<td>98.47%</td>
</tr>
<tr>
<td>MBE - Other</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE - Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE – Non-Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td>SMWB Total</td>
<td>98.47%</td>
</tr>
</tbody>
</table>

Alissa R. Lockett, P.E.  
Director, Construction and Maintenance

Michael S. Brinkmann  
Vice President, Distribution and Collection Ops

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE BID OF FACILITIES REHABILITATION, INC., FOR A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,961,575.00 IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 2; AWARDBING A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,961,575.00 TO FACILITIES REHABILITATION, INC., IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 2; APPROVING THE EXPENDITURE OF FUNDS AND TO MAKE AVAILABLE THE AMOUNT OF $1,961,575.00 FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONTRACT WITH FACILITIES REHABILITATION, INC., AND TO PAY FACILITIES REHABILITATION, INC., THE AMOUNT OF $1,961,575.00 FOR THE SYSTEM’S OBLIGATIONS UNDER THE TERMS OF THE CONTRACT FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313; and

WHEREAS, one of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, the System and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the System’s Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet; and

WHEREAS, the System’s Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028; and
WHEREAS, the System can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss; the contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs; and

WHEREAS, in 2016, the System had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System; in comparison to the industry average of 9 leaks per 100 miles, the System has workload challenges due to the aging infrastructure; and

WHEREAS, the System requires construction services to perform the necessary water distribution system repairs (the "project work"); and

WHEREAS, Facilities Rehabilitation, Inc., a local MBE-Hispanic firm submitted a bid in the amount of $1,961,575.00 for the project work and this bid has been determined to be the lowest responsible bid; and

WHEREAS, System funds in the amount of $1,961,575.00 are required for the project work; and

WHEREAS, the total amount of $1,961,575.00 is available from the System Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the bid of Facilities Rehabilitation, Inc., for a construction contract in the amount of $1,961,575.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 2, (ii) to award a construction contract in the amount of $1,961,575.00 to Facilities Rehabilitation, Inc., in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 2, (iii) to approve the expenditure of funds in the amount of $1,961,575.00 from the System Fund for the project work, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with Facilities Rehabilitation, Inc., and to pay Facilities Rehabilitation, Inc., the amount of $1,961,575.00 for the System’s obligations under the terms of the contract for the project work; now, therefore:

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

1. That the bid of Facilities Rehabilitation, Inc., in the amount of $1,961,575.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 2 is hereby accepted.

2. That the contract is hereby awarded to Facilities Rehabilitation, Inc., in the amount of $1,961,575.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 2.
3. That the expenditure of funds in the not to exceed amount of $1,961,575.00 for the project work is hereby approved and made available from the System Fund.

4. That the System's President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a contract with Facilities Rehabilitation, Inc., for the project work and to pay an amount of $1,961,575.00 for the System’s obligations under the terms of the contract to Facilities Rehabilitation, Inc., for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 2.

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 4th day of April, 2017.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________
Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. 35

TO:       San Antonio Water System Board of Trustees

FROM:     Alissa R. Lockett, Director, Construction and Maintenance, and Michael S. Brinkmann, Vice President, Distribution and Collection Operations

THROUGH:  Robert R. Puente, President/Chief Executive Officer

SUBJECT:  AWARD OF A CONSTRUCTION CONTRACT IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT - PACKAGE 3

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $1,913,675.00 to D. Guerra Construction, LLC, a local, MBE-Hispanic firm, in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 3.

- The San Antonio Water System (SAWS) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313.

- One of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, SAWS and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the SAWS Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet.

- SAWS Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028.

- SAWS can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss. The contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs.
In 2016, SAWS had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System. In comparison to the industry average of 9 leaks per 100 miles, SAWS has workload challenges due to the aging infrastructure.

Beyond the water leaks reported to SAWS by water-conscious public citizens, many leaks are discovered by in-house leak detection crews, leak detection and valve assessment contractors, and through SAWS’ proactive conservation program.

This contract will allow for SAWS staff to identify, prioritize, and manage the leak repair work orders to be issued to the contractor to maximize efficiency.

The standard construction bidding process was used for this contract.

D. Guerra Construction, LLC, submitted the lowest responsive bid of $1,913,675.00.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Under the Program and Interlocal Contract with the EAA, SAWS is entitled to be paid $18,631,400 by the EAA over the first five (5) years of the contract. SAWS would be obligated to transfer 2,372.5 acre-feet of Edwards Water Rights into the EAA Groundwater Trust annually in the years of 2016-2019, and 316.0 acre-feet in 2020. SAWS has already received the 2017 funding from the EAA in the amount of $4,507,750.00. Any applicable water leak repair charges incurred under this contract, and similar contracts, will be paid from these funds.

The construction cost will be paid from the System Fund in the 2017 Distribution and Collection Operations budget (Company: 1000, Accounting Unit: 5047600, Account: 511220) in the total amount of $1,913,675.00. The SAWS job number for the replacement of any water service lines, valves or fire hydrants is 17-1401 (CIP). The SAWS job number for all other types of work is 17-0104 (O&M).

**SUPPLEMENTARY COMMENTS:**

SAWS staff prepared the contract documents for this project. The bid opening was held on March 2, 2017 at 10:00 a.m. The following bids were submitted:
The bid amount by D. Guerra Construction, LLC, represents a 9.9% decrease from the estimated construction cost. This contract provides for 365 calendar days for completion of this contract or until funds have been exhausted.

The SMWB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>D. Guerra Construction, LLC*</td>
<td>$1,913,675.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>Nerie Construction, LLC</td>
<td>$1,953,100.00</td>
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<td>Engineer's Estimate</td>
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<tr>
<td>Austin Constructors, LLC</td>
<td>$2,135,320.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>Pronto Sandblasting &amp; Coating &amp; Oil-Field Services Co., Inc.</td>
<td>$2,528,100.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
</tbody>
</table>

* Lowest Responsible Bidder

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Alissa R. Lockett, P.E.
Director, Construction and Maintenance

Michael S. Brinkmann
Vice President, Distribution and Collection Ops

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE BID OF D. GUERRA CONSTRUCTION, LLC, FOR A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,913,675.00 IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 3; AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,913,675.00 TO D. GUERRA CONSTRUCTION, LLC, IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 3; APPROVING THE EXPENDITURE OF FUNDS AND TO MAKE AVAILABLE THE AMOUNT OF $1,913,675.00 FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONTRACT WITH D. GUERRA CONSTRUCTION, LLC, AND TO PAY D. GUERRA CONSTRUCTION, LLC, THE AMOUNT OF $1,913,675.00 FOR THE SYSTEM'S OBLIGATIONS UNDER THE TERMS OF THE CONTRACT FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313; and

WHEREAS, one of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, the System and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the System’s Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet; and

WHEREAS, the System’s Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective
January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028; and

WHEREAS, the System can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss; the contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs; and

WHEREAS, in 2016, the System had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System; in comparison to the industry average of 9 leaks per 100 miles, the System has workload challenges due to the aging infrastructure; and

WHEREAS, the System requires construction services to perform the necessary water distribution system repairs (the "project work"); and

WHEREAS, D. Guerra Construction, LLC, a local, MBE-Hispanic firm submitted a bid in the amount of $1,913,675.00 for the project work, and this bid has been determined to be the lowest responsible bid; and

WHEREAS, System funds in the amount of $1,913,675.00 are required for the project work; and

WHEREAS, the total amount of $1,913,675.00 is available from the System Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the bid of D. Guerra Construction, LLC, for a construction contract in the amount of $1,913,675.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 3, (ii) to award a construction contract in the amount of $1,913,675.00 to D. Guerra Construction, LLC, in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 3, (iii) to approve the expenditure of funds in the amount of $1,913,675.00 from the System Fund for the project work, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with D. Guerra Construction, LLC, and to pay D. Guerra Construction, LLC, the amount of $1,913,675.00 for the System’s obligations under the terms of the contract for the project work; now, therefore:

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

1. That the bid of D. Guerra Construction, LLC, in the amount of $1,913,675.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 3 is hereby accepted.
2. That the contract is hereby awarded to D. Guerra Construction, LLC, in the amount of $1,913,675.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 3.

3. That the expenditure of funds in the not to exceed amount of $1,913,675.00 for the project work is hereby approved and made available from the System Fund.

4. That the System's President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a contract with D. Guerra Construction, LLC, for the project work and to pay an amount of $1,913,675.00 for the System’s obligations under the terms of the contract to D. Guerra Construction, LLC, for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 3.

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 4th day of April, 2017.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________
Ernesto Arrellano, Jr., Secretary
TO:         San Antonio Water System Board of Trustees

FROM:      Alissa R. Lockett, Director, Construction and Maintenance, and Michael S. Brinkmann, Vice President, Distribution and Collection Operations

THROUGH:   Robert R. Puente, President/Chief Executive Officer

SUBJECT:   AWARD OF A CONSTRUCTION CONTRACT IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT - PACKAGE 4

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $1,905,675.00 to D. Guerra Construction, LLC, a local, MBE-Hispanic firm, in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 4.

• The San Antonio Water System (SAWS) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313.

• One of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, SAWS and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the SAWS Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet.

• SAWS Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028.

• SAWS can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss. The contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs.
In 2016, SAWS had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System. In comparison to the industry average of 9 leaks per 100 miles, SAWS has workload challenges due to the aging infrastructure.

Beyond the water leaks reported to SAWS by water-conscious public citizens, many leaks are discovered by in-house leak detection crews, leak detection and valve assessment contractors, and through SAWS’ proactive conservation program.

This contract will allow for SAWS staff to identify, prioritize, and manage the leak repair work orders to be issued to the contractor to maximize efficiency.

The standard construction bidding process was used for this contract.

D. Guerra Construction, LLC, submitted the lowest responsive bid of $1,905,675.00.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Under the Program and Interlocal Contract with the EAA, SAWS is entitled to be paid $18,631,400 by the EAA over the first five (5) years of the contract. SAWS would be obligated to transfer 2,372.5 acre-feet of Edwards Water Rights into the EAA Groundwater Trust annually in the years of 2016-2019, and 316.0 acre-feet in 2020. SAWS has already received the 2017 funding from the EAA in the amount of $4,507,750.00. Any applicable water leak repair charges incurred under this contract, and similar contracts, will be paid from these funds.

The construction cost will be paid from the System Fund in the 2017 Distribution and Collection Operations budget (Company: 1000, Accounting Unit: 5047600, Account: 511220) in the total amount of $1,905,675.00. The SAWS job number for the replacement of any water service lines, valves or fire hydrants is 17-1401 (CIP). The SAWS job number for all other types of work is 17-0104 (O&M).

**SUPPLEMENTARY COMMENTS:**

SAWS staff prepared the contract documents for this project. The bid opening was held on March 2, 2017 at 2:00 p.m. The following bids were submitted:
The bid amount by D. Guerra Construction, LLC, represents a 10.3% decrease from the estimated construction cost. This contract provides for 365 calendar days for completion of this contract or until funds have been exhausted.

The SMWB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>LOCAL/SMWB</th>
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<tbody>
<tr>
<td>D. Guerra Construction, LLC*</td>
<td>$1,905,675.00</td>
<td>Local/MBE-Hispanic</td>
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<tr>
<td>Austin Constructors, LLC</td>
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<td>Nerie Construction, LLC</td>
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</table>

* Lowest Responsible Bidder
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE BID OF D. GUERRA CONSTRUCTION, LLC, FOR A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,905,675.00 IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 4; AWARDING A CONSTRUCTION CONTRACT IN THE AMOUNT OF $1,905,675.00 TO D. GUERRA CONSTRUCTION, LLC, IN CONNECTION WITH THE 2017 ANNUAL WATER DISTRIBUTION LEAK REPAIRS CONTRACT – PACKAGE 4; APPROVING THE EXPENDITURE OF FUNDS AND TO MAKE AVAILABLE THE AMOUNT OF $1,905,675.00 FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONTRACT WITH D. GUERRA CONSTRUCTION, LLC, AND TO PAY D. GUERRA CONSTRUCTION, LLC, THE AMOUNT OF $1,905,675.00 FOR THE SYSTEM'S OBLIGATIONS UNDER THE TERMS OF THE CONTRACT FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) Board of Trustees approved the Edwards Aquifer Habitat Conservation Plan (EAHCP) and other documents associated with the Edwards Aquifer Recovery Implementation Program on November 1, 2011, in Resolution No. 11-313; and

WHEREAS, one of the requirements to receive United States Fish and Wildlife Service’s (the “Service”) approval of the EAHCP was that the conservation measures outlined in the EAHCP must be “reasonably certain to occur.” In order to assure the Program would be deemed “reasonably certain to occur” by the Service, the System and other EAHCP permittees loaned Edwards Water Rights to the EAA Groundwater Trust for a term of ten years through Initial Commitment Contract No. 13-649-HCP, which was approved by the System’s Board of Trustees on October 1, 2013 through Resolution No. 13-302, conveying to the EAA Groundwater Trust the amount of 8,000 acre-feet; and

WHEREAS, the System’s Board of Trustees approved an Interlocal Contract with the Edwards Aquifer Authority (EAA) to implement the springflow protection measures included in the EAHCP known as the Regional Water Conservation Program (the “Program”) effective
January 1, 2016 through March 31, 2028 on January 5, 2016, in Resolution No. 16-028; and

WHEREAS, the System can use the funds received from the Program to hire contractors to repair leaks in the water distribution system so as to reduce water loss; the contractors will work in tandem with SAWS Distribution and Collection Operations crews to reduce the overall turnaround time on repairs; and

WHEREAS, in 2016, the System had over 20 leaks per 100 miles of water distribution system piping over the approximately 6,900 miles of water distribution mains and appurtenances in the System; in comparison to the industry average of 9 leaks per 100 miles, the System has workload challenges due to the aging infrastructure; and

WHEREAS, the System requires construction services to perform the necessary water distribution system repairs (the "project work"); and

WHEREAS, D. Guerra Construction, LLC, a local, MBE-Hispanic firm submitted a bid in the amount of $1,905,675.00 for the project work, and this bid has been determined to be the lowest responsible bid; and

WHEREAS, System funds in the amount of $1,905,675.00 are required for the project work; and

WHEREAS, the total amount of $1,905,675.00 is available from the System Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the bid of D. Guerra Construction, LLC, for a construction contract in the amount of $1,905,675.00 in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 4, (ii) to award a construction contract in the amount of $1,905,675.00 to D. Guerra Construction, LLC, in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 4, (iii) to approve the expenditure of funds in the amount of $1,905,675.00 from the System Fund for the project work, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with D. Guerra Construction, LLC, and to pay D. Guerra Construction, LLC, the amount of $1,905,675.00 for the System’s obligations under the terms of the contract for the project work; now, therefore:

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

1. That the bid of D. Guerra Construction, LLC, in the amount of $1,905,675.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 4 is hereby accepted.
2. That the contract is hereby awarded to D. Guerra Construction, LLC, in the amount of $1,905,675.00 for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 4.

3. That the expenditure of funds in the not to exceed amount of $1,905,675.00 for the project work is hereby approved and made available from the System Fund.

4. That the System's President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a contract with D. Guerra Construction, LLC, for the project work and to pay an amount of $1,905,675.00 for the System’s obligations under the terms of the contract to D. Guerra Construction, LLC, for the project work in connection with the 2017 Annual Water Distribution Leak Repairs Contract - Package 4.

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 4th day of April, 2017.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________
Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. ______

TO: San Antonio Water System Board of Trustees

FROM: Nancy Belinsky, Vice President and General Counsel

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: FILING OF A CIVIL DECLARATORY JUDGEMENT ACTION TO CONFIRM ACTIONS OF THE SAN ANTONIO WATER SYSTEM RELATED TO THE EXPENDITURE OF PUBLIC SECURITIES PROCEEDS FOR CONSTRUCTION OF THE VISTA RIDGE INTEGRATION PROJECT

Board Action Date: April 4, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the filing of a civil declaratory judgement action under Chapter 1205, as amended, of the Texas Government Code (“Chapter 1205”) by the City of San Antonio, Texas, acting by and through and for the benefit of the San Antonio Water System (the “System”) to confirm the validity and enforceability of the acts, deeds or actions undertaken by the System for the expenditure of public securities proceeds through contracts for the construction of the Vista Ridge Integration Project.

• The System entered into a water transmission and purchase agreement on November 4, 2014, with Vista Ridge LLC (formerly Abengoa Vista Ridge LLC) to provide and deliver water supplies through the Vista Ridge Regional Supply Project.

• In order to receive the water acquired through this purchase agreement, the System needs to construct new infrastructure to allow for the increased volumes of water into the system. This will be done through the Vista Ridge Integration Project.

• The System intends to use public securities proceeds to pay for a portion of the construction for the Vista Ridge Integration Project. Chapter 1205 vests a Court with authority to enter a declaratory judgment with respect to an issuer (System) as to “the legality and validity of each expenditure or proposed expenditure of money relating to the public securities.” Therefore, in order to assure that the expenditure of the public securities proceeds for the Vista Ridge Integration Project are in compliance with the applicable law, the System requests authorization to file a suit seeking declaratory judgement concerning this matter pursuant to Chapter 1205 (the “Suit”).

• Chapter 1205 requires that the Texas Attorney General be a named party to the declaratory judgement suit.

Staff recommends that the Board approve this resolution.
FINANCIAL IMPACT:

Any legal fees incurred to file the lawsuit will be paid from the System Fund, 2017 O&M budget (Company: 1000; Accounting Unit: 5000500; Account: 511320).

Nancy Belinsky
Vice President and General Counsel

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AUTHORIZING THE FILING OF A CIVIL DECLARATORY JUDGEMENT ACTION UNDER CHAPTER 1205, AS AMENDED, TEXAS GOVERNMENT CODE, TO CONFIRM THE VALIDITY AND ENFORCEABILITY OF THE ACTS, DEEDS OR ACTIONS UNDERTAKEN BY THE SAN ANTONIO WATER SYSTEM FOR THE EXPENDITURE OF PUBLIC SECURITIES PROCEEDS THROUGH CONTRACTS FOR THE CONSTRUCTION OF THE VISTA RIDGE INTEGRATION PROJECT; FURTHER AUTHORIZING THE SYSTEM'S GENERAL COUNSEL TO TAKE ALL NECESSARY ACTION RELATING TO SUCH DECLARATORY JUDGEMENT ACTION; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on November 4, 2014, San Antonio Water System (the “System”) entered into a water transmission and purchase agreement with Vista Ridge LLC (formerly Abengoa Vista Ridge LLC) to provide water supplies through the Vista Ridge Regional Supply Project; and

WHEREAS, in order to receive the water acquired through this purchase agreement, the System needs to construct new infrastructure to allow for the increased volumes of water into the System. This will be done through the Vista Ridge Integration Project; and

WHEREAS, the System intends to use public securities proceeds derived from the sale of “City of San Antonio, Texas Water System Commercial Paper Notes, Series A” and “City of San Antonio, Texas Water System Commercial Paper Notes, Series B” (together, Notes), authorized and from time to time outstanding pursuant to Ordinance No. 2012-09-20-0746 adopted by the City Council of the City of San Antonio, Texas on September 20, 2012 and approved by the Texas Attorney General (as evidenced by an approving opinion therefrom dated October 3, 2012), to pay for a portion of the construction for the Vista Ridge Integration Project; and

WHEREAS, Chapter 1205, as amended, of the Texas Government Code (Chapter 1205) vests a Court with authority to enter a declaratory judgment with respect to an issuer (System) as to “the legality and validity of each expenditure or proposed expenditure of money relating to the public securities;” and

WHEREAS, Chapter 1205 requires that the Texas Attorney General be a named party to the declaratory judgement suit; and
WHEREAS, in order to assure that the expenditure of the Notes proceeds for the Vista Ridge Integration Project are in compliance with the applicable law, the System requests authorization to file a suit seeking declaratory judgement concerning this matter pursuant to Chapter 1205; and

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

1. That a declaratory judgement action under Chapter 1205, as amended, of the Texas Government Code by the City of San Antonio, Texas, acting by and through and for the benefit of the System, to confirm the validity and enforceability of the acts, deeds or actions undertaken by the System for the expenditure of Notes proceeds through contracts for the construction of the Vista Ridge Integration Project, is hereby authorized to be filed.

2. That System’s General Counsel or her designee is hereby further authorized to take all necessary action, including the expenditure of funds, relating to the filing of the declaratory judgement action in this matter, and any future appeal or other administrative or judicial proceeding related thereof, as may be required.

3. 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.

4. If any 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.

5. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 4th day of April, 2017.

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Berto Guerra, Jr., Chairman

ATTEST:

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Ernesto Arrellano, Jr., Secretary